THE CODE OF IOWA

2005

AS AUTHORIZED BY CHAPTER 2B

TITLE I

STATE SOVEREIGNTY AND MANAGEMENT

SUBTITLE 1

SOVEREIGNTY

CHAPTER 1

SOVEREIGNTY AND JURISDICTION OF THE STATE

1.1 State boundaries.

The boundaries of the state are as defined in the preamble of the Constitution.

[C51, §1; R60, §1; C73, §1; C97, §1; C24, 27, 31, 35, 39, §**1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §1.1]

1.2 Sovereignty.

The state possesses sovereignty coextensive with the boundaries referred to in section 1.1, subject to such rights as may at any time exist in the United States in relation to public lands, or to any establishment of the national government.

[C51, §2; R60, §2; C73, §2; C97, §2; C24, 27, 31, 35, 39, §**2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §1.2]

1.3 Concurrent jurisdiction.

The state has concurrent jurisdiction on the waters of any river or lake which forms a common boundary between this and any other state.

[C51, §3; R60, §3; C73, §3; C97, §3; C24, 27, 31, 35, 39, §**3;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §1.3]

See Act of Congress, Aug. 4, 1846, 9 Stat. L. p. 52

1.4 Acquisition of lands by United States.
The United States of America may acquire by condemnation or otherwise for any of its uses or purposes any real estate in this state, and may exercise jurisdiction thereover but not to the extent of limiting the provisions of the laws of this state.

This state reserves, when not in conflict with the Constitution of the United States or any law enacted in pursuance thereof, the right of service on real estate held by the United States of any notice or process authorized by its laws; and reserves jurisdiction, except when used for naval or military purposes, over all offenses committed thereon against its laws and regulations and ordinances adopted in pursuance thereof.

Such real estate shall be exempt from all taxation, including special assessments, while held by the United States except when taxation of such property is authorized by the United States.

[R60, §2197, 2198; C73, §4; C97, §4; S13, §4-a – 4-d, 2024-c; C24, 27, 31, 35, 39, §**4;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §1.4]

1.5 Federal fish and game refuge.
The state of Iowa hereby consents that the government of the United States may in any manner acquire in this state such areas of land or water or of land and water as said government may deem necessary for the establishment of the *"Upper Mississippi River Wild Life and Fish Refuge"* in accordance with the Act of Congress, approved June 7, 1924, [16 USC, ch 8] provided the states of Illinois, Wisconsin, and Minnesota grant a like consent.

[C27, 31, 35, §4-a1; C39, §**4.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §1.5]

1.6 Approval required.
Any acquisition by the government of the United States of land and water, or of land or water, under section 1.5 shall be first approved by the natural resource commission and the director of the department of natural resources of this state.

[C27, 31, 35, §4-a2; C39, §**4.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §1.6]

86 Acts, ch 1245, §1971

1.7 Legislative grant.
There is hereby granted to the government of the United States, so long as it shall use the same as a part and for the purposes of the said *"Upper Mississippi River Wild Life and Fish Refuge"*, all areas of land subject to overflow and not used for agricultural purposes or state fish hatcheries or salvaging stations, owned by this state within the boundaries of the said refuge, as the same may be established from time to time under authority of the said Act of Congress.

[C27, 31, 35, §4-a3; C39, §**4.3;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §1.7]

1.8 Applicability of statute.
Section 1.4 shall apply to all lands acquired under sections 1.5 to 1.7.

[C27, 31, 35, §4-a4; C39, §**4.4;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §1.8]

1.9 National forests.
The consent of the state of Iowa is hereby given to the acquisition by the United States, by purchase, gift, or condemnation with adequate compensation, of such lands in Iowa as in the opinion of the federal government may be needed for the establishment, consolidation and extension of national forests or for the establishment and extension of wild life, fish and game refuges and for other conservation uses in the state, and may exercise jurisdiction thereover but not to the extent of limiting the provisions of the laws of this state. This section shall not, in any manner or to any extent, modify, limit or affect the title and ownership of the state to all wild life as provided in section 481A.2; provided, that the state of Iowa shall retain a concurrent jurisdiction with the United States in and over lands so acquired so far that civil process in all cases, and such criminal process as may issue under the authority of the state of Iowa against any persons charged with the commission of any crime without or within said jurisdiction, may be executed thereon in like manner as if this law had not been passed.

[C35, §4-f1; C39, §**4.5;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §1.9]

1.10 Offenses.
Power is hereby conferred upon the Congress of the United States to pass such laws and to make or provide for the making of such rules, of both a civil and criminal nature, and provide punishment therefor, as in its judgment may be necessary for the administration, control and protection of such lands as may be from time to time acquired by the United States under the provisions of this law.

[C35, §4-f2; C39, §**4.6;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §1.10]

1.11 Keokuk cemetery and Knoxville hospital — assumption of jurisdiction.
At the time of the return of jurisdiction over lands occupied by the veterans administration hospital located in Knoxville, Marion county, Iowa, and the Keokuk National Cemetery at Keokuk located in Lee county, Iowa, by the administrator of veterans affairs to the state of Iowa, the state of Iowa assumes criminal and civil jurisdiction on both grounds in the same manner as provided in section 1.4.

[C77, 79, 81, §1.11]

1.12 Jurisdiction of Indian settlement.
The state of Iowa hereby assumes jurisdiction over civil causes of actions between Indians or oth-

er persons or to which Indians or other persons are parties arising within the Sac and Fox Indian settlement in Tama county. The civil laws of this state shall obtain on the settlement and shall be enforced in the same manner as elsewhere throughout the state.

[C71, 73, 75, 77, 79, 81, §1.12]

1.13 Existing trusts not affected.

Nothing in sections 1.12 to 1.15 shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall confer jurisdiction upon the state to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein.

[C71, 73, 75, 77, 79, 81, §1.13]

1.14 Tribal ordinances or customs enforced.

Any tribal ordinance or custom heretofore or hereafter adopted by the governing council of the Sac and Fox Indian settlement in Tama county in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the state, be given full force and effect in the determination of civil causes of action pursuant to sections 1.12 to 1.15.

[C71, 73, 75, 77, 79, 81, §1.14]

1.15 Attorney appointed by state in civil actions.

In all civil causes of action where the state of Iowa or any of its subdivisions or departments is a party, and a member of the Sac and Fox Indian settlement is a party, the district court of Iowa shall appoint competent legal counsel at all stages of hearing, appeal, and final determination for any Indian not otherwise represented by legal counsel, in any domestic relations matter, including, but not limited to, matters pertaining to dependency, neglect, delinquency, care, or custody of minors. The court shall fix and allow reasonable compensation for the services of the attorney, costs of transcripts and depositions, and investigative expense, which shall be paid as a claim out of any funds in the state treasury not otherwise appropriated, upon filing the claim with the director of the department of administrative services.

[C71, 73, 75, 77, 79, 81, §1.15]

83 Acts, ch 123, §27, 209; 94 Acts, ch 1173, §1; 2003 Acts, ch 145, §286

1.16 Concurrent jurisdiction over lands and waters dedicated to national park purposes.

1. Concurrent legislative jurisdiction over crimes and offenses under the laws of the state of Iowa is ceded to the United States over and within all lands and waters within the state dedicated to national park purposes.

2. The concurrent jurisdiction ceded by subsection 1 is vested upon acceptance by the United States by and through its appropriate officials and shall continue so long as the lands and waters within the designated areas are dedicated to national park purposes.

3. The governor of the state of Iowa is authorized and empowered to execute all proper conveyances in the cession granted by this section, upon request of the United States by and through its appropriate officials.

4. The state of Iowa retains concurrent jurisdiction, both civil and criminal, with the United States over all lands and waters affected by this section.

84 Acts, ch 1024, §1

1.17 Cession or retrocession of federal jurisdiction.

By appropriate executive order, the governor may accept on behalf of the state full or partial cession or retrocession of federal jurisdiction, criminal or civil, over any lands, except Indian lands, in federal enclaves within the state where such cession or retrocession has been offered by appropriate federal authority. An executive order accepting a cession or retrocession of jurisdiction shall be filed in the office of the secretary of state and in the office of the recorder of the county in which the affected real estate is located.

90 Acts, ch 1146, §1

1.18 Iowa English language reaffirmation.

1. The general assembly of the state of Iowa finds and declares the following:

a. The state of Iowa is comprised of individuals from different ethnic, cultural, and linguistic backgrounds. The state of Iowa encourages the assimilation of Iowans into Iowa's rich culture.

b. Throughout the history of Iowa and of the United States, the common thread binding individuals of differing backgrounds together has been the English language.

c. Among the powers reserved to each state is the power to establish the English language as the official language of the state, and otherwise to promote the English language within the state, subject to the prohibitions enumerated in the Constitution of the United States and in laws of the state.

2. In order to encourage every citizen of this state to become more proficient in the English language, thereby facilitating participation in the economic, political, and cultural activities of this

state and of the United States, the English language is hereby declared to be the official language of the state of Iowa.

3. Except as otherwise provided for in subsections 4 and 5, the English language shall be the language of government in Iowa. All official documents, regulations, orders, transactions, proceedings, programs, meetings, publications, or actions taken or issued, which are conducted or regulated by, or on behalf of, or representing the state and all of its political subdivisions shall be in the English language.

For the purposes of this section, *"official action"* means any action taken by the government in Iowa or by an authorized officer or agent of the government in Iowa that does any of the following:

a. Binds the government.

b. Is required by law.

c. Is otherwise subject to scrutiny by either the press or the public.

4. This section shall not apply to:

a. The teaching of languages.

b. Requirements under the federal Individuals with Disabilities Education Act.

c. Actions, documents, or policies necessary for trade, tourism, or commerce.

d. Actions or documents that protect the public health and safety.

e. Actions or documents that facilitate activities pertaining to compiling any census of populations.

f. Actions or documents that protect the rights of victims of crimes or criminal defendants.

g. Use of proper names, terms of art, or phrases from languages other than English.

h. Any language usage required by or necessary to secure the rights guaranteed by the Constitution and laws of the United States of America or the Constitution of the State of Iowa.

i. Any oral or written communications, examinations, or publications produced or utilized by a driver's license station, provided public safety is not jeopardized.

5. Nothing in this section shall be construed to do any of the following:

a. Prohibit an individual member of the general assembly or officer of state government, while performing official business, from communicating through any medium with another person in a language other than English, if that member or officer deems it necessary or desirable to do so.

b. Limit the preservation or use of Native American languages, as defined in the federal Native American Languages Act of 1992.

c. Disparage any language other than English or discourage any person from learning or using a language other than English.

2002 Acts, ch 1007, §1

CHAPTER 1A

GREAT SEAL OF IOWA

1A.1 Seal — device — motto.

The secretary of state be, and is, hereby authorized to procure a seal which shall be the great seal of the state of Iowa, two inches in diameter, upon which shall be engraved the following device, surrounded by the words, *"The Great Seal of the State of Iowa"* — a sheaf and field of standing wheat, with a sickle and other farming utensils, on the left side near the bottom; a lead furnace and pile of pig lead on the right side; the citizen soldier, with a plow in his rear, supporting the American flag and liberty cap with his right hand, and his gun with his left, in the center and near the bottom; the Mississippi river in the rear of the whole, with the steamer *Iowa* under way; an eagle near the upper edge, holding in his beak a scroll, with the following inscription upon it: Our liberties we prize, and our rights we will maintain.

[1GA, ch 112; C75, 77, 79, 81, §1A.1]

Editor's Note: The Act of the First General Assembly of the State of Iowa creating the Great Seal, approved February 25, 1847, is hereby reproduced in the descriptive part.

There seem to be no further enactments, repeals or amendments and no codification of this law appears in the various Codes. See *Annals of Iowa,* Volume XI, pages 561, 576. Constitutional provision for a great seal is contained in Article IV, section 20 but no description is there provided.

CHAPTER 1B

STATE FLAG

1B.1 Specifications of state flag.

The banner designed by the Iowa society of the Daughters of the American Revolution and presented to the state is hereby adopted as the state flag for use on all occasions where a state flag may be fittingly displayed. The design consists of three vertical stripes of blue, white, and red, the blue stripe being nearest the staff and the white stripe* being in the center. On the central white stripe is depicted a spreading eagle bearing in its beak blue streamers on which is inscribed the state motto, *"Our liberties we prize and our rights we will maintain"* in white letters, with the word *"Iowa"* in red letters below the streamers.

[C24, 27, 31, 35, 39, §**468;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §31.1]

C93, §1B.1

95 Acts, ch 1, §1

*Editor's Note: On the original design, the white stripe was about equal to the sum of the others

1B.2 Use of state flag.

The design shall be used as the state flag and may be displayed on all proper occasions where the state is officially represented, either at home or abroad, or wherever it may be proper to distinguish the citizens of Iowa from the citizens of other states. When displayed with the national emblem, the state flag shall in all cases be subservient to and placed beneath the stars and stripes.

[C24, 27, 31, 35, 39, §**469;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §31.2]

C93, §1B.2

95 Acts, ch 1, §2

1B.3 Flags on public buildings.

It shall be the duty of any board of public officers charged with providing supplies for a public building in the state to provide a suitable state flag and it shall be the duty of the custodian of that public building to raise the flags of the United States of America and the state of Iowa, upon each secular day when weather conditions are favorable.

[S13, §2804-c; C24, 27, 31, 35, 39, §**470;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §31.3]

C93, §1B.3

95 Acts, ch 1, §3

Display of flags on school sites, see §280.5

CHAPTER 1C

PUBLIC HOLIDAYS AND RECOGNITION DAYS

This chapter not enacted as a part of this title; sections 1C.1 and 1C.2 transferred from sections 33.1 and 33.2; sections 1C.3 through 1C.9 from sections 31.4 through 31.10; and section 1C.10 from section 186A.1 in Code 1993

1C.1 Legal public holidays.

The following are legal public holidays:

1. New Year's Day, January 1.

2. Dr. Martin Luther King, Jr.'s Birthday, the third Monday in January.

3. Lincoln's Birthday, February 12.

4. Washington's Birthday, the third Monday in February.
5. Memorial Day, the last Monday in May.
6. Independence Day, July 4.
7. Labor Day, the first Monday in September.
8. Veterans Day, November 11.
9. Thanksgiving Day, the fourth Thursday in November.
10. Christmas Day, December 25.

[C71, 73, 75, 77, 79, 81, §33.1]
86 Acts, ch 1164, §1
C93, §1C.1

1C.2 Paid holidays.

State employees are granted, except as provided in the fourth paragraph of this section, the following holidays off from employment with pay:

1. New Year's Day, January 1.
2. Martin Luther King, Jr.'s Birthday, the third Monday in January.
3. Memorial Day, the last Monday in May.
4. Independence Day, July 4.
5. Labor Day, the first Monday in September.
6. Veterans Day, November 11.
7. Thanksgiving Day, the fourth Thursday in November.
8. Friday after Thanksgiving, the Friday following Thanksgiving Day.
9. Christmas Day, December 25.
10. Two days of paid leave each year to be added to the vacation allowance and accrued under the provisions of section 70A.1.

The appointing authority shall grant not more than four additional days of paid leave each year as required to implement contract provisions negotiated pursuant to chapter 20.

The executive council may designate days off from employment with pay in addition to those enumerated in this section for state employees at its discretion.

If a holiday enumerated in this section falls on Saturday, the preceding Friday shall be granted and if a holiday enumerated in this section falls on Sunday, the following Monday shall be granted. In those cases, where by nature of the employment a state employee must be required to work on a holiday the provisions of the first paragraph of this section shall not apply, however, compensation shall be made on the basis of the employee's straight time hourly rate for a forty-hour work week and shall be made in either compensatory time off or cash payment, at the discretion of the appointing authority unless otherwise provided for in a collective bargaining agreement. Notwithstanding any other provision of this section, an employee of the state who does not accrue sick leave or vacation, and who works on a holiday, shall receive regular pay for the hours worked on that holiday and shall not otherwise earn holiday compensatory pay.

A holiday or paid leave granted to a state employee under this section shall be in addition to vacation time to which a state employee is entitled under section 70A.1.

[C75, 77, 79, 81, §33.2]
84 Acts, ch 1180, §7; 86 Acts, ch 1163, §1 – 3
C93, §1C.2

1C.3 Mother's Day — Father's Day.

The governor of this state is authorized and requested to issue annually a proclamation calling upon our state officials to display the American flag on all state and school buildings, and the people of the state to display the flag at their homes, lodges, churches, and places of business, on the second Sunday in May, known as Mother's Day, and on the third Sunday in June, known as Father's Day, as a public expression of reverence for the homes of our state, and to urge the celebration of Mother's Day and Father's Day in the proclamation in such a way as will deepen home ties, and inspire better homes and closer union between the commonwealth, its homes, and their children.

[C24, 27, 31, 35, 39, §**471;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §31.4]
85 Acts, ch 99, §1
C93, §1C.3

1C.4 Independence Sunday.

The governor is hereby authorized and requested to issue annually a proclamation, calling upon the citizens of Iowa to assemble themselves in their respective communities for the purpose of holding suitable religious-patriotic services and the display of the American colors, in commemoration of the signing of the Declaration of Independence, on Independence Sunday, which is hereby established as the Sunday preceding the Fourth of July of each year, or on the Fourth when that date falls on Sunday.

[C27, 31, 35, §471-b1; C39, §**471.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §31.5]
C93, §1C.4

1C.5 Columbus Day.

The governor of this state is hereby authorized and requested to issue annually a proclamation, calling upon our state officials to display the American flag on all state and school buildings and the people of the state to display the flag at their homes, lodges, churches, and places of business on the twelfth day of October, known as Columbus Day; to commemorate the life and history of Christopher Columbus and to urge that services and exercises be had in churches, halls and other suitable places expressive of the public sentiment befitting the anniversary of the discovery of America.

[C35, §471-g1; C39, §**471.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §31.6]
C93, §1C.5

1C.6 Veterans Day.

The governor is hereby authorized and requested to issue annually a proclamation designating the eleventh day of November as Veterans Day and calling upon the people of Iowa to observe it as a legal holiday in honor of those who have been members of the armed forces of the United States, and urging state officials to display the American flag on all state and school buildings and the people of the state to display the flag at their homes, lodges, churches and places of business; that business activities be held to the necessary minimum; and that appropriate services and exercises be had expressive of the public sentiments befitting the occasion.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §31.7]
C93, §1C.6

1C.7 Youth Honor Day.

The governor of this state is hereby requested and authorized to issue annually a proclamation designating the thirty-first day of October of each year as *"Youth Honor Day."*

[C62, 66, 71, 73, 75, 77, 79, 81, §31.8]
C93, §1C.7

1C.8 Herbert Hoover Day.

The Sunday which falls on or nearest the tenth day of August of each year is hereby designated as Herbert Hoover Day, which shall be a recognition day in honor of the late President Herbert Hoover. The governor is hereby authorized and requested to issue annually a proclamation designating such Sunday as Herbert Hoover Day and calling on the people and officials of the state of Iowa to commemorate the life and principles of Herbert Hoover, to display the American flag, and to hold appropriate services and ceremonies.

[C71, 73, 75, 77, 79, 81, §31.9]
C93, §1C.8

1C.9 Dr. Martin Luther King, Jr. Day.

The third Monday of January of each year is designated as Dr. Martin Luther King, Jr. Day, which shall be a recognition day in honor of the late civil rights leader and Nobel Peace Prize recipient, Dr. Martin Luther King, Jr.

The governor is authorized and requested to issue annually a proclamation designating such Monday as Dr. Martin Luther King, Jr. Day and calling on the people and officials of the state of Iowa to commemorate the life and principles of Dr. King, to display the American flag, and to hold appropriate private services and ceremonies.

[C79, 81, §31.10]
86 Acts, ch 1164, §2
C93, §1C.9

1C.10 Arbor Day and Week.

The last Friday in April in each year shall be observed in Iowa as Arbor Day and the week in which this Friday falls shall be observed as Arbor Week. This day and week shall be designated annually by the governor with suitable proclamation urging that schools, civic organizations, governmental departments and all citizens and groups give serious thought to and appreciation of the contribution of trees to the beauty and economic welfare of Iowa.

[C62, 66, 71, 73, 75, 77, 79, 81, §186A.1]
C93, §1C.10

1C.11 Iowa State Flag Day.

The governor of this state is hereby requested and authorized to issue annually a proclamation designating the twenty-ninth day of March as "Iowa State Flag Day" and to urge that schools, civic organizations, governmental departments, and all citizens and groups display the Iowa state flag on that day and to reflect on and consider the heritage of the state flag.

98 Acts, ch 1023, §1

1C.12 Dr. Norman E. Borlaug World Food Prize Day.

The governor of this state is hereby authorized and requested to issue annually a proclamation designating the sixteenth day of October as Dr. Norman E. Borlaug World Food Prize Day and to encourage all governmental entities, civic organizations, schools, and institutions of higher education in the state to observe the day in a manner that emphasizes the meaning and importance of the work, accomplishments, and heroic contributions to humanity of Nobel peace prize laureate Dr. Norman E. Borlaug and to give attention and support to the programs and activities of the world food prize which was inspired and created by Dr. Norman E. Borlaug to alleviate poverty, hunger, and malnutrition throughout the world.

2002 Acts, ch 1160, §1

1C.13 Bill of Rights Day.

The governor of this state is hereby authorized and requested to issue annually a proclamation designating the fifteenth day of December as Bill of Rights Day and to encourage all governmental bodies in the state to observe the day in a manner that emphasizes the meaning and importance of the first ten amendments to the Constitution of the United States, and encourage a formal recitation of the Bill of Rights in its entirety in all schools, government meetings, and courtrooms on or about that date.

2002 Acts, ch 1053, §1

1C.14 Juneteenth National Freedom Day.

The governor of this state is hereby authorized and requested to issue annually a proclamation designating the third Saturday in June as Juneteenth National Freedom Day and to encourage all

governmental entities, civic organizations, schools, and institutions of higher education in the state to observe the day in a manner that emphasizes the meaning and importance of the emancipation proclamation that ended slavery in the United States and to recognize and celebrate the importance of this day to every person who cherishes liberty and equality for all people.

2002 Acts, ch 1105, §1

CHAPTER 1D

IOWA STANDARD TIME

1D.1 Standard time and daylight saving time.

The standard time in this state is the solar time of the ninetieth meridian of longitude west of Greenwich,* commonly known as central standard time, except that from two o'clock ante meridiem of the first Sunday of April in every year until two o'clock ante meridiem of the last Sunday of October in the same year, standard time shall be advanced one hour. The period of time so advanced shall be known as *"daylight saving time."*

[C66, 71, 73, 75, 77, 79, 81, §122A.1]
89 Acts, ch 83, §25
C93, §1D.1

*England

1D.2 Effect of time change.

In all laws, statutes, orders, decrees, rules, and regulations relating to the time of performance of any act by any officer or department of this state, including the legislative, executive, and judicial branches of the state government, or any county, city or district thereof, relating to the time in which any rights shall accrue or determine, or within which any act shall or shall not be performed by any person subject to the jurisdiction of this state and in all the public schools and institutions of this state, or of any county, city or district thereof, and in all contracts and choses in action made or to be performed in this state, the time shall be the time established in section 1D.1.

[C66, 71, 73, 75, 77, 79, 81, §122A.2]
C93, §1D.2

SUBTITLE 2

LEGISLATIVE BRANCH

CHAPTER 2

GENERAL ASSEMBLY

2.1 Sessions — place.

The sessions of the general assembly shall be held annually at the seat of government, unless the governor shall convene them at some other

place in times of pestilence or public danger. Each annual session of the general assembly shall commence on the second Monday in January of each year. The general assembly may recess from time to time during each year in such manner as it may provide, subject to Article III, section 14 of the Constitution of the state of Iowa.

[C51, §4; R60, §13; C73, §5; C97, §5; C24, 27, 31, 35, 39, §**5;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §2.1]

2.2 Designation of general assembly.

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.

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

[C71, 73, 75, 77, 79, 81, §2.2]

See also §2B.17

2.3 Temporary organization.

At ten o'clock a.m. on the second Monday in January of each odd-numbered year, the general assembly shall convene. The president of the senate, or in the president's absence some person claiming to be a member, shall call the senate to order. If necessary, a temporary president shall be chosen from the persons claiming to be elected senators. Some person claiming to be elected a member of the house of representatives shall call the house to order. The persons present claiming to be elected to the senate shall choose a secretary, and those of the house of representatives, a clerk on a temporary basis.

[C51, §5; R60, §14; C73, §6; C97, §6; C24, 27, 31, 35, 39, §**6;** C46, 50, 54, 58, 62, 66, §2.2; C71, 73, 75, 77, 79, 81, §2.3]

2.4 Certificates of election.

The selected secretary and clerk shall receive and file the certificates of election presented for their respective houses, and make a list therefrom of the persons who appear to have been elected members of the respective houses.

[C51, §6; R60, §15; C73, §7; C97, §7; C24, 27, 31, 35, 39, §**7;** C46, 50, 54, 58, 62, 66, §2.3; C71, 73, 75, 77, 79, 81, §2.4]

2.5 Temporary officers — committee on credentials.

The persons appearing to be members shall proceed to elect such other officers as may be requisite and when so temporarily organized shall choose a committee of five, who shall examine and report upon the credentials of the persons claiming to be members.

[C51, §7; R60, §4; C73, §8; C97, §8; C24, 27, 31, 35, 39, §**8;** C46, 50, 54, 58, 62, 66, §2.4; C71, 73, 75, 77, 79, 81, §2.5]

2.6 Permanent organization.

The members reported by the committee as holding certificates of election from the proper authority shall proceed to the permanent organization of their respective houses by the election of officers and shall not be challenged as to their qualifications during the remainder of the term for which they were elected.

[C51, §8; R60, §5; C73, §9; C97, §9; C24, 27, 31, 35, 39, §**9;** C46, 50, 54, 58, 62, 66, §2.5; C71, 73, 75, 77, 79, 81, §2.6]

2.7 Officers — tenure.

The president of the senate and the speaker of the house of representatives shall hold their offices until the first day of the meeting of the next general assembly. All other officers elected by either house shall hold their offices for the same terms, unless sooner removed, except as may be otherwise provided by resolution or rules of the general assembly.

[R60, §16; C73, §13; C97, §17; C24, 27, 31, 35, 39, §**10;** C46, 50, 54, 58, 62, 66, §2.6; C71, 73, 75, 77, 79, 81, §2.7]

90 Acts, ch 1223, §1

2.8 Oaths.

Any member may administer oaths necessary in the course of business of the house of which that person is a member, and, while acting on a committee, in the course of business of such committee.

[C51, §10; R60, §7; C73, §10; C97, §10; C24, 27, 31, 35, 39, §**11;** C46, 50, 54, 58, 62, 66, §2.7; C71, 73, 75, 77, 79, 81, §2.8]

2.9 Journals — bills and amendments.

1. *a.* The senate and house of representatives shall each publish a daily journal of the transactions of their respective bodies. The secretary of the senate and the chief clerk of the house shall each determine the format and manner of the journal's publication, the procurement procedures for the journal's publication, and the journal's distribution for their respective bodies.

b. The secretary of the senate and the clerk of the house of representatives shall each preserve copies of the printed daily journals of their respective bodies, as corrected, certify to their correctness, and file them with the secretary of state at the adjournment of each session of the general assembly. The secretary of state shall preserve the original journals of the senate and the house in the manner specified by the majority leader of the senate and speaker of the house.

2. *a.* The senate and house of representatives shall each publish bills and amendments of their respective bodies. The secretary of the senate and the chief clerk of the house shall each determine

the procurement procedures for the publication of the bills and amendments and the distribution of the bills and amendments for their respective bodies.

b. A bill that seeks to legalize the acts of any official or board or other official body, in regard to any matter of public nature or for any person or persons, company, or corporation, shall not be considered by the senate or house of representatives until the bill is published and distributed to members of the general assembly, and the publication shall be without expense to the state. The senate and house shall not order any such bill published until the secretary of the senate or chief clerk of the house has received a deposit to cover the cost of the publication. The newspaper publication of such bill shall be without expense to the state, and the bill shall not be published in a newspaper until the costs of the newspaper publication have been paid to the secretary of state.

[C97, §132; C24, 27, 31, 35, 39, §**13;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §2.9]

86 Acts, ch 1245, §2001; 2003 Acts, ch 35, §9, 49; 2003 Acts, ch 145, §102

2.10 Salaries and expenses — members of general assembly.

Members of the general assembly shall receive salaries and expenses as provided by this section.

1. Every member of the general assembly except the presiding officer of the senate, the speaker of the house, the majority and minority floor leader of each house, and the president pro tempore of the senate and speaker pro tempore of the house, shall receive an annual salary of twenty thousand one hundred twenty dollars for the year 1997 and subsequent years while serving as a member of the general assembly. In addition, each such member shall receive the sum of eighty-six dollars per day for expenses of office, except travel, for each day the general assembly is in session commencing with the first day of a legislative session and ending with the day of final adjournment of each legislative session as indicated by the journals of the house and senate, except that if the length of the first regular session of the general assembly exceeds one hundred ten calendar days and the second regular session exceeds one hundred calendar days, the payments shall be made only for one hundred ten calendar days for the first session and one hundred calendar days for the second session. Members from Polk county shall receive sixty-five dollars per day. Each member shall receive a two hundred dollar per month allowance for legislative district constituency postage, travel, telephone costs, and other expenses. Travel expenses shall be paid at the rate established by section 8A.363 for actual travel in going to and returning from the seat of government by the nearest traveled route for not more than one time per week during a legislative session unless the general assembly otherwise provides.

2. The speaker of the house, presiding officer of the senate, and the majority and minority floor leader of each house shall each receive an annual salary of thirty-one thousand thirty dollars for the year 1997 and subsequent years while serving in that capacity. The president pro tempore of the senate and the speaker pro tempore of the house shall receive an annual salary of twenty-one thousand two hundred ninety dollars for the year 1997 and subsequent years while serving in that capacity. Expense and travel allowances shall be the same for the speaker of the house and the presiding officer of the senate, the president pro tempore of the senate and the speaker pro tempore of the house, and the majority and minority leader of each house as provided for other members of the general assembly.

3. When a vacancy occurs and the term of any member of the general assembly is not completed, the member shall receive a salary or compensation proportional to the length of the member's service computed to the nearest whole month. A successor elected to fill such vacancy shall receive a salary or compensation proportional to the successor's length of service computed to the nearest whole month commencing with such time as the successor is officially determined to have succeeded to such office.

4. The director of the department of administrative services shall pay the travel and expenses of the members of the general assembly commencing with the first pay period after the names of such persons are officially certified. The salaries of the members of the general assembly shall be paid pursuant to any of the following alternative methods:

a. During each month of the year at the same time state employees are paid.

b. During each pay period during the first six months of each calendar year.

c. During the first six months of each calendar year by allocating two-thirds of the annual salary to the pay periods during those six months and one-third of the annual salary to the pay periods during the second six months of a calendar year. Each member of the general assembly shall file with the director of the department of administrative services a statement as to the method the member selects for receiving payment of salary. The presiding officers of the two houses of the general assembly shall jointly certify to the director of the department of administrative services the names of the members, officers, and employees of their respective houses and the salaries and mileage to which each is entitled. Travel and expense allowances shall be paid upon the submission of vouchers to the director of the department of administrative services indicating a claim for the same.

5. In addition to the salaries and expenses authorized by this section, a member of the general

assembly shall be paid eighty-six dollars per day, and necessary travel and actual expenses incurred in attending meetings for which per diem or expenses are authorized by law for members of the general assembly who serve on statutory boards, commissions, or councils, and for standing or interim committee or subcommittee meetings subject to the provisions of section 2.14, or when on authorized legislative business when the general assembly is not in session. However, if a member of the general assembly is engaged in authorized legislative business at a location other than at the seat of government during the time the general assembly is in session, payment may be made for the actual transportation and lodging costs incurred because of the business. Such per diem or expenses shall be paid promptly from funds appropriated pursuant to section 2.12.

6. If a special session of the general assembly is convened, members of the general assembly shall receive, in addition to their annual salaries, the sum of eighty-six dollars per day for each day the general assembly is actually in special session, and the same travel allowances and expenses as authorized by this section. A member of the general assembly shall receive the additional per diem, travel allowances and expenses only for the days of attendance during a special session.

7. A member of the general assembly may return to the state treasury all or a part of the salary, per diem, or expenses paid to the member pursuant to this section. The member may specify the public use for the returned money. A member has no income tax liability for that portion of the member's salary or per diem which is returned to the state treasury pursuant to this subsection. The administrative officer of each house shall provide a form at the convening of each legislative session to allow legislators to return any portion of their salaries or expenses according to this section.

8. Commencing upon the convening of the Seventy-eighth General Assembly in January 1999, the annual salaries of members and officers of the general assembly, as the annual salaries existed during the preceding calendar year, shall be adjusted by an amount equal to the average of the annual cost-of-living pay adjustments negotiated for the members of the collective bargaining units represented by the state police officers council labor union, the American federation of state, county, and municipal employees, and the Iowa united professionals for the fiscal year beginning July 1, 1997. For the calendar year 2000, during the month of January, the annual salaries of members and officers of the general assembly shall be adjusted by an amount equal to the average of the annual cost-of-living pay adjustments received by the members of those collective bargaining units for the fiscal year beginning July 1, 1998. The annual salaries determined for the members and officers as provided in this section for the calendar year 2000 shall remain in effect for subsequent calendar years until otherwise provided by the general assembly.

[C51, §11; R60, §18; C73, §12; C97, §12, 14; S13, §12; C24, 27, 31, 35, §14-a1, 14-a2, 14-a3; C39, §**14, 14.1, 14.2, 14.3, 15, 16, 17;** C46, 50, 54, 58, 62, 66, §2.11, 2.12, 2.13, 2.14, 2.15, 2.16, 2.17; C71, 73, 75, 77, 79, 81, §2.10]

83 Acts, ch 205, §20; 87 Acts, ch 227, §14; 88 Acts, ch 1267, §12, 13; 88 Acts, ch 1275, §29; 89 Acts, ch 302, §10; 89 Acts, ch 303, §13; 90 Acts, ch 1223, §2; 90 Acts, ch 1256, §19; 91 Acts, ch 258, §1; 93 Acts, ch 177, §16 – 18; 95 Acts, ch 211, §14, 17; 97 Acts, ch 204, §16; 2003 Acts, ch 145, §103, 286

See Constitution, Art. III, §25

2.11 Officers and employees — compensation — prohibitions.

Each house of the general assembly may employ such officers and employees as it shall deem necessary for the conduct of its business. The compensation of the chaplains, officers, and employees of the general assembly shall be fixed by joint action of the house and senate by resolution at the opening of each session, or as soon thereafter as conveniently can be done. Such persons shall be furnished by the state such supplies as may be necessary for the proper discharge of their duties.

Each house of the general assembly shall implement the sexual harassment prohibitions and grievance, violation, and disposition procedures of section 19B.12 for its respective full-time, part-time, and temporary employees, including, but not limited to, interns, clerks, and pages. Each house shall develop and cause to be distributed, at the time of hiring or orientation, a guide that describes for its employees the applicable sexual harassment prohibitions and grievance, violation, and disposition procedures. This section does not supersede the remedies provided under chapter 216.

[C73, §12; C97, §13, 152; C24, 27, 31, 35, 39, §**18, 19;** C46, 50, 54, 58, 62, 66, §2.18, 2.19; C71, 73, 75, 77, 79, 81, §2.11]

92 Acts, ch 1086, §1

2.12 Expenses of general assembly and legislative agencies — budgets.

There is appropriated out of any funds in the state treasury not otherwise appropriated a sum sufficient to pay for legislative printing and all current and miscellaneous expenses of the general assembly, authorized by either the senate or the house, and the director of the department of administrative services shall issue warrants for such items of expense upon requisition of the president, majority leader, and secretary of the senate or the speaker and chief clerk of the house.

There is appropriated out of any funds in the state treasury not otherwise appropriated, such sums as are necessary, for each house of the gener-

al assembly for the payment of any unpaid expense of the general assembly incurred during or in the interim between sessions of the general assembly, including but not limited to salaries and necessary travel and actual expenses of members, expenses of standing and interim committees or subcommittees, and per diem or expenses for members of the general assembly who serve on statutory boards, commissions, or councils for which per diem or expenses are authorized by law. The director of the department of administrative services shall issue warrants for such items of expense upon requisition of the president, majority leader, and secretary of the senate for senate expense or the speaker and chief clerk of the house for house expense.

There is appropriated out of any funds in the state treasury not otherwise appropriated, such sums as are necessary for the renovation, remodeling, or preparation of the legislative chambers, legislative offices, or other areas or facilities used or to be used by the legislative branch of government, and for the purchase of legislative equipment and supplies deemed necessary to properly carry out the functions of the general assembly. The director of the department of administrative services shall issue warrants for such items of expense, whether incurred during or between sessions of the general assembly, upon requisition of the president, majority leader, and secretary of the senate for senate expense or the speaker and chief clerk of the house for house expense.

There is appropriated out of any funds in the state treasury not otherwise appropriated such sums as may be necessary for the fiscal year budgets of the legislative services agency and the citizens' aide office for salaries, support, maintenance, and miscellaneous purposes to carry out their statutory responsibilities. The legislative services agency and the citizens' aide office shall submit their proposed budgets to the legislative council not later than September 1 of each year. The legislative council shall review and approve the proposed budgets not later than December 1 of each year. The budget approved by the legislative council for each of its statutory legislative agencies shall be transmitted by the legislative council to the department of management on or before December 1 of each year for the fiscal year beginning July 1 of the following year. The department of management shall submit the approved budgets received from the legislative council to the governor for inclusion in the governor's proposed budget for the succeeding fiscal year. The approved budgets shall also be submitted to the chairpersons of the committees on appropriations. The committees on appropriations may allocate from the funds appropriated by this section the funds contained in the approved budgets, or such other amounts as specified, pursuant to a concurrent resolution to be approved by both houses of the general assembly. The director of the department of administrative services shall issue warrants for salaries, support, maintenance, and miscellaneous purposes upon requisition by the administrative head of each statutory legislative agency. If the legislative council elects to change the approved budget for a legislative agency prior to July 1, the legislative council shall transmit the amount of the budget revision to the department of management prior to July 1 of the fiscal year, however, if the general assembly approved the budget it cannot be changed except pursuant to a concurrent resolution approved by the general assembly.

[C46, 50, 54, 58, 62, 66, §2.10, 2.20; C71, 73, 75, 77, 79, 81, §2.12]

85 Acts, ch 65, §1; 86 Acts, ch 1244, §1; 90 Acts, ch 1223, §3; 2003 Acts, ch 35, §46, 49; 2003 Acts, ch 145, §286

2.12A Legal expenses reviewed by the court.

If a member or members of the general assembly are involved in court proceedings on behalf of the general assembly, and are represented by an attorney who is not an employee of the state, and the legislative council determines that the reasonable expense of the court proceedings, including reasonable attorneys' fees, shall be paid from funds in the state treasury appropriated pursuant to section 2.12, at the conclusion of the court proceedings, the court shall review the fees charged to the state to determine if the fees are fair and reasonable. The legislative council shall not reimburse attorneys' fees in excess of those determined by the court to be fair and reasonable.

92 Acts, ch 1240, §11

2.13 Issuance of warrants.

The director of the department of administrative services shall also issue to each officer and employee of the general assembly, during legislative sessions or interim periods, upon vouchers signed by the president, majority leader, and secretary of the senate or the speaker and chief clerk of the house, warrants for the amount due for services rendered. The warrants shall be paid out of any moneys in the treasury not otherwise appropriated.

[C97, §15, 16; C24, 27, 31, 35, 39, §**20;** C46, 50, 54, 58, 62, 66, §2.21, 2.22; C71, 73, 75, 77, 79, 81, §2.13]

86 Acts, ch 1244, §2; 90 Acts, ch 1223, §4; 2003 Acts, ch 145, §286

2.14 Meetings of standing committees.

1. A standing committee of either house or a subcommittee when authorized by the chairperson of the standing committee, may meet when the general assembly is not in session in the manner provided in this section and upon call pursuant to the rules of the house or senate. In case of vacancy in the chair or in the chairperson's absence, the

ranking member shall act as chairperson. A standing committee or subcommittee may act on bills and resolutions in the interim between the first and second regular sessions of a general assembly. The date, time, and place of any meeting of a standing committee shall, by the person or persons calling the meeting, be reported to and be available to the public in the office of the director of the legislative services agency at least five days prior to the meeting.

2. The legislative services agency shall provide staff assistance for standing committees when authorized by the legislative council. The chairperson of the committee or subcommittee shall notify the legislative services agency in advance of each meeting.

3. Interim studies utilizing the services of the legislative services agency must be authorized by the general assembly or the legislative council. A standing committee may also study and draft proposed committee bills. However, unless the subject matter of a study or proposed committee bill has been assigned to a standing committee for study by the general assembly or legislative council, the services of the legislative services agency cannot be utilized. Nonlegislative members shall not serve upon any study committee, unless approved by the legislative council. A standing committee may hold public hearings and receive testimony upon any subject matter within its jurisdiction.

Nonlegislative members of study committees shall be paid their necessary travel and actual expenses incurred in attending committee or subcommittee meetings for the purposes of the study.

4. Standing committees and subcommittees of standing committees may meet when the general assembly is not in session under the following conditions:

a. A standing committee may meet one time at the discretion of the chairperson.

b. Additional meetings of standing committees or their subcommittees shall be authorized by the legislative council; however, such authorization may be given at any one time for as many meetings as deemed necessary by the legislative council.

c. Any study committee, other than an interim committee provided for in subsection 3 of this section, which utilizes staff of the legislative services agency may meet at such times as authorized by the legislative council.

5. When the general assembly is not in session, a member of the general assembly shall be paid the per diem and necessary travel and actual expenses, as specified in section 2.10, subsection 5, incurred in attending meetings of a standing committee or subcommittee of which the legislator is a member in addition to regular compensation. However, the per diem and expenses shall be allowed only if the member attends a meeting of the committee or subcommittee for at least four hours.

[C71, 73, 75, 77, 79, 81, §2.14]
91 Acts, ch 258, §2; 2003 Acts, ch 35, §44, 49

2.15 Powers and duties of standing committees.

The powers and duties of standing committees shall include, but shall not be limited to, the following:

1. Introducing legislative bills and resolutions.

2. Conducting investigations with the approval of either or both houses during the session, or the legislative council during the interim, with authority to call witnesses, administer oaths, issue subpoenas, and cite for contempt.

3. Requiring reports and information from state agencies as well as the full co-operation of their personnel.

4. Selecting nonlegislative members when conducting studies as provided in section 2.14.

5. Undertaking in-depth studies of governmental matters within their assigned jurisdiction, not only for the purpose of evaluating proposed legislation, but also for studying existing laws and governmental operations and functions to determine their usefulness and effectiveness, as provided in section 2.14.

6. Reviewing the operations of state agencies and departments.

7. Giving thorough consideration to, establishing priorities for, and making recommendations on all bills assigned to committees.

8. Preparing reports to be made available to members of the general assembly containing the committee's findings, recommendations, and proposed legislation.

A standing committee may call upon any department, agency or office of the state, or any political subdivision of the state, for information and assistance as needed in the performance of its duties and the information and assistance shall be furnished to the extent that they are within the resources and authority of the department, agency, office or political subdivision. This paragraph does not require the production or opening of any records which are required by law to be kept private or confidential.

[C71, 73, 75, 77, 79, 81, §2.15]
84 Acts, ch 1171, §1; 85 Acts, ch 67, §1

2.16 Prefiling legislative bills.

Any member of the general assembly or any person elected to serve in the general assembly, or any standing committee, may sponsor and submit legislative bills and joint resolutions for consideration by the general assembly, before the convening of any session of the general assembly. Each house may approve rules for placing prefiled standing committee bills or joint resolutions on its calendar. Such bills and resolutions shall be numbered, printed, and distributed in a manner to be determined by joint rule of the general assembly

or, in the absence of such rule, by the legislative council. All such bills and resolutions, except those sponsored by standing committees, shall be assigned to regular standing committees by the presiding officers of the houses when the general assembly convenes.

Departments and agencies of state government shall, at least forty-five days prior to the convening of each session of the general assembly, submit copies to the legislative services agency of proposed legislative bills and joint resolutions which such departments desire to be considered by the general assembly. The proposed legislative bills and joint resolutions of the governor must be submitted by the Friday prior to the convening of the session of the general assembly, except in the year of the governor's initial inauguration. The legislative services agency shall review such proposals and submit them in proper form to the presiding officer in each house of the general assembly for referral to the proper standing committee. Before submitting any proposal prepared under this section to the presiding officers, the legislative services agency shall return it for review to, as appropriate, the relevant department or agency or the governor's office and such department or agency or the governor's office shall review and return it within seven days of such delivery.

The costs of carrying out the provisions of this section shall be paid pursuant to section 2.12.

[C71, 73, 75, 77, 79, 81, §2.16]

86 Acts, ch 1245, §2002; 2003 Acts, ch 35, §44, 49

2.17 Freedom of speech.

A member of the general assembly shall not be held for slander or libel in any court for words used in any speech or debate in either house or at any session of a standing committee.

[C51, §9; R60, §6; C73, §11; C97, §11; C24, 27, 31, 35, 39, §**22;** C46, 50, 54, 58, 62, 66, §2.23; C71, 73, 75, 77, 79, 81, §2.17]

2.18 Contempt.

Each house has authority to punish for contempt, by fine or imprisonment or both, any person who commits any of the following offenses against its authority:

1. Arresting a member, knowing the member to be such, in violation of the member's privilege, or assaulting, or threatening to assault, or threatening any harm to the person or property of, a member, knowing the member to be such, for anything said or done by the member in such house as a member thereof.

2. Attempting by menace, or by force, or by any corrupt means to control or influence a member in giving a vote, or to prevent giving it.

3. Disorderly or contemptuous conduct, tending to disturb its proceedings.

4. Refusal to attend, or to be sworn, or to affirm, or to be examined, as a witness before it, or before a committee thereof, when duly subpoenaed.

5. Assaulting or preventing any person going before it, or before any of its committees, by its order, the offender knowing such fact.

6. Rescuing or attempting to rescue any person arrested by its order, the offender knowing of such arrest.

7. Impeding any officer of such house in the discharge of the officer's duties as such, the offender knowing the officer's official character.

[C51, §12; R60, §8; C73, §14; C97, §18; C24, 27, 31, 35, 39, §**23;** C46, 50, 54, 58, 62, 66, §2.24; C71, 73, 75, 77, 79, 81, §2.18]

2.19 Punishment for contempt.

Fines and imprisonment for contempt shall be only by virtue of an order of the proper house, entered on its journals, stating the grounds thereof.

[C51, §14; R60, §10; C73, §15; C97, §19; C24, 27, 31, 35, 39, §**24;** C46, 50, 54, 58, 62, 66, §2.25; C71, 73, 75, 77, 79, 81, §2.19]

2.20 Warrant — execution.

Imprisonment for contempt shall be effected by a warrant, under the hand of the presiding officer, for the time being, of the house ordering it, countersigned by the acting secretary or clerk, in the name of the state, and directed to the sheriff or jailer of the proper county. Under such warrant, the proper officer will be authorized to commit and detain the person.

[C51, §14; R60, §10; C73, §15; C97, §19; C24, 27, 31, 35, 39, §**25;** C46, 50, 54, 58, 62, 66, §2.26; C71, 73, 75, 77, 79, 81, §2.20]

2.21 Fines — collection.

Fines for contempt shall be collected by a warrant, directed to any proper officer of any county in which the offender has property, and executed in the same manner as executions for fines issued from courts of record, and the proceeds paid into the state treasury.

[C51, §14; R60, §10; C73, §15; C97, §19; C24, 27, 31, 35, 39, §**26;** C46, 50, 54, 58, 62, 66, §2.27; C71, 73, 75, 77, 79, 81, §2.21]

2.22 Punishment — effect.

Imprisonment for contempt shall not extend beyond the session at which it is ordered, and shall be in a facility designated by the presiding officer.

Punishment for contempt shall not constitute a bar to any other proceeding, civil or criminal, for the same act.

[C51, §13, 15; R60, §9, 11; C73, §16; C97, §20; C24, 27, 31, 35, 39, §**27;** C46, 50, 54, 58, 62, 66, §2.28; C71, 73, 75, 77, 79, 81, §2.22]

2.23 Witness — attendance compulsory.

Whenever a committee of either house, or a joint committee of both, is conducting an investigation

requiring the personal attendance of witnesses, any person may be compelled to appear before such committee as a witness by serving an order upon the person, which service shall be made in the manner required in case of a subpoena in a civil action in the district court. Such order shall state the time and place a person is required to appear, be signed by the presiding officer of the body by which the committee was appointed, and attested by its acting secretary or clerk; or, in case of a joint committee, signed and attested by such officers of that body.

[C73, §17; C97, §21; C24, 27, 31, 35, 39, §**28;** C46, 50, 54, 58, 62, 66, §2.29; C71, 73, 75, 77, 79, 81, §2.23]

2.24 Witnesses — compensation.

Witnesses called by a standing or joint committee shall be entitled to the same compensation for attendance under section 2.23 as before the district court but shall not have the right to demand payment of their fees in advance.

[C73, §18; C97, §22; C24, 27, 31, 35, 39, §**29;** C46, 50, 54, 58, 62, 66, §2.30; C71, 73, 75, 77, 79, 81, §2.24]

See §622.69, 622.72

2.25 Joint conventions.

Joint conventions of the general assembly shall meet in the house of representatives for such purposes as are provided by law. The president of the senate, or, in the president's absence, the president pro tempore of the senate shall preside at such joint conventions.

The speaker of the house of representatives may, for purposes of canvass of votes for governor and lieutenant governor and for the inauguration of such officers, designate any suitable hall at the seat of government as the hall of the house of representatives.

[R60, §674, 675; C73, §19; C97, §23; C24, 27, 31, 35, 39, §**30;** C46, 50, 54, 58, 62, 66, §2.31; C71, 73, 75, 77, 79, 81, §2.25]

2.26 Secretary — record.

The clerk of the house of representatives shall act as secretary of the convention, and the clerk and the secretary of the senate shall keep a fair and correct record of the proceedings of the convention, which shall be entered on the journal of each house.

[R60, §677; C73, §21; C97, §25; C24, 27, 31, 35, 39, §**31;** C46, 50, 54, 58, 62, 66, §2.32; C71, 73, 75, 77, 79, 81, §2.26]

2.27 Canvass of votes for governor.

The general assembly shall meet in joint session on the same day the assembly first convenes in January of 1979 and every four years thereafter as soon as both houses have been organized, and canvass the votes cast for governor and lieutenant governor and determine the election. If an election is necessary under section 69.13 to fill a vacancy in the office of lieutenant governor, the general assembly shall similarly meet on the day it convenes in the January following that election and canvass the vote cast for the office. When the canvass is completed, the oath of office shall be administered to the persons or person so declared elected. Upon being inaugurated the governor shall deliver to the joint assembly any message the governor may deem expedient.

[S13, §30-a; C24, 27, 31, 35, 39, §**32;** C46, 50, 54, 58, 62, 66, §2.33; C71, 73, 75, 77, 79, 81, §2.27]

2.28 Tellers.

After the time for the meeting of the joint convention has been designated each house shall appoint three tellers, and the six shall act as judges of the election.

Canvassing the votes for governor and lieutenant governor shall be conducted substantially according to the provisions of sections 2.25 to 2.28.

[R60, §676; C73, §20, 26; C97, §24, 30; C24, 27, 31, 35, 39, §**33, 34;** C46, 50, 54, 58, 62, 66, §2.34, 2.35; C71, 73, 75, 77, 79, 81, §2.28]

2.29 Election — vote — how taken — second poll.

When any officer is to be elected by joint convention, the names of the members shall be arranged in alphabetical order by the secretaries, and each member shall vote in the order in which the member's name stands when so arranged. The name of the person voted for, and the names of the members voting, shall be entered in writing by the tellers, who, after the secretary shall have called the names of the members a second time, and the name of the person for whom each member has voted, shall report to the president of the convention the number of votes given for each candidate.

If no person shall receive the votes of a majority of the members present, a second poll may be taken, or as many polls as may be required until some person receives a majority.

[R60, §678, 679, 680; C73, §22, 23; C97, §26, 27; C24, 27, 31, 35, 39, §**35, 36;** C46, 50, 54, 58, 62, 66, §2.36, 2.37; C71, 73, 75, 77, 79, 81, §2.29]

2.30 Certificates of election.

When any person shall have received a majority of the votes, the president shall declare the person to be elected, and shall, in the presence of the convention, sign two certificates of such election, attested by the tellers, one of which the president shall transmit to the governor, and the other shall be preserved among the records of the convention and entered at length on the journal of each house. The governor shall issue a commission to the person so elected.

[R60, §682; C73, §25; C97, §29; C24, 27, 31, 35, 39, §**37;** C46, 50, 54, 58, 62, 66, §2.38; C71, 73, 75, 77, 79, 81, §2.30]

2.31 Adjournment.

If the purpose for which the joint convention is assembled is not concluded, the president shall adjourn or recess the same from time to time as the members present may determine.

[R60, §681; C73, §24; C97, §28; C24, 27, 31, 35, 39, §**38;** C46, 50, 54, 58, 62, 66, §2.39; C71, 73, 75, 77, 79, 81, §2.31]

2.32 Confirmation of appointments — procedures.

1. The governor shall either make an appointment or file a notice of deferred appointment by March 15 for the following appointments which are subject to confirmation by the senate:

a. An appointment to fill a term beginning on May 1 of that year.

b. An appointment to fill a vacancy, other than as provided for in paragraph *"d,"* existing prior to the convening of the general assembly in regular session in that year.

c. An appointment to fill a vacancy, other than as provided for in paragraph *"d,"* which is known, prior to the convening of the general assembly in regular session, will occur before May 1 of that year.

d. An appointment to fill a vacancy existing in a full-time compensated position on December 15 prior to the convening of the general assembly.

2. If a vacancy in a position requiring confirmation by the senate, other than a full-time compensated position, occurs after the convening of the general assembly in regular session, the governor shall, within sixty calendar days after the vacancy occurs, either make an appointment or file a notice of deferred appointment unless the general assembly has adjourned its regular session before the sixty-day period expires. If a vacancy in a full-time compensated position requiring senate confirmation occurs after December 15, the governor shall, within ninety calendar days after the vacancy occurs, make an appointment or file a notice of deferred appointment unless the general assembly has adjourned its regular session before the ninety-day period expires.

3. If an appointment is submitted pursuant to subsection 1, the senate shall by April 15 of that year either approve, disapprove, or by resolution defer consideration of confirmation of the appointment. If an appointment is submitted pursuant to subsection 2, the senate shall either approve, disapprove, or by resolution defer consideration of confirmation of the appointment within thirty days after receiving the appointment from the governor. The senate may defer consideration of an appointment until a later time during that session, but the senate shall not adjourn that session until all appointments submitted pursuant to this section before the last thirty days of the session are approved or disapproved. If a nomination is submitted during the last thirty days of the session, the senate may by resolution defer consideration of the appointment until the next regular session of the general assembly and the nomination shall be considered as though made during the legislative interim.

Sixty days after a person's appointment has been disapproved by the senate, that person shall not serve in that position as an interim appointment or by holding over in office and the governor shall submit another appointment or file a notice of deferred appointment before the sixty-day period expires.

4. The governor shall submit all appointments requiring confirmation by the senate and notices of deferred appointment to the secretary of the senate who shall provide the governor's office with receipts of submission. Each notice of appointment shall be accompanied by a statement of the appointee's political affiliation. The notice of a deferred appointment shall be filed by the governor with the secretary of the senate and accompanied by a statement of reasons for the deferral.

5. The senate shall adopt rules governing the referral of appointments to committees, the reports of committees on appointments, and the confirmation of appointments by the senate.

6. The confirmation of every appointment submitted to the senate requires the approval of two-thirds of the members of the senate.

A person whose appointment is subject to senate confirmation shall make available to the senate committee to which the appointment is referred, upon the committee's request, a notarized statement that the person has filed federal and state income tax returns for the three years immediately preceding the appointment, or a notarized statement of the legal reason for failure to file. If the appointment is to a board, commission, council, or other body empowered to take disciplinary action, all complaints and statements of charges, settlement agreements, findings of fact, and orders pertaining to any disciplinary action taken by that board, commission, council, or body in a contested case against the person whose appointment is being reviewed by the senate shall be made available to the senate committee to which the appointment is referred upon its request.

All tax records, complaint files, investigation files, other investigation reports, and other investigative information in the possession of the committee which relate to appointee tax filings or complaints and statements of charges, settlement agreements, findings of fact, and orders from any past disciplinary action in a contested case against the appointee are privileged and confidential and they are not subject to discovery, subpoena, or other means of legal compulsion for their release to a person other than the appointee unless otherwise provided by law.

7. The governor shall file by February 1 with the secretary of the senate a list of all the appoint-

ment positions requiring gubernatorial action pursuant to subsection 1. The secretary of the senate shall provide the governor a written acknowledgment of the list within five days of its receipt. The senate shall approve the list or request corrections by resolution by February 15.

8. A gubernatorial appointee, whose appointment is subject to confirmation by the senate and who serves at the pleasure of the governor, is subject to reconfirmation by the senate during the regular session of the general assembly convening in January if the appointee will complete the appointee's fourth year in office on or before the following April 30. For the purposes of this section, the submission of an appointee for reconfirmation is deemed the same as the submission of an appointee for confirmation and the procedures of this section regarding confirmation and the consequences of refusal to confirm are the same for reconfirmation.

9. If an appointment subject to senate confirmation is required by statute to be made by an appointing authority other than the governor, the duties assigned under this section to the governor shall be performed by the appointing authority.

[C27, 31, 35, §38-b1; C39, §**38.1;** C46, 50, 54, 58, 62, 66, §2.40; C71, 73, 75, 77, 79, 81, §2.32]

85 Acts, ch 145, §1; 86 Acts, ch 1245, §2003; 88 Acts, ch 1128, §1; 94 Acts, ch 1184, §1

2.33 Differential treatment.

The general assembly shall not pass a bill that uses gender as the basis for differential treatment unless there is a compelling reason for the differential treatment and no reasonable alternatives exist by which the treatment could be mitigated or avoided.

84 Acts, ch 1042, §1

2.34 Reserved.

2.35 Communications review committee established.

A communications review committee is established, consisting of three members of the senate appointed by the president of the senate, after consultation with the majority leader and the minority leader of the senate, and three members of the house of representatives appointed by the speaker of the house. The committee shall select a chairperson and vice chairperson. Meetings may be called by the chairperson or a majority of the members.

Members shall be appointed prior to the adjournment of the first regular session of each general assembly and shall serve for terms ending upon the convening of the following general assembly or when their successors are appointed, whichever is later. Vacancies shall be filled in the same manner as original appointments are made and shall be for the remainder of the unexpired term of the vacancy. The members of the committee shall be reimbursed for actual and necessary expenses incurred in the performance of their duties and shall be paid the per diem specified in section 2.10, subsection 5, for each day in which engaged in the performance of their duties. However, per diem compensation and expenses shall not be paid when the general assembly is actually in session at the seat of government. Expenses and per diem shall be paid from funds appropriated pursuant to section 2.12.

Administrative assistance shall be provided by the legislative services agency to the extent possible.

[C75, 77, §750.8; C79, §693.8; C81, §2.35]

86 Acts, ch 1245, §2004; 90 Acts, ch 1223, §5; 91 Acts, ch 258, §3; 2003 Acts, ch 35, §44, 49

2.36 Duties of committee.

The committee shall review the present and proposed uses of communications by state agencies and the development of a statewide communications plan. It shall meet as often as deemed necessary and annually shall make recommendations to the legislative council and the general assembly, accompanied by bill drafts to implement its recommendations.

[C75, 77, §750.8; C79, §693.8; C81, §2.36]

87 Acts, ch 115, §1

2.37 to 2.39 Reserved.

2.40 Membership in state insurance plans.

1. A member of the general assembly may elect to become a member of a state group insurance plan for employees of the state established under chapter 509A subject to the following conditions:

a. The member shall be eligible for all state group insurance plans on the basis of enrollment rules established for full-time state employees excluded from collective bargaining as provided in chapter 20.

b. The member shall pay the premium for the plan selected on the same basis as a full-time state employee excluded from collective bargaining as provided in chapter 20.

c. The member shall authorize a payroll deduction of the premium due according to the member's pay plan selected pursuant to section 2.10, subsection 4.

d. The premium rate shall be the same as the premium rate paid by a state employee for the plan selected.

A member of the general assembly may elect to become a member of a state group insurance plan. A member of the general assembly may continue membership in a state group insurance plan without reapplication during the member's tenure as a member of consecutive general assemblies. For the purpose of electing to become a member of the state health or medical service group insurance

plan, a member of the general assembly has the status of a *"new hire"*, full-time state employee following each election of that member in a general or special election, or during the first subsequent annual open enrollment. In lieu of membership in a state health or medical group insurance plan, a member of the general assembly may elect to receive reimbursement for the costs paid by the member for a continuation of a group coverage (COBRA) health or medical insurance plan. The member shall apply for reimbursement by submitting evidence of payment for a COBRA health or medical insurance plan. The maximum reimbursement shall be no greater than the state's contribution for health or medical insurance family plan II. A member of the general assembly who elects to become a member of a state health or medical group insurance plan shall be exempted from preexisting medical condition waiting periods. A member of the general assembly may change programs or coverage under the state health or medical service group insurance plan during the month of January of odd-numbered years, but program and coverage change selections shall be subject to the enrollment rules established for full-time state employees excluded from collective bargaining as provided in chapter 20. A person who has been a member of the general assembly for two years and who has elected to be a member of a state health or medical group insurance plan may continue to be a member of such state health or medical group insurance plan by requesting continuation in writing to the finance officer within thirty-one days after leaving office. The continuing former member of the general assembly shall pay the total premium for the state plan and shall have the same rights to change programs or coverage as state employees. In the event of the death of a former member of the general assembly who has elected to continue to be a member of a state health or medical group insurance plan, the surviving spouse of the former member whose insurance would otherwise terminate because of the death of the former member may elect to continue to be a member of such state health or medical group insurance plan by requesting continuation in writing to the finance officer within thirty-one days after the death of the former member. The surviving spouse of the former member shall pay the total premium for the state plan and shall have the same rights to change programs or coverage as state employees.

2. A part-time employee of the general assembly may elect to become a member of a state group insurance plan for employees of the state established under chapter 509A subject to the following conditions:

a. The part-time employee shall be eligible for all state group insurance plans on the basis of enrollment rules established for full-time state employees excluded from collective bargaining as provided in chapter 20 and shall have the same rights to change programs or coverage as are afforded such state employees.

b. The part-time employee shall pay the total premium.

c. A part-time employee may continue membership in a state group insurance plan without reapplication during the employee's employment during consecutive sessions of the general assembly. For the purpose of electing to become a member of the state group insurance plan, a part-time employee of the general assembly has the status of a *"new hire"*, full-time state employee when the employee is initially eligible or during the first subsequent enrollment change period.

d. (1) A part-time employee of the general assembly who elects membership in a state group insurance plan shall state each year whether the membership is to extend through the interim period between consecutive sessions of the general assembly.

(2) If the membership is to extend through the interim period the part-time employee shall authorize payment of the total annual premium through direct payment of the monthly premium for the plan selected to the state group insurance plan provider.

(3) The part-time employee shall notify the finance officer within thirty-one days after the conclusion of the general assembly whether the person's decision to extend the membership through the interim period is confirmed.

e. A member of a state group insurance plan pursuant to this subsection shall have the same rights upon final termination of employment as a part-time employee as are afforded full-time state employees excluded from collective bargaining as provided in chapter 20.

f. A part-time employee of the general assembly who elects membership in a state life insurance plan shall authorize payment of the premium through a total of two payments during each annual period made to the department of administrative services on dates prescribed by the department.

83 Acts, ch 205, §21; 88 Acts, ch 1267, §14; 89 Acts, ch 303, §14; 90 Acts, ch 1122, §1, 2; 95 Acts, ch 211, §15; 2003 Acts, ch 145, §286

LEGISLATIVE COUNCIL

2.41 Legislative council created.

A continuing legislative council of twenty-four members is created. The council is composed of the president and president pro tempore of the senate, the speaker and speaker pro tempore of the house of representatives, the majority and minority floor leaders of the senate, the chairperson of the senate committee on appropriations, the minority party ranking member of the senate committee on appropriations, six members of the senate appointed by the majority leader of the senate,

the majority and minority floor leaders of the house of representatives, the chairperson of the house committee on appropriations, the minority party ranking member of the house committee on appropriations, and six members of the house of representatives appointed by the speaker of the house of representatives. Of the six members appointed by the majority leader of the senate and speaker of the house, three from each house shall be appointed from the majority party and three from each house shall be appointed from the minority party. Members shall be appointed prior to the fourth Monday in January of the first regular session of each general assembly and shall serve for two-year terms ending upon the convening of the following general assembly or when their successors are appointed. Vacancies on the council, including vacancies which occur when a member of the council ceases to be a member of the general assembly, shall be filled by the majority leader of the senate and the speaker of the house respectively. Insofar as possible at least two members of the council from each house shall be reappointed. The council shall hold regular meetings at a time and place fixed by the council and shall meet at any other time and place as the council deems necessary.

[C58, §2.46; C62, 66, 71, 73, §2.49; C75, 77, 79, 81, §2.41]

86 Acts, ch 1245, §2005; 90 Acts, ch 1223, §6

2.42 Powers and duties of council.

The legislative council shall select its officers and prescribe its rules and procedure. The powers and duties of the council shall include, but not be limited to, the following:

1. To establish policies for the operation of the legislative services agency.
2. To appoint the director of the legislative services agency for such term of office as may be set by the council.
3. To prepare reports to be submitted to the general assembly at its regular sessions.
4. To appoint interim study committees consisting of members of the legislative council and members of the general assembly of such number as the council shall determine. Nonlegislative members may be included on such committees when the council deems the participation of such members advantageous to the conduct of the study.
5. To conduct studies and evaluate reports of studies assigned to study committees and make recommendations for legislative or administrative action thereon. Recommendations shall include such bills as the legislative council may deem advisable.
6. To cooperate with other states to discuss mutual legislative and governmental problems.
7. To recommend staff for the legislative council and the standing committees in cooperation with the chairperson of such standing committees.
8. To recommend changes or revisions in the senate and house rules and the joint rules for more efficient operation of the general assembly and draft proposed rule amendments, resolutions, and bills as may be required to carry out such recommendations, for consideration by the general assembly.
9. To recommend to the general assembly the names and numbers of standing committees of both houses.
10. To establish rules for the style and format for drafting and preparing of legislative bills and resolutions.
11. To approve the appointment of the Iowa Code editor and the administrative code editor.
12. To establish policies for the distribution of information which is stored by the general assembly in an electronic format, including the contents of statutes or rules, other than value-added electronic publications as provided in section 2A.5. The legislative council shall establish payment rates that encourage the distribution of such information to the public, including private vendors reselling that information. The legislative council shall not establish a price that attempts to recover more than is attributable to costs related to reproducing and delivering the information.
13. To establish policies with regard to the publishing of printed and electronic versions of the Iowa administrative code, the Iowa administrative bulletin, the Iowa Code, the Iowa Code Supplement, and the Iowa Acts, or any part of those publications. The publishing policies may include, but are not limited to: the style and format to be used; the frequency of publication; the contents of the publications; the numbering system to be used in the Iowa Code, the Iowa Code Supplement, and the Iowa Acts; the preparation of editorial comments or notations; the correction of errors; the type of print or electronic media and data processing software to be used; the number of printed volumes to be published; recommended revisions of the Iowa Code, the Iowa Code Supplement, and the Iowa Acts; the letting of contracts for the publication of the Iowa administrative code, the Iowa administrative bulletin, the Iowa court rules, the Iowa Code, the Iowa Code Supplement, and the Iowa Acts; the pricing of the publications to which section 22.3 does not apply; access to, and the use, reproduction, legal protection, sale or distribution, and pricing of related data processing software consistent with chapter 22; and any other matters deemed necessary to the publication of uniform and understandable publications.
14. To hear and act upon appeals of aggrieved employees of the legislative services agency and the office of the citizens' aide pursuant to rules of procedure established by the council.
15. Authority to review and delay the effective dates of rules and forms submitted by the supreme court pursuant to section 602.4202.

16. To implement the sexual harassment prohibitions and grievance, violation, and disposition procedures of section 19B.12 with respect to full-time, part-time, and temporary central legislative staff agency employees and to develop and distribute, at the time of hiring or orientation, a guide that describes for its employees the applicable sexual harassment prohibitions and grievance, violation, and disposition procedures. This subsection does not supersede the remedies provided under chapter 216.

[C58, §2.47; C62, 66, 71, 73, §2.50; C75, 77, 79, 81, §2.42]

83 Acts, ch 186, §10001, 10201; 84 Acts, ch 1067, §1; 85 Acts, ch 65, §2, 3; 85 Acts, ch 197, §1; 87 Acts, ch 115, §2; 91 Acts, ch 258, §4; 92 Acts, ch 1086, §2; 96 Acts, ch 1099, §1; 2003 Acts, ch 35, §10, 49

2.43 General supervision over legislative facilities, equipment, and arrangements.

The legislative council in cooperation with the officers of the senate and house shall have the duty and responsibility for preparing for each session of the general assembly. Pursuant to such duty and responsibility, the legislative council shall assign the use of areas in the state capitol except for the areas used by the governor as of January 1, 1986, and by the courts as of July 1, 2003, and, in consultation with the director of the department of administrative services and the capitol planning commission, may assign areas in other state office buildings for use of the general assembly or legislative agencies. The legislative council may authorize the renovation, remodeling and preparation of the physical facilities used or to be used by the general assembly or legislative agencies subject to the jurisdiction of the legislative council and award contracts pursuant to such authority to carry out such preparation. The legislative council may purchase supplies and equipment deemed necessary for the proper functioning of the legislative branch of government.

In carrying out its duties under this section, the legislative council shall consult with the director of the department of administrative services and the capitol planning commission, but shall not be bound by any decision of the director in respect to the responsibilities and duties provided for in this section. The legislative council may direct the director of the department of administrative services or other state employees to carry out its directives in regard to the physical facilities of the general assembly, or may employ other personnel to carry out such functions.

The costs of carrying out the provisions of this section shall be paid pursuant to section 2.12.

[C71, 73, §2.51; C75, 77, 79, 81, §2.43]

86 Acts, ch 1245, §301; 2002 Acts, ch 1173, §23; 2003 Acts, ch 145, §104, 286

Capitol space allocation; see also §8A.322

2.44 Expenses of council and special interim committees.

Members of the legislative council shall be reimbursed for actual and necessary expenses incurred in the performance of their duties, and shall be paid the per diem specified in section 2.10, subsection 5, for each day in which engaged in the performance of their duties. However, the per diem and expenses shall not be paid when the general assembly is actually in session at the seat of government. The expenses and per diem shall be paid in the manner provided for in section 2.12.

Members of special interim study committees which may from time to time be created and members of the legislative fiscal committee who are not members of the legislative council shall be entitled to receive the same expenses and compensation provided for the members of the legislative council.

[C97, §181; S13, §181; C24, 27, 31, 35, 39, §**44;** C46, 50, §2.46; C54, §2.45; C58, §2.45, 2.48; C62, 66, §2.45, 2.51; C71, 73, §2.45, 2.52; C75, 77, 79, 81, §2.44]

91 Acts, ch 258, §5

2.45 Committees of the legislative council.

The legislative council shall be divided into committees, which shall include but not be limited to:

1. The legislative service committee which shall be composed of six members of the legislative council, consisting of three members from each house, to be appointed by the legislative council. The legislative service committee shall select a chairperson from its membership, and shall determine policies relating to the operation of the legislative services agency, subject to the approval of the legislative council.

2. The legislative fiscal committee, composed of the chairpersons or their designated committee member and the ranking minority party members or their designated committee member of the committees of the house and senate responsible for developing a state budget and appropriating funds, the chairpersons or their designated committee member and the ranking minority party members or their designated committee member of the committees on ways and means, and two members, one appointed from the majority party of the senate by the majority leader of the senate and one appointed from the majority party of the house by the speaker of the house of representatives. In each house, unless one of the members who represent the committee on ways and means is also a member of the legislative council, the person appointed from the membership of the majority party in that house shall also be appointed from the membership of the legislative council.

3. The legislative administration committee which shall be composed of six members of the legislative council, consisting of three members from

each house, to be appointed by the legislative council. The legislative administration committee shall perform such duties as are assigned it by the legislative council.

4. The legislative capital projects committee which shall be composed of ten members appointed as follows:

a. Two senate members of the legislative fiscal committee or the senate committee on appropriations, one to be appointed by the majority leader of the senate and one to be appointed by the minority leader of the senate.

b. Two house members of the legislative fiscal committee or the house committee on appropriations, one to be appointed by the speaker of the house and one to be appointed by the minority leader of the house.

c. The chairpersons of the senate and house committees on appropriations.

d. Four members of the legislative council, one appointed by the speaker of the house, one by the majority leader of the senate, one by the minority leader of the house, and one by the minority leader of the senate.

The chairperson of the legislative council shall designate the chairperson or chairpersons of the legislative capital projects committee.

5. *a.* The legislative oversight committee composed of members designated by the legislative council. In addition to the duties assigned by the legislative council, the committee shall systematically review the programs, agencies, and functions of the executive and judicial branches of government to ensure that public resources are used in the most efficient manner to benefit the people of Iowa.

b. The committee shall implement a systematic process of assessing the programs, agencies, and functions. Annually, by October 1, the committee shall identify the programs, agencies, and functions that will be subject to review and evaluation in the succeeding calendar year. An agency of state government selected by the committee for review and evaluation shall provide information as required by the committee, which may include but is not limited to the following:

(1) Identifying the activities, services, products, and functions of the agency, including identifying those that are required and the source of the requirement. At minimum, the sources identified shall include state law, state administrative rule, federal law, and federal regulation.

(2) Specifying for all activities, services, products, and functions, the users or clientele, and the current level of need for and the level of satisfaction with the activity, service, product, or function.

(3) Listing each discretionary activity, service, product, or function of the agency that is not required by state law, state administrative rule, federal law, or federal regulation.

(4) Identifying the degree of alignment between the agency strategic plan adopted pursuant to section 8E.206 and the requirements of the agency in state law and administrative rule.

(5) Identifying alternative methods of providing the agency's existing activities, services, products, and functions, and quantifying the impact to Iowans if such activities, services, products, or functions are no longer provided by the agency.

[C97, §181; S13, §181; C24, 27, 31, 35, 39, §**39, 40;** C46, 50, §2.41, 2.42; C54, 58, 62, 66, 71, 73, §2.41; C75, 77, 79, 81, §2.45]

86 Acts, ch 1245, §2006; 89 Acts, ch 298, §1; 2002 Acts, ch 1162, §74; 2003 Acts, ch 35, §11, 44, 49

2.46 Powers of legislative fiscal committee.

The legislative fiscal committee may, subject to the approval of the legislative council:

1. *Budget.* Gather information relative to budget matters for the purpose of aiding the legislature to properly appropriate money for the functions of government, and to report their findings to the legislature.

2. *Examination.* Examine the reports and official acts of the executive council and of each officer, board, commission, and department of the state, in respect to the conduct and expenditures thereof and the receipts and disbursements of public funds thereby. All state departments and agencies are required to immediately notify the legislative fiscal committee of the legislative council and the director of the legislative services agency if any state facilities within their jurisdiction have been cited for violations of any federal, state, or local laws or regulations or have been decertified or notified of the threat of decertification from compliance with any state, federal, or other nationally recognized certification or accreditation agency or organization.

3. *Reorganization.* Make a continuous study of all offices, departments, agencies, boards, bureaus, and commissions of the state government and shall determine and recommend to each session of the legislature what changes therein are necessary to accomplish the following purposes:

a. To reduce expenditures and promote economy to the fullest extent consistent with the efficient operation of state government.

b. To increase the efficiency of the operations of the state government to the fullest extent practicable within the available revenues.

c. To group, coordinate, and consolidate judicial districts, agencies and functions of the government, as nearly as may be according to major purposes.

d. To reduce the number of offices, agencies, boards, commissions, and departments by consolidating those having similar functions, and to abolish such offices, agencies, boards, commissions, and departments, or functions thereof, as may not be necessary for the efficient and economical conduct of state government.

e. To eliminate overlapping and duplication of

effort on the part of such offices, agencies, boards, commissions, and departments of the state government.

4. *Administration of legislative database.* Determine the policy for the content and administration of a legislative database.

5. *Information needs determination.* Determine the information needs of the general assembly and report them to the director of the department of administrative services who shall consider such needs in establishing the operating policies for a database management system.

[C97, §181, 182; S13, §181; C24, 27, 31, 35, 39, §**42, 45;** C46, 50, §2.44, 2.47; C54, 58, 62, 66, 71, 73, §2.43; C75, 77, §2.46; C79, §2.46, 2.54; C81, §2.46]

86 Acts, ch 1245, §302; 89 Acts, ch 298, §2; 2003 Acts, ch 35, §45, 49; 2003 Acts, ch 145, §286

2.47 Procedure.

The chairpersons of the committees on budget shall serve as cochairpersons of the legislative fiscal committee. The legislative fiscal committee shall determine its own method of procedure and shall meet as often as deemed necessary, subject to the approval of the legislative council. It shall keep a record of its proceedings which shall be open to public inspection, and it shall inform the legislative council in advance concerning the dates of meetings of the committee.

[C75, 77, 79, 81, §2.47]

2.47A Powers and duties of legislative capital projects committee.

1. The legislative capital projects committee shall do all of the following:

a. Receive the recommendations of the governor regarding the funding and priorities of proposed capital projects pursuant to section 8.3A, subsection 2, paragraph *"b"*.

b. Receive the reports of all capital project budgeting requests of all state agencies, with individual state agency priorities noted, pursuant to section 8.6, subsection 13.

c. Receive annual status reports for all ongoing capital projects of state agencies, pursuant to section 8A.321, subsection 10.

d. Examine and evaluate, on a continuing basis, the state's system of contracting and subcontracting in regard to capital projects.

2. The legislative capital projects committee, subject to the approval of the legislative council, may do all of the following:

a. Gather information relative to capital projects, for the purpose of aiding the general assembly to properly appropriate moneys for capital projects.

b. Examine the reports and official acts of the state agencies, as defined in section 8.3A, with regard to capital project planning and budgeting and the receipt and disbursement of capital project funding.

c. Establish advisory bodies to the committee in areas where technical expertise is not otherwise readily available to the committee. Advisory body members may be reimbursed for actual and necessary expenses from funds appropriated pursuant to section 2.12, but only if the reimbursement is approved by the legislative council.

d. Compensate experts from outside state government for the provision of services to the committee from funds appropriated pursuant to section 2.12, but only if the compensation is approved by the legislative council.

e. Make recommendations to the legislative fiscal committee, legislative council, and the general assembly regarding issues relating to the planning, budgeting, and expenditure of capital project funding.

3. The capital projects committee shall determine its own method of procedure and shall keep a record of its proceedings which shall be open to public inspection. The committee shall meet as often as deemed necessary, subject to the approval of the legislative council, and the committee shall inform the legislative council in advance of its meeting dates.

89 Acts, ch 298, §3; 90 Acts, ch 1168, §1; 91 Acts, ch 268, §601; 95 Acts, ch 214, §1; 2001 Acts, 2nd Ex, ch 2, §1, 13; 2003 Acts, ch 145, §105

2.48 through 2.50 Repealed by 2003 Acts, ch 35, § 47, 49. See chapter 2A.

2.51 Visitations.

The legislative fiscal committee, with the approval of the legislative council, may direct a subcommittee, which shall be composed of the chairpersons and minority party ranking members of the appropriate subcommittees of the committees on budget of the senate and the house of representatives and the chairpersons of the appropriate standing committees of the general assembly, to visit the offices and facilities of any state office, department, agency, board, bureau, or commission to review programs authorized by the general assembly and the administration of the programs. When the legislative fiscal committee visits the offices and facilities of any state office, department, agency, board, bureau, or commission to review programs authorized by the general assembly and the administration of the programs, there shall be included the chairpersons and minority party ranking members of the appropriate subcommittees of the committees on budget of the senate and the house of representatives. The legislative council may appoint a member of the subcommittee or standing committee to serve in place of that subcommittee's or standing committee's chairperson or minority party ranking member on the legislative fiscal visitation committee or subcommittee if that person will be absent. The subcommittee and the legislative fiscal committee shall be provided with information by the legislative services

agency concerning budgets, programs, and legislation authorizing programs prior to any visitation. Members of a committee shall be compensated pursuant to section 2.10, subsection 5. The subcommittee shall make reports and recommendations as required by the legislative fiscal committee.

[C75, 77, 79, 81, §2.51]

84 Acts, ch 1026, §1; 2003 Acts, ch 35, §45, 49

2.52 Access — subpoenas. Repealed by 2003 Acts, ch 35, § 47, 49. See § 2A.3.

2.53 Actuarial services. Repealed by 83 Acts, ch 200, § 14.

2.54 Repealed by 80 Acts, ch 1011, § 4. See § 2.46.

2.55 Government accountability. Repealed by 2003 Acts, ch 35, § 47, 49. See § 2A.7.

2.55A Departmental information required. Repealed by 2003 Acts, ch 35, § 47, 49.

CORRECTIONAL IMPACT STATEMENTS

2.56 Correctional impact statements.

1. Prior to debate on the floor of a chamber of the general assembly, a correctional impact statement shall be attached to any bill, joint resolution, or amendment which proposes a change in the law which creates a public offense, significantly changes an existing public offense or the penalty for an existing offense, or changes existing sentencing, parole, or probation procedures. The statement shall include information concerning the estimated number of criminal cases per year that the legislation will impact, the fiscal impact of confining persons pursuant to the legislation, the impact of the legislation upon existing correctional institutions, community-based correctional facilities and services, and jails, the likelihood that the legislation may create a need for additional prison capacity, and other relevant matters. The statement shall be factual and shall, if possible, provide a reasonable estimate of both the immediate effect and the long-range impact upon prison capacity.

2. *a.* When a committee of the general assembly reports a bill, joint resolution, or amendment to the floor, the committee shall state in the report whether a correctional impact statement is or is not required.

b. The legislative services agency shall review all bills and joint resolutions placed on the calendar of either chamber of the general assembly, as well as amendments filed to bills or joint resolutions on the calendar, to determine whether a correctional impact statement is required.

c. A member of the general assembly may request the preparation of a correctional impact statement by submitting a request to the legislative services agency.

3. The legislative services agency shall cause to be prepared a correctional impact statement within a reasonable time after receiving a request or determining that a proposal is subject to this section. All correctional impact statements approved by the legislative services agency shall be transmitted immediately to either the chief clerk of the house or the secretary of the senate, after notifying the sponsor of the legislation that the statement has been prepared for publication. The chief clerk of the house or the secretary of the senate shall attach the statement to the bill, joint resolution, or amendment affected as soon as it is available.

4. The legislative services agency may request the cooperation of any state department or agency or political subdivision in preparing a correctional impact statement.

5. A revised correctional impact statement shall be prepared if the correctional impact has been changed by the adoption of an amendment, and may be requested by a member of the general assembly or be prepared upon a determination made by the legislative services agency. However, a request for a revised correctional impact statement shall not delay action on the bill, joint resolution, or amendment unless so ordered by the presiding officer of the chamber.

93 Acts, ch 171, §14; 2003 Acts, ch 35, §12, 49

2.57 Reserved.

2.58 through 2.60 Repealed by 2003 Acts, ch 35, § 47, 49. See chapter 2A.

RESEARCH REQUESTS — INTERIM STUDY COMMITTEES

2.61 Requests for research.

Requests for research on governmental matters may be made to the legislative services agency by either house of the general assembly, committees of either house of the general assembly, special interim committees of the general assembly, the legislative council, or upon petition by twenty or more members of the general assembly. Any legislative committee may request the legislative services agency to do research on any matter under consideration by such committee. For each such request the legislative council may, if deemed advisable, authorize a special interim study committee to conduct the research study or may request a standing committee to conduct such study. Members on a study committee shall be appointed by the council and shall consist of at least one member of the council and such other members of the

majority and minority parties of the senate and the house of representatives as the council may designate. As far as practicable, a study committee shall include members of standing committees concerned with the subject matter of the study. No legislator shall serve on more than two study committees. Nonlegislative members having special knowledge of the subject under study may be appointed by the council to a study committee but such members shall be nonvoting members of such committee. The legislative services agency shall assist study committees on research studies when authorized by the legislative council.

[C58, §2.52; C62, 66, §2.55; C71, 73, 75, 77, 79, 81, §2.61]

2003 Acts, ch 35, §44, 46, 49

2.62 Powers.

Special interim study committees shall have the following powers and duties:

1. Elect officers and adopt necessary rules for the conduct of business.
2. Conduct research on any matter connected with the study assigned by the legislative council.
3. Hold hearings.
4. Make regular progress reports to the legislative council.
5. Make a report, which may include recommendations, to the legislative council. Copies of study committee reports shall be made available to members of the general assembly and may be made available to other interested individuals upon request. The reports shall not be final until approved by the legislative council.

[C62, 66, §2.57; C71, 73, 75, 77, 79, 81, §2.62]

2.63 Meetings.

Special interim study committees shall first meet at the call of the ranking legislative council member assigned to the study committee, and shall thereafter meet at such time as study committee members shall so designate. Any legislator may attend any study committee meeting or any hearing held by a study committee. All study committee meetings shall be open to the public.

[C62, 66, §2.58; C71, 73, 75, 77, 79, 81, §2.63]

2.64 through 2.67 Repealed by 2003 Acts, ch 35, § 47, 49. See chapter 2A.

2.68 Cities authorized to draw proposed precincts. Repealed by 94 Acts, ch 1023, § 125.

2.69 through 2.90 Reserved.

2.91 Iowa boundary commission. Repealed by 86 Acts, ch 1245, § 2052; 90 Acts, ch 1028, § 1.

2.92 through 2.99 Reserved.

2.100 through 2.104 Repealed by 2003 Acts, ch 35, § 47, 49. See chapter 2A.

CHAPTER 2A

LEGISLATIVE SERVICES AGENCY

Former ch 2A repealed by 2002 Acts, ch 1175, §68

2A.1 Legislative services agency created — services — legislative privileges — nonpartisanship and nonadvocacy.

1. A legislative services agency is created as a nonpartisan, central legislative staff agency under the direction and control of the legislative council. The agency shall cooperate with and serve all members of the general assembly, the legislative council, and committees of the general assembly.
2. The legislative services agency shall provide the following services:

a. Legal and fiscal analysis, including legal drafting services, fiscal analysis of legislation, and

state expenditure, revenue, and budget review.

b. State government oversight and performance evaluation.

c. Staffing of standing committees, revenue and budget committees, statutory committees, and interim study committees, and any subcommittees of such committees, including the provision of legal and fiscal analysis to committees and subcommittees.

d. Publication of the official legal publications of the state, including but not limited to the Iowa Code, Iowa Code Supplement, Iowa Acts, Iowa court rules, Iowa administrative bulletin, and Iowa administrative code as provided in chapter 2B.

e. Operation and maintenance of the legislative computer systems used by the senate, house of representatives, and the central legislative staff agencies.

f. Provision of legislative information to the public, provision of library information, management of legislative visitor protocol services, and provision of capitol tour guide services.

g. Other functions as assigned to the legislative services agency by the legislative council or the general assembly.

3. The legislative services agency shall provide services to the general assembly in such a manner as to preserve the authority of the senate and the house of representatives to determine their own rules of proceedings and to exercise all other powers necessary for a separate branch of the general assembly of a free and independent state, and to protect the legislative privileges of the members and employees of the general assembly. In providing services to the general assembly, the legislative services agency shall adhere to all applicable policies of the general assembly and its constituent bodies relating to public access to legislative information and related confidentiality restrictions.

4. The director and all other employees of the legislative services agency shall not participate in partisan political activities and shall not be identified as advocates or opponents of issues subject to legislative debate except as otherwise provided by law or by the legislative council.

2003 Acts, ch 35, §1, 49

2A.2 Director — duties.

1. The administrative head of the legislative services agency shall be the director appointed by the legislative council as provided in section 2.42. The salary of the director shall be set by the legislative council.

2. The director shall do all of the following:

a. Employ persons with expertise to perform the legal, fiscal, technical, and other functions which are required to be performed by the legislative services agency by this chapter or are assigned to the legislative services agency by the legislative council or the general assembly.

b. Supervise all employees of the legislative services agency, including the legal counsel designated to provide legal assistance to the administrative rules review committee, and supervise any outside service providers retained by the legislative services agency.

c. Supervise all expenditures of the agency.

d. Supervise the legal and fiscal analysis and legal publication functions of the agency.

e. Supervise the government oversight and program evaluation functions of the agency.

f. Supervise the committee staffing functions of the agency.

g. Supervise the computer systems services functions of the agency.

h. Supervise the legislative and library information, legislative visitor protocol, and capitol tour guide functions of the agency.

i. Perform other functions as assigned to the director by the legislative council or the general assembly.

2003 Acts, ch 35, §2, 49

2A.3 Information access — confidentiality — subpoenas.

1. *a.* The director and agents and employees of the legislative services agency, with respect to the agency's provision of services relating to fiscal analysis of legislation, state expenditure, revenue, and budget review, state government oversight and performance evaluation, and staffing of revenue and budget committees, shall at all times have access to all agencies, offices, boards, and commissions of the state and its political subdivisions and private organizations providing services to individuals under contracts with state agencies, offices, boards, or commissions and to the information, records, instrumentalities, and properties used in the performance of such entities' statutory duties or contractual arrangements. All such entities and the described private organizations shall cooperate with the director, and shall make available to the director such information, records, instrumentalities, and properties upon request.

b. If the information sought by the legislative services agency, with respect to the agency's provision of services described in paragraph *"a"*, is required by law to be kept confidential, the agency shall have access to the information, but shall maintain the confidentiality of the information and is subject to the same penalties as the lawful custodian of the information for dissemination of the information. However, the legislative services agency shall not have access to tax return information except for individual income tax sample data as provided in section 422.72, subsection 1.

c. The director may issue subpoenas for production of any information, records, instrumentalities, or properties to which the director is authorized to have access under paragraph *"a"*. If any person subpoenaed refuses to produce the infor-

mation, records, instrumentalities, or properties, the director may apply to the district court having jurisdiction over that person for the enforcement of the subpoena.

2. The director and agents and employees of the legislative services agency, with respect to the agency's provision of services relating to legal analysis, drafting, and publications, staffing of subject matter standing and statutory committees, and provision of legislative information to the public, may call upon any agency, office, board, or commission of the state or any of its political subdivisions or private organizations providing services to individuals under contracts with a state agency, office, board, or commission for such information and assistance as may be needed in the provision of services described in this subsection. Such information and assistance shall be furnished within the resources and authority of such agency, office, board, or commission. This requirement of furnishing such information and assistance shall not be construed to require the production or opening of any public records which are required by law to be kept private or confidential.

3. The director, an agent or former agent, and an employee or former employee of the legislative services agency shall not be compelled to give testimony or to appear and produce documentary evidence in a judicial or quasi-judicial proceeding if the testimony or documentary evidence sought relates to a legislative duty or act concerning the consideration or passage or rejection of proposed legislation performed by the director, agent, or employee. An order or subpoena purporting to compel testimony or the production of documentary evidence protected under this subsection is unenforceable.

2003 Acts, ch 35, §3, 49

2A.4 Specific services — public policy recommendations restricted.

The legislative services agency shall provide the following specific services:

1. Preparation of legal and legislative analysis of any governmental matter upon the proper request of members and committees of the general assembly. Such analysis shall not contain any public policy recommendations. Such legal analysis shall be provided through the exercise of an attorney-employee's independent, professional judgment.

2. Drafting and preparation of legislation, including bills, resolutions, and amendments, for committees and individual members of the general assembly; proposed bills and joint resolutions for state agencies and the governor in accordance with section 2.16; and bills embodying a plan of legislative and congressional redistricting prepared in accordance with chapter 42.

3. Fiscal analysis of legislation, and state expenditure, revenue, and budget review. The director of the agency or the director's designee may make recommendations to the general assembly concerning the state's expenditures and revenues.

4. Attendance at the budget hearings required by section 8.26. The director of the agency may offer explanations or suggestions and make inquiries with respect to such budget hearings.

5. Assistance to standing committees and members of the general assembly in attaching fiscal notes to bills and resolutions as provided by the rules of the general assembly.

6. Performance of the duties pertaining to the preparation of correctional impact statements as provided in section 2.56.

7. Furnishing information, acting in an advisory capacity, providing staffing services, and reporting to standing, statutory, and interim committees of the general assembly.

8. Provision of staffing services including but not limited to preparation of legal and legislative analysis for the administrative rules review committee.

9. Preparation of legal and legislative analysis for the legislative council with respect to rules and forms submitted by the supreme court to the legislative council pursuant to section 602.4202.

10. Review and oversight of state program operations and program evaluation of state agencies, including compliance, efficiency, and effectiveness determinations, as required by section 2A.7.

11. Provision of legislative computer systems services to the senate, house of representatives, and central legislative staff agencies, and provision of advice regarding legislative computer systems services, needs, capabilities, and uses to the legislative council and the general assembly.

2003 Acts, ch 35, §4, 49

2A.5 Official legal and other publications — procurements.

1. The legislative services agency shall publish the official legal publications of the state as provided in chapter 2B. The legislative services agency shall have legal custody of the publications and shall provide for the warehousing, sale, and distribution of the publications. The legislative services agency shall retain or cause to be retained a number of old editions of the publications but may otherwise distribute or cause to be distributed old editions of the publications to any person upon payment by the person of any distribution costs.

2. The printed versions of the publications listed in this subsection shall be sold at a price to be established by the legislative services agency. In determining the prices, the legislative services agency shall consider the costs of printing, binding, distribution, and paper stock, compilation and editing labor costs, and any other associated costs. The legislative services agency shall also consider the number of volumes or units to be printed, sold, and distributed in the determination of the prices.

a. The Iowa Code.
b. The Iowa Code Supplement.
c. The Iowa Acts.
d. The Iowa court rules.
e. The Iowa administrative code.
f. The Iowa administrative bulletin.

3. The legislative services agency shall compile for publication and distribute in odd-numbered years the Iowa official register. The register shall contain historical, political, and other information and statistics of general value but shall not contain information or statistics of a partisan character. The print and electronic versions of the register need not contain the same information and statistics but shall be published to provide the greatest access to such information and statistics at the most reasonable cost as determined by the legislative services agency. The different versions of the register may be distributed free of charge, may be distributed free of charge except for postage and handling charges, or may be sold at a price to be established by the legislative services agency.

4. The legislative services agency may establish policies for the production, editing, distribution, and pricing of electronic publications containing information stored by the legislative branch in an electronic format, including information contained in the printed publications listed in this section. Such electronic publications may include programming not originally part of the stored information, including but not limited to search and retrieval functions. The policies shall provide for the widest possible distribution of these value-added electronic publications at the lowest price practicable, which shall not be more than the costs attributable to producing, editing, and distributing the electronic publications.

5. Subject to section 2.42, the legislative services agency shall determine its procurement procedures, which may include procurement determinations based on service provider competence, meeting of service or product specifications, and reasonableness of price; the posting of security to accompany a service provider proposal; the preference of Iowa-based businesses if comparable in price; the disclosure of service provider assignments; the inclusion of renewal options; the imposition of liquidated damages and other penalties for breach of any service provider requirement; and the rejection of all service provider proposals and institution of a new procurement process.

2003 Acts, ch 35, §5, 48, 49

Legislative intent that provisions of 2003 Acts, ch 35, relating to official legal and other publications, procurements, special distribution of legal publications, and restrictions on free distributions by the legislative services agency shall prevail over conflicting provisions of 2003 Acts, ch 145; 2003 Acts, ch 145, §292

2A.6 Special distribution of legal publications — restrictions on free distributions.

1. The legislative services agency shall make free distribution of the printed versions of the official legal publications listed in section 2A.5, subsection 2, subject to payment of any routine distribution costs such as but not limited to mailing and handling costs, to the three branches of state government, to elected county officers, to county and city assessors, to Iowa's congressional delegation, to federal courts in Iowa and federal judges and magistrates for Iowa, and to state and university depository libraries, the library of Congress, and the library of the United States supreme court. Only such officers, offices, and agencies entitled to or receiving free copies during the fiscal year beginning July 1, 2002, and ending June 30, 2003,* shall be entitled to continue to receive free copies in subsequent years, except that successor and new officers, offices, and agencies shall receive a reasonable number of free copies as determined by the legislative services agency. Such officers, offices, and agencies shall annually review the number of copies received in the prior year to determine if the number of copies received can be reduced and shall submit the information in a report to the legislative services agency. The number of copies received, once reduced, shall not be increased to the previous level without the express consent of the legislative services agency.

2. Each officer, office, or agency receiving one or more free copies of a publication under this section shall only receive up to the number of copies indicated free at the time of initial distribution. If an officer, office, or agency receiving one or more free copies of a publication under this section desires additional copies beyond the number initially received, the officer, office, or agency must request the additional copies and pay the normal charge for such publication.

3. If a version of a publication provided under this section is available in an electronic format, the legislative services agency may establish policies providing for the substitution of an electronic version for the printed version of the publication, and for the amount of payment, if any, required for the electronic publication. The payment amount shall not be more than established pursuant to section 2A.5 for the same publication. For the Iowa administrative code and its supplements, the legislative services agency may provide that the distribution requirement of this section is met by distributing relevant portions of the Iowa administrative code or its supplements in either a printed or electronic format.

4. Notwithstanding any provision of this section to the contrary, the legislative services agency may review the publication costs and offsetting sales revenues relating to legal publications in printed formats, and may establish policies requiring payment from persons otherwise entitled to receive them at no cost or at a price covering distribution costs pursuant to subsection 1. The payment amount shall not be more than established

pursuant to section 2A.5 for the same publication.

2003 Acts, ch 35, §6, 49

*See §18.97, Code 2003

Legislative intent that provisions of 2003 Acts, ch 35, relating to official legal and other publications, procurements, special distribution of legal publications, and restrictions on free distributions by the legislative services agency shall prevail over conflicting provisions of 2003 Acts, ch 145; 2003 Acts, ch 145, §292

2A.7 State government oversight and program evaluation.

1. The general assembly shall independently and intensively review and oversee the performance of state agencies in the operation of state programs to evaluate the efficiency and effectiveness of the state programs and to consider alternatives which may improve the benefits of such programs or may reduce their costs to the citizens of the state. The legislative services agency shall provide technical and professional support for the general assembly's oversight responsibility.

2. The general assembly by concurrent resolution or the legislative council may direct the legislative services agency to conduct a program evaluation of any state agency. Upon the passage of the concurrent resolution or receiving the direction of the legislative council, the director of the legislative services agency shall inform the chairpersons of the committees responsible for appropriations of the anticipated cost of the program evaluation and the number and nature of any additional personnel needed to conduct the program evaluation and shall notify the official responsible for the program to be evaluated. The director, after consulting with the responsible official and the entity requesting the program evaluation, shall determine the goals and objectives of the state agency or state program for the purpose of the program evaluation.

3. In conducting the program evaluation, the legislative services agency may make certain determinations including but not limited to the following:

a. The organizational framework of the state agency, its adequacy and relationship to the overall structure of state government, and whether the program under the agency's jurisdiction could be more effective if consolidated with another program, transferred to another program, or modified, or whether the program should be abolished.

b. Whether the state agency is conducting programs and activities and expending funds appropriated to the state agency in compliance with state and federal law and any executive order of the governor, and whether statutory or administrative rule changes are advisable.

c. Whether the state agency is conducting authorized activities and programs pursuant to goals and objectives established by statute or rule, specific legislative intent, the budget, the governor, or a strategic or other long-range plan, and whether alternatives which might produce the desired results at a lower cost have been considered.

d. Whether the state agency is conducting programs and activities and expending funds appropriated to the state agency in an efficient and effective manner, has complied with all applicable laws, and, if not, determine the causes for such inefficiency, ineffectiveness, or noncompliance.

e. Relationships within and among other governmental agencies and programs including financial exchanges, coordination, inconsistent programs, and areas of duplication or overlapping programs.

f. The productivity of the state agency's operations measured in terms of cost-benefit relationships or other accepted measures of effectiveness.

g. Other criteria determined by the director.

4. Upon the completion of the program evaluation and preparation of a report on the evaluation, the legislative services agency shall provide a copy of the report to the governing official or board of the state agency and afford the state agency a reasonable opportunity to respond to the findings and recommendations of the report. The response shall be included in the final version of the report released to the general assembly or the legislative council. Until its release the report shall be regarded as confidential by all persons properly having custody of the report.

2003 Acts, ch 35, §7, 49

2A.8 Sales — tax exemption. Repealed by 2004 Acts, ch 1073, § 51. See § 423.3(33).

With respect to proposed amendment to this section by 2004 Acts, ch 1101, §1, see Code editor's note at the end of Vol VI

CHAPTER 2B

LEGAL PUBLICATIONS

2B.1 Iowa Code and administrative code editors.

1. The director of the legislative services agency shall appoint the Iowa Code editor and the administrative code editor, subject to the approval of the legislative council, as provided in section 2.42. The Iowa Code editor and the administrative code editor shall serve at the pleasure of the director of the legislative services agency.

2. The Iowa Code and administrative code editors are responsible for the editing, compiling, and proofreading of the publications they prepare, as provided in this chapter. The Iowa Code editor is entitled to the temporary possession of the original enrolled Acts and resolutions as necessary to prepare them for publication.

[C51, §46; R60, §62, 113, 115, 144; C73, §35, 155, 156; C97, p. 5, §38, 216; S13, p. 3; SS15, §224-c, -h; C24, 27, 31, 35, 39, §**156;** C46, 50, 54, 58, 62, 66, §14.3; C71, §14.5; C73, 75, 77, 79, 81, §14.1]

91 Acts, ch 258, §8

C93, §2B.1

98 Acts, ch 1119, §13; 98 Acts, ch 1164, §1; 2003 Acts, ch 35, §13, 49

2B.2 through 2B.4 Reserved.

2B.5 Duties of administrative code editor.

The administrative code editor shall:

1. Cause the Iowa administrative bulletin and the Iowa administrative code to be published as provided in chapter 17A.

2. Cause the Iowa court rules to be published and distributed, as directed by the supreme court after consultation with the legislative council. The Iowa court rules shall consist of all rules prescribed by the supreme court. The Iowa court rules and supplements to the court rules shall be priced as provided in section 2A.5.

3. Cause to be published annually a correct list of state officers and deputies; members of boards and commissions; justices of the supreme court, judges of the court of appeals, and judges of the district courts including district associate judges and judicial magistrates; and members of the general assembly. The offices of the governor and secretary of state shall cooperate in the preparation of the list.

4. Notify the administrative rules coordinator if a rule is not in proper style or form.

5. Perform other duties as directed by the director of the legislative services agency, the legislative council, or the administrative rules review committee and as provided by law.

91 Acts, ch 258, §9

CS91, §14.5

C93, §2B.5

98 Acts, ch 1115, §1, 21; 2003 Acts, ch 35, §14, 49

See §7.17, 17A.6

2B.6 Duties of Iowa Code editor.

The Iowa Code editor shall:

1. Submit recommendations as the Iowa Code editor deems proper to each general assembly for the purpose of amending, revising, codifying, and repealing portions of the statutes which are inaccurate, inconsistent, outdated, conflicting, redundant, or ambiguous, and present the recommendations in bill form to the appropriate committees of the general assembly.

2. Cause the annual Iowa Acts to be published, as provided in section 2B.10, including copies of all Acts and joint resolutions passed at each session of the general assembly.

3. Cause the Iowa Code and Iowa Code Supplement to be published as provided in section 2B.12.

4. Perform other duties as directed by the director of the legislative services agency or the legislative council and as provided by law.

[C51, §46; R60, §62, 113, 115, 144; C73, §35, 155, 156; C97, p. 5, §38, 216; S13, p. 3; SS15, §224-c, -h; C24, 27, 31, 35, 39, §**156;** C46, 50, 54, §14.3; C54, 58, 62, 66, §14.3, 17A.9; C71, 73, 75, 77, 79, 81, §14.6; 82 Acts, ch 1061, §1]

91 Acts, ch 258, §10

C93, §2B.6

2003 Acts, ch 35, §15, 49

2B.7 through 2B.9 Reserved.

2B.10 Iowa Acts.

1. The arrangement of the Acts and resolutions, and the size, style, type, binding, general arrangement, and tables of the Iowa Acts shall be printed and published in the manner determined by the Iowa Code editor in accordance with the policies set by the legislative council as provided in section 2.42.

2. Chapters of the first regular session shall be numbered from one and chapters of the second regular session shall be numbered from one thousand one.

3. A list of elective state officers and deputies, supreme court justices, judges of the court of appeals, and members of the general assembly shall be published annually with the Iowa Acts.

4. A statement of the condition of the state treasury shall be included, as provided by the Constitution of the State of Iowa. The statement shall be furnished by the director of the department of administrative services.

5. The enrolling clerks of the house and senate shall arrange for the Iowa Code editor to receive suitable copies of all Acts and resolutions as soon as they are enrolled.

6. A notation of the filing of an estimate of a state mandate prepared by the legislative services agency pursuant to section 25B.5 shall be included in the Iowa Acts with the text of an enacted bill or joint resolution containing the state mandate.

[C73, §36; C97, §39; SS15, §224-i; C24, 27, 31, 35, §162, 162-d1, 163, 164, 165, 167; C39, §**221.1 – 221.5;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §14.10]

83 Acts, ch 186, §10004, 10201; 91 Acts, ch 258, §11; 92 Acts, ch 1123, §3

C93, §2B.10

98 Acts, ch 1115, §2, 21; 2003 Acts, ch 35, §16, 45, 49; 2003 Acts, ch 145, §286; 2004 Acts, ch 1086, §1

See Constitution, Art. III, §18; §7A.3
Section amended

2B.11 Reserved.

2B.12 Iowa Code and Code Supplement.

1. A new Iowa Code shall be issued as soon as possible after the final adjournment of the second regular session of the general assembly. A new Code Supplement shall be issued as soon as possible after the first regular session of the general assembly. A Code Supplement may be issued after a special session of the general assembly or as required by the legislative council.

2. The entire Iowa Code shall be maintained on a computer database which shall be updated as soon as possible after each session of the general assembly. The Iowa Code and Code Supplement shall be prepared and printed on a good quality of paper in one or more volumes, in the manner determined by the Iowa Code editor in accordance with the policies of the legislative council, as provided in section 2.42.

3. An edition of the Iowa Code or Code Supplement shall contain each Code section in its new or amended form. However, a new section or amendment which does not take effect until after the probable publication date of a succeeding Iowa Code or Code Supplement may be deferred for publication in that succeeding Iowa Code or Code Supplement. The sections shall be inserted in each edition in a logical order as determined by the Iowa Code editor in accordance with the policies of the legislative council.

4. Each section of an Iowa Code or Code Supplement shall be indicated by a number printed in boldface type and shall have an appropriate headnote printed in boldface type.

5. Appropriate historical references or source notes may be placed following each section.

6. The Iowa Code published after the second regular session of the general assembly shall include:

a. An analysis of the Code by titles and chapters.

b. The Declaration of Independence.

c. The Articles of Confederation.

d. The Constitution of the United States.

e. The laws of the United States relating to the authentication of records.

f. The Constitution of the State of Iowa, original and codified versions.

g. The Act admitting Iowa into the union as a state.

h. A chapter title, number, and chapter analysis at the head of each chapter. The chapter number shall be printed at the top of each page.

i. All of the statutes of Iowa of a general and permanent nature, except as provided in subsection 3.

j. A comprehensive index and a summary index covering the Constitution and statutes of the state of Iowa.

7. The Code Supplement published after the first regular session of the general assembly shall include:

a. All of the statutes of Iowa of a general and permanent nature which were enacted or amended during that session, except as provided in subsection 3, and an indication of all sections repealed during that session, and any amendments to the Constitution of the State of Iowa approved by the voters at the preceding general election.

b. A chapter title and number for each chapter or part of a chapter included.

c. An index covering the material included.

8. A Code or Code Supplement may include appropriate tables showing the disposition of Acts of the general assembly and other reference material as determined by the Iowa Code editor in accordance with policies of the legislative council.

[C97, p. 5; S13, p. 3; C24, 27, 31, 35, 39, §**168;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §14.12; 82 Acts, ch 1061, §2 – 4]

91 Acts, ch 258, §12

C93, §2B.12

94 Acts, ch 1107, §19; 2003 Acts, ch 35, §17, 49

See also §2.42

2B.13 Editorial powers and duties.

1. The Iowa Code editor in preparing the copy for an edition of the Iowa Code or Iowa Code Supplement shall not alter the sense, meaning, or effect of any Act of the general assembly, but may:

a. Correct manifestly misspelled words and grammatical and clerical errors, including punctuation, and change capitalization, spelling, and punctuation for purposes of uniformity and consistency in Code language.

b. Correct internal references to sections which are cited erroneously or have been repealed, amended, or renumbered.

c. Substitute the proper chapter, section, subsection, or other statutory reference for the term *"this Act"* or references to another Act of the general assembly when there appears to be no doubt as to the proper method of making the substitution.

d. Substitute the proper date for references to the effective or applicability dates of an Act when there appears to be no doubt as to the proper method of making the substitution.

e. Correct names of agencies, officers, or other entities when there appears to be no doubt as to the proper method of making the correction.

f. Transfer, divide, or combine sections or parts of sections and add or amend headnotes to sections and subsections. Pursuant to section 3.3, the headnotes are not part of the law.

g. Change words that designate one gender to reflect both genders when the provisions apply to both genders.

h. If any Code section or part of a Code section, or any Act of the general assembly which is intended to be codified, is amended by more than one Act or more than one provision in an Act of the general assembly, and the amendments do not expressly refer to or amend one of the other Acts or Act provisions in question, harmonize the amendments, if possible, so that effect may be given to each and incorporate the amendments as harmonized in the Code section. If amendments made by several Acts are irreconcilable, unless one of the amendments repeals or strikes the language in question, the Iowa Code editor shall codify the amendment that is latest in date of enactment by the general assembly. If amendments made by provisions within an Act are irreconcilable, unless one of the amendments repeals or strikes the language in question, the Iowa Code editor shall codify the provision listed last in the Act. If one of the amendments repeals or strikes the language in question, the Iowa Code editor shall codify the amendment that repeals or strikes the language.

2. The administrative code editor in preparing the copy for an edition of the Iowa administrative code or bulletin shall not alter the sense, meaning, or effect of any rule, but may:

a. Correct misspelled words and grammatical and clerical errors, including punctuation, and change capitalization, spelling, and punctuation for purposes of uniformity and consistency.

b. Correct references to rules or sections which are cited erroneously or have been repealed, amended, or renumbered.

c. Correct names of agencies, officers, or other entities when there appears to be no doubt as to the proper method of making the correction.

d. Transfer, divide, or combine rules or parts of rules and add or amend catchwords to rules and subrules.

e. Change words that designate one gender to reflect both genders when the provisions apply to both genders.

f. Perform any other editorial tasks required or authorized by section 17A.6.

3. The Iowa Code editor may, in preparing the copy for an edition of the Iowa Code or Iowa Code Supplement, establish standards for and change capitalization, spelling, and punctuation in any Code provision for purposes of uniformity and consistency in Code language. The administrative code editor may establish standards for capitalization, spelling, and punctuation for purposes of uniformity and consistency in the administrative code.

4. The Iowa Code editor shall seek direction from the senate committee on judiciary and the house committee on judiciary when making Iowa Code or Iowa Code Supplement changes, and the administrative code editor shall seek direction from the administrative rules review committee and the administrative rules coordinator when making Iowa administrative code changes, which appear to require substantial editing and which might otherwise be interpreted to exceed the scope of the authority granted in this section.

5. The Iowa Code editor may prepare and publish comments deemed necessary for a proper explanation of the manner of printing a section or chapter of the Iowa Code. The Iowa Code editor shall maintain a record of all of the corrections made under subsection 1. The Iowa Code editor shall also maintain a separate record of the changes made under subsection 1, paragraphs *"b"* through *"h"*. The records shall be available to the public.

6. The Iowa Code editor and the administrative code editor shall not make editorial changes which go beyond the authority granted in this section or other law.

7. The effective date of all editorial changes in an edition of the Iowa Code or Iowa Code Supplement is the date of the Iowa Code editor's approval of the final press proofs for the statutory text contained within that publication. The effective date of all editorial changes for the Iowa administrative code is the date those changes are published in the Iowa administrative code.

[C24, 27, 31, 35, 39, §**169;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §14.13]

84 Acts, ch 1117, §1; 85 Acts, ch 195, §1; 86 Acts, ch 1242, §5, 6; 91 Acts, ch 258, §13

C93, §2B.13

95 Acts, ch 67, §1; 96 Acts, ch 1099, §2; 2003 Acts, ch 35, §18, 49

2B.14 through 2B.16 Reserved.

2B.17 Citations — official statutes.

1. The permanent and official printed versions of the Iowa Codes and Code Supplements published subsequent to the adjournment of the 1982 regular session of the Sixty-ninth General Assembly shall be known and may be cited as "Iowa Code chapter (or section) . . . . ", or "Iowa Code Supplement chapter (or section) . . . . ", inserting the appropriate chapter or section number. If the year of edition is needed, it may be inserted before or after the words "Iowa Code" or "Iowa Code Supplement". In Iowa publications, the word "Iowa" may be omitted if the meaning is clear.

2. The Acts of each general assembly shall be known as "Acts of the . . . . General Assembly, ... Session, Chapter (or File No.) . . . . , Section . . . . " (inserting the appropriate numbers) and shall be cited as ". . . . Iowa Acts, chapter . . . . , section . . . . " (inserting the appropriate year, chapter, and section number).

3. The official printed versions of the Iowa Code, Iowa Code Supplement, and Iowa Acts published under authority of the state are the only authoritative publications of the statutes of this state. Other publications of the statutes of the state shall not be cited in the courts or in the reports or rules of the courts. The Iowa Code editor is the custodian of the official printed versions of the Iowa Code, Iowa Code Supplement, and Iowa Acts and may attest to and authenticate any portion of those official printed versions for purposes of admitting a portion of the official printed version in any court or office of any state, territory, or possession of the United States or in a foreign jurisdiction.

4. The Iowa administrative code and the Iowa administrative bulletin shall be cited as provided in section 17A.6.

5. The printed version of the Iowa administrative code is the permanent publication of administrative rules in this state and the Iowa administrative bulletin and the Iowa administrative code published pursuant to chapter 17A are the official publications of the administrative rules of this state, and are the only authoritative publications of the administrative rules of this state. Other publications of the administrative rules of this state shall not be cited in the courts or in the reports or rules of the courts. The Iowa administrative code editor is the custodian of the official printed versions of the Iowa administrative code and the Iowa administrative bulletin and may attest to and authenticate any portion of those official printed versions for purposes of admitting a portion of the official printed version in any court or office of any state, territory, or possession of the United States or in a foreign jurisdiction.

[C24, 27, 31, 35, 39, §**172;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §14.17; 82 Acts, ch 1061, §5]
91 Acts, ch 258, §14
C93, §2B.17
96 Acts, ch 1099, §3, 4; 2003 Acts, ch 35, §19, 49; 2004 Acts, ch 1086, §2
Subsection 2 amended

2B.18 through 2B.20 Reserved.

2B.21 Availability of parts of the Iowa Code and administrative code.

The Iowa Code editor and the administrative code editor, in accordance with policies established by the legislative council, may cause parts of the Iowa Code or administrative code to be made available for the use of public officers and other persons. This authority shall be exercised in a manner planned to avoid delay in the other publications of the editors.

[C97, p. 5; S13, p. 3; C24, 27, 31, 35, 39, §**176;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §14.21]
83 Acts, ch 181, §1; 85 Acts, ch 197, §2; 86 Acts, ch 1238, §1; 91 Acts, ch 258, §15
C93, §2B.21
2003 Acts, ch 35, §20, 49
See also §7A.27

2B.22 Appropriation.

There is hereby appropriated out of any money in the treasury not otherwise appropriated an amount sufficient to defray all expenses incurred in the carrying out of the provisions of this chapter.

[C24, 27, 31, 35, 39, §**177;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §14.22]
C93, §2B.22

CHAPTER 2C

CITIZENS' AIDE

This chapter not enacted as a part of this title; transferred from chapter 601G in Code 1993

2C.1 Definitions.

As used in this chapter:

1. *"Administrative action"* means any policy or action taken by an agency or failure to act pursuant to law.

2. *"Agency"* means all governmental entities, departments, boards, commissions, councils or institutions, and any officer, employee or member thereof acting or purporting to act in the exercise of official duties, but it does not include:

a. Any court or judge or appurtenant judicial staff.

b. The members, committees, or permanent or temporary staffs of the Iowa general assembly.

c. The governor of Iowa or the governor's personal staff.

d. Any instrumentality formed pursuant to an interstate compact and answerable to more than one state.

3. *"Employee"* means any employee of an agency.

4. *"Officer"* means any officer of an agency.

5. *"Person"* means an individual, aggregate of individuals, corporation, partnership, or unincorporated association.

[C73, 75, 77, 79, 81, §601G.1]
C93, §2C.1

2C.2 Office established.

The office of citizens' aide is established.
[C73, 75, 77, 79, 81, §601G.2]
C93, §2C.2

2C.3 Appointment — vacancy.

The citizens' aide shall be appointed by the legislative council with the approval and confirmation of a constitutional majority of the senate and with the approval and confirmation of a constitutional majority of the house of representatives. The legislative council shall fill a vacancy in this office in the same manner as the original appointment. If the appointment or vacancy occurs while the general assembly is not in session, such appointment shall be reported to the senate and the house of representatives within thirty days of their convening at their next regular session for approval and confirmation.

The citizens' aide shall employ and supervise all employees under the citizens' aide's direction in such positions and at such salaries as shall be authorized by the legislative council. The legislative council shall hear and act upon appeals of aggrieved employees of the office of the citizens' aide.

[C73, 75, 77, 79, 81, §601G.3]
C93, §2C.3

2C.4 Citizen of United States and resident of Iowa.

The citizens' aide shall be a citizen of the United States and a resident of the state of Iowa, and shall be qualified to analyze problems of law, administration and public policy.

[C73, 75, 77, 79, 81, §601G.4]
C93, §2C.4

2C.5 Term — removal.

The citizens' aide shall hold office for four years from the first day in July of the year of approval by the senate and the house of representatives, and until a successor is appointed by the legislative council, unless the citizens' aide can no longer perform the official duties, or is removed from office. The citizens' aide may at any time be removed from office by constitutional majority vote of the two houses of the general assembly or as provided by chapter 66. If a vacancy occurs in the office of citizens' aide, the deputy citizens' aide shall act as citizens' aide until the vacancy is filled by the legislative council.

[C73, 75, 77, 79, 81, §601G.5]
C93, §2C.5

2C.6 Deputy — assistant for penal agencies.

The citizens' aide shall designate one of the members of the staff as the deputy citizens' aide, with authority to act as citizens' aide when the citizens' aide is absent from the state or becomes disabled. The citizens' aide may delegate to members of the staff any of the citizens' aide's authority or duties except the duty of formally making recommendations to agencies or reports to the governor or the general assembly.

The citizens' aide shall appoint an assistant who shall be primarily responsible for investigating complaints relating to penal or correctional agencies.

[C73, 75, 77, 79, 81, §601G.6]
84 Acts, ch 1046, §1
C93, §2C.6

2C.7 Prohibited activities.

Neither the citizens' aide nor any member of the staff shall:

1. Hold another public office of trust or profit under the laws of this state other than the office of notary public.

2. Engage in other employment for remuneration with an agency against which a complaint may be filed under this chapter or that could create a conflict of interest or interfere in the performance of the person's duties under this chapter.

3. Knowingly engage in or maintain any business transactions with persons employed by agencies against whom complaints may be made under the provisions of this chapter.

4. Be actively involved in partisan affairs.

[C73, 75, 77, 79, 81, §601G.7]
84 Acts, ch 1046, §2
C93, §2C.7

2C.8 Closed files.

The citizens' aide may maintain secrecy in respect to all matters including the identities of the complainants or witnesses coming before the citizens' aide, except that the general assembly, any standing committee of the general assembly or the governor may require disclosure of any matter and shall have complete access to the records and files of the citizens' aide. The citizens' aide may conduct private hearings.

[C73, 75, 77, 79, 81, §601G.8]
C93, §2C.8

2C.9 Powers.

The citizens' aide may:

1. Investigate, on complaint or on the citizens' aide's own motion, any administrative action of any agency, without regard to the finality of the administrative action, except that the citizens' aide shall not investigate the complaint of an employee of an agency in regard to that employee's employment relationship with the agency. A communication or receipt of information made pursuant to the powers prescribed in this chapter shall not be considered an ex parte communication as described in the provisions of section 17A.17.

2. Investigate, on complaint or on the citizens' aide's own motion, any administrative action of any person providing child welfare or juvenile justice services under contract with an agency that is subject to investigation by the citizens' aide. The person shall be considered to be an agency for purposes of the citizens' aide's investigation.

3. Prescribe the methods by which complaints are to be made, received, and acted upon; determine the scope and manner of investigations to be made; and, subject to the requirements of this chapter, determine the form, frequency, and distribution of the conclusions and recommendations of the citizens' aide.

4. Request and receive from each agency assistance and information as necessary in the performance of the duties of the office. Notwithstanding section 22.7, pursuant to an investigation the citizens' aide may examine any and all records and documents of any agency unless its custodian demonstrates that the examination would violate federal law or result in the denial of federal funds to the agency. Confidential documents provided to the citizens' aide by other agencies shall continue to maintain their confidential status. The citizens' aide is subject to the same policies and penalties regarding the confidentiality of the document as an employee of the agency. The citizens' aide may enter and inspect premises within any agency's control and may observe proceedings and attend hearings, with the consent of the interested party, including those held under a provision of confidentiality, conducted by any agency unless the agency demonstrates that the attendance or observation would violate federal law or result in the denial of federal funds to that agency. This subsection does not permit the examination of records or access to hearings and proceedings which are the work product of an attorney under section 22.7, subsection 4, or which are privileged communications under section 622.10.

5. Issue a subpoena to compel any person to appear, give sworn testimony, or produce documentary or other evidence relevant to a matter under inquiry. The citizens' aide, deputies, and assistants of the citizens' aide may administer oaths to persons giving testimony before them. If a witness either fails or refuses to obey a subpoena issued by the citizens' aide, the citizens' aide may petition the district court having jurisdiction for an order directing obedience to the subpoena. If the court finds that the subpoena should be obeyed, it shall enter an order requiring obedience to the subpoena, and refusal to obey the court order is subject to punishment for contempt.

6. Establish rules relating to the operation, organization, and procedure of the office of the citizens' aide. The rules are exempt from chapter 17A and shall be published in the Iowa administrative code.

[C73, 75, 77, 79, 81, §601G.9; 82 Acts, ch 1026, §1]
88 Acts, ch 1247, §1; 89 Acts, ch 296, §78
C93, §2C.9
2003 Acts, ch 178, §46

2C.10 No charge for services.

No monetary or other charge shall be levied upon any person as a prerequisite to presentation of a complaint to the citizens' aide.

[C73, 75, 77, 79, 81, §601G.10]
C93, §2C.10

2C.11 Subjects for investigations.

An appropriate subject for investigation by the office of the citizens' aide is an administrative action that might be:

1. Contrary to law or regulation.
2. Unreasonable, unfair, oppressive, or inconsistent with the general course of an agency's functioning, even though in accordance with law.
3. Based on a mistake of law or arbitrary in ascertainments of fact.
4. Based on improper motivation or irrelevant consideration.
5. Unaccompanied by an adequate statement of reasons. The citizens' aide may also be concerned with strengthening procedures and practices which lessen the risk that objectionable administrative actions will occur.

[C73, 75, 77, 79, 81, §601G.11]
C93, §2C.11

2C.12 Complaints investigated.

The citizens' aide may receive a complaint from any source concerning an administrative action.

The citizens' aide shall conduct a suitable investigation into the administrative actions complained of unless the citizens' aide finds substantiating facts that:

1. The complainant has available another remedy or channel of complaint which the complainant could reasonably be expected to use.
2. The grievance pertains to a matter outside the citizens' aide power.
3. The complainant has no substantive or procedural interest which is directly affected by the matter complained about.
4. The complaint is trivial, frivolous, vexatious, or not made in good faith.
5. Other complaints are more worthy of attention.
6. The citizens' aide resources are insufficient for adequate investigation.
7. The complaint has been delayed too long to justify present examination of its merit.

The citizens' aide may decline to investigate a complaint, but shall not be prohibited from inquiring into the matter complained about or into related problems at some future time.

[C73, 75, 77, 79, 81, §601G.12]
C93, §2C.12

2C.13 No investigation — notice to complainant.

If the citizens' aide decides not to investigate, the complainant shall be informed of the reasons for the decision. If the citizens' aide decides to investigate, the complainant and the agency shall be notified of the decision. After completing consideration of a complaint, whether or not it has been investigated, the citizens' aide shall without delay inform the complainant of the fact, and if appropriate, shall inform the administrative agency involved. The citizens' aide shall on request of the complainant, and as appropriate, report the status of the investigation to the complainant.

[C73, 75, 77, 79, 81, §601G.13; 82 Acts, ch 1026, §2]
C93, §2C.13

2C.14 Institutionalized complainants.

A letter to the citizens' aide from a person in a correctional institution, a hospital, or other institution under the control of an administrative agency shall be immediately forwarded, unopened to the citizens' aide by the institution where the writer of the letter is a resident. A letter from the citizens' aide to such a person shall be immediately delivered, unopened to the person.

[C73, 75, 77, 79, 81, §601G.14]
C93, §2C.14

2C.15 Reports critical of agency or officer.

Before announcing a conclusion or recommendation that criticizes an agency or any officer or employee, the citizens' aide shall consult with that agency, officer or employee, and shall attach to every report sent or made under the provisions of this chapter a copy of any unedited comments made by or on behalf of the officer, employee, or agency.

[C73, 75, 77, 79, 81, §601G.15]
C93, §2C.15

2C.16 Recommendations to agency.

If, having considered a complaint and whatever material the citizens' aide deems pertinent, the citizens' aide finds substantiating facts that:

1. A matter should be further considered by the agency;
2. An administrative action should be modified or canceled;
3. A rule on which an administrative action is based should be altered;
4. Reasons should be given for an administrative action; or
5. Any other action should be taken by the agency, the citizens' aide shall state the recommendations to the agency. If the citizens' aide requests, the agency shall, within twenty working days notify the citizens' aide of any action taken on the recommendations or the reasons for not complying with them.

If the citizens' aide believes that an administrative action has occurred because of laws of which results are unfair or otherwise objectionable, the citizens' aide shall notify the general assembly concerning desirable statutory change.

[C73, 75, 77, 79, 81, §601G.16]
C93, §2C.16

2C.17 Publication of conclusions.

The citizens' aide may publish the conclusions, recommendations, and suggestions and transmit them to the governor, the general assembly or any of its committees. When publishing an opinion adverse to an administrative agency or official the citizens' aide shall, unless excused by the agency or official affected, include with the opinion any unedited reply made by the agency.

Any conclusions, recommendations, and suggestions so published may at the same time be made available to the news media or others who may be concerned.

[C73, 75, 77, 79, 81, §601G.17]
C93, §2C.17

2C.18 Report to general assembly.

The citizens' aide shall by April 1 of each year submit an economically designed and reproduced report to the general assembly and to the governor concerning the exercise of the citizens' aide functions during the preceding calendar year. In discussing matters with which the citizens' aide has been concerned, the citizens' aide shall not identify specific persons if to do so would cause needless hardship. If the annual report criticizes a named

agency or official, it shall also include unedited replies made by the agency or official to the criticism, unless excused by the agency or official affected.

[C73, 75, 77, 79, 81, §601G.18; 82 Acts, ch 1026, §3]

C93, §2C.18

2C.19 Disciplinary action recommended.

If the citizens' aide believes that any public official, employee or other person has acted in a manner warranting criminal or disciplinary proceedings, the citizens' aide shall refer the matter to the appropriate authorities.

[C73, 75, 77, 79, 81, §601G.19]

C93, §2C.19

2C.20 Immunities.

No civil action, except removal from office as provided in chapter 66, or proceeding shall be commenced against the citizens' aide or any member of the staff for any act or omission performed pursuant to the provisions of this chapter unless the act or omission is actuated by malice or is grossly negligent, nor shall the citizens' aide or any member of the staff be compelled to testify in any court with respect to any matter involving the exercise of the citizens' aide's official duties except as may be necessary to enforce the provisions of this chapter.

[C73, 75, 77, 79, 81, §601G.20]

C93, §2C.20

2C.21 Witnesses.

A person required by the citizens' aide to provide information shall be paid the same fees and travel allowances as are extended to witnesses whose attendance has been required in the district courts of this state. Officers and employees of an agency shall not be entitled to such fees and allowances. A person who, with or without service of compulsory process, provides oral or documentary information requested by the citizens' aide shall be accorded the same privileges and immunities as are extended to witnesses in the courts of this state, and shall also be entitled to be accompanied and advised by counsel while being questioned.

[C73, 75, 77, 79, 81, §601G.21]

C93, §2C.21

2C.22 Penalties.

A person who willfully obstructs or hinders the lawful actions of the citizens' aide or the citizens' aide's staff, or who willfully misleads or attempts to mislead the citizens' aide in the citizens' aide's inquiries, shall be guilty of a simple misdemeanor.

[C73, 75, 77, 79, 81, §601G.22]

C93, §2C.22

2C.23 Citation.

This chapter shall be known and may be cited as the *"Iowa Citizens' Aide Act"*.

[C73, 75, 77, 79, 81, §601G.23]

C93, §2C.23

CHAPTER 2D

INTERNATIONAL RELATIONS

2D.1 International relations advisory council.

1. An international relations advisory council is created to provide coordination of state and local international relations activities, through both the public and private sectors, and to provide recommendations to the governor and to the general assembly relating to international relations activities.

2. The international relations advisory council shall consist of all of the following members:

a. The cochairpersons of the international relations committee established by the legislative council, or their designees.

b. Two members of the senate who are members of the international relations committee of the legislative council, appointed by the majority leader of the senate, after consultation with the president of the senate and the minority leader of the senate, and two members of the house of representatives who are members of the international relations committee of the legislative council, appointed by the speaker of the house, after consultation with the majority leader and the minority leader of the house of representatives.

c. The director of the department of economic development, or the director's designee.

d. The secretary of agriculture, or the secretary's designee.

e. The director of the department of administrative services, or the director's designee.

f. The director of the department of workforce

development, or the director's designee.

g. The director of the department of cultural affairs, or the director's designee.

h. The director of the department of education, or the director's designee.

i. The director of public health, or the director's designee.

j. Representatives of agriculture, private business and industry, international programs provided through universities and colleges located in this state, Iowa sister states, the refugee services center of the department of human services, and others, selected by the legislative council, based upon recommendations made by the international relations committee of the legislative council.

3. The cochairpersons of the international relations committee of the legislative council shall serve as cochairpersons of the advisory council.

4. The executive branch protocol officer and the legislative branch protocol officer shall act in a consultative capacity to the advisory council. The legislative branch protocol officer shall provide staff support to the advisory council.

5. The advisory council shall do all of the following:

a. Create a statewide network to coordinate international relations activities involving the executive and legislative branches, business and industry, public and private educational institutions, and other entities involved in promoting international relations. The network shall include provision of information to the public via electronic access utilizing the most advanced and cost-effective and efficient technology.

b. Coordinate existing resources, provided through state agencies and other entities with international relations expertise, to facilitate international relations activities. Resources shall be utilized in a manner which is most appropriate to the type of international relations activity involved.

c. Provide continuity, over time, at the state level in the development and enhancement of partnerships with international colleagues.

d. Develop a comprehensive, state international relations policy and define the state's role in the international relations arena.

e. Coordinate efforts with the executive branch and legislative branch protocol officers.

f. Sponsor an annual state summit on international relations capacity to promote international relations activities in a variety of arenas including but not limited to international market development and civic, cultural, and educational opportunities. The summit should incorporate input from city, county, and state entities from both the public and private sectors.

g. Inform and educate the public, workforce, students, businesses, and state policymakers regarding the importance of international involvement in both economic and noneconomic international relations activities.

h. Compile reference materials and a listing of resources to be available to policymakers and the public in preparing for international relations activities and travel. The compiled materials and listing of resources shall be provided via electronic access utilizing the most advanced and cost-effective and efficient technology.

2000 Acts, ch 1102, §1; 2003 Acts, ch 145, §286

2D.2 International relations committee — protocol.

1. The international relations committee of the legislative council shall establish and utilize protocol for visitors to the capitol, who may include state, national, or international visitors. The protocol established shall include provisions relating to transportation of visitors to and from the capitol, the designation of an official point of entry and a receiving area for visitors, security provisions, official introduction of visitors to the general assembly while the general assembly is in session, the provision of gifts to visitors, and other provisions appropriate to the visitor's position.

2. The international relations committee shall work with the executive branch protocol officer and with the legislative branch protocol officer in developing the protocol and in coordinating the visits of state, national, and international visitors to the capitol.

2000 Acts, ch 1102, §2

2D.3 Legislative branch protocol officer.

The legislative services agency shall employ a legislative branch protocol officer to coordinate activities related to state, national, and international visitors to the state capitol or with an interest in the general assembly, and related to travel of members of the general assembly abroad. The protocol officer shall serve in a consultative capacity and shall provide staff support to the international relations advisory council. The protocol officer shall also work with the executive branch protocol officer to coordinate state, national, and international relations activities. The legislative branch protocol officer shall submit periodic reports to the international relations committee of the legislative council regarding the visits of state, national, and international visitors and regarding international activities.

2000 Acts, ch 1102, §3; 2000 Acts, ch 1232, §41; 2003 Acts, ch 35, §44, 49

2D.4 Executive branch protocol officer.

The lieutenant governor, or the lieutenant governor's designee, shall be the executive branch protocol officer. The protocol officer shall serve in a consultative capacity to the international relations advisory council. The protocol officer shall work with the international relations committee of the legislative council and the legislative branch protocol officer in developing and implementing protocol for state, national, and international visi-

tors to the state capitol and in improving coordination between the legislative and executive branches in international relations activities.

2000 Acts, ch 1102, §4

CHAPTER 3

STATUTES AND RELATED MATTERS

3.1 Form of bills.

Bills designed to amend, revise, codify, or repeal a law:

1. Shall refer to the numbers of the sections or chapters of the Code or Code Supplement to be amended or repealed, but it is not necessary to refer to the sections or chapters in the title.

2. Shall refer to the session of the general assembly and the sections and chapters of the Acts to be amended if the bill relates to a section or sections of an Act not appearing in the Code or codified in a supplement to the Code.

3. All references to statutes shall be expressed in numerals.

4. The title to a bill shall contain a brief statement of the purpose of the bill, however all detail matters properly connected with the subject so expressed may be omitted from the title.

[C73, §38; C97, §41; S13, §41-a, -b; C24, 27, 31, 35, 39, §**47;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §3.1]

84 Acts, ch 1067, §2; 90 Acts, ch 1168, §2; 2004 Acts, ch 1101, §2

Publication of bills, §2.9
Subsection 3 amended

3.2 Bill drafting instructions.

The legislative council shall, in consultation with the director of the legislative services agency and the Code editor, promulgate rules and instructions for the drafting of legislative bills and resolutions not otherwise in conflict with the provisions of law and the rules of the senate and the house.

[C71, 73, 75, 77, 79, 81, §3.2]

2003 Acts, ch 35, §44, 49

3.3 Headnotes and historical references.

Proper headnotes may be placed at the beginning of a section of a bill, and at the end of the section there may be placed a reference to the section number of the Code, or any Iowa Act from which the matter of the bill was taken, but, except as provided in the uniform commercial code, section 554.1109, neither said headnotes nor said historical references shall be considered as a part of the law as enacted.

[C24, 27, 31, 35, 39, §**49;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §3.3]

2004 Acts, ch 1086, §3

Section amended

3.4 Bills — approval — passage over veto.

If the governor approves a bill, the governor shall sign and date it; if the governor returns it with objections and it afterwards passes as provided in the Constitution, a certificate, signed by the presiding officer of each house in the following form, shall be endorsed thereon or attached thereto: "This bill (or this item of an appropriation bill, as the case may be), having been returned by the governor, with objections, to the house in which it originated, and, after reconsideration, having again passed both houses by yeas and nays by a vote of two-thirds of the members of each house, has become a law this ..... day of .....".

An *"appropriation bill"* means a bill which has as its primary purpose the making of appropriations of money from the public treasury.

[C51, §16, 17; R60, §19, 20; C73, §28, 29; C97, §32; C24, 27, 31, 35, 39, §**50;** C46, 50, 54, 58, 62, 66,

71, 73, 75, 77, 79, 81, §3.4]
86 Acts, ch 1245, §2011
Constitutional provision, (codified) Art. III, §16

3.5 Failure of governor to return bill.

When a bill has passed the general assembly, and is not returned by the governor within three days as provided in the Constitution, it shall be authenticated by the secretary of state endorsing thereon: "This bill, having remained with the governor three days (Sunday excepted), the general assembly being in session, has become a law this ..... day of ....., ...
....., Secretary of State."

[C51, §18; R60, §21; C73, §30; C97, §33; C24, 27, 31, 35, 39, §**51;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §3.5]
Constitutional provision, (codified) Art. III, §16

3.6 Acts — where deposited — nullification resolutions.

The original Acts of the general assembly shall be deposited with and kept by the secretary of state.

The secretary of state shall submit to the administrative code editor a copy of any resolution nullifying an administrative rule which is passed by the general assembly pursuant to Article III, section 40 of the Constitution of the State of Iowa.

[C51, §19; R60, §22; C73, §31; C97, §34; C24, 27, 31, 35, 39, §**52;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §3.6]
91 Acts, ch 42, §1

3.7 Effective dates of Acts and resolutions.

1. All Acts and resolutions of a public nature passed at regular sessions of the general assembly shall take effect on the first day of July following their passage, unless some other specified time is provided in an Act or resolution.

2. All Acts and resolutions of a public nature which are passed prior to July 1 at a regular session of the general assembly and which are approved by the governor on or after July 1, shall take effect forty-five days after approval. However, this subsection shall not apply to Acts provided for in section 3.12 or Acts and resolutions which specify when they take effect.

3. All Acts and resolutions passed at a special session of the general assembly shall take effect ninety days after adjournment of the special session unless a different effective day is stated in an Act or resolution.

4. An Act which is effective upon enactment is effective upon the date of signature by the governor; or if the governor fails to sign it and returns it with objections, upon the date of passage by the general assembly after reconsideration as provided in Article III, section 16 of the Constitution of the State of Iowa; or if the governor fails to sign or return an Act submitted during session, but prior to the last three days of a session, on the fourth day after it is presented to the governor for the governor's approval. An Act which has an effective date which is dependent upon the time of enactment shall have the time of enactment determined by the standards of this subsection.

5. A concurrent or joint resolution which is effective upon enactment is effective upon the date of final passage by both chambers of the general assembly, except that such a concurrent or joint resolution requiring the approval of the governor under section 262A.4 or otherwise requiring the approval of the governor is effective upon the date of such approval. A resolution which is effective upon enactment is effective upon the date of passage. A concurrent or joint resolution or resolution which has an effective date which is dependent upon the time of enactment shall have the time of enactment determined by the standards of this subsection.

6. Unless retroactive effectiveness is specifically provided for in an Act or resolution, an Act or resolution which is enacted after an effective date provided in the Act or resolution shall take effect upon the date of enactment.

7. Proposed legalizing Acts shall be published prior to passage as provided in chapter 585.

8. An Act or resolution under this section is also subject to the applicable provisions of sections 16 and 17 of Article III of the Constitution of the State of Iowa.

[C51, §22; R60, §25; C73, §34; C97, §37; C24, 27, 31, 35, 39, §**53;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §3.7]
87 Acts, ch 1, §1
Amendment by 87 Acts, ch 1, §1, effective February 19, 1987, applies to all Acts and resolutions of 1987 regular session and subsequent sessions; 87 Acts, ch 1, §3, 4
Acts of private nature, §3.11
Constitution (codified), Art. III, §26

3.8 Publication of Acts. Repealed by 87 Acts, ch 1, § 2. See § 3.7.

3.9 Designation of papers. Repealed by 87 Acts, ch 1, § 2. See § 3.7.

3.10 Acts effective — certification. Repealed by 87 Acts, ch 1, § 2. See § 3.7.

3.11 Private Acts — when effective.

Acts of a private nature which do not prescribe the time when they take effect, shall do so on the thirtieth day next after they have been approved by the governor, or endorsed as provided in this chapter.

[C51, §20; R60, §23; C73, §32; C97, §35; C24, 27, 31, 35, 39, §**57;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §3.11]

3.12 Appropriations — effective for fiscal year.

All annual appropriations shall be for the fiscal year beginning with July 1 and ending with June 30 of the succeeding year and when such appropriations are made payable quarterly, the quarters shall end with September 30, December 31, March 31, and June 30; but nothing in this section shall be construed as increasing the amount of any annual appropriation.

[S13, §116-a; C24, 27, 31, 35, 39, §**58;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §3.12]

3.13 Pro rata disbursement of appropriations.

Annual appropriations shall be disbursed in accordance with the provisions of the Acts granting the same pro rata from the time such Acts shall take effect up to the first day of the succeeding quarter as provided in section 3.12.

[S13, §116-b; C24, 27, 31, 35, 39, §**59;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §3.13]

3.14 Certain appropriations prohibited.

No appropriations shall be made to any institution not wholly under the control of the state.

[S13, §116-c1; C24, 27, 31, 35, 39, §**60;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §3.14]

Constitution, Art. III, §31

3.15 Copies of Acts effective by publication. Repealed by 87 Acts, ch 1, § 2. See § 3.7.

3.16 Cost of publishing. Repealed by 87 Acts, ch 1, § 2. See § 3.7.

3.17 to 3.19 Reserved.

3.20 Directions to future general assemblies.

The following principles shall be used by the general assembly in determining whether a procedure should be established and the type of procedure which should be established, for the state licensure of an occupation or profession:

1. The state shall engage in licensing procedures for those professions and occupations where it believes it can assure an objective and measurable level of competence concerning the public health, safety, and well-being which other sources cannot effectively provide.

2. The examining board shall pursue a meaningful examination and enforcement procedure which upholds the level of competency of the licensee to insure that the public interest is protected.

[C75, 77, 79, 81, §3.20]

CHAPTER 4

CONSTRUCTION OF STATUTES

4.1 Rules.

In the construction of the statutes, the following rules shall be observed, unless such construction would be inconsistent with the manifest intent of the general assembly, or repugnant to the context of the statute:

1. *Appellate court.* The term *"appellate court"* means and includes both the supreme court and the court of appeals. Where an act, omission, right, or liability is by statute conditioned upon the filing of a decision by an appellate court, the term means any final decision of either the supreme court or the court of appeals.

2. *"Child"* includes child by adoption.

3. *Clerk — clerk's office.* The word *"clerk"* means clerk of the court in which the action or proceeding is brought or is pending; and the words *"clerk's office"* mean the office of that clerk.

4. *Consanguinity and affinity.* Degrees of consanguinity and affinity shall be computed according to the civil law.

5. *"Court employee"* and *"employee of the judi-*

cial branch" include every officer or employee of the judicial branch except a judicial officer.

6. *Deed — bond — indenture — undertaking.* The word *"deed"* is applied to an instrument conveying lands, but does not imply a sealed instrument; and the words *"bond"* and *"indenture"* do not necessarily imply a seal, and the word *"undertaking"* means a promise or security in any form.

7. *Executor — administrator.* The term *"executor"* includes administrator, and the term *"administrator"* includes executor, where the subject matter justifies such use.

8. *Figures and words.* If there is a conflict between figures and words in expressing a number, the words govern.

9. *Highway — road.* The words *"highway"* and *"road"* include public bridges, and may be held equivalent to the words *"county way"*, *"county road"*, *"common road"*, and *"state road"*.

9A. *"Internet"* means the federated international system that is composed of allied electronic communication networks linked by telecommunication channels, that uses standardized protocols, and that facilitates electronic communication services, including but not limited to use of the world wide web; the transmission of electronic mail or messages; the transfer of files and data or other electronic information; and the transmission of voice, image, and video.

10. *Issue.* The word *"issue"* as applied to descent of estates includes all lawful lineal descendants.

11. *Joint authority.* Words giving a joint authority to three or more public officers or other persons shall be construed as giving such authority to a majority of them, unless it be otherwise expressed in the Act giving the authority.

12. *"Judicial officer"* means a supreme court justice, a judge of the court of appeals, a district judge, a district associate judge, an associate juvenile judge, an associate probate judge, or a magistrate. The term also includes a person who is temporarily serving as a justice, judge, or magistrate as permitted by section 602.1612 or 602.9206.

13. *Land — real estate.* The word *"land"* and the phrases *"real estate"* and *"real property"* include lands, tenements, hereditaments, and all rights thereto and interests therein, equitable as well as legal.

13A. *"Livestock"* includes but is not limited to an animal classified as an ostrich, rhea, or emu.

14. *"Magistrate"* means a judicial officer appointed under chapter 602, article 6, part 4.

15. Reserved.

16. *Month — year — A.D.* The word *"month"* means a calendar month, and the word *"year"* and the abbreviation *"A.D."* are equivalent to the expression *"year of our Lord"*.

17. *Number and gender.* Unless otherwise specifically provided by law the singular includes the plural, and the plural includes the singular. Words of one gender include the other genders.

18. *Numerals — figures.* The Roman numerals and the Arabic figures are to be taken as parts of the English language.

19. *Oath — affirmation.* The word *"oath"* includes affirmation in all cases where an affirmation may be substituted for an oath, and in like cases the word *"swear"* includes *"affirm"*.

20. *Person.* Unless otherwise provided by law, *"person"* means individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

21. *Personal property.* The words *"personal property"* include money, goods, chattels, evidences of debt, and things in action.

21A. *Persons with mental illness.* The words *"persons with mental illness"* include persons with psychosis, persons who are severely depressed, and persons with any type of mental disease or mental disorder, except that mental illness does not refer to mental retardation as defined in section 222.2, or to insanity, diminished responsibility, or mental incompetency as defined and used in the Iowa criminal code or in the rules of criminal procedure, Iowa court rules. A person who is hospitalized or detained for treatment of mental illness shall not be deemed or presumed to be incompetent in the absence of a finding of incompetence made pursuant to section 229.27.

22. *Population.* The word *"population"* where used in this Code or any statute means the population shown by the latest preceding certified federal census, unless otherwise specifically provided.

23. *"Preceding"* and *"following"* when used by way of reference to a chapter or other part of a statute mean the next preceding or next following chapter or other part.

24. *Property.* The word *"property"* includes personal and real property.

25. *Quorum.* A quorum of a public body is a majority of the number of members fixed by statute.

26. *Repeal — effect of.* The repeal of a statute, after it becomes effective, does not revive a statute previously repealed, nor affect any right which has accrued, any duty imposed, any penalty incurred, or any proceeding commenced, under or by virtue of the statute repealed.

27. *"Rule"* includes *"regulation"*.

28. *Seal.* Where the seal of a court, public office or officer, or public or private corporation, may be required to be affixed to any paper, the word *"seal"* shall include an impression upon the paper alone, as well as upon wax or a wafer affixed thereto or an official ink stamp if a notarial seal.

29. *Series.* If a statute refers to a series of numbers or letters, the first and the last numbers or letters are included.

30. *Shall, must, and may.* Unless otherwise

specifically provided by the general assembly, whenever the following words are used in a statute enacted after July 1, 1971, their meaning and application shall be:

a. The word *"shall"* imposes a duty.

b. The word *"must"* states a requirement.

c. The word *"may"* confers a power.

31. *Sheriff.* The term *"sheriff"* may be extended to any person performing the duties of the sheriff, either generally or in special cases.

32. *State.* The word *"state"*, when applied to the different parts of the United States, includes the District of Columbia and the territories, and the words *"United States"* may include the said district and territories.

33. *Tense.* Words in the present tense include the future.

34. *Time — legal holidays.* In computing time, the first day shall be excluded and the last included, unless the last falls on Sunday, in which case the time prescribed shall be extended so as to include the whole of the following Monday. However, when by the provisions of a statute or rule prescribed under authority of a statute, the last day for the commencement of an action or proceedings, the filing of a pleading or motion in a pending action or proceedings, or the perfecting or filing of an appeal from the decision or award of a court, board, commission, or official falls on a Saturday, a Sunday, a day on which the office of the clerk of the district court is closed in whole or in part pursuant to the authority of the supreme court, the first day of January, the third Monday in January, the twelfth day of February, the third Monday in February, the last Monday in May, the fourth day of July, the first Monday in September, the eleventh day of November, the fourth Thursday in November, the twenty-fifth day of December, and the following Monday when any of the foregoing named legal holidays fall on a Sunday, and any day appointed or recommended by the governor of Iowa or the president of the United States as a day of fasting or thanksgiving, the time shall be extended to include the next day which the office of the clerk of the court or the office of the board, commission, or official is open to receive the filing of a commencement of an action, pleading or a motion in a pending action or proceeding, or the perfecting or filing of an appeal.

35. *"United States"* includes all the states.

36. The word *"week"* means seven consecutive days.

37. *Will.* The word *"will"* includes codicils.

38. *Words and phrases.* Words and phrases shall be construed according to the context and the approved usage of the language; but technical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in law, shall be construed according to such meaning.

39. *Written — in writing — signature.* The words *"written"* and *"in writing"* may include any mode of representing words or letters in general use, and include an electronic record as defined in section 554D.103.* A signature, when required by law, must be made by the writing or markings of the person whose signature is required. *"Signature"* includes an electronic or digital signature as defined in section 554D.103. If a person is unable due to a physical disability to make a written signature or mark, that person may substitute either of the following in lieu of a signature required by law:

a. The name of the person with a disability written by another upon the request and in the presence of the person with a disability.

b. A rubber stamp reproduction of the name or facsimile of the actual signature when adopted by the person with a disability for all purposes requiring a signature and then only when affixed by that person or another upon request and in the presence of the person with a disability.

40. The word *"year"* means twelve consecutive months.

[C51, §26, 2513; R60, §29, 4121, 4123, 4124; C73, §45; C97, §48; C24, 27, 31, 35, 39, §**63;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §4.1]

83 Acts, ch 186, §10002, 10201; 87 Acts, ch 115, §3; 92 Acts, ch 1151, §1; 93 Acts, ch 9, §1; 95 Acts, ch 43, §1; 96 Acts, ch 1129, §1; 96 Acts, ch 1153, §1; 98 Acts, ch 1047, §1; 99 Acts, ch 146, §42; 2000 Acts, ch 1189, §24; 2002 Acts, ch 1119, §106; 2002 Acts, ch 1137, §1, 71

Similar provision on population, §9F.6

Transition provisions for court reorganization in chapter 602, article 11

*Definition of "digital signature" stricken from 554D.103 in 2004 Acts, ch 1067, §2; corrective legislation is pending

4.2 Common law rule of construction.

The rule of the common law, that statutes in derogation thereof are to be strictly construed, has no application to this Code. Its provisions and all proceedings under it shall be liberally construed with a view to promote its objects and assist the parties in obtaining justice.

[C51, §2503; R60, §2622; C73, §2528; C97, §3446; C24, 27, 31, 35, 39, §**64;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §4.2]

4.3 References to other statutes.

Any statute which adopts by reference the whole or a portion of another statute of this state shall be construed to include subsequent amendments of the statute or the portion thereof so adopted by reference unless a contrary intent is expressed.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §4.3]

4.4 Presumption of enactment.

In enacting a statute, it is presumed that:

1. Compliance with the Constitutions of the state and of the United States is intended.

2. The entire statute is intended to be effective.

3. A just and reasonable result is intended.

4. A result feasible of execution is intended.

5. Public interest is favored over any private interest.

[C73, 75, 77, 79, 81, §4.4]

4.5 Prospective statutes.

A statute is presumed to be prospective in its operation unless expressly made retrospective.

[C73, 75, 77, 79, 81, §4.5]

4.6 Ambiguous statutes — interpretation.

If a statute is ambiguous, the court, in determining the intention of the legislature, may consider among other matters:

1. The object sought to be attained.
2. The circumstances under which the statute was enacted.
3. The legislative history.
4. The common law or former statutory provisions, including laws upon the same or similar subjects.
5. The consequences of a particular construction.
6. The administrative construction of the statute.
7. The preamble or statement of policy.

[C73, 75, 77, 79, 81, §4.6]

4.7 Conflicts between general and special statutes.

If a general provision conflicts with a special or local provision, they shall be construed, if possible, so that effect is given to both. If the conflict between the provisions is irreconcilable, the special or local provision prevails as an exception to the general provision.

[C73, 75, 77, 79, 81, §4.7]

Intent of general assembly that §7E.6 govern compensation of members of boards, committees, commissions, or councils; see §7E.6(7)

4.8 Irreconcilable statutes.

If statutes enacted at the same or different sessions of the legislature are irreconcilable, the statute latest in date of enactment* by the general assembly prevails. If provisions of the same Act are irreconcilable, the provision listed last in the Act prevails.

[C73, 75, 77, 79, 81, §4.8]

*See Attorney General opinion, May 16, 1973; §2B.13(1)(h)

Intent of general assembly that §7E.6 govern compensation of members of boards, committees, commissions, or councils; see §7E.6(7)

4.9 Official copy prevails.

If the language of the official copy of a statute conflicts with the language of any subsequent printing or reprinting of the statute, the language of the official copy prevails.

[C73, 75, 77, 79, 81, §4.9]

4.10 Re-enactment of statutes — continuation.

A statute which is re-enacted, revised or amended is intended to be a continuation of the prior statute and not a new enactment, so far as it is the same as the prior statute.

[C73, 75, 77, 79, 81, §4.10]

4.11 Conflicting amendments to same statutes — interpretation.

If amendments to the same statute are enacted at the same or different sessions of the general assembly, one amendment without reference to another, the amendments are to be harmonized, if possible, so that effect may be given to each. If the amendments are irreconcilable, the latest in date of enactment by the general assembly prevails.

[C73, 75, 77, 79, 81, §4.11]

4.12 Acts or statutes are severable.

If any provision of an Act or statute or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act or statute which can be given effect without the invalid provision or application, and to this end the provisions of the Act or statute are severable.

[C73, 75, 77, 79, 81, §4.12]

4.13 General savings provision.

The re-enactment, revision, amendment, or repeal of a statute does not affect:

1. The prior operation of the statute or any prior action taken thereunder;
2. Any validation, cure, right, privilege, obligation, or liability previously acquired, accrued, accorded, or incurred thereunder;
3. Any violation thereof or penalty, forfeiture, or punishment incurred in respect thereto, prior to the amendment or repeal; or
4. Any investigation, proceeding, or remedy in respect of any privilege, obligation, liability, penalty, forfeiture, or punishment; and the investigation, proceeding, or remedy may be instituted, continued, or enforced, and the penalty, forfeiture, or punishment imposed, as if the statute had not been repealed or amended.

If the penalty, forfeiture, or punishment for any offense is reduced by a re-enactment, revision, or amendment of a statute, the penalty, forfeiture, or punishment if not already imposed shall be imposed according to the statute as amended.

[C73, 75, 77, 79, 81, §4.13]

4.14 General rules of construction for English language laws.

It is presumed that English language requirements in the public sector are consistent with the laws of Iowa and any ambiguity in the English language text of the laws of Iowa shall be resolved, in accordance with the ninth and tenth amendments

of the Constitution of the United States, not to deny or disparage rights retained by the people, and to reserve powers to the states or to the people.

2002 Acts, ch 1007, §2

CHAPTER 5

UNIFORM STATE LAWS

5.1 Commission on uniform laws — vacancies.

The governor shall appoint three commissioners, each of whom shall be a member of the bar of this state, in good standing, who shall constitute and be known as the commission on uniform state laws, and upon the death, resignation, or refusal to serve of any of the commissioners so appointed, the governor shall make an appointment to fill the vacancy so caused, such new appointment to be for the unexpired balance of the term of the original appointee.

[C24, 27, 31, 35, 39, §**65;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §5.1]

5.2 Tenure — compensation — expenses.

Said commissioners shall hold office for a term of four years, and until their successors are duly appointed, but nothing herein contained shall be construed to render a commissioner who has faithfully performed the duties of commissioner ineligible for reappointment. No member of said commission shall receive any compensation for services as a commissioner, but each commissioner shall be entitled to receive actual disbursements for expenses in performing the duties of the office.

[C24, 27, 31, 35, 39, §**66;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §5.2]

5.3 Organization.

The commissioners shall meet at the state capitol at least once in two years and shall organize by the election of one of their number as chairperson and another as secretary, who shall hold their respective offices for a term of two years and until their successors are elected and qualified.

[C24, 27, 31, 35, 39, §**67;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §5.3]

5.4 Duties — reports.

The commissioners shall attend the meeting of the national conference of commissioners on uniform state laws, or arrange for the attendance of at least one of their number at the national conference, and both in and out of the national conference they shall do all in their power to promote uniformity in state laws, upon all subjects where uniformity is deemed desirable and practicable. The commission shall report to the legislative council of the general assembly, an account of its transactions, and its advice and recommendations for legislation. This report shall be printed for presentation to the council. The council shall submit the report to the speaker of the house and president of the senate who shall forward it to the appropriate committees of the general assembly for further study. The commission shall bring about as far as practicable the uniform judicial interpretation of all uniform laws and generally devise and recommend additional legislation or other or further course of action as shall tend to accomplish the purposes of this chapter.

[C24, 27, 31, 35, 39, §**68;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §5.4]

89 Acts, ch 296, §1

SUBTITLE 3

EMINENT DOMAIN

CHAPTER 6

CONSTITUTIONAL AMENDMENTS AND PUBLIC MEASURES

Transferred to chapter 49A

CHAPTER 6A

EMINENT DOMAIN LAW (CONDEMNATION)

This chapter not enacted as a part of this title; transferred from chapter 471 in Code 1993

6A.1 Exercise of power by state.

Proceedings may be instituted and maintained by the state of Iowa, or for the use and benefit thereof, for the condemnation of such private property as may be necessary for any public improvement which the general assembly has authorized to be undertaken by the state, and for which an available appropriation has been made. The executive council shall institute and maintain such proceedings in case authority to so do be not otherwise delegated.

[C73, §1271; C97, §2024; S13, §2024-d; C24, 27, 31, 35, 39, §**7803;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §471.1]

C93, §6A.1

State parks and highways connecting therewith, §461A.7, 461A.8

6A.2 On behalf of federal government.

The executive council may institute and maintain such proceedings when private property is necessary for any use of the government of the United States.

[S13, §2024-a; C24, 27, 31, 35, 39, §**7804;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §471.2]

C93, §6A.2

Condemnation by federal government, §1.4

6A.3 Conveyance by state to federal government.

When land or any easement therein is condemned by the state for the use and benefit of the United States, the governor, after the land has been finally acquired, shall have power to convey, to the United States, the easement or lands so acquired and all rights of the state therein.

[S13, §2024-b; C24, 27, 31, 35, 39, §**7805;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §471.3]

C93, §6A.3

6A.4 Right conferred.

The right to take private property for public use is hereby conferred:

1. *Counties.* Upon all counties for public purposes which are reasonable and necessary as an incident to the powers and duties conferred upon counties.

2. *Owners of land without a way to the land.* Upon the owner or lessee of lands, which

have no public or private way to the lands, for the purpose of providing a public way, not exceeding forty feet in width, which will connect with an existing public road. The condemned public way shall be located on a division, subdivision or *"forty"* line, or immediately adjacent thereto, and along the line which is the nearest feasible route to an existing public road, or along a route established for a period of ten years or more by an easement of record or by use and travel to and from the property by the owner and the general public. The public way shall not interfere with buildings, orchards, or cemeteries. When passing through enclosed lands, the public way shall be fenced on both sides by the condemner upon request of the owner of the condemned land. The condemner or the condemner's assignee, shall provide easement for access to the owner of property severed by the condemnation. The public way shall be maintained by the condemner or the condemner's assignee, and shall not be considered any part of the primary or secondary road systems.

A public way condemned under this subsection shall not be considered an existing public road in subsequent condemnations to provide a public way for access to an existing public road.

3. *Owners of mineral lands.* Upon all owners, lessees, or possessors of land, for a railway right-of-way thereto not exceeding one hundred feet in width and located wherever necessary or practical, when such lands have no railway thereto and contain coal, stone, gravel, lead, or other minerals and such railway is necessary in order to reach and operate any mine, quarry, or gravel bed on said land and transport the products thereof to market. Such right-of-way shall not interfere with buildings, orchards, or cemeteries, and when passing through enclosed lands, fences shall be built and maintained on both sides thereof by the party condemning the land and by that party's assignees. The jury, in the assessment of damages, shall consider the fact that a railway is to be constructed thereon.

4. *Cemetery associations.* Upon any private cemetery or cemetery association which is incorporated under the laws of this state relating to corporations not for pecuniary profit, and having its cemetery located outside the limits of a city, for the purpose of acquiring necessary grounds for cemetery use or reasonable additions thereto. The right granted in this subsection shall not be exercised until the board of supervisors, of the county in which the land sought to be condemned is located, has, on written application and hearing, on such reasonable notice to all interested parties as it may fix, found that the land, describing it, sought to be condemned, is necessary for cemetery purposes. The association shall pay all costs attending such hearing.

5. *Subdistricts of soil and water conservation districts.* Upon a subdistrict of a soil and water conservation district for land or rights or interests in the land as reasonable and necessary to carry out the purposes of the subdistrict.

6. *Cities.* Upon all cities for public purposes which are reasonable and necessary as an incident to the powers and duties conferred upon cities.

1. [S13, §2024-f; C24, 27, 31, 35, 39, §**7806;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §471.4; 81 Acts, ch 117, §1084]

2. [C97, §2028; S13, §2028; C24, 27, 31, 35, 39, §**7806;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §471.4]

3. [C97, §2028, 2031; S13, §2028; C24, 27, 31, 35, 39, §**7806;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §471.4]

4. [S13, §1644-a – e; C24, 27, 31, 35, 39, §**7806;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §471.4]

5. [C62, 66, 71, 73, 75, 77, 79, 81, S81, §471.4]

6. [R60, §1064; C73, §464, 470, 474; C97, §722, 880, 881; S13, §722, 729-b, 741-s; SS15, §741-d, 879-t, 880, 881; C24, 27, 31, 35, 39, §**6134, 6195 – 6197, 6740;** C46, §397.8, 403.1 – 403.3; C50, §391A.3, 397.8, 403.1 – 403.3, 420.51; C54, 62, 66, 71, 73, §368.37, 397.8; C75, 77, 79, 81, S81, §471.4]

83 Acts, ch 67, §1; 87 Acts, ch 23, §55

C93, §6A.4

6A.5 Right to purchase.

Whenever the power to condemn private property for a public use is granted to any officer, board, commission, or other official, or to any county, township, or municipality, such grant shall, unless otherwise declared, be construed as granting authority to the officer, board, or official body having jurisdiction over the matter, to acquire, at its fair market value, and from the parties having legal authority to convey, such right as would be acquired by condemnation.

[R60, §1317; C73, §1244, 1247; C97, §1999, 2002, 2014, 2029; S13, §1644-a; C24, 27, 31, 35, 39, §**7807;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §471.5]

C93, §6A.5

6A.6 Railways.

The Iowa railway finance authority or any railway corporation, may acquire by condemnation property as necessary for the location, construction, and convenient use of a railway. The Iowa railway finance authority may acquire fee title or a lesser property interest. The authority shall offer to sell its interest in the property at fair market value to the adjoining property owners upon abandonment. The acquisition shall carry the right to use for the construction and repair of the railway and its appurtenances any earth, gravel, stone, timber, or other material, on or from the land taken.

[R60, §1314; C73, §1241; C97, §1995; S13, §1995; C24, 27, 31, 35, 39, §**7808;** C46, 50, 54, 58,

62, 66, 71, 73, 75, 77, 79, 81, §471.6]
83 Acts, ch 121, §9
C93, §6A.6

6A.7 Cemetery lands.

No lands actually platted, used, and devoted to cemetery purposes shall be taken for any railway purpose without the consent of the proper officers or owners thereof.

[S13, §1995; C24, 27, 31, 35, 39, §**7809;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §471.7]
C93, §6A.7

6A.8 Limitation on right-of-way.

Land taken for railway right-of-way, otherwise than by consent of the owner, shall not exceed one hundred feet in width unless greater width is necessary for excavation, embankment, or depositing waste earth.

[R60, §1314; C73, §1241; C97, §1995; S13, §1995; C24, 27, 31, 35, 39, §**7810;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §471.8]
C93, §6A.8

6A.9 Additional purposes.

The Iowa railway finance authority or a railway corporation may, by condemnation or otherwise, acquire lands for the following additional purposes:

1. For necessary additional depot grounds or yards.
2. For constructing a track or tracks to any mine, quarry, gravel pit, manufacturing plant, warehouse, or mercantile establishment.
3. For additional or new right-of-way for constructing double track, reducing or straightening curves, changing grades, shortening or relocating portions of the line, and for excavations, embankments, or places for depositing waste earth.
4. For the preservation of abandoned railroad right-of-way for future railroad use.

[R60, §1314; C73, §1241, 1242; C97, §1995, 1996, 1998; S13, §1995, 1998; C24, 27, 31, 35, 39, §**7811;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §471.9]
83 Acts, ch 121, §10
C93, §6A.9

6A.10 Initiating railroad condemnation.

1. The railway corporation shall apply to the department of transportation for permission to condemn. The railway corporation shall serve notice of the application and hearing and provide a copy of the legal description of the property to be condemned to the owner and any recordholders of liens and encumbrances on any land described in the application. The department may, after hearing, report to the clerk of the district court of the county in which the land is situated the description of the land sought to be condemned. The corporation may begin condemnation procedures in district court for the land described by the department.
2. The railway finance authority may begin condemnation proceedings in district court.

[C97, §1998; S13, §1998; C24, 27, 31, 35, 39, §**7812;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §471.10; 81 Acts, ch 22, §22]
83 Acts, ch 121, §11
C93, §6A.10
93 Acts, ch 47, §17; 93 Acts, ch 87, §1

6A.11 Lands for water stations — how set aside.

Lands which are sought to be condemned for water stations, dams, or reservoirs, including all the overflowed lands, if any, shall, if requested by the owner, be set aside in a square or rectangular shape by the department of transportation or district court.

[C73, §1242; C97, §1996; C24, 27, 31, 35, 39, §**7813;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §471.11; 81 Acts, ch 22, §22]
83 Acts, ch 121, §12
C93, §6A.11

6A.12 Access to water — overflow limited.

An owner of land, which has in part been condemned for water stations, dams, or reservoirs, shall not be deprived, without the owner's consent, of access to the water, or the use thereof, in common with the company, on the owner's own land, nor, without the owner's consent, shall the owner's dwelling, outhouses, or orchards be overflowed, or otherwise injuriously affected by such condemnation.

[C73, §1242; C97, §1996; C24, 27, 31, 35, 39, §**7814;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §471.12]
C93, §6A.12

6A.13 Change in streams.

When a railway company would have the right to excavate a channel or ditch and thereby change and straighten the course of a stream or watercourse, which is too frequently crossed by such railway, and thereby protect the right-of-way and roadbed, or promote safety and convenience in the operation of the railway, it may, by condemnation or otherwise, acquire sufficient land on which to excavate such ditch or channel.

[C97, §2014; C24, 27, 31, 35, 39, §**7815;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §471.13]
C93, §6A.13

6A.14 Unlawful diversion prohibited.

Nothing in section 6A.13 shall give such corporation the right to change the course of any stream or watercourse where such right does not otherwise exist, nor, without the owner's consent, to di-

vert such stream or watercourse from any cultivated meadow or pasture land, when it only touches such lands at one point.

[C97, §2014; C24, 27, 31, 35, 39, §**7816;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §471.14]

C93, §6A.14

6A.15 Reserved.

6A.16 Right to condemn abandoned right-of-way.

Railroad right-of-way which has been abandoned by order of the proper authority, may be condemned by a railway corporation or the Iowa railway finance authority before or after the track materials have been removed. The procedure to condemn abandoned right-of-way shall be the same as for an original condemnation.

[C73, §1260; C97, §2015; C24, 27, 31, 35, 39, §**7818;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §471.16]

83 Acts, ch 121, §13

C93, §6A.16

6A.17 Reserved.

6A.18 No double damages.

Owners of abandoned right-of-way which was originally condemned for rail purposes shall not receive additional compensation unless the track materials were removed prior to the second condemnation.

[C73, §1261; C97, §2016; C24, 27, 31, 35, 39, §**7820;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §471.18]

83 Acts, ch 121, §14

C93, §6A.18

6A.19 Interpretative clause.

A grant in this chapter of right to take private property for a public use shall not be construed as limiting a like grant elsewhere in the Code for another and different use.

[C24, 27, 31, 35, 39, §**7821;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §471.19]

C93, §6A.19

6A.20 Description of land furnished.

Whenever any person, state department, or political subdivision takes title to land in fee simple for a public use by condemnation or by purchase in lieu of condemnation, the purchaser shall furnish to the owner of the land a legal description of the part taken and a legal description of the remainder which is compatible with the existing abstract description of the entire tract of land. For the purposes of this section a center line description is compatible only when it contains reference points which are a part of and tied to the abstract description.

[C71, 73, 75, 77, 79, 81, §471.20]

C93, §6A.20

6A.21 Condemnation of agricultural land — definitions.

1. Except as otherwise provided, for purposes of this chapter and chapter 6B:

a. "Agricultural land" means real property owned by a person in tracts of ten acres or more and not laid off into lots of less than ten acres or divided by streets and alleys into parcels of less than ten acres, and that has been used for the production of agricultural commodities during three out of the past five years. Such use of property includes, but is not limited to, the raising, harvesting, handling, drying, or storage of crops used for feed, food, seed, or fiber; the care or feeding of livestock; the handling or transportation of crops or livestock; the storage, treatment, or disposal of livestock manure; and the application of fertilizers, soil conditioners, pesticides, and herbicides on crops. Agricultural land includes land on which is located farm residences or outbuildings used for agricultural purposes and land on which is located facilities, structures, or equipment for agricultural purposes. Agricultural land includes land taken out of agricultural production for purposes of environmental protection or preservation.

b. "Private development purposes" means the construction of, or improvement related to, recreational trails, recreational development paid for primarily with private funds, housing and residential development, or commercial or industrial enterprise development.

c. "Public use" or *"public purpose"* or *"public improvement"* does not include the authority to condemn agricultural land for private development purposes unless the owner of the agricultural land consents to the condemnation.

2. The limitation on the definition of public use, public purpose, or public improvement does not apply to a slum area or blighted area as defined in section 403.17, or to agricultural land acquired for industry as that term is defined in section 260E.2, or to the establishment, relocation, or improvement of a road pursuant to chapter 306, or to the establishment of a railway under the supervision of the department of transportation as provided in section 327C.2, or to an airport as defined in section 328.1, or to land acquired in order to replace or mitigate land used in a road project when federal law requires replacement or mitigation. This limitation also does not apply to utilities or persons under the jurisdiction of the Iowa utilities board in the department of commerce or to any other utility conferred the right by statute to condemn private property or to otherwise exercise the power of eminent domain.

99 Acts, ch 171, §1, 41, 42

CHAPTER 6B

PROCEDURE UNDER EMINENT DOMAIN

This chapter not enacted as a part of this
title; transferred from chapter 472 in Code 1993

6B.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
Former §6B.1 transferred to §6B.1A

6B.1A Procedure provided.

The procedure for the condemnation of private property for works of internal improvement, and for other public projects, uses, or purposes, unless and except as otherwise provided by law, shall be in accordance with the provisions of this chapter. This chapter shall not apply to the dedication of property to an acquiring agency or to the voluntary negotiation and purchase of property by an

acquiring agency.

[C24, 27, 31, 35, 39, §**7822;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §472.1]

C93, §6B.1

2000 Acts, ch 1179, §1, 30

C2001, §6B.1A

6B.2 By whom conducted.

Such proceedings shall be conducted:

1. By the attorney general when the damages are payable from the state treasury.

2. By the county attorney, when the damages are payable from funds disbursed by the county, or by any township, or school corporation.

3. By the city attorney, when the damages are payable from funds disbursed by the city.

This section shall not be construed as prohibiting any other authorized representative from conducting such proceedings.

[C73, §1271; C97, §2024; S13, §2024-a, -d, -f; C24, 27, 31, 35, 39, §**7823;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §472.2]

C93, §6B.2

6B.2A Notice of proposed public improvement.

1. An acquiring agency shall provide written notice of a public hearing to each owner and any contract purchaser of record of agricultural land that may be the subject of condemnation. The authority under this chapter is not conferred and condemnation proceedings shall not begin unless a good faith effort is made to mail and publish the notice as provided in this section on the owner and any contract purchaser of record of the property subject to condemnation. The notice shall be mailed by ordinary mail, not less than thirty days before the date the hearing is held, to the owner and any contract purchaser of record of each property or property interest at the owner's and contract purchaser's last known address as shown in the records of the county auditor not less than seven days nor more than fourteen days prior to the date of mailing. A change in ownership of any such property which is not reflected in the records of the county auditor during the period those records are searched as above provided shall not affect the validity of the notice or any condemnation proceeding commenced on the basis of such notice. The notice shall be given and the public hearing held before adoption of the ordinance, resolution, motion, or other declaration of intent to fund the final site-specific design for the public improvement, to make the final selection of the route or site location for the public improvement, or to acquire or condemn, if necessary, all or a portion of the property or an interest in the property for the public improvement. If the location of the public improvement is changed or expanded after the decision has been made to proceed with the public improvement, a notice shall be mailed by ordinary mail no less than thirty days before the adoption of the ordinance, resolution, motion, or other declaration of intent to proceed with a change in the location of the public improvement to the owner and any contract purchaser of record of the land to be acquired or condemned, if necessary, in the new location of the public improvement affected by the change. The mailed notice shall, at a minimum, include the following information:

a. The general nature of the public improvement.

b. A statement of the possibility that the acquiring agency may acquire part or all of the property or interest in the property by condemnation for the public improvement.

c. The process to be followed by the acquiring agency in making the decision to fund the final site-specific design for the public improvement, to make the final selection of the route or site location, or to acquire or condemn, if necessary, all or a portion of the property or an interest in the property for the public improvement.

d. The time and place of a public hearing at which an opportunity is provided for public input into the decision to fund the final site-specific design for the public improvement, to make the final selection of the route or site location, or to acquire or condemn, if necessary, all or a portion of the property or an interest in the property for the public improvement.

e. The name, address, and telephone number of the person designated by the acquiring agency as the person to contact regarding the public improvement.

f. A statement of rights of individual property owners with respect to the acquisition of their property and the availability of relocation benefits. The attorney general shall adopt by rule pursuant to chapter 17A a statement of rights which may be used in substantial form by any person required to provide the statement of rights as provided in this section.

2. The acquiring agency shall cause a notice to be published once in a newspaper of general circulation in the county or city where the agricultural land is located. The notice shall be published at least four but no more than twenty days before the public hearing is held as referred to in subsection 1. The published notice shall, at a minimum, include the following information:

a. The general nature of the public improvement.

b. A statement of the possibility that the acquiring agency may acquire part or all of the property or an interest in the property by condemnation for the public improvement.

c. The process to be followed by the acquiring agency in making the decision to fund the final site-specific design for the public improvement, to make the final selection of the route or site location, or to acquire or condemn, if necessary, all or a portion of the property or an interest in the prop-

erty for the public improvement.

d. The time and place of a public hearing at which an opportunity is provided for public input into the decision to fund the final site-specific design for the public improvement, to make the final selection of the route or site location, or to acquire or condemn, if necessary, all or a portion of the property or an interest in the property for the public improvement.

e. The name, address, and telephone number of the contact person regarding the public improvement.

3. If the acquiring agency is a person required to obtain a franchise under chapter 478, compliance with section 478.2 shall satisfy the requirements of this section. If the acquiring agency is a person required to obtain a permit under chapter 479, compliance with section 479.5 shall satisfy the requirements of this section.

4. This section shall not apply to a condemnation of property by the state department of transportation or a county for right-of-way that is contiguous to an existing road right-of-way and necessary for the maintenance, safety improvement, repair, or upgrade of the existing road. Notwithstanding section 6B.2C, a condemnation of property by the state department of transportation pursuant to this subsection shall be approved by the director of the department of transportation. For purposes of this subsection, *"upgrade"* means to bring a road or bridge up to currently acceptable standards, including improved geometrics, passing lanes, turning lanes, climbing lanes, and improved shoulders. *"Upgrade"* does not include expanding a highway from two lanes to four lanes.

5. The time deadlines in this section do not apply during the existence of an emergency requiring the construction or repair of public improvements in situations where failure to immediately construct or repair would result in immediate danger to public health, safety, or welfare. The notices required in this section shall be provided to the owner as soon as practicable.

99 Acts, ch 171, §2, 42; 2000 Acts, ch 1178, §1; 2000 Acts, ch 1179, §2 – 4, 30; 2002 Acts, ch 1063, §1

6B.2B Acquisition negotiation statement of rights.

The acquiring agency shall make a good faith effort to negotiate with the owner to purchase the private property or property interest before filing an application for condemnation or otherwise proceeding with the condemnation process. An acquiring agency shall not make an offer to purchase the property or property interest that is less than the fair market value the acquiring agency has established for the property or property interest pursuant to the appraisal required in section 6B.45. However, an acquiring agency need not make an offer in excess of that amount in order to satisfy the requirement to negotiate in good faith. An acquiring agency is deemed to have met the requirements of this section if the acquiring agency complies with section 6B.54.

99 Acts, ch 171, §3, 42; 2000 Acts, ch 1179, §5, 6, 30

6B.2C Approval of the public improvement.

The authority to condemn is not conferred, and the condemnation proceedings shall not commence, unless the governing body for the acquiring agency approves the use of condemnation and there is a reasonable expectation the applicant will be able to achieve its public purpose, comply with all applicable standards, and obtain the necessary permits.

2000 Acts, ch 1179, §7, 30

6B.3 Application — recording — notice — time for appraisement — new proceedings.

1. The proceedings shall be instituted by a written application filed with the chief judge of the judicial district of the county in which the land sought to be condemned is located. The application shall set forth:

a. A description of all the property in the county affected or sought to be condemned, by its congressional numbers, in tracts not exceeding one-sixteenth of a section, or, if the land consists of lots, by the numbers of the lot and block, and plat designation.

b. A plat showing the location of the right-of-way or other property sought to be condemned with reference to such description.

c. The names of all record owners of the different tracts of land sought to be condemned, or otherwise affected by such proceedings, and of all record holders of liens and encumbrances on such lands; also the place of residence of all such persons so far as known to the applicant.

d. The purpose for which condemnation is sought. For purposes of section 6B.4A, if condemnation of agricultural land is sought by a city or county, or an agency of a city or county, for location of an industry as that term is defined in section 260E.2, the application shall so state. However, the city or county shall not be required to disclose information on an industrial prospect with which the city or county is currently negotiating.

e. A request for the appointment of a commission to appraise the damages.

f. If the damages are to be paid by the state and the land to be condemned is within an agricultural area as provided in chapter 352, a statement disclosing whether any of that land is classified as class I or class II land under the United States department of agriculture natural resources conservation service land capability classification system contained in the agriculture handbook number 210, 1961 edition and, if so classified, stating that the class I or class II land is reasonably

necessary for the work of internal improvement for which condemnation is sought.

g. A showing of the minimum amount of land necessary to achieve the public purpose and the amount of land to be acquired by condemnation for the public improvement. Any land to be acquired by condemnation beyond the necessary minimum to complete the project shall be presumed not to be necessary for a public use or public purpose unless the applicant can show that a substantial need exists for the additional property to achieve the public use or public purpose, or that the land in question constitutes an uneconomical remnant that has little or no value or utility to the owner, or that the owner consents to the condemnation.

h. A statement indicating the efforts made by the applicant to negotiate in good faith with the owner to acquire the private property sought to be condemned.

2. The applicant shall mail a copy of the application by certified mail to the owner at the owner's last known address and to any record lienholder or encumbrancer of the property at the lienholder's or encumbrancer's last known address. The applicant shall also cause the application to be published once in a newspaper of general circulation in the county, not less than four nor more than twenty days before the meeting of the compensation commission to assess the damages. Service of the application by publication shall be deemed complete on the day of publication.

In lieu of mailing and publishing the application, the applicant may cause the application to be served upon the owner, lienholders, and encumbrancers of the property in the manner provided by the Iowa rules of civil procedure for the personal service of original notice. The application shall be mailed and published or served, as above provided, prior to or contemporaneously with the mailing and publication or service of the list of compensation commissioners as provided in section 6B.4.

3. The applicant shall promptly certify that its application for condemnation has been approved by the chief judge and shall file the original approved application with the county recorder in the manner required under section 6B.37. The county recorder shall file and index the application in the record of deeds and preserve the application as required by sections 6B.38 and 558.55. The filing and indexing constitute constructive notice to all parties that a proceeding to condemn the property is pending and that the applicant has the right to acquire the property from all owners, lienholders, and encumbrancers whose interests are of record at the time of the filing. After filing and indexing, the county recorder shall file a copy of the application with the office of secretary of state.

When indexed, the proceeding is considered pending so as to charge all persons not having an interest in the property with notice of its pendency, and while pending no interest can be acquired by the third parties in the property against the rights of the applicant. If the appraisement of damages is not made within one hundred twenty days, the proceedings instituted under this section are terminated and all rights and interests of the applicant arising out of the application for condemnation terminate. The applicant may reinstitute a new condemnation proceeding at any time. The reinstituted proceedings are entirely new proceedings and not a revival of the terminated proceeding.

[R60, §1230; C73, §1247; C97, §2002; C24, 27, 31, 35, 39, §**7824;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §472.3; 82 Acts, ch 1245, §19]

84 Acts, ch 1065, §1, 2

C93, §6B.3

95 Acts, ch 216, §25; 99 Acts, ch 171, §4, 42; 2000 Acts, ch 1179, §8, 9, 30

6B.4 Commission to assess damages.

Annually the board of supervisors of a county shall appoint not less than twenty-eight residents of the county and the names of such persons shall be placed on a list and they shall be eligible to serve as members of a compensation commission. One-fourth of the persons appointed shall be owner-operators of agricultural property, one-fourth of the persons appointed shall be owners of city property, one-fourth shall be licensed real estate salespersons or real estate brokers, and one-fourth shall be persons having knowledge of property values in the county by reason of their occupation, such as bankers, auctioneers, property managers, property appraisers, and persons responsible for making loans on property.

The chief judge of the judicial district or the chief judge's designee shall select by lot six persons from the list, two persons who are owner-operators of agricultural property when the property to be condemned is agricultural property; two persons who are owners of city property when the property to be condemned is other than agricultural property; and two persons from each of the remaining two representative groups, who shall constitute a compensation commission to assess the damages to all property to be taken by the applicant and located in the county, and shall name a chairperson from the persons selected. The chief judge or the judge's designee may appoint such alternate members and chairpersons to the commission as are deemed necessary and appropriate under the circumstances. A person shall not be selected as a member or alternate member of the compensation commission if the person possesses any interest in the proceeding which would cause the person to render a biased decision. The applicant shall mail a copy of the list of commissioners and alternates appointed by the chief judge by certified mail to the property owner at the owner's last known address. The applicant shall also cause the list of commissioners and alternates to be published once in a newspaper of general cir-

culation in the county, not less than four nor more than twenty days before the meeting of the compensation commission to assess the damages. Service of the list of commissioners and alternates by publication shall be deemed complete on the day of publication. In lieu of mailing and publishing the list of commissioners and alternates, the applicant may cause the list to be served upon the owner of the property in the manner provided by the Iowa rules of civil procedure for the personal service of original notice. The list of commissioners and alternates shall be mailed and published or served, as above provided, prior to or contemporaneously with service of the notice of assessment as provided in section 6B.8.

[R60, §1317, 1318; C73, §1244, 1245; C97, §1999, 2029; C24, 27, 31, 35, 39, §**7825;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §472.4]

C93, §6B.4

99 Acts, ch 171, §5, 6, 42; 2000 Acts, ch 1032, §1; 2000 Acts, ch 1179, §10, 11, 30

6B.4A Review of applications by compensation commission.

1. If a city or county, or an agency of a city or county, has filed an application for condemnation of agricultural land for industry, the application is subject to review by the compensation commission pursuant to this section.

2. At any time before the thirty-day notice of assessment expires pursuant to section 6B.8, a landowner may apply to the compensation commission for review of the condemnation application to determine whether the use of condemnation is necessary for the placement of an industry in the community. When reviewing an application, the commission shall consider all of the following:

a. The feasibility of acquiring the agricultural land by methods other than condemnation.

b. The public cost and public benefit from locating the industry on the agricultural land.

c. The ability to adapt the industry development plans to avoid the use of condemnation.

d. The existence of a specific industry to be located on the agricultural land.

e. The amount of agricultural land requested to be condemned compared to the total amount of agricultural land needed for the project.

3. The commission shall approve or deny the application for condemnation within thirty days of receiving a request to review the condemnation application. A majority vote of the commission members is necessary to approve or deny a condemnation application. The sheriff shall notify the landowner and condemner of the commission's determination by certified mail.

4. A determination made by the compensation commission pursuant to this section shall be final unless appealed from. An appeal must be filed with the district court within thirty days of mailing the commission's determination to the condemner and the landowner. At the time of appeal, the appellant shall give written notice that the appeal has been taken to the adverse party, or the adverse party's agent or attorney. Notice of an appeal shall be served in the same manner as an original notice. The appeal shall be docketed in the name of the person appealing and all other interested parties to the action shall be defendants.

5. This section does not apply to condemnation of agricultural land if the industry is an eligible business under section 15.329 and the department of economic development enters into an agreement under section 15.330 with the industry.

6. For purposes of this section, *"industry"* means the same as defined in section 260E.2.

99 Acts, ch 171, §7, 42

6B.5 Challenges to commissioners — filling vacancies on commission.

1. Persons appointed by the chief judge to serve on the compensation commission are excused from the commission if they are removed for cause, stricken by a challenge pursuant to this section, unavailable to serve on the commission, or fail to act in their capacity as commissioners.

2. The applicant may challenge one commissioner without stating cause and the person or persons representing the fee ownership interest in the property may challenge one commissioner without stating cause. A challenge to the appointment of a commissioner shall be filed, in writing, with the sheriff not less than seven days prior to the meeting of the compensation commission, and shall be mailed to the other party by ordinary mail on the day of filing. An alternate commissioner may not be challenged without cause. A challenge filed less than seven days prior to the meeting of the commission shall have no effect.

3. If a person is excused from the commission, the sheriff shall select and notify, not less than twenty-four hours prior to the meeting, the alternate commissioners appointed for that condemnation proceeding, to complete the membership of the commission. Alternate commissioners selected and notified shall have the same qualifications as the person who is being replaced. If no alternates have been appointed, the chief judge of the judicial district shall appoint another person from the list, possessing the same qualifications as the person who is being replaced to complete the membership of the commission.

4. The sheriff shall notify alternate commissioners in the order directed by the chief judge, and the alternate commissioner first notified who is available to serve as a compensation commissioner shall serve in the place of the commissioner who was unable to serve or who was stricken from the panel.

5. If a person is excused from the commission, the applicant and the property owner may stipulate in writing to the selection and notification of

a particular alternate having the same qualifications as the person who is being replaced, to complete the membership of the commission. Such stipulation shall be filed with the sheriff not less than seventy-two hours prior to the meeting of the commission.

[R60, §1319; C73, §1251; C97, §2006; C24, 27, 31, 35, 39, §**7826;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §472.5]

C93, §6B.5

2000 Acts, ch 1179, §12, 30

6B.6 Sheriff to coordinate meeting of commissioners and provide meeting place.

The sheriff of the county in which the property to be condemned is located shall coordinate the meeting of commissioners, shall arrange an appropriate meeting place for commissioners, shall assure that appointed commissioners receive the order of the court appointing them and directing their attendance at the meeting of commissioners, and shall report the unavailability or absence of appointed commissioners to the chief judge, to the applicant, and to the landowner.

2000 Acts, ch 1179, §13, 30

6B.7 Commissioners to qualify.

Before meeting to assess the damages for the taking, all commissioners shall qualify by filing with the sheriff a written oath that they will to the best of their ability faithfully and impartially assess damages and make a written report assessing the damages to the sheriff.

[C24, 27, 31, 35, 39, §**7828;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §472.7]

C93, §6B.7

99 Acts, ch 171, §8, 42; 2000 Acts, ch 1179, §14, 30

6B.8 Notice of assessment.

The applicant, or the owner or any lienholder or encumbrancer of any land described in the application, may, at any time after the appointment of the commissioners, have the damages to the lands of any such owner assessed by giving the other party, if a resident of this state, thirty days' notice, in writing. The notice shall specify the day and the hour when the compensation commission will meet, view the premises, and assess the damages. The notice shall be personally served upon all necessary parties in the same manner provided by the Iowa rules of civil procedure for the personal service of original notice. If a city or county, or an agency of a city or county, is seeking to condemn agricultural land for an industry as that term is defined in section 260E.2, the notice shall inform the landowner that the landowner may request that the compensation commission review the application as provided in section 6B.4A.

[R60, §1318; C73, §1245; C97, §2000; C24, 27, 31, 35, 39, §**7829;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §472.8]

C93, §6B.8

99 Acts, ch 171, §9, 42; 2000 Acts, ch 1179, §15, 30

Manner of service, R.C.P. 1.302 – 1.315

6B.9 Form of notice.

Said notice shall be in substantially the following form, with such changes therein as will render it applicable to the party giving and receiving the notice, and to the particular case pending, to wit:

To . . . . . (here name each person whose land is to be taken or affected and each record lienholder or encumbrancer thereof) and all other persons, companies, or corporations having any interest in or owning any of the following described real estate:

(Here describe the land as in the application.)

You are hereby notified that . . . . . (here enter the name of the applicant) desires the condemnation of the following described land: (Here describe the particular land or portion thereof sought to be condemned, in such manner that it will be clearly identified.)

That such condemnation is sought for the following purpose: (Here clearly specify the purpose.)

That a commission has been appointed as provided by law for the purpose of appraising the damages which will be caused by said condemnation.

That said commissioners will, on the . . . . . day of . . . . . (month), ... (year), at . . . . . o'clock . . . . .m., view said premises and proceed to appraise said damages, at which time you may appear before the commissioners if you care to do so.

. . . . . Applicant.

[R60, §1320; C73, §1247; C97, §2002; C24, 27, 31, 35, 39, §**7830;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §472.9]

C93, §6B.9

2000 Acts, ch 1058, §56

6B.10 Signing of notice.

The notice may be signed by the applicant, by the applicant's attorney, or by any other authorized representative.

[R60, §1320; C73, §1247; C97, §2002; C24, 27, 31, 35, 39, §**7831;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §472.10]

C93, §6B.10

6B.11 Filing of notices and return of service.

Notices, immediately after the service thereof, shall, with proper return of service endorsed

thereon or attached thereto, be filed with the sheriff. The sheriff shall at once cause the commissioners to be notified of the day and hour when they will be required to proceed with the appraisement. The notice to the commissioners shall also be published by the sheriff pursuant to section 331.305.

[C24, 27, 31, 35, 39, §**7832;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §472.11]

C93, §6B.11

99 Acts, ch 171, §10, 42

6B.12 Notice when residence unknown. Repealed by 2000 Acts, ch 1179, § 29, 30.

6B.13 Service outside state. Repealed by 2000 Acts, ch 1179, § 29, 30.

6B.14 Appraisement — report.

The commissioners shall, at the time fixed in the aforesaid notices, view the land sought to be condemned and assess the damages which the owner will sustain by reason of the appropriation. The commission shall file its written report, signed by all commissioners, with the sheriff. At the request of the condemner or the condemnee, the commission shall divide the damages into parts to indicate the value of any dwelling, the value of the land and improvements other than a dwelling, and the value of any additional damages. The appraisement and return may be in parcels larger than forty acres belonging to one person and lying in one tract, unless the agent or attorney of the applicant, or the commissioners, have actual knowledge that the tract does not belong wholly to the person in whose name it appears of record; and in case of such knowledge, the appraisement shall be made of the different portions as they are known to be owned.

Prior to the meeting of the commission, the commission or a commissioner shall not communicate with the applicant, property owner, or tenant, or their agents, regarding the condemnation proceedings. The commissioners shall meet in open session to view the property and to receive evidence, but may deliberate in closed session. After deliberations commence, the commission and each commissioner is prohibited from communicating with any party to the proceeding, unless such communication occurs in the presence of or with the consent of the property owner and the other parties who appeared before the commission. The commission shall keep minutes of all its meetings showing the date, time, and place, the members present, and the action taken at each meeting. The minutes shall show the results of each vote taken and information sufficient to indicate the vote of each member present. The vote of each member present shall be made public at the open session. The minutes shall be public records open to public inspection.

In assessing the damages the owner or tenant will sustain, the commissioners shall consider and make allowance for personal property which is damaged or destroyed or reduced in value.

An owner or tenant occupying land which is proposed to be acquired by condemnation shall be awarded a sum sufficient to remove such owner's or tenant's personal property from the land to be acquired, which sum shall represent reasonable costs of moving the personal property from the land to be acquired to a point no greater than fifty miles; but in any event, damages awarded under this section for moving shall not exceed five thousand dollars for each owner or tenant occupying land proposed to be condemned. An owner or tenant may apply for an award pursuant to this section only if all other damages provided by law have been awarded and such amount awarded is insufficient to pay the owner's or tenant's reasonable costs of moving.

[C73, §1249; C97, §2004, 2029; C24, 27, 31, 35, 39, §**7835;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §472.14]

C93, §6B.14

99 Acts, ch 171, §12, 42; 2000 Acts, ch 1179, §16, 17, 30

6B.15 Guardianship.

In all cases where any interest in lands sought to be condemned is owned by a person who is under legal disability and has no guardian of the person's property, the applicant shall, prior to the filing of the application with the sheriff, apply to the district court for the appointment of a guardian of the property of such person.

[C24, 27, 31, 35, 39, §**7836;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §472.15]

C93, §6B.15

6B.16 Power of guardian.

If the owner of any lands is under guardianship, such guardian may, under the direction of the district court, or judge thereof, agree and settle with the applicant for all damages resulting from the taking of such lands, and give valid conveyances thereof.

[R60, §1316; C73, §1246; C97, §2001; C24, 27, 31, 35, 39, §**7837;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §472.16]

C93, §6B.16

6B.17 When appraisement final.

The appraisement of damages returned by the commissioners shall be final unless appealed from.

[C24, 27, 31, 35, 39, §**7838;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §472.17]

C93, §6B.17

6B.18 Notice of appraisement — appeal of award — notice of appeal.

1. 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 condemner and the condemnee of the date on which the appraisement of damages was made, the amount of the appraisement, and that any interested party may, within thirty days from the date of mailing the notice of the appraisement of damages, appeal to the district court by filing notice of appeal with the district court of the county in which the real estate is located and by giving written notice to the sheriff that the appeal has been taken. The sheriff shall endorse the date of mailing of notice upon the original appraisement of damages.

2. An appeal of appraisement of damages is deemed to be perfected upon filing of a notice of appeal with the district court within thirty days from the date of mailing the notice of appraisement of damages. The notice of appeal shall be served on the adverse party, or the adverse party's agent or attorney, and any lienholder and encumbrancer of the property in the same manner as an original notice within thirty days from the date of filing the notice of appeal unless, for good cause shown, the court grants more than thirty days. If after reasonable diligence, the notice cannot be personally served, the court may prescribe an alternative method of service consistent with due process of law.

3. In case of condemnation proceedings instituted by the state department of transportation, when the owner appeals from the assessment made, such notice of appeal shall be served upon the attorney general, or the department general counsel to the state department of transportation, or the chief highway engineer for the department.

[R60, §1317; C73, §1254; C97, §2009; S13, §2009; C24, 27, 31, 35, 39, §**7839;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §472.18]

C93, §6B.18

2002 Acts, ch 1063, §2; 2003 Acts, ch 44, §1

6B.19 Service of notice — highway matters. Repealed by 2002 Acts, ch 1063, § 15.

6B.20 Sheriff to file certified copy.

When an appeal is taken, the sheriff shall at once file with the clerk of the district court a certified copy of as much of the assessment as applies to the part for which the appeal is taken.

[R60, §1317; C73, §1254; C97, §2009; S13, §2009; C24, 27, 31, 35, 39, §**7840;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §472.20]

84 Acts, ch 1065, §3

C93, §6B.20

6B.21 Appeals — how docketed and tried.

The appeal shall be docketed in the name of the person appealing and all other interested parties to the action shall be defendants. In the event the condemner and the condemnee appeal, the appeal shall be docketed in the name of the appellant which filed the application for condemnation and all other parties to the action shall be defendants. The appeal shall be tried as in an action by ordinary proceedings.

[R60, §1317; C73, §1254; C97, §2009; S13, §2009, 2024-h; C24, 27, 31, 35, 39, §**7841;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §472.21]

84 Acts, ch 1119, §1

C93, §6B.21

99 Acts, ch 171, §13, 42

6B.22 Pleadings on appeal.

A written petition shall be filed by the plaintiff within thirty days after perfection of the appeal, stating specifically the items of damage and the amount thereof. The court may for good cause shown grant additional time for the filing of the petition. The defendant shall file a written answer to plaintiff's petition, or such other pleadings as may be proper.

[C31, 35, §7841-c1; C39, §**7841.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §472.22]

C93, §6B.22

2002 Acts, ch 1063, §3

6B.23 Question determined.

On the trial of the appeal, no judgment shall be rendered except for costs and allocation of interest earned pursuant to section 6B.25, but the amount of damages shall be ascertained and entered of record.

[C73, §1257; C97, §2011; C24, 27, 31, 35, 39, §**7842;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §472.23]

C93, §6B.23

2004 Acts, ch 1121, §1

Section amended

6B.24 Reduction of damages — interest on increased award.

If the amount of damages awarded by the commissioners is decreased on appeal, the reduced amount shall be paid to the landowner. If the amount of damages awarded by the commissioners is increased on appeal, interest shall be paid from the date of the condemnation. Interest shall not be paid on any amount which was previously paid. Interest shall be calculated at an annual rate equal to the treasury constant maturity index published by the federal reserve in the H15 Report settled immediately before the date of the award.

[C73, §1259; C97, §2013; C24, 27, 31, 35, 39, §**7843;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §472.24]

C93, §6B.24

95 Acts, ch 135, §1; 2002 Acts, ch 1063, §4

6B.25 Right to take possession of lands — title — damages award.

Upon the filing of the commissioners' report with the sheriff, the applicant may deposit with the sheriff the amount assessed in favor of a claimant, and the applicant, except as otherwise provided, may take possession of the land condemned and proceed with the improvement. An appeal from the assessment does not affect the right, except as otherwise provided. Prior to expiration of the time provided for appeal, the property owner may apply to the district court for release of that part of the damages deposited which the court finds proper. If there is not an appeal by any party, the property owner shall be entitled to the whole of the damages awarded. Upon appeal from the commissioners' award of damages, the district court may direct that the part of the amount of damages deposited with the sheriff, as it finds just and proper, be paid to the claimant. If upon trial of the appeal a lesser amount is awarded, the difference between the amount so awarded and the amount paid shall be repaid by the person to whom it was paid and upon failure to make the repayment the party shall have judgment entered against the person who received the excess payment. Title to the property or the interests in property passes to the applicant when damages have been finally determined and paid.

If an award of damages is appealed to district court, the amount deposited with the sheriff, if any, less the amount paid by the sheriff to the claimant, shall be transferred to the clerk of district court where the appeal was filed and the clerk shall deposit the money in an interest-bearing account. The district court in its judgment rendered pursuant to section 6B.23 shall award the interest earned on the account in proportion to the amount of damages ascertained and entered of record.

[R60, §1317; C73, §1244, 1255, 1256, 1272; C97, §1999, 2010, 2025, 2029; S13, §2024-e, -g, -h; C24, 27, 31, 35, 39, §**7844, 7847, 7848;** C46, 50, 54, 58, §472.25, 472.28, 472.29; C62, 66, 71, 73, 75, 77, 79, 81, §472.25]

84 Acts, ch 1065, §4

C93, §6B.25

2000 Acts, ch 1179, §18, 30; 2004 Acts, ch 1121, §2

NEW unnumbered paragraph 2

6B.26 Dispossession of owner.

A landowner shall not be dispossessed under condemnation proceedings of the landowner's residence, dwelling house, outbuildings if the residence or dwelling house is also acquired, orchard, or garden, until the damages thereto have been finally determined and paid. However, if the property described in this section is condemned for highway purposes by the state department of transportation, the condemning authority may take possession of the property either after the damages have been finally determined and paid or one hundred eighty days after the compensation commission has determined and filed its award, in which event all of the appraisement of damages shall be paid to the property owner before the dispossession can take place. This section shall not apply to condemnation proceedings for drainage or levee improvements, or for public school purposes. For the purposes of this section, *"outbuildings"* means structures and improvements located in proximity to the landowner's residence.

[C24, 27, 31, 35, 39, §**7845;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §472.26]

C93, §6B.26

99 Acts, ch 171, §14, 42

6B.27 Erection of dam — limitation.

If it appears from the finding of the commissioners that the dwelling house, outhouse, orchard, or garden of the owner of any land taken will be overflowed or otherwise injuriously affected by any dam or reservoir to be constructed as authorized by this chapter, such dam shall not be erected until the question of such overflowing or other injury has been determined in favor of the corporation upon appeal.

[C73, §1250; C97, §2005; C24, 27, 31, 35, 39, §**7846;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §472.27]

C93, §6B.27

6B.28 and 6B.29 Reserved.

6B.30 Additional deposit.

If, on the trial of the appeal, the damages awarded by the commissioners are increased, the condemner shall, if the condemner is already in possession of the property, make such additional deposit with the sheriff, as will, with the deposit already made, equal the entire damages allowed. If the condemner be not already in possession, the condemner shall deposit with the sheriff the entire damages awarded, before entering on, using, or controlling the premises.

[C73, §1258; C97, §2012; C24, 27, 31, 35, 39, §**7849;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §472.30]

C93, §6B.30

6B.31 Payment by public authorities.

When damages, by reason of condemnation, are payable from public funds, the sheriff, or clerk of the district court, as the case may be, shall certify to the officer, board, or commission having power to audit claims for the purchase price of said lands, the amount legally payable to each claimant, and, separately, a detailed statement of the cost legally payable from such public funds. Said officer, board, or commission shall audit said claims, and the warrant-issuing officer shall issue warrants therefor on any funds appropriated therefor, or

otherwise legally available for the payment of the same. Warrants shall be drawn in favor of each claimant to whom damages are payable. The warrant in payment of costs shall be issued in favor of the officer certifying thereto.

[C73, §1272; C97, §2025; S13, §2024-b, -e, -g; C24, 27, 31, 35, 39, §**7850;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §472.31]

C93, §6B.31

6B.32 Removal of condemner.

The sheriff, upon being furnished with a copy of the assessment as determined on appeal, certified to by the clerk of the district court, may remove from said premises the condemner and all persons acting for or under the condemner, unless the amount of the assessment is forthwith paid or deposited as hereinbefore provided.

[C73, §1258; C97, §2012; C24, 27, 31, 35, 39, §**7851;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §472.32]

C93, §6B.32

6B.33 Costs and attorney fees.

The applicant shall pay all costs of the assessment made by the commissioners and reasonable attorney fees and costs incurred by the condemnee as determined by the commissioners if the award of the commissioners exceeds one hundred ten percent of the final offer of the applicant prior to condemnation. The condemnee shall submit an application for fees and costs prior to adjournment of the final meeting of the compensation commission held on the matter. The applicant shall file with the sheriff an affidavit setting forth the most recent offer made to the person whose property is sought to be condemned. Members of such commissions shall receive a per diem of two hundred dollars and actual and necessary expenses incurred in the performance of their official duties. The applicant shall reimburse the county sheriff for the per diem and expense amounts paid by the sheriff to the members. The applicant shall reimburse the owner for the expenses the owner incurred for recording fees, penalty costs for full or partial prepayment of any preexisting recorded mortgage entered into in good faith encumbering the property, and for similar expenses incidental to conveying the property to the applicant. The applicant shall also pay all costs occasioned by the appeal, including reasonable attorney fees to be taxed by the court, unless on the trial thereof the same or a lesser amount of damages is awarded than was allowed by the tribunal from which the appeal was taken.

[R60, §1317; C73, §1252; C97, §2007; C24, 27, 31, 35, 39, §**7852;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §472.33]

C93, §6B.33

99 Acts, ch 171, §15, 42; 2000 Acts, ch 1179, §19, 30; 2002 Acts, ch 1063, §5

6B.34 Refusal to pay final award.

Should the applicant decline, at any time after an appeal is taken as provided in section 6B.18, to take the property and pay the damages awarded, the applicant shall pay, in addition to the costs and damages actually suffered by the landowner, reasonable attorney fees to be taxed by the court.

[C97, §2011; C24, 27, 31, 35, 39, §**7853;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §472.34]

C93, §6B.34

6B.35 Sheriff to file record.

Thirty days after the date of mailing the notice of appraisement of damages, the sheriff shall file with the county recorder of the county in which the condemned land is situated, the following papers:

1. A certified copy of the application for condemnation.
2. All notices, together with all returns of service endorsed on the returns or attached to the returns.
3. The report of the commissioners.
4. All other papers filed with the sheriff in the proceedings.
5. A written statement by the sheriff of all money received in payment of damages, from whom received, to whom paid, and the amount paid to each claimant and reference to the application for condemnation by document reference or instrument number and the date the application was filed with the county recorder.

[C73, §1253; C97, §2008; C24, 27, 31, 35, 39, §**7854;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §472.35]

84 Acts, ch 1065, §5

C93, §6B.35

2001 Acts, ch 44, §1

6B.36 Clerk to file record.

The clerk of the district court, in case an appeal is taken in condemnation proceedings, shall file with the county recorder:

1. A copy of the final judgment entry of the court showing the amount of damages determined on appeal.
2. A written statement by the clerk of all money received by the clerk in payment of damages, from whom received, to whom paid, and the amount paid to each claimant.
3. A copy of the description of the property condemned and the interest acquired in the property.

[C24, 27, 31, 35, 39, §**7855;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §472.36]

84 Acts, ch 1065, §6

C93, §6B.36

6B.37 Form of record — certificate.

Said papers shall be securely fastened together, arranged in the order named above, and be accompanied by a certificate of the officer filing the papers that the papers are true and correct copies of the original files in the proceedings and that the

statements accompanying the papers are true.

[C24, 27, 31, 35, 39, §**7856;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §472.37]

91 Acts, ch 116, §3

C93, §6B.37

6B.38 Record of proceedings.

The county recorder shall record the papers, statements, and certificate in the record of deeds and properly index them. The recorder may return the recorded instrument to the sender or dispose of that instrument if the sender does not wish to have the instrument returned. A document filed in the recorder's office before July 1, 1990, may be returned to the sender or disposed of if the sender does not wish to have the document returned and if there is an official copy of that document in the recorder's office.

The county recorder shall file a copy of the sheriff's statement required by section 6B.35, subsection 5, with the office of the secretary of state.

[C73, §1253; C97, §2008; C24, 27, 31, 35, 39, §**7857;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §472.38]

90 Acts, ch 1021, §3; 91 Acts, ch 116, §4

C93, §6B.38

99 Acts, ch 171, §16, 42

6B.39 Fee for recording.

The sheriff or clerk, as the case may be, shall collect from the condemner such fee as the county recorder would have legal right to demand for making such record, and pay such fee to the recorder upon presenting the papers for record.

[C24, 27, 31, 35, 39, §**7858;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §472.39]

C93, §6B.39

Recorder fee, §331.604

6B.40 Failure to record — liability.

Any sheriff, or clerk of the district court, as the case may be, who fails to present said papers, statements, and certificate for record, and any recorder who fails to record the same as above provided shall be liable for all damages caused by such failure.

[C24, 27, 31, 35, 39, §**7859;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §472.40]

C93, §6B.40

6B.41 Presumption.

The said original papers, statements, and certificate, or the record thereof shall be presumptive evidence of title in the condemner, and shall constitute constructive notice of the right of such condemner to the lands condemned.

[C73, §1253; C97, §2008; C24, 27, 31, 35, 39, §**7860;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §472.41]

C93, §6B.41

6B.42 Eminent domain — payment to displaced persons.

1. *a.* The acquiring agency shall provide to the person, in addition to any other sums of money in payment of just compensation, the payments and assistance required by law, in accordance with chapter 316.

b. A person aggrieved by a determination made as to eligibility for relocation assistance, a payment, or the amount of the payment, upon application, may have the matter reviewed by the appropriate acquiring agency.

c. An acquiring agency subject to this section that proposes to displace a person shall inform the person of the person's right to receive relocation assistance and payments, and of an aggrieved person's right to appeal a determination as to assistance and payments.

2. *a.* A utility or railroad subject to section 327C.2, or chapters 476, 478, 479, 479A, and 479B, authorized by law to acquire property by condemnation, which acquires the property of a person or displaces a person for a program or project which has received or will receive federal financial assistance as defined in section 316.1, shall provide to the person, in addition to any other sums of money in payment of just compensation, the payments and assistance required by law, in accordance with chapter 316.

b. A person aggrieved by a determination made by a utility as to eligibility for relocation assistance, a payment, or the amount of the payment, upon application, may have the matter reviewed by the utilities division of the department of commerce.

c. A person aggrieved by a determination made by a railroad as to eligibility for relocation assistance, a payment, or the amount of the payment, upon application, may have the matter reviewed by the state department of transportation.

d. A utility or railroad subject to this section that proposes to displace a person shall inform the person of the person's right to receive relocation assistance and payments, and of an aggrieved person's right to appeal to the utilities division of the department of commerce or the state department of transportation.

[C71, 73, 75, 77, 79, 81, §472.42; 81 Acts, ch 22, §21, 22]

89 Acts, ch 20, §18

C93, §6B.42

95 Acts, ch 192, §1; 99 Acts, ch 171, §17, 42

6B.43 Chief justice to prepare instructions.

Written instructions for members of compensation commissions shall be prepared under the direction of the chief justice of the supreme court and distributed to the sheriff in each county. The sheriff shall transmit copies of the instructions to each member of a compensation commission, and

such instructions shall be read aloud to each commission before it commences its duties.

[C71, 73, 75, 77, 79, 81, §472.43]

C93, §6B.43

6B.44 Taking property for highway — buildings and fences moved.

When real property or an interest therein is purchased or condemned for highway purposes and a fence or building is located on such property, the governmental agency shall be responsible for all costs incurred by the property owner in replacing or moving the fence or moving the building onto property owned by the landowner and abutting the property purchased or condemned for highway purposes, or the governmental agency may replace or move the fence or move the building. Such costs shall not constitute an additional element of damages which would permit unjust enrichment or a duplication of payments to any condemnee.

[C71, 73, 75, 77, 79, 81, §472.44]

C93, §6B.44

6B.45 Mailing copy of appraisal.

When any real property or interest in real property is to be purchased, or in lieu thereof to be condemned, the acquiring agency or its agent shall submit to the person, corporation, or entity whose property or interest in the property is to be taken, by ordinary mail, at least ten days prior to the date upon which the acquiring agency or its agent contacts the property owner to commence negotiations, a copy of the appraisal in its entirety upon such real property or interest in such real property prepared for the acquiring agency or its agent, which shall include, at a minimum, an itemization of the appraised value of the real property or interest in the property, any buildings on the property, all other improvements including fences, severance damages, and loss of access. The appraisal sent to the condemnee shall be that appraisal upon which the condemnor will rely to establish an amount which the condemnor believes to be just compensation for the real property. All other appraisals made on the property as a result of the condemnation proceeding shall be made available to the condemnee upon request. In lieu of an appraisal, a utility or person under the jurisdiction of the utilities board of the department of commerce, or any other utility conferred the right by statute to condemn private property, shall provide in writing by certified mail to the owner of record thirty days prior to negotiations, the methods and factors used in arriving at an offered price for voluntary easements including the range of cash amount of each component. An acquiring agency may obtain a signed written waiver from the landowner to allow negotiations to commence prior to the expiration of the applicable waiting period for the commencement of negotiations.

[C71, 73, 75, 77, 79, 81, §472.45]

C93, §6B.45

99 Acts, ch 171, §18, 42; 2000 Acts, ch 1179, §20, 30

6B.46 Special proceedings to condemn existing utility.

When any city has voted at an election to purchase, establish, erect, maintain and operate heating plants, waterworks, gasworks or electric light or power plants, or when it has voted to contract an indebtedness and issue bonds for such purposes, and in such city there exists any such utility, or incomplete parts thereof or more than one, not publicly owned, and the contract or franchise of the owner of the utility has expired or been surrendered, and the owner and the city cannot agree upon terms of purchase, it may, by resolution, proceed to acquire by condemnation any one or more of the utilities or incomplete parts thereof. When so acquired it may apply the proceeds of the bonds in payment therefor and in making extensions and improvements to such works or plants so acquired, but not more than one utility may be so acquired when the municipality is indebted in excess of the statutory limitation of indebtedness for such purposes for any such acquired property.

[C73, §474; C97, §722; S13, §722; C24, 27, 31, 35, 39, §**6135;** C46, 50, 54, 58, 62, 66, 71, §397.20; C73, 75, 77, 79, 81, §472.46]

C93, §6B.46

6B.47 Court of condemnation.

Upon the passage of the resolution as provided in section 6B.46 and the presentation of a certified copy thereof to the supreme court while in session, or to the chief justice of the supreme court, the court or chief justice shall within five days appoint as a court of condemnation three district court judges from three judicial districts, one of whom shall be from the district in which the city is located, if not a resident of the city, and shall enter an order requiring the judges to attend as such court of condemnation at the county seat of the county in which the city is located within ten days. The district court judges shall attend and constitute a court of condemnation.

[SS15, §722-a; C24, 27, 31, 35, 39, §**6136;** C46, 50, 54, 58, 62, 66, 71, §397.21; C73, 75, 77, 79, 81, §472.47]

C93, §6B.47

6B.48 Procedure.

Said court when it meets to organize or at any time during the proceedings, which may be adjourned from time to time for any purpose, may fix the time for the appearance of any person that any party desires to have joined in the proceedings, and whom the court deems necessary. The time for appearance shall be sufficiently remote to serve notice upon the parties, but if the time for appearance occurs after the proceedings are begun, the

proceedings may be reviewed by the court to give all parties a full opportunity to be heard.

[SS15, §722-a; C24, 27, 31, 35, 39, §**6137;** C46, 50, 54, 58, 62, 66, 71, §397.22; C73, 75, 77, 79, 81, §472.48]

C93, §6B.48

6B.49 Notice — service.

Persons not voluntarily appearing, but having any right, title, or interest in or to the property which is the subject of condemnation, or any part thereof, including all leaseholders, mortgagees and trustees of bondholders, who are to be made parties to the proceedings shall be served with notice of the proceedings and the time and place of meeting of the court in the same manner and for the same length of time as for the service of original notice, either by personal service, or by service by publication, the time so set being the time at which the parties so served are required to appear, and actual personal service of the notice within or without the state shall supersede the necessity for publication.

[SS15, §722-a; C24, 27, 31, 35, 39, §**6138;** C46, 50, 54, 58, 62, 66, 71, §397.23; C73, 75, 77, 79, 81, §472.49]

C93, §6B.49

Time and manner of service, R.C.P. 1.302 – 1.315

6B.50 Powers of court — duty of clerk — vacancy.

The court of condemnation shall have power to summon and swear witnesses, take evidence, order the taking of depositions, require the production of any books or papers, and may appoint a shorthand reporter. It shall perform all the duties of commissioners in the condemnation of property. The duties and the method of procedure and condemnation, including provisions for appeal shall be except as otherwise specifically provided, as provided for the taking of private property for works of internal improvement. The clerk of the district court of the county where the city is located shall perform all of the duties required of the sheriff in the condemnation; and in case of a vacancy in the court, the vacancy shall be filled in the manner in which the original appointment was made. When necessary by reason of a vacancy, the court may review any evidence in its record.

[SS15, §722-a; C24, 27, 31, 35, 39, §**6139;** C46, 50, 54, 58, 62, 66, 71, §397.24; C73, 75, 77, 79, 81, §472.50]

C93, §6B.50

6B.51 Costs — expenses.

The costs of the proceedings shall be the same and paid in the same manner as in proceedings in the district court, and the district court judges of the court of condemnation shall receive, while engaged in such service, their actual expenses, which expenses shall be taxed as costs in the case.

[S13, §722-b; C24, 27, 31, 35, 39, §**6140;** C46, 50, 54, 58, 62, 66, 71, §397.25; C73, 75, 77, 79, 81, §472.51]

C93, §6B.51

Costs generally, chapter 625

6B.52 Renegotiation of damages.

Whenever property or an interest therein has been taken by condemnation or has been purchased for a public use and a settlement for construction or maintenance damages has been thereafter entered into pursuant to said condemnation or purchase, the owner shall have five years from the date of said settlement to renegotiate construction or maintenance damages not apparent at the time of said settlement. The condemner or purchaser shall give written notice to the owner of such right of renegotiation at the time said settlement is entered into.

[C73, 75, 77, 79, 81, §472.52]

C93, §6B.52

6B.53 Procedure for homesteading projects.

If the purpose of condemnation is to obtain property for use as part of an Iowa homesteading project under section 16.14, the application required under section 6B.3 may contain a verified statement that the property sought to be condemned is abandoned and deteriorating in condition, or is inhabited but is not safe for human habitation, or is or is likely to become a public nuisance, and that the property is suitable for use and is to be used in an Iowa homesteading project. Other information may be included. The statement must be verified by the Iowa finance authority or by a local agency authorized under rules of the authority. Upon proper filing of the statement and the report of the condemnation commission assessing damages, and deposit of the amount assessed with the sheriff, the applicant for condemnation may take possession as provided in section 6B.25 if the property is abandoned, or may take steps to obtain possession after ninety days from the date of the filing of the statement, report, and deposit, if the property is inhabited.

[C77, 79, 81, §472.53]

C93, §6B.53

6B.54 Federally assisted project and displacing activities — acquisition policies.

For any project or displacing activity that has received or will receive federal financial assistance as defined in section 316.1, for any state-funded projects, or for any other public improvement for which condemnation is sought, an acquiring agency shall, at a minimum, satisfy the following policies:

1. Every reasonable effort shall be made to acquire expeditiously real property by negotiation.

2. Real property shall be appraised as re-

quired by section 6B.45 before the initiation of negotiations, and the owner or the owner's designated representative shall be given an opportunity to accompany at least one appraiser of the acquiring agency during an inspection of the property, except that an acquiring agency may prescribe a procedure to waive the appraisal in cases involving the acquisition of property with a low fair market value. In lieu of an appraisal, a utility or person under the jurisdiction of the utilities board of the department of commerce, or any other utility conferred the right by statute to condemn private property, shall provide in writing by certified mail to the owner of record thirty days before negotiations, the methods and factors used in arriving at an offered price for voluntary easements including the range of cash amount of each component.

3. Before the initiation of negotiations for real property, the acquiring agency shall establish an amount which it believes to be just compensation for the real property, and shall make a prompt offer to acquire the property for the full amount established by the agency. In no event shall the amount be less than the lowest appraisal of the fair market value of the property. In the case of a utility or person under the jurisdiction of the utilities board of the department of commerce, or any other utility conferred the right by statute to condemn private property, the amount shall not be less than the amount indicated by the methods and factors used in arriving at an offered price for a voluntary easement.

4. The construction or development of a public improvement shall be so scheduled that, to the greatest extent practicable, no person lawfully occupying real property shall be required to move from a dwelling or to move the person's business or farm operation without at least ninety days' written notice of the date by which the move is required.

5. If an owner or tenant is permitted to occupy the real property acquired on a rental basis for a short term or for a period subject to termination on short notice, the amount of rent required shall not exceed the fair rental value of the property to a short-term occupier.

6. In no event shall the time of condemnation be advanced, or negotiations or condemnation and the deposit of funds in court for the use of the owner be deferred, or any other coercive action be taken to compel an agreement on the price to be paid for the property.

7. If an interest in real property is to be acquired by exercise of the power of eminent domain, formal condemnation proceedings shall be instituted. The acquiring agency shall not intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of the owner's real property.

8. If the acquisition of only a portion of property would leave the owner with an uneconomical remnant, the acquiring agency shall offer to acquire that remnant. For the purposes of this chapter, an *"uneconomical remnant"* is a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property, where the acquiring agency determines that the parcel has little or no value or utility to the owner.

9. A person whose real property is being acquired in accordance with this chapter, after the person has been fully informed of the person's right to receive just compensation for the property, may donate the property, any part of the property, any interest in the property, or any compensation paid for it as the person may determine.

10. As soon as practicable after the date of payment of the purchase price or the date of deposit in court of funds to satisfy the award of compensation in a condemnation proceeding to acquire real property, whichever is earlier, the acquiring agency shall reimburse the owner, to the extent the acquiring agency deems fair and reasonable, for expenses the owner necessarily incurred for all of the following:

a. Recording fees, transfer taxes, and similar expenses incidental to conveying the real property to the acquiring agency.

b. Penalty costs for full or partial prepayment of any preexisting recorded mortgage entered into in good faith encumbering the real property.

Payments and expenditures under this subsection are incident to and arise out of the program or project for which the acquisition activity takes place. Such payments and expenditures may be made from the funds made available for the program or project.

A person aggrieved by a determination as to the eligibility for or amount of a reimbursement may have the matter reviewed in accordance with section 316.9.

11. An owner shall not be required to surrender possession of real property before the acquiring agency concerned pays the agreed purchase price.

89 Acts, ch 20, §19
CS89, §472.54
C93, §6B.54
99 Acts, ch 171, §19, 20, 42

6B.55 Buildings, structures, and improvements on federally assisted programs and projects.

For any program or project that has received or will receive federal financial assistance as defined in section 316.1, for any state-funded projects, or for any other public improvement for which condemnation is sought, an acquiring agency shall at a minimum satisfy the following policies:

1. If an interest in real property is acquired, the acquiring agency shall acquire an equal interest in all buildings, structures, or other improvements located upon the real property which are required to be removed from the real property

or which are determined to be adversely affected by the use to which the real property will be put.

2. For the purpose of determining the just compensation to be paid for any building, structure, or other improvement required to be acquired under this section, the building, structure, or other improvement shall be deemed to be a part of the real property to be acquired, notwithstanding the right or obligation of a tenant of the lands, as against the owner of any other interest in the real property, to remove the building, structure, or improvement at the expiration of the tenant's term. The fair market value which the building, structure, or improvement contributes to the fair market value of the real property to be acquired, or the fair market value of the building, structure, or improvement for removal from the real property, whichever is the greater, shall be paid to the owner of the building, structure, or improvement.

3. Payment for the building, structure, or improvement under this section shall not result in duplication of any payments otherwise authorized by state law. The payment shall not be made unless the owner of the land involved disclaims all interest in the improvements of the tenant. In consideration for any such payment, the tenant shall assign, transfer, and release all the tenant's right, title, and interest in and to the improvements. Nothing with regard to the above-mentioned acquisition of buildings, structures, or other improvements shall be construed to deprive the tenant of any rights to reject payment and to obtain payment for the property interests in accordance with other laws of this state.

89 Acts, ch 20, §20
CS89, §472.55
C93, §6B.55
99 Acts, ch 171, §21, 42

6B.56 Disposition of condemned property.

1. If real property condemned pursuant to this chapter is not used for the purpose stated in the application filed pursuant to section 6B.3 and the condemner seeks to dispose of the real property, the condemner shall first offer the property for sale to the prior owner of the condemned property as provided in this section. For purposes of this section, the prior owner of the real property includes the successor in interest of the real property.

2. Before the real property may be offered for sale to the general public, the condemner shall notify the prior owner of the real property condemned in writing of the condemner's intent to dispose of the real property, of the current appraised value of the real property, and of the prior owner's right to purchase the real property within sixty days from the date the notice is served at a price equal to the current appraised value of the real property. The notice sent by the condemner as provided in this subsection shall be filed with the office of the recorder in the county in which the real property is located.

3. If the prior owner elects to purchase the real property at the price established in subsection 2, before the expiration of the sixty-day period, the prior owner shall notify the condemner in writing of this intention and file a copy of this notice with the office of the recorder in the county in which the real property is located.

4. The provisions of this section do not apply to the sale of unused right-of-way property as provided in chapter 306.

97 Acts, ch 149, §1

6B.57 Procedural compliance.

If an acquiring agency makes a good faith effort to serve, send, or provide the notices or documents required under this chapter to the owner and any contract purchaser of private property that is or may be the subject of condemnation, but fails to provide the notice or documents to the owner and any contract purchaser, such failure shall not constitute grounds for invalidation of the condemnation proceeding if the chief judge of the judicial district determines that such failure can be corrected by delaying the condemnation proceedings to allow compliance with the requirement or such failure does not unreasonably prejudice the owner or any contract purchaser.

99 Acts, ch 171, §22, 42; 2000 Acts, ch 1179, §21, 30

6B.58 Acquiring agency — definition.

For purposes of this chapter, an *"acquiring agency"* means the state of Iowa or any person or entity conferred the right by statute to condemn private property or to otherwise exercise the power of eminent domain.

99 Acts, ch 171, §23, 42

6B.59 Sale of acquired property — reimbursement to landowner.

If an acquiring agency acquires property by condemnation, or by otherwise exercising the power of eminent domain, and that property is later sold by the acquiring agency for more than the acquisition price paid to the landowner, the acquiring agency shall pay to the landowner from whom the property was acquired the difference between the price at which it was acquired and the price at which it was sold by the acquiring agency less the cost of any improvements made to or benefiting the land by the acquiring agency. This section does not apply to property acquired by the state department of transportation.

99 Acts, ch 171, §24, 42; 2000 Acts, ch 1058, §1

SUBTITLE 4

EXECUTIVE BRANCH

CHAPTER 7

GOVERNOR AND LIEUTENANT GOVERNOR

7.1 Office — secretary.

The governor shall keep the governor's office at the seat of government, in which shall be transacted the business of the executive department of the state. The governor shall keep a secretary at the office during the governor's absence.

[C73, §55; C97, §60; C24, 27, 31, 35, 39, §**78;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §7.1]

7.2 Journal.

The governor shall cause a journal to be kept in the executive office, in which a record shall be made of each official act as done, except if in cases of emergency an act is done away from the office, such entry shall be made as soon thereafter as may be. The governor shall cause a like military record to be kept of the acts done as commander in chief.

[C73, §56, 57; C97, §61; C24, 27, 31, 35, 39, §**79;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §7.2]

7.3 Counsel.

Whenever the governor is satisfied that an action or proceeding has been commenced which may affect the rights or interests of the state, the governor may employ counsel to protect such rights or interests; and when any civil action or proceeding has been or is about to be commenced by the proper officer in behalf of the state, the governor may employ additional counsel to assist in the cause.

[C51, §40; R60, §44; C73, §59; C97, §63; C24, 27, 31, 35, 39, §**80;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §7.3]

Employment by executive council, §13.7

7.4 Expenses.

The expenses thus incurred, and those caused in executing the laws, may be allowed by the governor and paid from the contingent fund.

[C51, §41; R60, §45; C73, §60; C97, §64; C24, 27, 31, 35, 39, §**81;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §7.4]

7.5 Highway construction patents.

The governor, whenever the governor deems such action to be in the interest of the public, shall have power to direct the attorney general to appear for and on behalf of any county, city or other municipality of this state or for and on behalf of any officer thereof or contractor therewith, whenever any such county, city or other municipality or officer or contractor is a party to any action or proceeding in any court wherein is involved the validity of any alleged patent on any matter or thing entering into highway, bridge, or culvert construction, or on any parts thereof, and may employ such legal assistance in addition to the attorney general as the governor may deem necessary and may pay for the same out of any fund in the state treasury not otherwise appropriated. Whenever the attorney general is so directed by the governor it shall be the attorney general's duty to comply therewith.

[S13, §64-a; C24, 27, 31, 35, 39, §**82;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §7.5]

Employment by executive council, §13.7

7.6 Reward for arrest.

Whenever the governor is satisfied that a crime has been committed within the state, punishable by imprisonment in the penitentiary for a term of

ten years or more, and the person committing the same has not been arrested or has escaped from arrest or custody or the person's whereabouts is unknown, the governor may in the governor's discretion, offer a reward not exceeding five hundred dollars for the arrest and delivery to the proper authorities of such persons, which reward, upon the certificate of the governor that the same has been earned, shall be audited and paid by the state.

The reward shall be paid only upon the conviction of the person, and if appealed, only after a final decision of an appellate court has been rendered which affirms that conviction.

[R60, §57; C73, §58; C97, §62; C24, 27, 31, 35, 39, §**83;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §7.6]

7.7 Accounting.

All fees paid to the governor shall be turned over to the treasurer of state.

[SS15, §4-e; C24, 27, 31, 35, 39, §**84;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §7.7]

7.8 Salary — governor, lieutenant governor.

The salary of the governor shall be as fixed by the general assembly.

The salary, payment of expenses, and any per diem of the lieutenant governor shall be as fixed by the general assembly.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §7.8]
90 Acts, ch 1223, §8

7.9 Federal funds accepted.

The governor is authorized to accept for the state, the funds provided by any Act of Congress for the benefit of the state of Iowa, or its political subdivisions, provided there is no agency to accept and administer such funds, and the governor is authorized to administer or designate an agency to administer the funds until such time as an agency of the state is established for that purpose.

[C66, 71, 73, 75, 77, 79, 81, §7.9]

7.10 Emergency highway peace officers.

Whenever the governor is satisfied that a state of emergency exists, or is likely to exist, on the public streets or highways of this state, because of violations of chapter 321, the governor shall designate any employee or employees of this state as peace officers pursuant to section 801.4, subsection 11, paragraph *"j"*, until such time as the governor is satisfied the state of emergency is ended.

[C66, 71, 73, 75, 77, 79, 81, §7.10]

7.11 Purpose.

Individuals so designated shall have the full duties and rights of peace officers under the Code, for the purpose of enforcing the motor vehicle laws and ordinances of this state, and shall be provided with an identifying badge and card.

[C66, 71, 73, 75, 77, 79, 81, §7.11]

7.12 Supervisor designated.

The governor, in exercising the power conferred by sections 7.10 and 7.11, may designate one employee or officer of the state to supervise all persons designated as peace officers hereunder, and they shall be fully responsible to that employee or officer for all acts performed pursuant to these sections.

[C66, 71, 73, 75, 77, 79, 81, §7.12]

7.13 Governor-elect expense fund.

There is hereby created as a permanent fund in the office of the treasurer of state a fund to be known as the *"governor-elect expense fund"*. For the purpose of establishing and maintaining said fund, for each biennium, there is hereby appropriated thereto from funds in the general fund not otherwise appropriated the sum of ten thousand dollars, or so much thereof as may be necessary, to pay for office space, supplies, postage, and secretarial and clerical salaries after the day of the election and before the day of the inauguration for a first term governor-elect. Any balance in said fund at the end of each biennium shall revert to the general fund. Said fund shall be subject at all times to the warrant of the director of the department of administrative services drawn upon written requisition of the governor-elect. In event of a contested election, no distribution of the fund will be made until such time as the general assembly certifies the results of the election.

[C66, 71, 73, 75, 77, 79, 81, §7.13]
2003 Acts, ch 145, §286

7.14 Disability of governor to act.

1. Whenever it appears that the governor is unable to discharge the duties of office for reason of disability pursuant to Article IV, section 17, Constitution of Iowa, the person next in line of succession to the office of the governor, or the chief justice, may call a conference consisting of the person who is chief justice, the person who is director of mental health, and the person who is the dean of medicine at the state university of Iowa. Provided, if either the director or dean is not a physician duly licensed to practice medicine by this state the director or dean may assign a member of the director's or dean's staff so licensed to assist and advise on the conference. The three members of the conference shall within ten days after the conference is called examine the governor. Within seven days after the examination, or if upon attempting to examine the governor the members of the conference are unable to examine the governor because of circumstances beyond their control, they shall conduct a secret ballot and by unanimous vote may find that the governor is temporarily unable to discharge the duties of the office.

2. The finding of or failure to find a disability

shall be immediately made public, and if the governor is found to be unable to discharge the duties of the office, the person next in line of succession to the office of governor shall be immediately notified. After receiving the notification that person may, under Article IV, sections 17 and 19, Constitution of the State of Iowa, become governor until the disability is removed.

3. Whenever a governor who is unable to discharge the duties of the office believes the disability to be removed, the governor may call a conference consisting of the three persons referred to as members of such a conference in subsection 1. The three members of the conference shall within ten days examine the governor. Within seven days after the examination they shall conduct a secret ballot and by unanimous vote may find the disability removed.

4. The finding of or failure to find the disability removed shall be immediately made public.

[C66, 71, 73, 75, 77, 79, 81, §7.14]

91 Acts, ch 97, §2; 96 Acts, ch 1129, §2

7.15 Federal funds for highway safety.

The governor, in addition to other duties and responsibilities conferred by the Constitution and laws of this state, is hereby empowered to contract for the benefits available to this state under any Act of Congress for highway safety, law enforcement, or other related programs, and in so doing, to co-operate with federal and state agencies, private and public organizations, and with individuals, to effectuate the purposes of these enactments. The governor shall be responsible for and is hereby empowered to administer, either through the governor's office or through one or more state departments or agencies designated by the governor or any combination of the foregoing the highway safety, law enforcement and related programs of this state and those of its political subdivisions, all in accordance with said Acts and the Constitution of the state of Iowa, in implementation thereof.

[C71, 73, 75, 77, 79, 81, §7.15]

Department of public safety designated as state highway safety agency to receive federal funds; Executive Order No. 23; June 9, 1986

7.16 Vacancies filled at less than statutory salary.

The governor or other appointing authority may, when appointing or employing any person for which a salary is specifically provided by the appropriation bill, appoint a person to fill the vacancy at a lesser salary than that provided by the appropriation bill.

[C71, 73, 75, 77, 79, 81, §7.16]

7.17 Office of administrative rules co-ordinator.

The governor shall establish the office of the administrative rules co-ordinator, and appoint its staff, which shall be a part of the governor's office. The administrative rules co-ordinator shall receive all notices and rules adopted pursuant to chapter 17A and provide the governor with an opportunity to review and object to any rule as provided in chapter 17A. The administrative rules coordinator in consultation with the administrative code editor shall prescribe a uniform style and form by which an agency shall prepare and file a rule pursuant to chapter 17A, which shall correlate each rule to a uniform numbering system devised by the administrative rules co-ordinator. The administrative rules co-ordinator shall review all submitted rules for style and form and may return or revise a rule which is not in proper style and form. In prescribing the style and form, the administrative rules co-ordinator shall require that the agency include a reference to the statute which the rules are intended to implement.

[C79, 81, §7.17]

90 Acts, ch 1266, §28; 91 Acts, ch 258, §7

7.18 Model community projects.

1. As used in this section, unless the context otherwise suggests, *"community"* means a city, county, or any combination of cities and counties.

2. During any project, pilot project, or similar initiative undertaken by the governor or the executive branch which includes the designation of a model community in the state, the approval of all of the following entities must be obtained by a simple majority vote prior to the granting of an official model community designation and prior to any state financial support being disbursed to any person under the project, pilot project, or similar initiative:

a. The city council of any city included in a proposed model community.

b. The county board of supervisors of a county included in a proposed model community.

c. Each school board of a school district serving students in a proposed model community.

2001 Acts, ch 40, §1

7.19 Reserved.

7.20 Executive order — use of vacant school property.

The governor shall issue an executive order requiring all state agencies to consider the leasing of a vacant facility or building which is appropriately located and which is owned by a public school corporation before a state agency leases, purchases, or constructs a facility or building. The state agency may lease a facility or building owned by a public school corporation with an option to purchase the facility or building in compliance with section 297.22. The lease shall provide that the public school corporation may terminate the lease if the corporation needs to use the facility or build-

ing for school purposes. The public school corporation shall notify the state agency at least thirty days before the termination of the lease.

[82 Acts, ch 1148, §1]

97 Acts, ch 184, §1

7.21 Reserved.

7.22 Exchange of offenders under treaty — consent by governor.

If a treaty in effect between the United States and a foreign country provides for the transfer or exchange of convicted offenders to the country of which the offenders are citizens or nationals, the governor or the governor's designee, on behalf of the state and subject to the terms of the treaty, may authorize the transfer or exchange of offenders.

83 Acts, ch 203, §13

CHAPTER 7A

OFFICIAL REPORTS AND MISCELLANEOUS PUBLICATIONS

7A.1 Official reports — preparation.

State officials, boards, commissions, and heads of departments shall prepare and file written official reports, in simple language and in the most concise form consistent with clearness and comprehensiveness of matter, required by law or by the governor.

Before filing any report its author shall carefully edit the same and strike therefrom all minutes of proceedings, and all correspondence, petitions, orders, and other matter which can be briefly stated, or which is not important information concerning public affairs, and consolidate so far as practicable all statistical tables.

Any report failing to comply substantially with this section shall be returned to its author for correction, and until made so to comply shall not be printed.

This section shall not be construed as depriving the director of the department of administrative services of the right to edit and revise said report.

[C24, 27, 31, 35, 39, §**244;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §17.1]

C93, §7A.1

98 Acts, ch 1119, §25; 98 Acts, ch 1164, §40; 2003 Acts, ch 145, §106

7A.2 Made to governor.

All official reports shall be made to the governor unless otherwise provided.

Reports after being filed with the governor and considered by the governor shall be delivered to the director of the department of administrative services.

[C24, 27, 31, 35, 39, §**245;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §17.2]

C93, §7A.2

98 Acts, ch 1119, §25; 98 Acts, ch 1164, §40; 2003 Acts, ch 145, §107

Departmental annual reports to governor and legislature; see §7E.3(4)

7A.2A Annual reports — financial information.

An annual report issued by a state official,

board, commission, department, or independent agency that is required by law to be submitted to the general assembly shall include a financial information section pertaining to the topic of the report. The financial information shall include but is not limited to budget and actual revenue and expenditure information for the fiscal year covered by the annual report and for the previous fiscal year and may include budget information for future fiscal years. In addition to any narrative, the financial information shall be provided in graphic form utilizing a columnar format.

2003 Acts, ch 57, §1

7A.3 Biennial reports — time covered and date of filing.

Reports of the following officials and departments shall cover the biennial period ending June 30 in each even-numbered year, and shall be filed as soon as practicable after the end of the reporting period:

1. Director of the department of administrative services on the fiscal condition of the state.
2. Treasurer of state as to the condition of the treasury.
3. Director of the department of education.
4. Director of the department of human services.
5. Board of regents.
6. State historical society board of trustees.
7. State librarian.
8. Commission of libraries.
9. Department of administrative services.
10. Director of department of natural resources.
11. Adjutant general.

The officials and departments required by this section to file biennial reports shall, in addition thereto, in each odd-numbered year, file summary reports relating to their operations for the preceding fiscal year. Such reports shall be filed as soon as practicable after June 30 of each odd-numbered year and shall be as detailed as may be required by the governor, or in case the reports are to be filed with the general assembly, the presiding officers of the two houses of the general assembly.

The officials and departments required by this section to file reports shall submit the reports on standardized forms furnished by the director of the department of management. All officials and agencies submitting reports shall consult with the director of the department of management and shall devise standardized report forms for submission to the governor and members of the general assembly.

[C73, §125; C97, §122; S13, §122; C24, 27, 31, 35, 39, §**246;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §17.3]

83 Acts, ch 96, §157, 159; 85 Acts, ch 212, §21; 86 Acts, ch 1245, §904; 91 Acts, ch 258, §16

C93, §7A.3

93 Acts, ch 48, §1; 94 Acts, ch 1107, §1; 98 Acts, ch 1119, §25; 98 Acts, ch 1164, §40; 2001 Acts, ch 129, §1; 2003 Acts, ch 145, §108 – 110

7A.4 Annual reports — time covered and date of filing.

Reports of the following officials and departments shall cover the year ending December 31 of each year, and shall be filed as soon as practicable after said date:

1. Commissioner of insurance.
2. State geologist.
3. Fire marshal.
4. College student aid commission.

[C24, 27, 31, 35, 39, §**247;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §17.4]

88 Acts, ch 1134, §13; 90 Acts, ch 1253, §122

C93, §7A.4

98 Acts, ch 1119, §7; 2004 Acts, ch 1082, §1

Subsection 2 stricken and former subsections 3 – 5 renumbered as 2 – 4

7A.5 Governor.

The biennial report of the governor to the general assembly on reprieves, commutations, pardons, and remission of fines and forfeitures shall cover the two years ending with December 31 immediately preceding the convening of the general assembly in regular session, in odd-numbered years, and shall be filed as soon as practicable after said date.

[C24, 27, 31, 35, 39, §**248;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §17.5]

C93, §7A.5

7A.6 Attorney general.

The biennial report of the attorney general shall cover the two-year period ending with December 31 in even-numbered years and shall be filed as soon as practicable after the expiration of said period but not later than March 1.

[C24, 27, 31, 35, 39, §**249;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §17.6]

C93, §7A.6

7A.7 Reserved.

7A.8 Superintendent of banking.

The annual report of the superintendent of banking shall cover the year ending June 30 of each year, and shall be filed as soon as practicable after said date and not later than December 31.

[C24, 27, 31, 35, 39, §**251;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §17.8]

91 Acts, ch 220, §1

C93, §7A.8

Annual report, §524.216

7A.9 State department of transportation.

The annual report of the state department of transportation shall cover the year ending June 30 and shall be filed not later than September 1 of

each year.

[C24, 27, 31, 35, 39, §**252;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §17.9]

84 Acts, ch 1102, §1

C93, §7A.9

7A.10 Utilities board.

The annual report of the utilities board shall, as to all statistical data, cover the year ending December 31 preceding the filing of the report, and the proceedings of the board to date of filing the report each year. The report shall be filed on or before December 1. The board shall determine the manner in which the annual report shall be published.

[C24, 27, 31, 35, 39, §**253;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §17.10]

88 Acts, ch 1134, §14

C93, §7A.10

7A.11 Documents filed with the general assembly.

1. It is the intent of the general assembly that a department or official may notify the chief clerk of the house of representatives and the secretary of the senate of the availability of documents and materials other than those covered by subsection 2.

2. A department or official required to file a document with the general assembly shall only be required to send one copy of the document to each of the following:

a. The chief clerk of the house of representatives.

b. The secretary of the senate.

c. Each caucus or research staff director of the general assembly.

3. The chief clerk of the house of representatives and the secretary of the senate shall transmit a list of the documents received, and a list of the documents and materials available to the general assembly to the legislative services agency, which shall maintain the lists, as well as a list of addresses where copies of the documents may be ordered. The legislative services agency shall periodically distribute copies of these lists to members of the general assembly. The chief clerk of the house of representatives and the secretary of the senate may transmit the actual documents received to the legislative services agency for temporary storage.

91 Acts, ch 47, §1

CS91, §17.11

C93, §7A.11

96 Acts, ch 1099, §5; 2003 Acts, ch 35, §44, 49

7A.11A Reports to the general assembly.

All reports required to be filed with the general assembly by a state department or agency shall be filed by delivering one printed copy and one copy in electronic format as prescribed by the secretary of the senate and the chief clerk of the house.

93 Acts, ch 178, §27

7A.12 Delay.

Should the governor deem the delay in filing a report to be unreasonable the governor shall take such steps as will correct the delinquency.

[C24, 27, 31, 35, 39, §**255;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §17.12]

C93, §7A.12

7A.13 Governor may grant extension.

The governor shall have authority to grant an extension of time for the completion of any report or any portion thereof, but in the case of any delay deemed by the governor to be unnecessary or unreasonable the governor shall take whatever steps may be necessary to have the delayed report prepared for filing.

[C24, 27, 31, 35, 39, §**256;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §17.13]

C93, §7A.13

7A.14 Number of copies — style.

The annual and biennial reports shall be published, printed, and bound in such number as the director of the department of administrative services may order. The officials and heads of departments shall furnish the director with information necessary to determine the number of copies to be printed.

They shall be printed on good paper, in legible type with pages substantially six inches by nine inches in size. They may be divided for binding where one portion should receive larger distribution than another, or be issued in parts or sections for greater convenience.

[C73, §130; C97, §125; S13, §125; C24, 27, 31, 35, 39, §**257;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §17.14]

C93, §7A.14

98 Acts, ch 1119, §25; 98 Acts, ch 1164, §40; 2003 Acts, ch 145, §111

7A.15 through 7A.19 Repealed by 2003 Acts, ch 35, § 47, 49; 2003 Acts, ch 145, § 291. See § 2.9.

7A.20 Miscellaneous documents. Repealed by 2003 Acts, ch 35, § 47 – 49.

7A.21 and 7A.22 Repealed by 2003 Acts, ch 35, § 47, 49; 2003 Acts, ch 145, § 291. See § 2A.5.

7A.23 Price of departmental reports.

The director of the department of administrative services shall establish and fix a selling price for all state departmental reports and any other state publications the director may designate, which price per volume shall be the amount

charged any person, other than public officials, who purchases the publication. The price shall cover the cost of printing and distribution. The director may distribute gratis to state or local public officials or offices, as the director deems necessary, copies of departmental annual reports.

[C35, §265-e1; C39, §**265.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §17.23]

84 Acts, ch 1067, §5

C93, §7A.23

98 Acts, ch 1119, §25; 98 Acts, ch 1164, §40; 2003 Acts, ch 145, §112

7A.24 Reserved.

7A.25 and 7A.26 Repealed by 2003 Acts, ch 35, § 47, 49; 2003 Acts, ch 145, § 291. See § 2A.5.

7A.27 Other necessary publications — when necessary to sell.

Other miscellaneous documents, reports, bulletins, books, and booklets may be published that are needed for the use of the various officials and departments of state, or are of value for the information of the general assembly or the public, in form and number most useful and convenient, to be determined by the director of the department of administrative services.

When such publications, except supplements to the Iowa administrative code, paid for by public funds furnished by the state, contain reprints of statutes or rules, or both, they shall be sold and distributed at cost by the department ordering the publication if the cost per publication is one dollar or more, unless a central library or depository is established. Such publications shall be obtained from the director of the department of administrative services on requisition by the department ordering the publication, and the selling price, if any, shall be determined by the director of the department of administrative services by dividing the total cost of printing, paper, distribution, and binding by the number printed. The price shall be set at the nearest multiple of ten to the quotient thus obtained. Distribution of such publications shall be made by the director gratis to public officers, purchasers of licenses from state departments required by statute, and departments. Funds from the sale of such publications shall be deposited monthly in the general fund of the state except the cost of distribution shall be deposited in the printing revolving fund established in section 8A.345.

[C24, 27, 31, 35, 39, §**269;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §17.27]

C93, §7A.27

98 Acts, ch 1119, §25; 98 Acts, ch 1164, §40; 2003 Acts, ch 145, §113

Additional geological reports, §456.9
Publication of director of institutions bulletins, §218.46
Publication of parts of Code or administrative code, §2B.21

7A.28 Governor may fix filing date.

The governor shall have the right to fix a date for the completion of or filing of any copy or manuscript for any miscellaneous document or other publication, or for any portion of the manuscript, and to compel compliance with such orders the same as in the case of the official reports. The director of the department of administrative services shall report to the governor any failure to furnish manuscript or other delay affecting any publication.

[C24, 27, 31, 35, 39, §**270;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §17.28]

C93, §7A.28

98 Acts, ch 1119, §25; 98 Acts, ch 1164, §40; 2003 Acts, ch 145, §114

7A.29 Title pages — complimentary insertions.

The director of the department of administrative services shall provide the necessary printer's copy for a suitable title page for each publication requiring such title which shall contain the name of the author, but such title shall not have written or printed thereon or attached thereto the words "Compliments of" followed by the name of the author, nor any other words of similar import.

[C24, 27, 31, 35, 39, §**271;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §17.29]

C93, §7A.29

98 Acts, ch 1119, §25; 98 Acts, ch 1164, §40; 2003 Acts, ch 145, §115

7A.30 Inventory of state property.

Each state board, commission, department, and division of state government and each institution under the control of the department of human services, the Iowa department of corrections and the state board of regents and each division of the state department of transportation are responsible for keeping a written, detailed, up-to-date inventory of all real and personal property belonging to the state and under their charge, control, and management. The inventories shall be in the form prescribed by the director of the department of administrative services.

Inventories maintained in the files of each such agency of state government shall be open to public inspection and available for the information of the executive council and director of the department of administrative services.

[C46, 50, 54, 58, §17.30 – 17.32; C62, 66, 71, 73, 75, 77, 79, 81, §17.30]

83 Acts, ch 96, §157, 159; 85 Acts, ch 195, §4

C93, §7A.30

2003 Acts, ch 145, §286

CHAPTER 7B

JOB TRAINING PARTNERSHIP PROGRAM

Repealed by 2001 Acts, ch 61, §18

CHAPTER 7C

PRIVATE ACTIVITY BOND ALLOCATION ACT

7C.1 Short title.

This chapter shall be known and may be cited as the *"Private Activity Bond Allocation Act"*.

85 Acts, ch 225, §3

7C.2 Declaration of intent.

It is the intention of the general assembly in enacting this chapter to:

1. Implement section 146 of the Internal Revenue Code by providing a different formula for allocating the state ceiling among the various governmental units which are authorized to issue private activity bonds under the laws of this state.

2. Maximize the availability of the state ceiling to the issuers of private activity bonds within the state and thereby maximize the economic benefit to the citizens of the state from the issuance of private activity bonds.

85 Acts, ch 225, §4; 87 Acts, ch 171, §1

7C.3 Definitions.

For the purposes of this chapter, unless the context otherwise requires:

1. *"Allocation"* means that portion of the state ceiling which is allocated and certified to a political subdivision hereby or by the governor's designee pursuant to section 7C.8 with respect to an issue of bonds for a specific project or purpose.

2. *"Bond"* or *"private activity bond"* means a private activity bond as defined in section 141 of the Internal Revenue Code.

3. *"Carryforward project"* means a carryforward project or carryforward purpose as defined in section 146(f) of the Internal Revenue Code.

4. *"First-time farmer"* means a first-time farmer as defined in section 147(c) of the Internal Revenue Code.

5. *"Governor's designee"* means the person, department, or authority designated by the governor to administer this chapter.

6. *"Internal Revenue Code"* means the Internal Revenue Code as defined in section 422.3.

7. *"Political subdivision"* means a political subdivision, authority, or department of the state which is authorized under the laws of the state to issue private activity bonds.

8. *"Qualified mortgage bond"* means a qualified mortgage bond as defined in section 143(a) of the Internal Revenue Code.

9. *"Qualified small issue bond"* means a qualified small issue bond as defined in section 144(a) of the Internal Revenue Code.

10. *"Qualified student loan bond"* means a qualified student loan bond as defined in section 144(b) of the Internal Revenue Code.

11. *"State ceiling"* means the same as defined in section 146(d) of the Internal Revenue Code.

85 Acts, ch 225, §5; 87 Acts, ch 171, §2

7C.4 Maximum amount of bonds.

The aggregate principal amount of bonds which are subject to section 146 of the Internal Revenue Code which may be issued by all political subdivisions during a calendar year shall not exceed the state ceiling for that calendar year, except as provided in section 7C.8.

85 Acts, ch 225, §6; 87 Acts, ch 171, §3

7C.4A Allocation of state ceiling.

For each calendar year, the state ceiling shall be allocated among bonds issued for various purposes as follows:

1. Thirty percent of the state ceiling shall be allocated solely to the Iowa finance authority for the following purposes:

a. Issuing qualified mortgage bonds.

b. Reallocating the amount, or any portion thereof, to another qualified political subdivision for the purpose of issuing qualified mortgage bonds; or

c. Exchanging the allocation, or any portion thereof, for the authority to issue mortgage credit certificates by election under section 25(c) of the Internal Revenue Code.

However, at any time during the calendar year the executive director of the Iowa finance authority may determine that a lesser amount need be allocated to the Iowa finance authority and on that date this lesser amount shall be the amount allocated to the authority and the excess shall be allocated under subsection 7.

2. Twelve percent of the state ceiling shall be allocated to bonds issued to carry out programs established under chapters 260C, 260E, and 260F. However, at any time during the calendar year the director of the Iowa department of economic development may determine that a lesser amount need be allocated and on that date this lesser amount shall be the amount allocated for those programs and the excess shall be allocated under subsection 7.

3. Sixteen percent of the state ceiling shall be allocated to qualified student loan bonds. However, at any time during the calendar year the governor's designee, with the approval of the Iowa student loan liquidity corporation, may determine that a lesser amount need be allocated to qualified student loan bonds and on that date the lesser amount shall be the amount allocated for those bonds and the excess shall be allocated under subsection 7.

4. Twenty-one percent of the state ceiling shall be allocated to qualified small issue bonds issued for first-time farmers. However, at any time during the calendar year the governor's designee, with the approval of the Iowa agricultural development authority, may determine that a lesser amount need be allocated to qualified small issue bonds for first-time farmers and on that date this lesser amount shall be the amount allocated for those bonds and the excess shall be allocated under subsection 7.

5. Eighteen percent of the state ceiling shall be allocated to bonds issued by political subdivisions to finance a qualified industry or industries for the manufacturing, processing, or assembly of agricultural or manufactured products even though the processed products may require further treatment before delivery to the ultimate consumer.

6. During the period of January 1 through June 30, three percent of the state ceiling shall be reserved for private activity bonds issued by political subdivisions, the proceeds of which are used by the issuing political subdivisions.

7. *a.* The amount of the state ceiling which is not otherwise allocated under subsections 1 through 5, and after June 30, the amount of the state ceiling reserved under subsection 6 and not allocated, shall be allocated to all bonds requiring an allocation under section 146 of the Internal Revenue Code without priority for any type of bond over another, except as otherwise provided in sections 7C.5 and 7C.11.

b. The population of the state shall be determined in accordance with the Internal Revenue Code.

87 Acts, ch 171, §4; 90 Acts, ch 1011, §1; 91 Acts, ch 25, §1; 98 Acts, ch 1165, §1

7C.5 Formula for allocation.

Except as provided in section 7C.4A, subsections 1 through 5, the state ceiling shall be allocated among all political subdivisions on a statewide basis on the basis of the chronological orders of receipt by the governor's designee of the applications described in section 7C.6 with respect to a definitive issue of bonds, as determined by the day, hour, and minute time-stamped on the application immediately upon receipt by the governor's designee. However, for the period January 1 through June 30 of each year, allocations to bonds for which an amount of the state ceiling has been reserved pursuant to section 7C.4A, subsection 6, shall be made to the political subdivisions submitting the applications first from the reserved amount until the reserved amount has been fully allocated and then from the amount specified in section 7C.4A, subsection 7.

85 Acts, ch 225, §7; 87 Acts, ch 171, §5; 98 Acts, ch 1165, §2

7C.6 Application for allocation.

A political subdivision which proposes to issue bonds for a particular project or purpose for which an allocation of the state ceiling is required and has not already been made under section 7C.4A, subsections 1 through 5, must make an application for allocation before issuance of the bonds. The application may be made by the political subdivision or its representative, the beneficiary of the project or purpose, or by a person acting on behalf of the beneficiary. The application shall be submitted to the governor's designee, in the form prescribed by the governor's designee. The application shall contain, where appropriate, the following information:

1. Name and mailing address of the political subdivision.

2. Name of the chief elected or appointed executive officer of the political subdivision.

3. If the project to be financed by the bonds is not to be owned by the political subdivision, the name or description and location by mailing address or other definitive description of the project for which the allocation is requested.

4. Name and mailing address of both the initial owner, beneficiary, or operator of the project and an appropriate person from whom information regarding the project or purpose can be ob-

tained.

5. Date of adoption by the governing body of the political subdivision of any initial governmental act with respect to the bonds.

6. Amount of the state ceiling which the political subdivision is requesting be allocated to the bonds.

7. Other information which the governor's designee deems reasonably required to carry out the purposes of this chapter.

85 Acts, ch 225, §8; 87 Acts, ch 171, §6; 98 Acts, ch 1165, §3

7C.7 Certification of allocation.

Upon the receipt of a completed application pursuant to section 7C.6, the governor's designee shall promptly certify to the political subdivision the amount of the state ceiling allocated to the bonds for the purpose or project with respect to which the application was submitted. The allocation shall remain valid for thirty days from the date the allocation was certified, subject to the following conditions:

1. If the bonds are issued and delivered for the purpose or project within the thirty-day period or the forty-five day extension period provided in subsection 2, the political subdivision or its representative shall within ten days following the issuance and delivery of the bonds or not later than June 30 of that year, if the bonds were issued and delivered on or before that date, file with the governor's designee, in the form or manner the governor's designee may prescribe, a notification of the date of issuance and the delivery of the bonds, and the actual principal amount of bonds issued and delivered. The filing of the notification shall be done by actual delivery or by posting in a United States post office depository with correct first class postage paid. If the actual principal amount of bonds issued and delivered is less than the amount of the allocation, the amount of the allocation is automatically reduced to the actual principal amount of the bonds issued and delivered.

2. If the political subdivision does not reasonably expect to issue and deliver the bonds within the thirty-day period and evidence of an executed, valid and binding agreement to purchase the bonds is obtained from an entity with the legal ability to purchase and this agreement is filed with the governor's designee, the thirty-day allocation period is automatically extended for an additional forty-five days. The allocation period shall not be extended beyond that additional forty-five days.

3. The allocation is no longer valid unless the bonds are issued and delivered prior to December 24 or in the case of bonds described in section 7C.11 are issued and delivered prior to December 31 of the calendar year in which the allocation is certified, except as provided in section 7C.8.

85 Acts, ch 225, §9; 87 Acts, ch 171, §7; 88 Acts, ch 1134, §2; 98 Acts, ch 1165, §4

7C.8 State ceiling carryforwards.

It is the intention of the general assembly that the maximum use be made of all carryforward provisions in the Internal Revenue Code. Therefore, if the aggregate principal amount of bonds, subject to section 146 of the Internal Revenue Code, issued by all political subdivisions in a calendar year is less than the state ceiling for that calendar year, a political subdivision may apply to the governor's designee for an allocation of a specified portion of the excess state ceiling to be applied to a specified carryforward project. The governor's designee shall determine the time and manner in which applications for an allocation of excess state ceiling shall be made for this purpose and may, in the designee's discretion, refuse any requests. However, the procedures for applications, the method of identifying, and the types permitted of carryforward projects shall comply with the carryforward provisions of the Internal Revenue Code and regulations promulgated under those provisions.

85 Acts, ch 225, §10; 87 Acts, ch 171, §8

7C.9 Nonbusiness days.

If the expiration date of either the thirty-day period or the forty-five day extension period described in subsection 1 or 2 of section 7C.7 is a Saturday, Sunday or any day on which the offices of the state, banking institutions or savings and loan associations in the state are authorized or required to close, the expiration date is extended to the first day thereafter which is not a Saturday, Sunday or other previously described day.

85 Acts, ch 225, §11; 87 Acts, ch 171, §9

7C.10 Resubmission of expired allocations.

If an allocation becomes no longer valid as provided in section 7C.7, the political subdivision may resubmit its application for the same project or purpose. The resubmitted application shall be treated as a new application and preference, priority, or prejudice shall not be given to the application or the political subdivision as a result of the prior application.

85 Acts, ch 225, §12; 87 Acts, ch 171, §10

7C.11 Priority allocations.

Notwithstanding any other provision of this chapter, the governor's designee shall give priority in allocation of the state ceiling not yet allocated to bonds which must be issued and delivered on or prior to December 31 of the calendar year in order for the interest on the bonds to be exempt from federal income taxation. Applications for an allocation with respect to these bonds shall be accompanied by an opinion of a nationally recognized bond counsel to the effect that the bonds must be issued and delivered on or prior to December 31 in that

calendar year in order for the interest on the bonds to be exempt from federal income taxation.

85 Acts, ch 225, §13; 87 Acts, ch 171, §11

7C.12 Authority and duties of the governor and governor's designee.

1. The governor shall designate a person, department, or authority to administer this chapter. The person, department, or authority so designated shall serve at the pleasure of the governor and shall be selected primarily for administrative ability and knowledge in the area of public finance.

2. In addition to the powers and duties specified in sections 7C.1 to 7C.11, the governor's designee:

a. Shall promulgate rules which are necessary or expedient to carry out the intent and purposes of the private activity bond allocation Act.

b. Shall maintain records of all applications filed by political subdivisions pursuant to section 7C.6 and all bonds issued pursuant to these applications including, but not limited to, a daily accounting of the amount of the state ceiling available for allocation, the amount of the state ceiling which has been allocated but not used, and the names, addresses, and telephone numbers of those political subdivisions for whom an allocation has been approved or disapproved and the amount of the allocation approved or disapproved for the political subdivisions.

85 Acts, ch 225, §14; 87 Acts, ch 171, §12

CHAPTER 7D

EXECUTIVE COUNCIL

7D.1 Membership.

The executive council shall consist of the:

1. Governor.
2. Secretary of state.
3. Auditor of state.
4. Treasurer of state.
5. Secretary of agriculture.

A majority shall constitute a quorum. No deputy shall act on the council for the deputy's principal.

[R60, §993; C73, §111; C97, §155; C24, 27, 31, 35, 39, §**276;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §19.1]

C93, §7D.1

7D.2 Secretary.

The executive council shall choose a secretary who shall hold office during its pleasure, and perform such duties as may be required by law or by the executive council.

[R60, §999; C73, §119, 120; C97, §156, 157; S13, §156, 157; C24, 27, 31, 35, 39, §**277;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §19.2]

C93, §7D.2

7D.3 Records kept.

The secretary shall keep a complete record of the proceedings of the executive council.

[C73, §119; C97, §156, 157; S13, §157; C24, 27, 31, 35, 39, §**278;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §19.3]

C93, §7D.3

7D.4 and 7D.5 Reserved.

7D.6 Report — official register.

The secretary shall, as soon as practicable after January 1 of each odd-numbered year, prepare a report of the proceedings of the executive council for the two preceding calendar years. The report shall include a statement of:

1. The official canvass of the votes cast at the

last general election.

2. Other acts of the council that are of general interest.

The report may be published in the Iowa official register as provided in section 2A.5.

[C73, §120; C97, §157; S13, §157; C24, 27, 31, 35, 39, §**284;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §19.6]

C93, §7D.6

2003 Acts, ch 35, §21, 48, 49

7D.7 Reserved.

7D.8 Anticipation of revenues.

The executive council may anticipate the revenues for any year, when the current revenues for that year are insufficient to pay all warrants issued in that year, by causing state warrants, in an amount not exceeding the estimated state revenues for that year, and bearing interest at a rate not exceeding that permitted by chapter 74A, to be issued, advertised, and sold on sealed bids, and to the bidder offering the lowest interest rate. All bids and all records pertaining thereto shall be kept on file. The treasurer of state shall comply with the provisions of chapter 74.

[S13, §170-a; C24, 27, 31, 35, 39, §**287;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §19.8]

C93, §7D.8

7D.9 Compromise of claims.

The executive council, on a written report to it by the attorney general together with the attorney general's opinion as to the legal effect of the facts, may determine by resolution to be duly entered in its official records, the terms on which claims of doubtful equity or collectibility, and in favor of the state, may be compromised and settled with all or any of the parties thereto. Such terms may be withdrawn prior to acceptance, or in case the debtor fails to comply therewith within a reasonable time. The attorney general shall have full authority to execute all papers necessary to effect any such settlement.

[S13, §170-h; C24, 27, 31, 35, 39, §**288;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §19.9]

C93, §7D.9

7D.10 Court costs.

If sufficient funds for court costs have not been appropriated to a state department, or if sufficient funds are not otherwise available for such purposes within the budget of a state department, the executive council may pay, out of any money in the state treasury not otherwise appropriated, expenses incurred, or costs taxed to the state, in any proceeding brought by or against any of the state departments or in which the state is a party or is interested. This section shall not be construed to authorize the payment of travel or other personal expenses of state officers or employees.

[S13, §170-i; C24, 27, 31, 35, 39, §**289;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §19.10]

C93, §7D.10

7D.10A Allocation to manure storage indemnity fund.

If moneys are not sufficient to support the manure storage indemnity fund as provided in chapter 459, subchapter V, the executive council may allocate from moneys in the general fund of the state, which are not otherwise obligated or encumbered, an amount to the manure storage indemnity fund as provided under section 459.501. However, not more than a total of one million dollars shall be allocated to the manure storage indemnity fund at any time.

98 Acts, ch 1209, §1

7D.11 Report of unexpended balances.

All commissions, boards, officers, or persons placed in charge, by statute, of special work for which a specific appropriation of state funds has been made, shall, biennially, report to the executive council the progress of such special work, the balance on hand in such fund, a list of all unpaid bills, and the amount of each, then outstanding, with such other information as the council shall from time to time require.

[SS15, §170-q; C24, 27, 31, 35, 39, §**290;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §19.11]

C93, §7D.11

7D.12 Notice to transfer balance.

When said council is satisfied that the work for which such special fund was created has been completed or abandoned, it shall fix a day for hearing on the question whether the unexpended balance then on hand should be transferred to the general revenue fund of the state, and shall cause a ten days' notice of such hearing to be given such commission, board, officer, or person, at which hearing showing may be made why such unexpended balance should not be so transferred.

[SS15, §170-q; C24, 27, 31, 35, 39, §**291;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §19.12]

C93, §7D.12

7D.13 Order of transfer.

If after such hearing the council shall find that said special work has been completed or abandoned, and that there is no good reason why such transfer should not then be made, such findings shall be made a matter of record in the minutes of its proceedings, and the secretary of the council shall at once file a copy of such proceedings with the director of the department of administrative services.

[SS15, §170-q; C24, 27, 31, 35, 39, §**292;** C46, 50,

54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §19.13]
C93, §7D.13
2003 Acts, ch 145, §286

7D.14 Duty to transfer.

The director of the department of administrative services shall, on receipt from the secretary of the council of a copy of such record, make such transfer.

[SS15, §170-q; C24, 27, 31, 35, 39, §**293;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §19.14]
C93, §7D.14
2003 Acts, ch 145, §286

7D.15 Public policy research foundation.

1. The public policy research foundation is created for the purpose of conducting studies and making recommendations on critical and long-term issues needing the attention of state government. The foundation is authorized to establish an endowment fund to assist in the financing of its activities. The foundation may exercise any power authorized by chapter 504 or 504A and this section.

2. The executive council shall cause a public policy research foundation to be created under chapter 504 or 504A and this section. The foundation shall be created so that donations and bequests to it qualify as tax deductible under the federal and state income tax laws. The foundation is not a state agency and shall not exercise any sovereign power of the state. The state is not liable for any debts of the foundation.

3. The public policy research foundation shall have a board of directors of ten members. One member shall be appointed by the state board of regents and one member shall be appointed by the Iowa association of independent colleges and universities. Four members shall be appointed by the governor and four members shall be appointed by the legislative council, one by each appointing authority representing the interests of each of the following four categories:

a. Business.
b. Labor.
c. Community-based organizations.
d. Farming.

4. The terms of the members of the board of directors shall be two years beginning on July 1 and ending on June 30. A vacancy on the board shall be filled in the same manner as the original appointment for the remainder of the term. Not more than two of the governor's appointees and two of the legislative council's appointees, respectively, shall be of the same gender or of the same political party.

5. The governor, the legislative council by motion, and the general assembly by concurrent resolution may request that studies be conducted by the public policy research foundation. The board of directors of the foundation shall establish the priorities of the research requests based upon available financial resources.

6. For the purposes of this section *"community-based organizations"* means private nonprofit organizations which are representative of communities or significant segments of communities. Examples include United Way of America, neighborhood groups and organizations, community action agencies, community development corporations, vocational rehabilitation organizations, rehabilitation facilities as defined in section 7, subsection 10, of the federal Rehabilitation Act of 1973, tribal governments, and agencies serving youth, persons with disabilities, displaced homemakers, or on-reservation Indians.

86 Acts, ch 1154, §1
C87, §19.15
C93, §7D.15
96 Acts, ch 1129, §113; 2004 Acts, ch 1175, §393
References to chapter 504A in this section to be deleted editorially upon repeal of that chapter; 2004 Acts, ch 1049, §191
Subsections 1 and 2 amended

7D.16 through 7D.28 Reserved.

7D.29 Performance of duty — expense.

The executive council shall not employ others, or incur any expense, for the purpose of performing any duty imposed upon the council when the duty may, without neglect of their usual duties, be performed by the members, or by their regular employees, but, subject to this limitation, the council may incur the necessary expense to perform or cause to be performed any legal duty imposed on the council, and pay the same out of any money in the state treasury not otherwise appropriated.

[S13, §170-l, -n, -p; C24, 27, 31, 35, 39, §**306;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §19.29]
88 Acts, ch 1275, §30; 89 Acts, ch 315, §25
C93, §7D.29

7D.30 Necessary record.

Before incurring any expense authorized by section 7D.29, the council shall, in each case, by resolution, entered upon its records, set forth the necessity for incurring such expense, the special fitness of the one employed to perform such work, the definite rate of compensation or salary allowed, and the total amount of money that may be expended. Compensation or salary for personal services in such cases must be determined by unanimous vote of all members of the council.

[S13, §170-m, -n; C24, 27, 31, 35, 39, §**307;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §19.30]
C93, §7D.30

7D.31 Additional compensation and expenses.

Members of the executive council and its regular employees shall be paid no additional salary or compensation for special service, but shall receive their necessary traveling expenses, including sub-

sistence, when absent from the seat of government on official business.

[S13, §170-o; C24, 27, 31, 35, 39, §**308;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §19.31]

C93, §7D.31

7D.32 Reserved.

7D.33 State employee suggestion system. Repealed by 2003 Acts, ch 145, § 291. See § 8A.110.

7D.34 Energy conservation lease-purchase.

1. As used in this section:

a. "Energy conservation measure" means installation or modification of an installation in a building which is primarily intended to reduce energy consumption or allow the use of an alternative energy source, which may contain integral control and measurement devices.

b. "State agency" means a board, department, commission or authority of or acting on behalf of the state having the power to enter into contracts with or without the approval of the executive council to acquire property in its own name or in the name of the state. *"State agency"* does not mean the general assembly, the courts, the governor or a political subdivision of the state.

2. *a.* A state agency may, with the approval of the executive council, lease as lessee real and personal properties and facilities for use as or in connection with any energy conservation measure for which it may so acquire real and personal properties and facilities, upon the terms, conditions and considerations the official or officials having the authority with or without the approval of the executive council to commit the state agency to acquire real and personal property and facilities deem in the best interests of the state agency. A lease may include provisions for ultimate ownership by the state or by the state agency and may obligate the state agency to pay costs of maintenance, operation, insurance and taxes. The state agency shall pay the rentals and the additional costs from the annual appropriations for the state agency by the general assembly or from other funds legally available. The lessor of the properties or facilities may retain a security interest in them until title passes to the state or state agency. The security interest may be assigned or pledged by the lessor. In connection with the lease, the state agency may contract for a letter of credit, insurance or other security enhancement obligation with respect to its rental and other obligations and pay the cost from annual appropriations for such state agency by the general assembly or from other funds legally available. The security enhancement arrangement may contain customary terms and provisions, including reimbursement and acceleration if appropriate. This section is a complete and independent authorization and procedure for a state agency, with the approval of the executive council, to enter into a lease and related security enhancement arrangements and this section is not a qualification of any other powers which a state agency may possess, including those under chapter 262, and the authorization and powers granted under this section are not subject to the terms or requirements of any other provision of the Code.

b. Before a state agency seeks approval of the executive council for leasing real or personal properties or facilities for use as or in connection with any energy conservation measure, the state agency shall have a comprehensive engineering analysis done on a building in which it seeks to improve the energy efficiency by an engineering firm approved by the department of natural resources through a competitive selection process and the engineering firm is subject to approval of the executive council. Provisions of this section shall only apply to energy conservation measures identified in the comprehensive engineering analysis.

c. Before the executive council gives its approval for a state agency to lease real and personal properties or facilities for use as or in connection with any energy conservation measure, the executive council shall in conjunction with the department of natural resources and after review of the engineering analysis submitted by the state agency make a determination that the properties or facilities will result in energy cost savings to the state in an amount that results in the state recovering the cost of the properties or facilities within six years after the initial acquisition of the properties or facilities.

85 Acts, ch 55, §1
CS85, §19.34
C93, §7D.34

7D.35 Dispute resolution.

The executive council shall resolve any disputes transmitted to it by the department of natural resources, the state building code commissioner, or both, arising under section 470.7.

89 Acts, ch 315, §26
CS89, §19.35
C93, §7D.35

CHAPTER 7E

EXECUTIVE BRANCH ORGANIZATION AND RESPONSIBILITIES

7E.1 Policy — purposes.

1. *Declaration of policy: three branches of government.* The separation of powers within state government among the legislative, the executive, and the judicial branches of the government is a traditional American concept. The legislative branch has the broad objective of determining policies and programs and review of program performance for programs previously authorized, the executive branch carries out the programs and policies, and the judicial branch has the responsibility for adjudicating any conflicts which might arise from the interpretation or application of the laws.

2. *Goals of executive branch organization.*

a. The governor, as the chief executive officer of the state, should be provided with the facilities and the authority to carry out the functions of the governor's office efficiently and effectively within the policy limits established by the legislature.

b. The administrative agencies which comprise the executive branch should be consolidated into a reasonable number of departments, consistent with executive capacity to administer effectively at all levels.

c. The executive branch shall be organized on a functional basis, so that programs can be coordinated.

d. Each agency in the executive branch should be assigned a name commensurate with the scope of its responsibilities, and should be integrated into one of the departments of the executive branch as closely as the goals of administrative integration and responsiveness to the legislature and citizenry permit.

3. *Goals of continuing reorganization.* Structural reorganization should be a continuing process through careful executive and legislative appraisal of the placement of proposed new programs and the coordination of existing programs in response to changing emphasis or public needs, and should be consistent with the following goals:

a. The organization of state government should assure its responsiveness to popular control. It is the goal of reorganization to improve legislative policymaking capability and to improve the administrative capability of the executive to carry out the policies.

b. The organization of state government should facilitate communication between citizens and government. It is the goal of reorganization, through coordination of related programs in function-oriented departments, to improve public understanding of government programs and policies and to improve the relationships between citizens and administrative agencies.

c. The organization of state government should assure efficient and effective administration of the policies established by the legislature. It is the goal of reorganization to promote efficiency by improving the management and coordination of state services and by eliminating overlapping activities.

86 Acts, ch 1245, §1

7E.2 Offices, departments and independent agencies.

The constitutional and statutory offices, administrative departments, and independent agencies which comprise the executive branch of state government are structured as follows:

1. *Separate constitutional offices.* The elective constitutional and statutory officers who do not head operating departments each head a staff to be termed the *"office"* of the respective elective officer, but the office of the governor shall be known as the *"executive office"*.

2. *Principal administrative units.* The principal administrative unit of the executive branch is a *"department"* and there may be one or more *"independent agencies"*.

3. *Internal structure.*

a. The director of each department, subject to applicable statute, approval by the governor, and the provisions of subsection 4 of this section, may establish the internal structure within the office of the director so as to best suit the purposes of the department.

b. For field operations, departments may establish district or area offices which may cut

across divisional lines of responsibility.

c. For their internal structure, all departments shall adhere to the following standard terms unless otherwise specified by law, and independent agencies are encouraged to review their internal structure and to adhere as much as possible to the following standard terms:

(1) The principal subunit of the department is the *"division"*. Each division shall be headed by an *"administrator"*.

(2) The principal subunit of the division is the *"bureau"*. Each bureau shall be headed by a *"chief"*.

(3) If further subdivision is necessary, bureaus may be divided into subunits which shall be known as *"sections"* and which shall be headed by *"supervisors"* and sections may be divided into subunits which shall be known as *"units"* and which shall be headed by *"unit managers"*.

4. *Internal organization and allocation of functions.* Subject to applicable law, the head of each department or independent agency shall, subject to the approval of the governor, establish the internal organization of the department or independent agency and allocate and reallocate duties and functions not assigned by law to an officer or any subunit of the department or independent agency to promote economic and efficient administration and operation of the department or independent agency.

5. *Attachment for limited purposes.* Any commission, board, or other unit attached under this section to a department or independent agency, or a specified division of one, shall be a distinct unit of that department, independent agency, or specified division. Any commission, board, or other unit so attached shall exercise its powers, duties, and functions as may be prescribed by law, including rulemaking, licensing and regulation, and operational planning within the area of program responsibility of the commission, board, or other unit independently of the head of the department or independent agency, but budgeting, program coordination, and related management functions shall be performed under the direction and supervision of the head of the department or independent agency, unless otherwise provided by law.

86 Acts, ch 1245, §2

7E.3 Heads of departments and independent agencies — powers and duties.

Each head of a department or independent agency shall, except as otherwise provided by law:

1. *Supervision.* Plan, direct, coordinate, and execute the functions vested in the department or independent agency.

2. *Budget.* Annually compile a comprehensive program budget which reflects all fiscal matters related to the operation of the department or independent agency and each program, subprogram, and activity in the department or agency.

3. *Advisory bodies.* In addition to any councils specifically created by law, create by rule and appoint such councils or committees as the operation of the department or independent agency requires. Members of councils and committees created under this general authority shall serve without compensation, but may be reimbursed for their expenses.

4. *Annual report.* Unless otherwise provided by law, submit a report in November of each year to the governor and the legislature on the operation of the department or independent agency during the fiscal year concluded on the preceding June 30, and projecting the goals and objectives of the department or independent agency as developed in the program budget report for the fiscal year under way. Any department or independent agency may issue such additional reports on its findings and recommendations as its operations require.

86 Acts, ch 1245, §3

See also §7A.3 – 7A.11A

7E.4 Definitions and terminology for executive branch organization.

In statutory references and administrative usage, the following terminology and definitions shall be used as guidelines for the terminology applicable to state governmental structure and organization to the extent practicable:

1. *"Authority"* means a body with independent power to issue and sell bonds.

2. *a. "Board"* means a policymaking body that has the power to hear contested cases.

b. A policymaking body that has powers for both rulemaking and hearing contested cases shall be termed a *"board"*.

3. *"Commission"* means a policymaking body that has rulemaking powers.

4. *"Committee"* means a part-time body appointed to study a specific problem and to recommend a solution or policy alternative with respect to that problem, and intended to terminate on the completion of its assignment.

5. *"Council"* means an advisory body appointed to function on a continuing basis for the study, and recommendation of solutions and policy alternatives, of the problems arising in a specified functional area of state government.

6. *"Department"* means a principal administrative agency within the executive branch of state government, but does not include independent agencies.

7. *"Division"*, *"bureau"*, *"section"*, and *"unit"* mean the subunits of a department, whether specifically created by law or created by the head of the department for the more economic and efficient administration and operation of the programs assigned to the department.

8. *"Examining board"* means a body which sets standards of professional competence and conduct for the profession or occupation under its

supervision, which may prepare and grade the examinations of prospective new practitioners when authorized by law, which may issue licenses when authorized by law, which investigates complaints of alleged unprofessional conduct, and which performs other functions assigned to it by law.

9. *"Head of the department"* means the elective officer, director, commissioner, or other official in charge of a department.

10. *"Independent agency"* is an administrative unit which, because of its unique operations, does not fit into the general pattern of operating departments.

86 Acts, ch 1245, §4; 88 Acts, ch 1278, §21

7E.5 Principal departments and primary responsibilities.

1. The principal central departments of the executive branch as established by law are listed in this section for central reference purposes as follows:

a. The department of management, created in section 8.4, which has primary responsibility for coordination of state policy planning, management of interagency programs, economic reports, and program development.

b. The department of administrative services, created in section 8A.102, which has primary responsibility for the management and coordination of the major resources of state government.

c. The department of revenue, created in section 421.2, which has primary responsibility for revenue collection and revenue law compliance.

d. The department of inspections and appeals, created in section 10A.102, which has primary responsibility for coordinating the conducting of various inspections, investigations, appeals, hearings, and audits.

e. The department of agriculture and land stewardship, created in section 159.2, which has primary responsibility for encouraging, promoting, and advancing the interests of agriculture and allied industries. The secretary of agriculture is the director of the department of agriculture and land stewardship.

f. The department of commerce, created in section 546.2, which has primary responsibility for business and professional regulatory, service, and licensing functions.

g. The Iowa department of economic development, created in section 15.105, which has primary responsibility for programs for carrying out the economic development policies of the state.

h. The department of workforce development, created in section 84A.1, which has primary responsibility for administering the laws relating to unemployment compensation insurance, job placement and training, employment safety, labor standards, workers' compensation, and related matters.

i. The department of human services, created in section 217.1, which has primary responsibility for services to individuals to promote the well-being and the social and economic development of the people of the state.

j. The Iowa department of public health, created in chapter 135, which has primary responsibility for supervision of public health programs, promotion of public hygiene and sanitation, treatment and prevention of substance abuse, and enforcement of related laws.

k. The department of elder affairs, created in section 231.21, which has primary responsibility for leadership and program management for programs which serve the senior citizens of the state.

l. The department of cultural affairs, created in section 303.1, which has primary responsibility for managing the state's interests in the areas of the arts, history, the state archives and records program, and other cultural matters.

m. The department of education, created in section 256.1, which has primary responsibility for supervising public education at the elementary and secondary levels and for supervising the community colleges.

n. The department of corrections, created in section 904.102, which has primary responsibility for corrections administration, corrections institutions, prison industries, and the development, funding, and monitoring of community-based corrections programs.

o. The department of public safety, created in section 80.1, which has primary responsibility for statewide law enforcement and public safety programs that complement and supplement local law enforcement agencies and local inspection services.

p. The department of public defense, created in section 29.1, which has primary responsibility for state military forces and emergency management.

q. The department of natural resources, created in section 455A.2, which has primary responsibility for state parks and forests, protecting the environment, and managing energy, fish, wildlife, and land and water resources.

r. The state department of transportation, created in section 307.2, which has primary responsibility for development and regulation of highway, railway, and air transportation throughout the state, including public transit.

s. The department of human rights, created in section 216A.1, which has primary responsibility for services relating to Latino persons, women, persons with disabilities, community action agencies, criminal and juvenile justice planning, the status of African-Americans, and deaf and hard-of-hearing persons.

t. In the area of higher education, an agency headed by the state board of regents and including all the institutions administered by the state board of regents, which has primary responsibility for state involvement in higher education.

u. The department for the blind, created in chapter 216B, which has primary responsibility for services relating to blind persons.

v. The commission of veterans affairs, which has primary responsibility for state veterans affairs.

2. *a.* There is a civil rights commission, a public employment relations board, an interstate cooperation commission, an ethics and campaign disclosure board, and an Iowa law enforcement academy.

b. The listing of additional state agencies in this subsection is for reference purposes only and is not exhaustive.

3. The responsibilities listed for each department and agency in this section are generally descriptive of the department's or agency's duties, are not all-inclusive, and do not exclude duties and powers specifically prescribed for by statute, or delegated to, each department or agency.

86 Acts, ch 1245, §5; 88 Acts, ch 1277, §20, 21; 89 Acts, ch 83, §1; 90 Acts, ch 1180, §1; 92 Acts, ch 1139, §19; 92 Acts, ch 1140, §1, 2; 92 Acts, ch 1163, §1; 93 Acts, ch 48, §2; 93 Acts, ch 75, §1; 93 Acts, ch 163, §38; 96 Acts, ch 1186, §23; 98 Acts, ch 1017, §1; 2000 Acts, ch 1058, §2; 2000 Acts, ch 1141, §11, 19; 2002 Acts, ch 1050, §1; 2003 Acts, ch 145, §116 – 119; 2003 Acts, ch 178, §96, 121; 2003 Acts, ch 179, §142

7E.5A Buildings and infrastructure — funding.

1. For each new vertical infrastructure project, the department in control of the vertical infrastructure shall identify and recommend to the general assembly funding sufficient to meet the projected maintenance, repair, and replacement needs of the vertical infrastructure.

2. A department shall, within its five-year capital budget request, identify specific instances where the failure to address deferred maintenance has had a negative impact on the department's ability to implement its mission and the proposed costs for annual routine and preventive maintenance based on an industry standard of one percent of the estimated replacement cost of the department's facilities. This subsection shall not apply to the state department of transportation.

3. A department requesting state moneys for a vertical infrastructure project shall actively pursue any federal funds for which the proposed project may be eligible and shall demonstrate such pursuit prior to receiving state moneys for the project. The department shall report the receipt of any such federal funds to the department of management and the legislative services agency in the manner described in section 8.23.

4. As used in this section, *"vertical infrastructure"* means the same as defined in section 8.57, subsection 6, paragraph *"c"*.

97 Acts, ch 215, §28; 2001 Acts, ch 185, §32; 2003 Acts, ch 35, §45, 49

7E.6 Compensation of members of boards, committees, commissions, and councils.

1. *a.* Any position of membership on any board, committee, commission, or council in the executive branch of state government which is compensated by the payment of a per diem to the holder of that position under statutory law shall be compensated at the rate of fifty dollars per diem, notwithstanding any other law to the contrary.

b. Reimbursement of expenses to the holder of any position governed by this subsection shall be as provided in the applicable law.

c. In regard to any board, committee, commission, or council which has its name or organizational location altered after January 1, 1986, the statutory provision on the subject of per diem compensation which was applicable to it on January 1, 1986, shall continue to govern such agency and its successor agency, notwithstanding the change in name or organizational location.

2. Any position of membership on any board, committee, commission, or council in the state government which has a compensation level limited to expenses only is eligible to receive, in addition to such actual expense reimbursement, an additional expense allowance of fifty dollars per day if the holder of any such position applies for such additional expense allowance and the holder of the position has an income level of one hundred fifty percent or less of the United States poverty level as defined by the most recently revised poverty income guidelines published by the United States department of health and human services.

3. Any position of membership on the board of the Iowa lottery authority shall receive compensation of fifty dollars per day and expenses.

4. Any position of membership on the transportation commission shall be compensated at an annual rate of ten thousand dollars.

5. Any position of membership on the board of parole, the public employment relations board, the utilities board, and the employment appeal board shall be compensated as otherwise provided in law.

6. All of the compensation provisions of this section are subject to the proper appropriations being made in the state budget legislation.

7. It is the intent of the general assembly that this section shall be the governing provision on the subject of the compensation of any position of membership on any board, committee, commission, or council in the state government and that the provisions of this section shall govern over any conflicting provision of law except provisions enacted subsequent to July 1, 1986, notwithstanding the provisions of section 4.7.

86 Acts, ch 1245, §2055; 88 Acts, ch 1277, §22; 89 Acts, ch 296, §2, 3; 89 Acts, ch 303, §15, 16; 2003 Acts, ch 35, §22, 49; 2003 Acts, ch 178, §97, 121;

2003 Acts, ch 179, §142

7E.7 Organizational structure.

For organizational purposes only, the following apply:

1. The Iowa finance authority and the Iowa economic protective and investment authority shall be considered parts of the Iowa department of economic development. The Iowa department of economic development may provide staff assistance and administrative support to the authorities.

2. The agricultural development authority as established in section 175.3 shall be considered part of the office of treasurer of state. The office may provide staff assistance and administrative support to the authority.

3. The Iowa higher education loan authority shall be attached to the college student aid commission.

4. The Iowa railway finance authority shall be considered part of the department of transportation. The department of transportation may provide staff assistance and administrative support to the authority.

5. The Iowa advance funding authority shall be considered part of the department of education. The department of education may provide staff assistance and administrative support to the authority.

86 Acts, ch 1245, §850; 90 Acts, ch 1253, §122; 2003 Acts, ch 137, §1

CHAPTER 7F

OFFICE FOR STATE-FEDERAL RELATIONS

7F.1 Office for state-federal relations.

1. *Purpose.* The purpose of this section is to establish, as an independent agency, an office for state-federal relations which will develop a nonpartisan state-federal relations program accessible to all three branches of state government.

2. *Definition.* As used in this section, unless the context otherwise requires, *"office"* means the office for state-federal relations established pursuant to this section.

3. *Office established.* A state-federal relations office is established as an independent agency. The office shall be located in Washington, D.C., and shall be administered by the director of the office who is appointed by the governor, subject to confirmation by the senate, and who serves at the pleasure of the governor. The office and its personnel are exempt from the merit system provisions of chapter 8A, subchapter IV.

4. *Office duties.* The office shall:

a. Coordinate the development of Iowa's state-federal relations efforts which shall include an annual state-federal program to be presented to Iowa's congressional delegation, the sponsorship of training sessions for state government officials, and the maintenance of a management information system.

b. Provide state government officials with greater access to current information on federal legislative and executive actions affecting state government.

c. Advocate federal policies and positions which benefit the state or are important to state government.

d. Monitor federal budget policies and assistance programs and assess their impact on the state.

e. Strengthen the working relationships between state government officials and Iowa's congressional delegation.

f. Improve the state's ability to establish key contacts with federal officials, officials from other states, organizations, business groups, and professional associations in order to share information and form cooperative agreements.

87 Acts, ch 233, §126; 2003 Acts, ch 145, §120

Confirmation; see §2.32

CHAPTER 7G

IOWA STATEHOOD SESQUICENTENNIAL

Repealed by 99 Acts, ch 114, §55

CHAPTER 7H

STATEWIDE ELECTED OFFICIALS — SALARIES

Repealed by 2000 Acts, ch 1219, §18

CHAPTER 7I

COMMUNITY EMPOWERMENT ACT

Transferred to chapter 28; 99 Acts, ch 190, §19, 20

CHAPTER 7J

CHARTER AGENCIES

7J.1 Charter agencies.

1. *Designation of charter agencies — purpose.* The governor may, by executive order, designate state departments or agencies, as described in section 7E.5, or the Iowa lottery authority established in chapter 99G, other than the department of administrative services or the department of management, as a charter agency by July 1, 2003. The designation of a charter agency shall be for a period of five years which shall terminate as of June 30, 2008. The purpose of designating a charter agency is to grant the agency additional authority as provided by this chapter while reducing the total appropriations to the agency.

2. *Charter agency directors.*

a. Prior to each fiscal year, or as soon thereafter as possible, the governor and each director of a designated charter agency shall enter into an annual performance agreement which shall set forth measurable organization and individual goals for the director in key operational areas of the director's agency. The annual performance agreement shall be made public and a copy of the agreement shall be submitted to the general assembly.

b. In addition to the authority granted the governor as to the appointment and removal of a director of an agency that is a charter agency, the governor may remove a director of a charter agency for misconduct or for failure to achieve the performance goals set forth in the annual performance agreement.

c. Notwithstanding any provision of law to the contrary, the governor may set the salary of a director of a charter agency under the pay plan for exempt positions in the executive branch of government. In addition, the governor may authorize the payment of a bonus to a director of a charter agency in an amount not in excess of fifty percent of the director's annual rate of pay, based upon the governor's evaluation of the director's performance in relation to the goals set forth in the annual performance agreement.

d. A director of a charter agency may authorize the payment of bonuses to employees of the charter agency in a total amount not in excess of fifty percent of the director's annual rate of pay, based upon the director's evaluation of the employees' performance.

3. *Appropriations and asset management.*

a. It is the intent of the general assembly that state general fund operating appropriations to a charter agency for the fiscal year beginning July 1, 2003, and ending June 30, 2004, shall be reduced from the appropriation that would otherwise have been enacted for that charter agency

which, along with any additional generated revenue to the general fund of the state attributed to the reinvention process as determined by the department of management, over that already committed to the general fund of the state by a charter agency, will achieve an overall target of fifteen million dollars.

b. Notwithstanding any provision of law to the contrary, proceeds from the sale or lease of capital assets that are under the control of a charter agency shall be retained by the charter agency and used for such purposes within the scope of the responsibilities of the charter agency.

c. Notwithstanding section 8.33, one-half of all unencumbered or unobligated balances of appropriations made for each fiscal year of that fiscal period to the charter agency shall not revert to the state treasury or to the credit of the funds from which the appropriations were made.

d. For the fiscal period beginning July 1, 2003, and ending June 30, 2005, a charter agency is not subject to a uniform reduction ordered by the governor in accordance with section 8.31.

4. *Personnel management.*

a. Notwithstanding any provision of law to the contrary, a charter agency shall not be subject to any limitation relating to the number of or pay grade assigned to its employees, including any limitation on the number of full-time equivalent positions as defined by section 8.36A.

b. A charter agency may waive any personnel rule and may exercise the authority granted to the department of administrative services relating to personnel management concerning employees of the charter agency, subject to any restrictions on such authority as to employees of the charter agency covered by a collective bargaining agreement. The exclusive representative of employees of a charter agency may enter into agreements with the charter agency to grant the charter agency the authority described in this paragraph. A waiver of a rule pursuant to this subsection shall be indexed, filed, and made available for public inspection in the same manner as provided in section 17A.9A, subsection 4.

5. *Procurement and general services.* A charter agency may waive any administrative rule regarding procurement, fleet management, printing and copying, or maintenance of buildings and grounds, and may exercise the authority of the department of administrative services as it relates to the physical resources of the state. A waiver of a rule pursuant to this subsection shall be indexed, filed, and made available for public inspection in the same manner as provided in section 17A.9A, subsection 4.

6. *Information technology.* A charter agency may waive any administrative rule regarding the acquisition and use of information technology and may exercise the powers of the department of administrative services as it relates to information technology. A waiver of a rule pursuant to this subsection shall be indexed, filed, and made available for public inspection in the same manner as provided in section 17A.9A, subsection 4.

7. *Rule flexibility.*

a. A charter agency may temporarily waive or suspend the provisions of any administrative rule if strict compliance with the rule impacts the ability of the charter agency requesting the waiver or suspension to perform its duties in a more cost-efficient manner and the requirements of this subsection are met.

b. The procedure for granting a temporary waiver or suspension of any administrative rule shall be as follows:

(1) The charter agency may waive or suspend a rule if the agency finds, based on clear and convincing evidence, all of the following:

(a) The application of the rule poses an undue financial hardship on the applicable charter agency.

(b) The waiver or suspension from the requirements of a rule in the specific case would not prejudice the substantial legal rights of any person.

(c) Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver or suspension is requested.

(d) The waiver or suspension would not result in a violation of due process, a violation of state or federal law, or a violation of the state or federal constitution.

(2) If a charter agency proposes to grant a waiver or suspension, the charter agency shall draft the waiver or suspension so as to provide the narrowest exception possible to the provisions of the rule and may place any condition on the waiver or suspension that the charter agency finds desirable to protect the public health, safety, and welfare. The charter agency shall then submit the waiver or suspension to the administrative rules review committee for consideration at the committee's next scheduled meeting.

(3) The administrative rules review committee shall review the proposed waiver or suspension at the committee's next scheduled meeting following submission of the proposal and may either take no action or affirmatively approve the waiver or suspension, or delay the effective date of the waiver or suspension in the same manner as for rules as provided in section 17A.4, subsection 5, and section 17A.8, subsection 9. If the administrative rules review committee either approves or takes no action concerning the proposed waiver or suspension, the waiver or suspension may become effective no earlier than the day following the meeting. If the administrative rules review committee delays the effective date of the waiver or suspension but no further action is taken to rescind the waiver or suspension, the proposed waiver or suspension may become effective no earlier than upon the conclusion of the delay. The ad-

ministrative rules review committee shall notify the applicable charter agency of its action concerning the proposed waiver or suspension.

(4) Copies of the grant or denial of a waiver or suspension under this subsection shall be filed and made available to the public by the applicable charter agency.

c. A waiver or suspension granted pursuant to this subsection shall be for a period of time not to exceed twelve months or until June 30, 2008, whichever first occurs, and as determined by the applicable charter agency. A renewal of a temporary waiver or suspension granted pursuant to this section shall be granted or denied in the same manner as the initial waiver or suspension.

8. *Executive council flexibility.* Notwithstanding any provision of law to the contrary, a charter agency shall not be required to obtain executive council approval for claims for expenses of attending conventions, out-of-state travel requests, and memberships in professional organizations.

9. *Reporting requirements.*

a. Each charter agency shall submit a written report to the general assembly by December 31 of each year summarizing the activities of the charter agency for the preceding fiscal year. The report shall include information concerning the expenditures of the agency and the number of filled full-time equivalent positions during the preceding fiscal year. The report shall include information relating to the actions taken by the agency pursuant to the authority granted by this section.

b. By January 15, 2008, the governor shall submit a written report to the general assembly on the operation and effectiveness of this chapter and the costs and savings associated with the implementation of this chapter. The report shall include any recommendations about extending the chapter's effectiveness beyond June 30, 2008.

10. *Department of management review.* Each proposed waiver or suspension of an administrative rule as authorized by this section shall be submitted to the department of management for review prior to the waiver or suspension becoming effective. The director of the department of management may disapprove the waiver or suspension if, based on clear and convincing evidence, the director determines that the suspension or waiver would result in an adverse financial impact on the state.

2003 Acts, ch 145, §286; 2003 Acts, ch 178, §32, 36; 2003 Acts, ch 179, §85, 86; 2003 Acts, 1st Ex, ch 2, §14, 209; 2004 Acts, ch 1086, §4; 2004 Acts, ch 1175, §26

Subsection 1 amended

NEW subsection 8 and former subsections 8 and 9 renumbered as 9 and 10

7J.2 Charter agency grant fund.

1. A charter agency grant fund is created in the state treasury under the control of the department of management for the purpose of providing funding to support innovation by those state agencies designated as charter agencies in accordance with section 7J.1. Innovation purposes shall include but are not limited to training, development of outcome measurement systems, management system modifications, and other modifications associated with transition of operations to charter agency status. Moneys in the fund are appropriated to the department of management for the purposes described in this subsection.

2. A charter agency requesting a grant from the fund shall complete an application process designated by the director of the department of management.

3. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited in the charter agency grant fund shall be credited to the charter agency grant fund. Notwithstanding section 8.33, moneys credited to the charter agency grant fund shall not revert to the fund from which appropriated at the close of a fiscal year.

2003 Acts, ch 178, §33, 36; 2003 Acts, ch 179, §87

7J.3 Repeal.

This chapter is repealed June 30, 2008.

2003 Acts, ch 178, §34, 36

CHAPTER 8

DEPARTMENT OF MANAGEMENT — BUDGET AND FINANCIAL CONTROL ACT

8.1 Title.

This chapter shall be known and may be cited as the *"Budget and Financial Control Act"*.

[C35, §84-e1; C39, §**84.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §8.1]

8.2 Definitions.

When used in this chapter:

1. *"Block grant"* means funds from the federal government awarded in broad program areas within which the state is given considerable latitude in determining how funds are used and for which the state develops its own plan for spending according to general federal guidelines. *"Block grant"* does not include education research grants.

2. *"Budget"* means the budget document required by this chapter to be transmitted to the legislature.

3. *"Categorical grant"* means federal funds applied for and received by the state which are in the form of entitlements, formula grants, discretionary grants, open-ended entitlements or another form that may be used only for specific narrowly defined activities except funds for student aid and assistance; grants, contracts and co-operative agreements for research and training for which no appropriated matching funds are required; and reimbursements for services rendered.

4. *"Code"* or *"the Code"* means the Code of Iowa.

5. The terms *"department and establishment"* and *"department"* or *"establishment",* mean any executive department, commission, board, institution, bureau, office, or other agency of the state government, including the state department of transportation, except for funds which are required to match federal aid allotted to the state by the federal government for highway special purposes, and except the courts, by whatever name called, other than the legislature, that uses, expends or receives any state funds.

6. *"Government"* means the government of the state of Iowa.

7. *"Private trust funds"* means any and all endowment funds and any and all moneys received by a department or establishment from private persons to be held in trust and expended as directed by the donor.

8. *"Repayment receipts"* means those moneys collected by a department or establishment that supplement an appropriation made by the legislature.

9. *"Special fund"* means any and all government fees and other revenue receipts earmarked to finance a governmental agency to which no general fund appropriation is made by the state.

10. *"State funds"* means any and all moneys appropriated by the legislature, or money collected by or for the state, or an agency thereof, pursuant to authority granted by any of its laws.

11. *"Unencumbered balance"* means the unobligated balance of an appropriation after charging thereto all unpaid liabilities for goods and services and all contracts or agreements payable from an appropriation or a special fund.

[C35, §84-e2; C39, §**84.02;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §8.2; 81 Acts, ch 17, §1]

8.3 Governor.

The governor of the state shall have:

1. Direct and effective financial supervision over all departments and establishments, and every state agency by whatever name now or hereafter called, including the same power and supervision over such private corporations, persons and organizations that may receive, pursuant to statute, any funds, either appropriated by, or collected for, the state, or any of its departments, boards, commissions, institutions, divisions and agencies.

2. The efficient and economical administration of all departments and establishments of the government.

3. The initiation and preparation of a balanced budget of any and all revenues and expenditures for each regular session of the legislature.

[C35, §84-e3; C39, §**84.03;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §8.3]

8.3A Capital project planning and budgeting — governor's duties.

1. *Definitions.* For the purposes of this section:

a. "Capital project" does not include highway and right-of-way projects or airport capital projects undertaken by the state department of transportation and financed from dedicated funds or capital projects funded by nonstate grants, gifts, or contracts obtained at or through state universities, if the projects do not require a commitment of additional state resources for maintenance, operations, or staffing.

A capital project shall not be divided into smaller projects in such a manner as to thwart the intent of this section to provide for the evaluation of a capital project whose cost cumulatively equals or exceeds two hundred fifty thousand dollars.

b. "Facility" means a distinct parcel of land or a building used by the state or a state agency for a specific purpose.

c. "State agency" means any executive, judicial, or legislative department, commission, board, institution, division, bureau, office, agency, or other entity of state government.

2. *Duties.* The governor shall:

a. Develop criteria for the evaluation of proposed capital projects which shall include but not be limited to the following:

(1) Fiscal impacts on costs and revenues.

(2) Health and safety effects.

(3) Community economic effects.

(4) Environmental, aesthetic, and social effects.

(5) Amount of disruption and inconvenience caused by the capital project.

(6) Distributional effects.

(7) Feasibility, including public support and project readiness.

(8) Implications of deferring the project.

(9) Amount of uncertainty and risk.

(10) Effects on interjurisdictional relationships.

(11) Advantages accruing from relationships to other capital project proposals.

(12) Private sector contracting for construction, operation, or maintenance.

b. Make recommendations to the general assembly and the legislative capital projects committee regarding the funding and priorities of proposed capital projects.

c. Develop maintenance standards and guidelines for capital projects.

d. Review financing alternatives available to fund capital projects, including the evaluation of the advantages and disadvantages of bonding for all types of capital projects undertaken by all state agencies.

e. Monitor the debt of the state or a state agency.

89 Acts, ch 298, §4

DEPARTMENT OF MANAGEMENT

8.4 Department of management.

The department of management is created, which is directly attached to the office of the governor and under the general direction, supervision, and control of the governor. The office is in immediate charge of an officer to be known as "the director", who shall be appointed by the governor, subject to confirmation by the senate, and shall hold office at the governor's pleasure and shall receive a salary as set by the governor. Before entering upon the discharge of duties, the director shall take the constitutional oath of office and give a surety bond in the penalty fixed by the governor,

payable to the state, which shall not be less than twenty-five thousand dollars, conditioned upon the faithful discharge of the director's duties. The premium on the bond shall be paid out of the state treasury.

[C24, §309, 311 – 316; C27, §309, 311, 313 – 316; C31, §309, 311, 314 – 316, 1063; C35, §84-e4; C39, §**84.04;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §8.4]

86 Acts, ch 1245, §103

Confirmation, see §2.32

8.5 General powers and duties.

The director of the department of management shall have the power and authority to:

1. *Assistants.* Employ, with the approval of the governor, two assistants and such clerical assistants as the director may find necessary.

2. *Compensation of employees.* Fix the compensation, with the approval of the governor, of any person employed by the director, provided that the total amount paid in salaries shall not exceed the appropriation made for that purpose.

3. *Discharge of employees.* Discharge any employee of the department of management.

4. *Miscellaneous duties.* Exercise and perform such other powers and duties as may be prescribed by law.

[C51, §50 – 58; R60, §71 – 79, 1967; C73, §66 – 74; C97, §89 – 97, 162; S13, §89, 162, 163-a, 170-e, -f; SS15, §170-r, -s, -t, -u; C24, §102 – 109, 391 – 407; C27, §102 – 109, 130-a1, 391 – 407; C31, §102 – 109, 130-a1, 391 – 397, 397-d1, 398 – 407; C35, §84-e5; C39, §**84.05;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §8.5]

See chapter 8A, subchapter IV, for merit system

8.6 Specific powers and duties.

The specific duties of the director of the department of management shall be:

1. *Forms.* To consult with all state officers and agencies which receive reports and forms from county officers, in order to devise standardized reports and forms which will permit computer processing of the information submitted by county officers, and to prescribe forms on which each municipality, at the time of preparing estimates required under section 24.3, shall be required to compile in parallel columns the following data and estimates for immediate availability to any taxpayer upon request:

a. For the immediate prior fiscal year, revenue from all sources, other than revenue received from property taxation, allocated to each of the several funds and separately stated as to each such source, and for each fund the unencumbered cash balance thereof at the beginning and end of the year, the amount received by property taxation allocated to each fund, and the amount of actual expenditure for each fund.

b. For the current fiscal year, actual and estimated revenue, from all sources, other than revenue received from property taxation, and separately stated as to each such source, allocated to each of the several funds, and for each fund the actual unencumbered cash balance available at the beginning of the year, the amount to be received from property taxation allocated to each fund, and the amount of actual and estimated expenditures, whichever is applicable.

c. For the proposed budget year, an estimate of revenue from all sources, other than revenue to be received from property taxation, separately stated as to each such source, to be allocated to each of the several funds, and for each fund the actual or estimated unencumbered cash balance, whichever is applicable, to be available at the beginning of the year, the amount proposed to be received from property taxation allocated to each fund, and the amount proposed to be expended during the year plus the amount of cash reserve, based on actual experience of prior years, which shall be the necessary cash reserve of the budget adopted exclusive of capital outlay items. The estimated expenditures plus the required cash reserve for the ensuing fiscal year less all estimated or actual unencumbered balances at the beginning of the year and less the estimated income from all sources other than property taxation shall equal the amount to be received from property taxes, and such amount shall be shown on the proposed budget estimate.

d. To insure uniformity, accuracy, and efficiency in the preparation of budget estimates by municipalities subject to chapter 24, the director shall prescribe the procedures to be used and instruct the appropriate officials of the various municipalities on implementation of the procedures.

2. *Report of standing appropriations.* To annually prepare a separate report containing a complete list of all standing appropriations showing the amount of each appropriation and the purpose for which the appropriation is made and furnish a copy of the report to each member of the general assembly on or before the first day of each regular session.

3. *Budget document.* To prepare the budget document and draft the legislation to make it effective.

4. *Allotments.* To perform the necessary work involved in reviewing requests for allotments as are submitted to the governor for approval.

5. Reserved.

6. *Investigations.* To make such investigations of the organization, activities and methods of procedure of the several departments and establishments as the director of management may be called upon to make by the governor or the governor and executive council, or the legislature.

7. *Legislative aid.* To furnish to any committee of either house of the legislature having jurisdiction over revenues or appropriations such aid

and information regarding the financial affairs of the government as it may request.

8. *Rules.* To make such rules, subject to the approval of the governor, as may be necessary for effectively carrying on the work of the department of management. The director may, with the approval of the executive council, require any state official, agency, department or commission, to require any applicant, registrant, filer, permit holder or license holder, whether individual, partnership, trust or corporation, to submit to said official, agency, department or commission, the social security or the tax number or both so assigned to said individual, partnership, trust or corporation.

9. *Budget report.* The director shall prepare and file in the department of management, on or before the first day of December of each year, a state budget report, which shall show in detail the following:

a. Classified estimates in detail of the expenditures necessary, in the director's judgment, for the support of each department and each institution and department thereof for the ensuing fiscal year.

b. A schedule showing a comparison of such estimates with the askings of the several departments for the current fiscal year and with the expenditures of like character for the last two preceding fiscal years.

c. A statement setting forth in detail the reasons for any recommended increases or decreases in the estimated requirements of the various departments, institutions, and departments thereof.

d. Estimates of all receipts of the state other than from direct taxation and the sources thereof for the ensuing fiscal year.

e. A comparison of such estimates and askings with receipts of a like character for the last two preceding fiscal years.

f. The expenditures and receipts of the state for the last completed fiscal year, and estimates of the expenditures and receipts of the state for the current fiscal year.

g. A detailed statement of all appropriations made during the two preceding fiscal years, also of unexpended balances of appropriations at the end of the last fiscal year and estimated balances at the end of the current fiscal year.

h. Estimates in detail of the appropriations necessary to meet the requirements of the several departments and institutions for the next fiscal year.

i. Statements showing:

(1) The condition of the treasury at the end of the last fiscal year.

(2) The estimated condition of the treasury at the end of the current fiscal year.

(3) The estimated condition of the treasury at the end of the next fiscal year, if the director's recommendations are adopted.

(4) An estimate of the taxable value of all the property within the state.

(5) The estimated aggregate amount necessary to be raised by a state levy.

(6) The amount per thousand dollars of taxable value necessary to produce such amount.

(7) Other data or information as the director deems advisable.

10. *General control.* To perform such other duties as may be required to effectively control the financial operations of the government as limited by this chapter.

11. *Targeted small businesses.* To assist the director of the department of economic development as requested in the establishment and implementation of the Iowa targeted small business procurement Act and the targeted small business loan guarantee program.

12. *State programs for equal opportunity.* To perform specific powers and duties as provided in chapter 19B and other provisions of law with respect to oversight and the imposition of sanctions in connection with state programs emphasizing equal opportunity through affirmative action, contract compliance policies, and procurement setaside requirements.

13. *Capital project budgeting requests.* To compile annually all capital project budgeting requests of all state agencies, as defined in section 8.3A, and to consolidate the requests, with individual state agency priorities noted, into a report for submission with the budget documents by the governor pursuant to section 8.22. Any additional information regarding the capital project budgeting requests or priorities shall be compiled and submitted in the same report.

14. *Capital project planning and budgeting authority.* To call upon any state agency, as defined in section 8.3A, for assistance the director may require in performing the director's duties under subsection 13. All state agencies, upon the request of the director, shall assist the director and are authorized to make available to the director any existing studies, surveys, plans, data, and other materials in the possession of the state agencies which are relevant to the director's duties.

[C51, §50; R60, §71, 1967; C73, §66; C97, §89; S13, §89, 161-a; C24, 27, 31, §102, 130, 329; C35, §84-e6; C39, §**84.06;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §8.6]

83 Acts, ch 96, §157, 159; 84 Acts, ch 1067, §3; 85 Acts, ch 212, §21; 86 Acts, ch 1244, §3; 86 Acts, ch 1245, §104, 105, 2014; 86 Acts, ch 1246, §121; 86 Acts, ch 1016, §1; 89 Acts, ch 284, §1; 89 Acts, ch 298, §5; 90 Acts, ch 1168, §3, 4; 90 Acts, ch 1266, §29; 91 Acts, ch 268, §602, 603; 99 Acts, ch 204, §21, 22; 2001 Acts, 2nd Ex, ch 2, §2, 3, 13

8.7 Reserved.

8.8 Special olympics fund — appropriation.

A special olympics fund is created in the office of the treasurer of state under the control of the de-

partment of management. There is appropriated annually from the general fund of the state to the special olympics fund thirty thousand dollars for distribution to one or more organizations which administer special olympics programs benefiting the citizens of Iowa with disabilities.

94 Acts, ch 1199, §1; 99 Acts, ch 208, §15

8.9 Grants enterprise management office.

The office of grants enterprise management is established in the department of management. The function of the office is to develop and administer a system to track, identify, advocate for, and coordinate nonstate grants as defined in section 8.2, subsections 1 and 3. Staffing for the office of grants enterprise management shall be provided by a facilitator appointed by the director of the department of management. Additional staff may be hired, subject to the availability of funding. Funding for the office is from the appropriation to the department pursuant to section 8A.505, subsection 2.

2003 Acts, ch 99, §1

8.10 Facilitator's duties.

The specific duties of the facilitator of the office of grants enterprise management may include the following:

1. Establish a grants network representing all state agencies to assist the grants enterprise management office in an advisory capacity. Each state agency shall designate an employee on the management or senior staff level to serve as the agency's federal funds coordinator and represent the agency on the grants network. An agency may not create a staff position for a federal funds coordinator. The coordinator's duties shall be in addition to the duties of the employee of the agency.
2. Develop a plan for increased state access to funding sources other than the general fund of the state.
3. Develop procedures to formally notify appropriate state and local agencies of the availability of discretionary federal funds and, when necessary, coordinate the application process.
4. Establish an automated information system database for grants applied for and received and to track congressional activity.
5. Provide information and counseling to state agencies and political subdivisions of the state concerning the availability and means of obtaining state, federal, and private grants.
6. Provide grant application writing assistance and training to state agencies and political subdivisions of the state, directly or through interagency contracts, cooperative agreements, or contracts with third-party providers.
7. Monitor the federal register and other federal or state publications to identify funding opportunities, with special emphasis on discretionary grants or other funding opportunities available to the state.
8. Periodically review the funding strategies and methods of those states that rank significantly above the national average in the per capita receipt of federal funds to determine whether those strategies and methods could be successfully employed by this state.

2003 Acts, ch 99, §2

8.11 through 8.20 Repealed by 86 Acts, ch 1245, § 451.

THE BUDGET

See §8.6(9)

8.21 Budget transmitted.

Not later than February 1 of each legislative session, the governor shall transmit to the legislature a document to be known as a budget, setting forth the governor's financial program for the ensuing fiscal year and having the character and scope set forth in sections 8.22 through 8.29.

If the governor is required to use a lesser amount in the budget process because of a later meeting of the state revenue estimating conference under section 8.22A, subsection 3, the governor shall transmit recommendations for a budget in conformance with that requirement within fourteen days of the later meeting of the state revenue estimating conference.

[SS15, §191-b; C24, 27, 31, §334; C35, §84-e14; C39, §**84.14;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §8.21]

86 Acts, ch 1245, §2015; 92 Acts, ch 1227, §1; 2001 Acts, 2nd Ex, ch 2, §4, 13

8.22 Nature and contents of budget.

The budget shall consist of four parts, the nature and contents of which shall be as follows:

PART I

Governor's budget message. Part I shall consist of the governor's budget message, in which the governor shall set forth:

1. The governor's program for meeting all the expenditure needs of the government for the fiscal year, indicating the classes of funds, general or special, from which appropriations are to be made and the means through which the expenditures shall be financed.

The governor's program shall include a single budget request for all capital projects proposed by the governor. The request shall include but is not limited to the following:

a. The purpose and need for each capital project.

b. A priority listing of capital projects.

c. The costs of acquisition, lease, construction,

renovation, or demolition of each capital project.

d. The identification of the means and source of funding each capital project.

e. The estimated operating costs of each capital project after completion.

f. The estimated maintenance costs of each capital project after completion.

g. The consequences of delaying or abandoning each capital project.

h. Alternative approaches to meeting the purpose or need for each capital project.

i. Alternative financing mechanisms.

j. A cost-benefit analysis or economic impact of each capital project.

2. Financial statements giving in summary form:

a. The condition of the treasury at the end of the last completed fiscal year, the estimated condition of the treasury at the end of the year in progress, and the estimated condition of the treasury at the end of the following fiscal year if the governor's budget proposals are put into effect.

b. Statements showing the bonded indebtedness of the government, debt authorized and unissued, debt redemption and interest requirements, and condition of the sinking funds, if any.

c. A summary of appropriations recommended for the following fiscal year for each department and establishment and for the government as a whole, in comparison with the actual expenditures for the last completed fiscal year and the estimated expenditures for the year in progress.

d. A summary of the revenue, estimated to be received by the government during the following fiscal year, classified according to sources, in comparison with the actual revenue received by the government during the last completed fiscal year and estimated income during the year in progress.

e. A statement of federal funds received in the form of block or categorical grants which were not included in the governor's budget for the previous fiscal year and a statement of anticipated block grants and categorical grants. The budget shall indicate how the federal funds will be used and the programs to which they will be allocated. The amount of state funds required to implement the programs to which the federal funds will apply shall also be indicated. The departments shall provide information to the director on the anticipated federal block grants and categorical grants to be received on or before November 1 of each year. The director shall use this information to develop an annual update of the statement of federal funds received which shall be provided to the general assembly.

f. Other financial statements, data, and comments as in the governor's opinion are necessary or desirable in order to make known in all practicable detail the financial condition and operation of the government and the effect that the budget as proposed by the governor will have on the financial condition and operation.

If the estimated revenues of the government for the ensuing fiscal year as set forth in the budget on the basis of existing laws, plus the estimated amounts in the treasury at the close of the year in progress, available for expenditure in the ensuing fiscal year are less than the aggregate recommended for the ensuing fiscal year as contained in the budget, the governor shall make recommendations to the legislature in respect to the manner in which the deficit shall be met, whether by an increase in the state tax or the imposition of new taxes, increased rates on existing taxes, or otherwise, and if the aggregate of the estimated revenues, plus estimated balances in the treasury, is greater than the recommended appropriations for the ensuing fiscal year, the governor shall make recommendations in reference to the application of the surplus to the reduction of debt or otherwise, to the reduction in taxation, or to such other action as in the governor's opinion is in the interest of the public welfare.

PART II

Recommended appropriations. Part II shall present in detail for the ensuing fiscal year the governor's recommendations for appropriations to meet the expenditure needs of the government from each general class of funds, in comparison with actual expenditures for each of the purposes during the last completed fiscal year and estimated expenditures for the year in progress, classified by departments and establishments and indicating for each the appropriations recommended for:

1. Meeting the cost of administration, operation, and maintenance of the departments and establishments.

2. Appropriations for meeting the cost of land, public improvements, and other capital outlays in connection with the departments and establishments.

Each item of expenditure, actual or estimated, and appropriations recommended for administration, operation, and maintenance of each department or establishment shall be supported by detailed statements showing the actual and estimated expenditures and appropriations classified by objects according to a standard scheme of classification to be prescribed by the director.

PART III

Appropriation bills. Part III shall include a draft or drafts of appropriation bills having for their purpose to give legal sanction to the appropriations recommended to be made in Parts I and II. The appropriation bills shall indicate the funds, general or special, from which the appropriations shall be paid, but the appropriations need not be in greater detail than to indicate the total appropriation to be made for:

1. Administration, operation, and maintenance of each department and establishment for the fiscal year.

2. The cost of land, public improvements, and other capital outlays for each department and establishment, itemized by specific projects or classes of projects of the same general character.

PART IV

Strategic plan. Part IV shall include an explanation that correlates the budget with the enterprise strategic plan adopted pursuant to section 8E.204. The budget shall provide an explanation of appropriations recommended for the administration and maintenance of an agency as defined in section 8E.103 with the general evaluation of the agency in meeting enterprise strategic goals, including identifying goals that require legislation.

[SS15, §191-b; C24, 27, 31, §332, 333, 335; C35, §84-e15; C39, §**84.15;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §8.22; 81 Acts, ch 17, §2]

84 Acts, ch 1231, §2; 86 Acts, ch 1245, §2016; 89 Acts, ch 298, §6; 90 Acts, ch 1168, §5; 2001 Acts, ch 169, §1, 2

8.22A Revenue estimating conference.

1. The state revenue estimating conference is created consisting of the governor or the governor's designee, the director of the legislative services agency or the director's designee, and a third member agreed to by the other two.

2. The conference shall meet as often as deemed necessary, but shall meet at least quarterly. The conference may use sources of information deemed appropriate.

3. By December 15 of each fiscal year the conference shall agree to a revenue estimate for the fiscal year beginning the following July 1. That estimate shall be used by the governor in the preparation of the budget message under section 8.22 and by the general assembly in the budget process. If the conference agrees to a different estimate at a later meeting which projects a greater amount of revenue than the initial estimate amount agreed to by December 15, the governor and the general assembly shall continue to use the initial estimate amount in the budget process for that fiscal year. However, if the conference agrees to a different estimate at a later meeting which projects a lesser amount of revenue than the initial estimate amount, the governor and the general assembly shall use the lesser amount in the budget process for that fiscal year. As used in this subsection, *"later meeting"* means only those later meetings which are held prior to the conclusion of the regular session of the general assembly and, if the general assembly holds an extraordinary session prior to the commencement of the fiscal year to which the estimate applies, those later meetings which are held before or during the extraordinary session.

4. At the meeting in which the conference agrees to the revenue estimate for the following fiscal year in accordance with the provisions of subsection 3, the conference shall agree to an estimate for tax refunds payable from that estimated revenue. The estimates required by this subsection shall be used in determining the adjusted revenue estimate under section 8.54.

5. At the meeting in which the conference agrees to the revenue estimate for the succeeding fiscal year in accordance with the provisions of subsection 3, the conference shall also agree to the following estimates which shall be used by the governor in preparation of the budget message under section 8.22 and the general assembly in the budget process for the succeeding fiscal year:

a. The amount of lottery revenues for the following fiscal year to be available for disbursement following the deductions made pursuant to section 99G.39, subsection 1.

b. The amount of revenue for the following fiscal year from gambling revenues and from interest earned on the cash reserve fund and the economic emergency fund to be deposited in the rebuild Iowa infrastructure fund under section 8.57, subsection 6, paragraph *"e"*.

c. The amount of accruals of those revenues collected by or due from entities other than the state on or before June 30 of the fiscal year but not remitted to the state until after June 30.

d. The amount of accrued lottery revenues collected on or before June 30 of the fiscal year but not transferred to the general fund of the state until after June 30.

86 Acts, ch 1245, §2045; 92 Acts, ch 1227, §2; 94 Acts, ch 1181, §4; 95 Acts, ch 214, §5; 96 Acts, ch 1218, §24; 2001 Acts, 2nd Ex, ch 2, §5, 13; 2003 Acts, ch 35, §23, 49; 2003 Acts, ch 178, §98, 121; 2003 Acts, ch 179, §142; 2004 Acts, ch 1175, §214, 287

Subsection 3 amended

8.23 Annual departmental estimates.

1. On or before October 1, prior to each legislative session, all departments and establishments of the government shall transmit to the director, on blanks to be furnished by the director, estimates of their expenditure requirements, including every proposed expenditure, for the ensuing fiscal year, classified so as to distinguish between expenditures estimated for administration, operation, and maintenance, and the cost of each project involving the purchase of land or the making of a public improvement or capital outlay of a permanent character, together with supporting data and explanations as called for by the director.

a. The estimates of expenditure requirements shall be based upon seventy-five percent of the funding provided for the current fiscal year accounted for by program reduced by the historical

employee vacancy factor in form specified by the director and the remainder of the estimate of expenditure requirements prioritized by program. The estimates shall be accompanied with performance measures for evaluating the effectiveness of the program.

b. The budget estimates for an agency as defined in section 8E.103 shall be based on achieving goals contained in the enterprise strategic plan and the agency's strategic plan as provided for in chapter 8E. The estimates shall be accompanied by a description of the measurable and other results to be achieved by the agency. Performance measures shall be based on the goals developed pursuant to sections 8E.205, 8E.206, and 8E.208. The estimates shall be accompanied by an explanation of the manner in which appropriations requested for the administration and maintenance of the agency meet goals contained in the enterprise strategic plan and the agency's strategic plan, including identifying goals that require legislation.

c. If a department or establishment fails to submit estimates within the time specified, the legislative services agency shall use the amounts of the appropriations to the department or establishment for the fiscal year in process at the time the estimates are required to be submitted as the amounts for the department's or establishment's request in the documents submitted to the general assembly for the ensuing fiscal year and the governor shall cause estimates to be prepared for that department or establishment as in the governor's opinion are reasonable and proper.

d. The director shall furnish standard budget request forms to each department or agency of state government.

2. On or before November 15 all departments and establishments of government and the judicial branch shall transmit to the department of management and the legislative services agency estimates of their receipts and expenditure requirements from federal or other nonstate grants, receipts, and funds for the ensuing fiscal year. The transmittal shall include the names of the grantor and the grant or the source of the funds, the estimated amount of the funds, and the planned expenditures and use of the funds. The format of the transmittal shall be specified by the legislative services agency.

[S13, §163-a; SS15, §191-a; C24, 27, 31, §327, 328; C35, §84-e16; C39, §**84.16;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §8.23]

86 Acts, ch 1245, §2017; 90 Acts, ch 1252, §1; 90 Acts, ch 1263, §53; 91 Acts, ch 263, §31; 95 Acts, ch 214, §20; 98 Acts, ch 1047, §2; 2001 Acts, ch 169, §3; 2003 Acts, ch 35, §45, 49; 2003 Acts, ch 179, §88, 159

2003 amendment striking subsection 1, paragraph a, takes effect May 30, 2003, and is first applicable to appropriations made for the fiscal year beginning July 1, 2003; 2003 Acts, ch 179, §159

8.24 Annual estimate of income. Repealed by 2001 Acts, 2nd Ex, ch 2, § 12, 13.

8.25 Tentative budget.

Upon the receipt of the estimates of expenditure requirements called for by section 8.23 and not later than the following December 1, the director of the department of management shall cause to be prepared a tentative budget conforming as to scope, contents, and character to the requirements of section 8.22 and containing the estimates of expenditures as called for by section 8.23, which tentative budget shall be transmitted to the governor.

[C24, 27, 31, §332; C35, §84-e18; C39, §**84.18;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §8.25]

2001 Acts, 2nd Ex, ch 2, §6, 13

8.26 Hearings.

Immediately upon the receipt of the tentative budget provided for by section 8.25 the governor shall make provision for public hearings thereon, at which the governor may require the attendance of the heads and other officers of all departments, establishments and other persons receiving or requesting the grant of state funds and the giving by them of such explanations and suggestions as they may be called upon to give or as they may desire to offer in respect to items of requested appropriations in which they are interested. The governor shall also extend invitations to the governor-elect and the director of the department of management to be present at such hearings and to participate in the hearings through the asking of questions or the expression of opinion in regard to the items of the tentative budget.

[C24, 27, 31, §331; C35, §84-e19; C39, §**84.19;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §8.26]

8.27 Preparation of budget.

Following the inauguration, the governor shall proceed to the formulation of the budget provided for by sections 8.21 and 8.22.

[C35, §84-e20; C39, §**84.20;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §8.27]

8.28 Supplemental estimates.

The governor shall transmit to the legislature supplemental estimates for such appropriations as in the governor's judgment may be necessary on account of laws enacted after transmission of the budget, or as the governor deems otherwise in the public interest. The governor shall accompany such estimates with a statement of the reasons therefor, including the reasons for their omission from the budget. Whenever such supplemental estimates amount to an aggregate which, if they had been contained in the budget, would have required the governor to make a recommendation for the raising of additional revenue, the governor shall make such recommendation.

[C35, §84-e21; C39, §**84.21;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §8.28]

8.29 Regents universities — uniform accounting system.

The state board of regents, with the approval of the director of the department of management, shall establish a uniform budgeting and accounting system for the institutions of higher education under its control, and shall require each of the institutions of higher education to begin operating under the uniform system not later than June 30, 1994.

[C71, 73, 75, 77, 79, 81, §8.29]

92 Acts, ch 1246, §23; 2001 Acts, 2nd Ex, ch 2, §7, 13

EXECUTION OF THE BUDGET

8.30 Availability of appropriations.

The appropriations made are not available for expenditure until allotted as provided for in section 8.31. All appropriations are declared to be maximum and proportionate appropriations, the purpose being to make the appropriations payable in full in the amounts named if the estimated budget resources during the fiscal year for which the appropriations are made, are sufficient to pay all of the appropriations in full. The governor shall restrict allotments only to prevent an overdraft or deficit in any fiscal year for which appropriations are made.

[C35, §84-e23; C39, §**84.23;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §8.30]

86 Acts, ch 1245, §2019

8.31 Allotments of appropriations — exceptions — modifications.

1. *a.* Before an appropriation of any department or establishment becomes available, the department or establishment shall submit to the director of the department of management a requisition for allotment of the appropriation according to dates identified in the requisition during the fiscal year by which portions of the appropriation will be needed. The department or establishment shall submit the requisition by June 1, prior to the start of a fiscal year or by another date identified by the director. The requisition shall contain details of proposed expenditures as may be required by the director subject to review by the governor.

b. The director of the department of management shall approve the allotments subject to review by the governor, unless it is found that the estimated budget resources during the fiscal year are insufficient to pay all appropriations in full, in which event such allotments may be modified to the extent the governor may deem necessary in order that there shall be no overdraft or deficit in the several funds of the state at the end of the fiscal year, and the director shall submit copies of the allotments thus approved or modified to the head of the department or establishment concerned, who shall set up such allotments on the books and be governed accordingly in the control of expenditures.

2. Allotments made in accordance with subsection 1 may be subsequently modified by the director of the department of management at the direction of the governor either upon the written request of the head of the department or establishment concerned, or in the event the governor finds that the estimated budget resources during the fiscal year are insufficient to pay all appropriations in full, upon the governor's own initiative to the extent the governor may deem necessary in order that there shall be no overdraft or deficit in the several funds of the state at the end of the fiscal year; and the head of the department or establishment shall be given notice of a modification in the same way as in the case of original allotments.

3. The allotment requests of all departments and establishments collecting governmental fees and other revenue which supplement a state appropriation shall attach to the summary of requests a statement showing how much of the proposed allotments are to be financed from state appropriations, stores, and repayment receipts.

4. The procedure to be employed in controlling the expenditures and receipts of the state fair board and the institutions under the state board of regents, whose collections are not deposited in the state treasury, is that outlined in section 8A.502, subsection 9.

5. If the governor determines that the estimated budget resources during the fiscal year are insufficient to pay all appropriations in full, the reductions shall be uniform and prorated between all departments, agencies, and establishments upon the basis of their respective appropriations.

6. Allotments from appropriations for the foreign trade offices of the department of economic development, if the appropriations are described by line item in the department's appropriation Act or another Act, may be made as is necessary to take advantage of the most favorable foreign currency exchange rates.

[C35, §84-e24; C39, §**84.24;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §8.31; 81 Acts, ch 18, §1]

86 Acts, ch 1245, §1972; 87 Acts, ch 115, §4; 89 Acts, ch 309, §6; 94 Acts, ch 1063, §1; 2003 Acts, ch 145, §121; 2003 Acts, ch 179, §89, 159

2003 amendments to subsections 1 – 3, 5, and 6 take effect May 30, 2003, and are first applicable to appropriations made for the fiscal year beginning July 1, 2003; 2003 Acts, ch 179, §159

8.32 Conditional availability of appropriations.

All appropriations made to any department or establishment of the government as receive or collect moneys available for expenditure by them under present laws, are declared to be in addition to such repayment receipts, and such appropriations

are to be available as and to the extent that such receipts are insufficient to meet the costs of administration, operation, and maintenance, or public improvements of such departments:

Provided, that such receipts or collections shall be deposited in the state treasury as part of the general fund or special funds in all cases, except those collections made by the state fair board, the institutions under the state board of regents and the natural resource commission.

Provided further, that no repayment receipts shall be available for expenditures until allotted as provided in section 8.31; and

Provided further, that the collection of repayment receipts by the state fair board and the institutions under the state board of regents shall be deposited in a bank or banks duly designated and qualified as state depositories, in the name of the state of Iowa, for the use of such boards and institutions, and such funds shall be available only on the check of such boards or institutions depositing them, which are hereby authorized to withdraw such funds, but only after allotment by the governor as provided in section 8.31; and

Provided further, that this chapter shall not apply to endowment or private trust funds or to gifts to institutions owned or controlled by the state or to the income from such endowment or private trust funds, or to private funds belonging to students or inmates of state institutions.

The provisions of this chapter shall not be construed to prohibit the state fair board from creating an emergency or sinking fund out of the receipts of the state fair and state appropriation for the purpose of taking care of any emergency that might arise beyond the control of the board of not to exceed three hundred thousand dollars. Neither shall this chapter be construed to prohibit the state fair board from retaining an additional sum of not to exceed three hundred fifty thousand dollars to be used in carrying out the provisions of chapter 173.

[C35, §84-e25; C39, §**84.25;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §8.32]

86 Acts, ch 1244, §4

8.33 Time limit on obligations — reversion.

No obligation of any kind shall be incurred or created subsequent to the last day of the fiscal year for which an appropriation is made, except when specific provision otherwise is made in the Act making the appropriation. On August 31, or as otherwise provided in an appropriation Act, following the close of each fiscal year, all unencumbered or unobligated balances of appropriations made for that fiscal term revert to the state treasury and to the credit of the funds from which the appropriations were made, except that capital expenditures for the purchase of land or the erection of buildings or new construction continue in force until the attainment of the object or the completion of the work for which the appropriations were made unless the Act making an appropriation for the capital expenditure contains a specific provision relating to a time limit for incurring an obligation or reversion of funds. This section does not repeal sections 7D.11 through 7D.14.

No payment of an obligation for goods and services shall be charged to an appropriation subsequent to the last day of the fiscal year for which the appropriation is made unless the goods or services are received on or before the last day of the fiscal year, except that repair projects, purchase of specialized equipment and furnishings, and other contracts for services and capital expenditures for the purchase of land or the erection of buildings or new construction or remodeling, which were committed and in progress prior to the end of the fiscal year are excluded from this provision.

[C35, §84-e26; C39, §**84.26;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §8.33]

83 Acts, ch 172, §1; 84 Acts, ch 1091, §1; 84 Acts, ch 1305, §17; 86 Acts, ch 1245, §2020; 86 Acts, ch 1246, §770; 89 Acts, ch 284, §2

8.34 Charging off unexpended appropriations.

Except as otherwise provided by law, the director of the department of administrative services shall transfer to the fund from which an appropriation was made, any unexpended or unencumbered balance of that appropriation remaining at the expiration of two months after the close of the fiscal term for which the appropriation was made. At the time the transfer is made on the books of the department of administrative services, the director shall certify that fact to the treasurer of state, who shall make corresponding entries on the books of the treasurer's office.

[C27, 31, §130-a1; C35, §84-a1; C39, §**84.27;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §8.34]

88 Acts, ch 1134, §3; 89 Acts, ch 284, §3; 2003 Acts, ch 145, §286

8.35 General supervisory control.

The governor and the director of the department of management and any officer of the department of management, hereinabove provided for, when authorized by the governor, are hereby authorized to make such inquiries regarding the receipts, custody and application of state funds, existing organization, activities and methods of business of the departments and establishments, assignments of particular activities to particular services and regrouping of such services, as in the opinion of the governor, will enable the governor to make recommendations to the legislature, and, within the scope of the powers possessed by the governor, to order action to be taken, having for their purpose to bring about increased economy and efficiency in the conduct of the affairs of government.

[C35, §84-e27; C39, §**84.28;** C46, 50, 54, 58, 62,

66, 71, 73, 75, 77, 79, 81, §8.35]

8.35A Information to be given to legislative services agency.

1. By July 1, the director of the department of management, in conjunction with the director of the department of administrative services, shall provide a projected expenditure breakdown of each appropriation for the beginning fiscal year to the legislative services agency in the form and level of detail requested by the legislative services agency. By the fifteenth of each month, the director, in conjunction with the director of the department of administrative services, shall transmit to the legislative services agency a record for each appropriation of actual expenditures for the prior month of the fiscal year and the fiscal year to date in the form and level of detail as requested by the legislative services agency. By October 1, the director, in conjunction with the director of the department of administrative services, shall transmit the total record of an appropriation, including reversions and transfers for the prior fiscal year ending June 30, to the legislative services agency.

2. Commencing October 1, the director shall provide weekly budget tapes in the form and level of detail requested by the legislative services agency reflecting finalized agency budget requests for the following fiscal year as submitted to the governor. The director shall transmit all agency requests in final form to the legislative services agency by November 15. Final budget records containing the governor's recommendation and final agency requests shall be transmitted to the legislative services agency by January 1 or no later than the date the governor's budget document is delivered to the printer. The governor's recommendation included on this record shall be considered confidential by the legislative services agency until it is made public by the governor. The legislative services agency shall use this data in the preparation of information for the legislative appropriation process.

3. The director shall communicate any changes or anticipated changes to the budgeting system or the accounting system in writing to the legislative services agency prior to implementation.

4. A government agency which receives state funds directly from the state or indirectly through a political subdivision as directed by statute and which is not a city, county, or school district is subject to this subsection. A government agency which is subject to this subsection shall submit a copy of its budget to the legislative services agency, identifying it as being submitted under this subsection, when the budget of that government agency has received approval from the governing head or body of that agency. The copy of the budget submitted to the legislative services agency shall be on the budget forms provided by the department of management to state agencies under this chapter. The government agency shall also submit a statement identifying any funds available to the agency which are not included in the budget.

5. The department shall transmit the enterprise strategic plan and related information and an agency shall transmit its agency strategic plan, performance report, and related information as required by chapter 8E to the legislative services agency.

86 Acts, ch 1245, §2013; 89 Acts, ch 284, §4; 95 Acts, ch 214, §21; 2001 Acts, ch 169, §4; 2001 Acts, 2nd Ex, ch 2, §8, 13; 2003 Acts, ch 35, §45, 46, 49; 2003 Acts, ch 145, §286

8.36 Fiscal year.

The fiscal year of the government shall commence on the first day of July and end on the thirtieth day of June. This fiscal year shall be used for purposes of making appropriations and of financial reporting and shall be uniformly adopted by all departments and establishments of the government.

However, the department of workforce development may use the federal fiscal year instead of the fiscal year commencing on July 1.

[C35, §84-e28; C39, §**84.29;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §8.36; 81 Acts, ch 19, §1]
96 Acts, ch 1186, §23

8.36A Full-time equivalent positions.

1. For purposes of making appropriations and financial reports and as used in appropriations statutes, *"full-time equivalent position"* means a budgeting and monitoring unit that equates the aggregate of full-time positions, part-time positions, a vacancy and turnover factor, and other adjustments. One full-time equivalent position represents two thousand eighty working hours, which is the regular number of hours one full-time person works in one fiscal year. The number of full-time equivalent positions shall be calculated by totaling the regular number of hours that could be annually worked by persons in all authorized positions, reducing those hours by a vacancy and turnover factor and dividing that amount by two thousand eighty hours. In order to achieve the full-time equivalent position level, the number of filled positions may exceed the number of full-time equivalent positions during parts of the fiscal year to compensate for time periods when the number of filled positions is below the authorized number of full-time equivalent positions.

2. If a department or establishment has reached or anticipates reaching the full-time equivalent position level authorized for the department but determines that conversion of a contract position to a full-time equivalent position would result in cost savings while providing comparable or better services, the department or establishment may request the director of the department of management to approve the conver-

sion and addition of the full-time equivalent position. The request shall be accompanied by evidence demonstrating how the cost savings and service quality will be achieved through the conversion. If approved by the director of the department of management, the department's or establishment's authorized full-time equivalent position level shall be increased accordingly and the revised level shall be reported to the fiscal committee of the legislative council and the legislative services agency.

90 Acts, ch 1247, §1; 2003 Acts, ch 35, §46, 49; 2003 Acts, ch 145, §122

8.37 Fiscal term. Repealed by 2001 Acts, 2nd Ex, ch 2, § 12, 13.

8.38 Misuse of appropriations.

No state department, institution, or agency, or any board member, commissioner, director, manager, or other person connected with any such department, institution, or agency, shall expend funds or approve claims in excess of the appropriations made thereto, nor expend funds for any purpose other than that for which the money was appropriated, except as otherwise provided by law. A violation of the foregoing provision shall make any person violating same, or consenting to the violation of same liable to the state for such sum so expended together with interest and costs, which shall be recoverable in an action to be instituted by the attorney general for the use of the state, which action may be brought in any county of the state.

[C35, §84-e29; C39, §**84.31;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §8.38]

8.39 Use of appropriations — transfer.

1. Except as otherwise provided by law, an appropriation or any part of it shall not be used for any other purpose than that for which it was made. However, with the prior written consent and approval of the governor and the director of the department of management, the governing board or head of any state department, institution, or agency may, at any time during the fiscal year, make a whole or partial intradepartmental transfer of its unexpended appropriations for purposes within the scope of such department, institution, or agency.

2. If the appropriation of a department, institution, or agency is insufficient to properly meet the legitimate expenses of the department, institution, or agency, the director, with the approval of the governor, may make an interdepartmental transfer from any other department, institution, or agency of the state having an appropriation in excess of its needs, of sufficient funds to meet that deficiency. An interdepartmental transfer to an appropriation which is not an entitlement appropriation is not authorized when the general assembly is in regular session and, in addition, the sum of interdepartmental transfers in a fiscal year to an appropriation which is not an entitlement appropriation shall not exceed fifty percent of the amount of the appropriation as enacted by the general assembly. For the purposes of this subsection, an entitlement appropriation is a line item appropriation to the state public defender for indigent defense or to the department of human services for foster care, state supplementary assistance, or medical assistance, or for the family investment program.

3. Prior to any transfer of funds pursuant to subsection 1 or 2 of this section or a transfer of an allocation from a subunit of a department which statutorily has independent budgeting authority, the director shall notify the chairpersons of the standing committees on budget of the senate and the house of representatives and the chairpersons of subcommittees of such committees of the proposed transfer. The notice from the director shall include information concerning the amount of the proposed transfer, the departments, institutions or agencies affected by the proposed transfer and the reasons for the proposed transfer. Chairpersons notified shall be given at least two weeks to review and comment on the proposed transfer before the transfer of funds is made.

4. Any transfer made under the provisions of this section shall be reported to the legislative fiscal committee on a monthly basis. The report shall cover each calendar month and shall be due the tenth day of the following month. The report shall contain the following: The amount of each transfer; the date of each transfer; the departments and funds affected; a brief explanation of the reason for the transfer; and such other information as may be required by the committee. A summary of all transfers made under the provisions of this section shall be included in the annual report of the legislative fiscal committee.

[C97, §187; SS15, §170-q; C24, 27, 31, §345; C35, §84-a3; C39, §**84.32;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §8.39]

86 Acts, ch 1245, §2022; 87 Acts, ch 115, §5; 94 Acts, ch 1181, §6; 94 Acts, ch 1199, §44

8.39A Transfer of moneys or positions — changes in tables of organization — notification. Repealed by 2001 Acts, 2nd Ex, ch 2, § 12, 13.

8.40 Penalty — removal — impeachment.

A refusal to perform any of the requirements of this chapter, or a refusal to perform a rule or requirement or request of the governor or the director of the department of management made pursuant to this chapter, by a board member, commissioner, director, manager, building committee, other officer or person connected with any institution, or other state department or establishment, subjects the offender to a penalty of two hundred

fifty dollars, to be recovered in an action instituted in the district court of Polk county by the attorney general for the use of the state. If the offender is not an officer elected by vote of the people, the offense is sufficient cause for removal from office or dismissal from employment by the governor upon thirty days' notice in writing to the offender; and if the offender is an officer elected by vote of the people, the offense is sufficient cause to subject the offender to impeachment.

[S13, §163-a; C24, 27, 31, §330; C35, §84-e30; C39, §**84.33;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §8.40]

88 Acts, ch 1134, §4

8.41 Federal funds — deposit — block grant plans — affected political subdivisions.

1. Commencing with the fiscal year beginning July 1, 1981, federal funds received in the form of block grants shall be deposited in a special fund in the state treasury and are subject to appropriation by the general assembly upon a recommendation by the governor. In determining a general fund balance, the federal funds deposited in the special fund shall not be included, but shall remain segregated in the special fund until appropriated by the general assembly.

2. Federal funds deposited in the state treasury as provided in subsection 1 shall either be included as part of the governor's budget required by section 8.22 or shall be included in a separate recommendation made by the governor to the general assembly. If federal funds received in the form of block grants or categorical grants have not been included in the governor's budget for the current fiscal year because of time constraints or because a budget is not being submitted for the next fiscal year, the governor shall submit a supplemental statement to the general assembly listing the federal funds received and including the same information for the federal funds required by section 8.22, part I, subsection 2, paragraph *"e"*, for the statement of federal funds in the governor's budget.

3. *a.* If, in any federal fiscal year, the federal government provides for a block grant which requires a new or revised program than was required in the prior fiscal year, each state agency required to administer the block grant program shall develop a block grant plan detailing program changes.

b. To the extent allowed by federal law, the block grant plan shall be developed in accordance with the following:

(1) The primary goal of the plan shall be to attain savings for taxpayers and to avoid shifting costs from the federal government to state and local governments.

(2) State agency planning meetings shall be held jointly with officials of the affected political subdivision and affected members of the public.

(3) The plan shall address proposed expenditures and accountability measures and shall be published so as to provide reasonable opportunity for public review and comment.

(4) (a) Preference shall be given to any existing service delivery system capable of delivering the required service. If an existing service delivery system is not used, the plan shall identify those existing delivery systems which were considered and the reasons those systems were rejected. This subparagraph subdivision applies to any service delivered pursuant to a federal block grant, including, but not limited to, any of the following block grant areas: health, human services, education, employment, community and economic development, and criminal justice.

(b) If a service delivered pursuant to a federal block grant and implemented by a political subdivision was previously provided for by a categorical grant, the state agency shall allow the political subdivision adequate transition time to accommodate related changes in federal and state policy. Transition activities may include, but are not limited to, revision of the political subdivision's laws, budgets, and administrative procedures.

(c) The state agency shall allow the political subdivision the flexibility to implement a service in a manner so as to address identifiable needs within the context of meeting broad national objectives.

(5) State administrative costs shall not exceed the limits allowed for under the federal law enacting the block grant.

(6) A federal mandate that is eliminated or waived for the state shall be eliminated or waived for a political subdivision.

(7) Federal block grants shall not be used to supplant existing funding efforts by the state.

c. The state agency shall send copies of the proposed block grant plan to the legislative fiscal committee and to the appropriate appropriations subcommittee chairpersons and ranking members of the general assembly. The plan and any program changes contained within the plan shall be adopted as rules in accordance with chapter 17A.

[81 Acts, ch 17, §3]

84 Acts, ch 1067, §4; 86 Acts, ch 1245, §2023; 96 Acts, ch 1105, §1

8.42 Payroll accrual account. Repealed by 2001 Acts, 2nd Ex, ch 2, § 12, 13.

8.43 Salary adjustment fund.

A *"salary adjustment fund"* is created, to be used to segregate funds appropriated by the general assembly for distribution to various state departments to fund salary increases for designated state employees. Moneys distributed from the salary adjustment fund are subject to the approval of the governor and director of the department of

management.

[C77, 79, 81, §8.43]

88 Acts, ch 1134, §6

8.44 Reporting additional funds received.

Upon receiving federal funds or any other funds from any public or private sources except gifts or donations made to institutions for the personal use or for the benefit of members, patients, or inmates and receipts from the gift shop of merchandise manufactured by members, patients, or inmates, the state departments, agencies, boards, and institutions receiving such funds shall submit a written report within thirty days after receipt of the funds to the director of the department of management. The report shall state the source of the funds that supplement or replace state appropriations for institutional operations, the amount received, and the terms under which the funds are received.

All departments and establishments of government and the judicial branch shall notify the department of management and the legislative services agency of any change in the receipt of federal or other nonstate grants, receipts, and funds from the funding levels on which appropriations for the current or ensuing fiscal year were or are based. Changes which must be reported include, but are not limited to, any request, approval, award, or loss changes affecting federal or other nonstate grants, receipts, or funds. The notifications shall be made on a quarterly basis. The format of the notifications shall be specified by the legislative services agency.

[C71, 73, 75, 77, 79, 81, §8.44]

88 Acts, ch 1134, §7; 90 Acts, ch 1263, §54; 98 Acts, ch 1047, §3; 2003 Acts, ch 35, §45, 49

8.45 Purchase of real estate by state departments.

Purchases of real estate as provided by law may be made by a state department on written contracts providing for payment over a period of years but the obligations thereon shall not constitute a debt or charge against the state of Iowa nor against the funds of the department for which said purchases are made. Purchase payments shall be made from only capital funds appropriated for that purpose. All state-appropriated capital funds used for any one purchase contract shall be taken entirely from a single capital appropriation and shall be set aside for that purpose. In event of default, the only remedy of the seller shall be against the property itself in rem, pursuant to chapter 654. In no event shall a deficiency judgment be entered or enforced against the state or the department making the purchase. The provisions of chapter 656 prescribing how a real estate contract may be forfeited shall, in no event, be applicable. In a foreclosure proceeding pursuant to this section and chapter 654, the department making the purchase and the attorney general shall be the only defendants who need be named and such department and the attorney general may be served personally or by restricted certified mail. The department and the attorney general shall have thirty days from the date of completed service in which to appear.

[C71, 73, 75, 77, 79, 81, §8.45]

8.46 Lease-purchase — reporting.

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

a. "Installment acquisition" includes, but is not limited to, an arrangement in which title of ownership passes when the first installment payment is made.

b. "Lease-purchase arrangement" includes, but is not limited to, an arrangement in which title of ownership passes when the final installment payment is made.

c. "State agency" means any executive, judicial, or legislative department, commission, board, institution, division, bureau, office, agency, or other entity of state government.

2. At least thirty days prior to entering into a contract involving a lease-purchase or installment acquisition arrangement in which any part or the total amount of the contract is at least fifty thousand dollars, a state agency shall notify the legislative services agency concerning the contract. The legislative services agency shall compile the notifications for submission to the legislative fiscal committee of the legislative council. The notification is required regardless of the source of payment for the lease-purchase or installment acquisition arrangement. The notification shall include all of the following information:

a. A description of the object of the lease-purchase or installment acquisition arrangement.

b. The proposed terms of the contract.

c. The cost of the contract, including principal and interest costs. If the actual cost of a contract is not known at least thirty days prior to entering into the contract, the state agency shall estimate the principal and interest costs for the contract.

d. An identification of the means and source of payment of the contract.

e. An analysis of consequences of delaying or abandoning the commencement of the contract.

3. The legislative fiscal committee shall report to the legislative council concerning the notifications it receives pursuant to this section.

91 Acts, ch 268, §606; 95 Acts, ch 214, §2; 2003 Acts, ch 35, §45, 49

8.47 Service contracts.

1. The department of administrative services, in cooperation with the office of attorney general and the department of management, shall adopt uniform terms and conditions for service contracts executed by a department or establishment bene-

fiting from service contracts. The terms and conditions shall include but are not limited to all of the following:

a. The amount or basis for paying consideration to the party based on the party's performance under the service contract.

b. Methods to effectively oversee the party's compliance with the service contract by the department or establishment receiving the services during performance, including the delivery of invoices itemizing work performed under the service contract prior to payment.

c. Methods to effectively review performance of a service contract, including but not limited to performance measurements developed pursuant to chapter 8E.

2. Departments or establishments, with the approval of the department of management acting in cooperation with the office of attorney general and the department of administrative services, may adopt special terms and conditions for use by the departments or establishments in their service contracts.

3. The state board of regents shall establish terms and conditions for service contracts executed by institutions governed by the state board of regents.

4. This section does not apply to service contracts or other agreements for services by the department of public defense that are funded with at least seventy-five percent federal moneys. The department of public defense shall establish terms and conditions for service contracts and other agreements for services that comply with this section to the greatest extent possible.

2001 Acts, ch 169, §5; 2002 Acts, ch 1117, §1, 23; 2003 Acts, ch 145, §123, 124

8.48 through 8.50 Reserved.

8.51 Fiscal year of political subdivisions.

The fiscal year of cities, counties, and other political subdivisions of the state shall begin July 1 and end the following June 30. For the purpose of this section, the term political subdivision includes school districts.

[C75, 77, 79, 81, §8.51]

8.52 Planning responsibility.

The department of management shall:

1. Provide coordination of state planning, performance measurement, and management of interagency programs of the state, and recommend policies to the governor and the general assembly.

2. Maintain and make available demographic and other information useful for state and local planning.

3. Prepare and submit economic reports appraising the economic condition, growth, and development of the state.

4. Analyze the quality and quantity of services required for the orderly growth of the state, taking into consideration the relationship of activities, capabilities, and future plans of private enterprise, the local, state, and federal governments, and regional units established under state or federal legislation, and shall make recommendations to the governor and the general assembly for the establishment and improvement of such services.

5. Inquire into methods of planning, performance measurement, and program development and the conduct of affairs of state government; prescribe adequate systems of records for planning, performance measurement, and programming; establish standards for effective planning, performance measurement, and programming in consultation with affected state agencies; and exercise all other powers necessary in discharging the powers and duties of this chapter.

6. Administer the accountable government Act as provided in chapter 8E.

86 Acts, ch 1245, §106; 2001 Acts, ch 169, §6, 7

8.53 GAAP deficit — GAAP implementation.

For the fiscal year beginning July 1, 1996, and each succeeding fiscal year, the governor shall recommend in the governor's budget and the general assembly shall provide funds to eliminate the GAAP deficit of the general fund of the state, as reported in the state's comprehensive annual financial report issued during the prior fiscal year, either through the appropriation of specific funds to correct a GAAP adjustment or by setting funds aside in a special account in an amount equal to the GAAP deficit.

92 Acts, ch 1227, §3; 94 Acts, ch 1181, §7; 2001 Acts, 2nd Ex, ch 2, §9, 13

8.54 General fund expenditure limitation.

1. For the purposes of section 8.22A, this section, and sections 8.55 through 8.57:

a. "Adjusted revenue estimate" means the appropriate revenue estimate for the general fund for the following fiscal year as determined by the revenue estimating conference under section 8.22A, subsection 3, adjusted by subtracting estimated tax refunds payable from that estimated revenue and as determined by the conference, adding any new revenues which may be considered to be eligible for deposit in the general fund.

b. "New revenues" means moneys which are received by the state due to increased tax rates and fees or newly created taxes and fees over and above those moneys which are received due to state taxes and fees which are in effect as of January 1 following the December state revenue estimating conference. *"New revenues"* also includes moneys received by the general fund of the state due to new transfers over and above those moneys received by the general fund of the state due to transfers which are in effect as of January 1 fol-

lowing the December state revenue estimating conference. The department of management shall obtain concurrence from the revenue estimating conference on the eligibility of transfers to the general fund of the state which are to be considered as new revenue in determining the state general fund expenditure limitation.

2. There is created a state general fund expenditure limitation for each fiscal year calculated as provided in this section. An expenditure limitation shall be used for the portion of the budget process commencing on the date the revenue estimating conference agrees to a revenue estimate for the following fiscal year in accordance with section 8.22A, subsection 3, and ending with the governor's final approval or disapproval of the appropriations bills applicable to that fiscal year that were passed prior to July 1 of that fiscal year in a regular or extraordinary legislative session.

3. Except as otherwise provided in this section, the state general fund expenditure limitation for a fiscal year shall be ninety-nine percent of the adjusted revenue estimate.

4. The state general fund expenditure limitation amount provided for in this section shall be used by the governor in the preparation of the budget under section 8.22 and approval of the budget and by the general assembly in the budget process. If a source for new revenues is proposed, the budget revenue projection used for that new revenue source for the period beginning on the effective date of the new revenue source and ending in the fiscal year in which the source is included in the revenue base shall be an amount determined by subtracting estimated tax refunds payable from the projected revenue from that new revenue source, multiplied by ninety-five percent. If a new revenue source is established and implemented, the original state general fund expenditure limitation amount provided for in subsection 3 shall be readjusted to include ninety-five percent of the estimated revenue from the new revenue source.

5. For fiscal years in which section 8.55, subsection 2, results in moneys being transferred to the general fund, the original state general fund expenditure limitation amount provided for in subsection 3 shall be readjusted to include the moneys which are so transferred.

6. The scope of the expenditure limitation under subsection 3 shall not encompass federal funds, donations, constitutionally dedicated moneys, and moneys in expenditures from state retirement system moneys.

7. The governor shall transmit to the general assembly, in accordance with section 8.21, a budget which does not exceed the state general fund expenditure limitation. The general assembly shall pass a budget which does not exceed the state general fund expenditure limitation. The governor shall not transmit a budget with recommended appropriations in excess of the state general fund expenditure limitation and the general assembly shall not pass a budget with appropriations in excess of the state general fund expenditure limitation. The governor shall not approve or disapprove appropriation bills or items of appropriation bills passed by the general assembly in a manner that would cause the final budget approved by the governor to exceed the state general fund expenditure limitation. In complying with the requirements of this subsection, the governor and the general assembly shall not rely on any anticipated reversion of appropriations in order to meet the state general fund expenditure limitation.

92 Acts, ch 1227, §4; 92 Acts, 2nd Ex, ch 1001, §228; 94 Acts, ch 1181, §1, 5; 2001 Acts, 2nd Ex, ch 2, §10, 11, 13; 2004 Acts, ch 1175, §215, 287
Subsection 2 amended

ECONOMIC EMERGENCY FUND, CASH RESERVE FUND, REBUILD IOWA INFRASTRUCTURE FUND, AND ENVIRONMENT FIRST FUND

8.55 Iowa economic emergency fund.

1. The Iowa economic emergency fund is created. The fund shall be separate from the general fund of the state and the balance in the fund shall not be considered part of the balance of the general fund of the state. 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.

2. *a.* The maximum balance of the fund is the amount equal to two and one-half percent of the adjusted revenue estimate for the fiscal year. If the amount of moneys in the Iowa economic emergency fund is equal to the maximum balance, moneys in excess of this amount shall be transferred to the general fund.

b. Notwithstanding paragraph *"a"*, any moneys in excess of the maximum balance in the economic emergency fund after the distribution of the surplus in the general fund of the state at the conclusion of the fiscal year beginning July 1, 2002, and subsequent fiscal years, shall not be transferred to the general fund of the state but shall be transferred to the endowment for Iowa's health account of the tobacco settlement trust fund. The amount transferred under this paragraph shall not exceed the difference between forty million dollars and the total amount transferred to the endowment for Iowa's health account pursuant to 2001 Iowa Acts, chapter 177, section 2, as amended by 2001 Iowa Acts, chapter 187, section 28, and previous fiscal years.

c. Notwithstanding paragraph *"a"*, any moneys in excess of the maximum balance in the economic emergency fund after the distribution of the surplus in the general fund of the state at the conclusion of each fiscal year and after the appropriate amount has been transferred pursuant to

paragraph *"b"*, shall not be transferred to the general fund of the state but shall be transferred to the senior living trust fund. The total amount transferred, in the aggregate, under this paragraph for all fiscal years shall not exceed one hundred eighteen million dollars.

d. Notwithstanding paragraph *"a"*, any moneys in excess of the maximum balance in the economic emergency fund after the distribution of the surplus in the general fund of the state at the conclusion of each fiscal year and after the appropriate amounts have been transferred pursuant to paragraphs *"b"* and *"c"* shall not be transferred to the general fund of the state but shall be transferred to the endowment for Iowa's health account of the tobacco settlement trust fund. The total amount transferred, in the aggregate, under this paragraph for all fiscal years shall not exceed the difference between one hundred thirty-one million five hundred thirty-six thousand dollars and the amounts transferred to the endowment for Iowa's health account to repay the amounts transferred or appropriated from the endowment for Iowa's health account in 2002 Iowa Acts, chapter 1165, 2002 Iowa Acts, chapter 1166, 2002 Iowa Acts, chapter 1167, 2002 Iowa Acts, Second Extraordinary Session, chapter 1003, 2003 Iowa Acts, chapter 183, and 2004 Iowa Acts, chapter 1175.

3. *a.* Except as provided in paragraphs *"b"* and *"c"*, the moneys in the Iowa economic emergency fund shall only be used pursuant to an appropriation made by the general assembly. An appropriation shall only be made for the fiscal year in which the appropriation is made. The moneys shall only be appropriated by the general assembly for emergency expenditures.

b. Moneys in the fund may be used for cash flow purposes during a fiscal year provided that any moneys so allocated are returned to the fund by the end of that fiscal year.

c. There is appropriated from the Iowa economic emergency fund to the general fund of the state for the fiscal year in which moneys in the fund were used for cash flow purposes, for the purposes of reducing or preventing any overdraft on or deficit in the general fund of the state, the amount from the Iowa economic emergency fund that was used for cash flow purposes pursuant to paragraph *"b"* and that was not returned to the Iowa economic emergency fund by June 30 of the fiscal year. The appropriation in this paragraph shall not exceed fifty million dollars and is contingent upon all of the following having occurred:

(1) The revenue estimating conference estimate of general fund receipts made during the last quarter of the fiscal year was or the actual fiscal year receipts and accruals were at least one-half of one percent less than the comparable estimate made during the third quarter of the fiscal year.

(2) The governor has implemented the uniform reductions in appropriations required in section 8.31 as a result of subparagraph (1) and such reduction was insufficient to prevent an overdraft on or deficit in the general fund of the state or the governor did not implement uniform reductions in appropriations because of the lateness of the estimated or actual receipts and accruals under subparagraph (1).

(3) The balance of the general fund of the state at the end of the fiscal year prior to the appropriation made in this paragraph was negative.

(4) The governor has issued an official proclamation and has notified the cochairpersons of the fiscal committee of the legislative council and the legislative services agency that the contingencies in subparagraphs (1) through (3) have occurred and the reasons why the uniform reductions specified in subparagraph (2) were insufficient or were not implemented to prevent an overdraft on or deficit in the general fund of the state.

d. If an appropriation is made pursuant to paragraph *"c"* for a fiscal year, there is appropriated from the general fund of the state to the Iowa economic emergency fund for the following fiscal year, the amount of the appropriation made pursuant to paragraph *"c"*.

e. Except as provided in section 8.58, the Iowa economic emergency fund shall be considered a special account for the purposes of section 8.53 in determining the cash position of the general fund of the state for the payment of state obligations.

4. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited in the Iowa economic emergency fund shall be credited to the rebuild Iowa infrastructure fund.

84 Acts, ch 1305, §21; 92 Acts, ch 1227, §5; 94 Acts, ch 1181, §8; 95 Acts, ch 214, §13; 2001 Acts, 2nd Ex, ch 6, §27, 28, 37; 2002 Acts, ch 1169, §1; 2002 Acts, ch 1175, §73; 2002 Acts, 2nd Ex, ch 1001, §25, 26, 33, 52; 2003 Acts, ch 35, §45, 49; 2003 Acts, ch 179, §29, 30, 40; 2004 Acts, ch 1175, §216

2002 amendment to subsection 2, paragraph a, takes effect July 1, 2004; 2002 Acts, 2nd Ex, ch 1001, §33; 2003 Acts, ch 179, §40

Subsection 2, paragraphs a and d amended

8.56 Cash reserve fund.

1. A cash reserve fund is created in the state treasury. The cash reserve 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 as provided in subsection 3. The moneys in the cash reserve 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 cash reserve fund shall be credited to the rebuild Iowa infrastructure fund created in section 8.57. Moneys in the cash reserve fund may be used for cash flow purposes during a fiscal year provided that any moneys so allo-

cated are returned to the cash reserve fund by the end of that fiscal year.

2. The maximum balance of the cash reserve fund is the amount equal to the cash reserve goal percentage, as defined in section 8.57, multiplied by the adjusted revenue estimate for the general fund of the state for the current fiscal year.

3. The moneys in the cash reserve fund shall only be used pursuant to an appropriation made by the general assembly. An appropriation shall be made in accordance with subsection 4 only for the fiscal year in which the appropriation is made. The moneys shall only be appropriated by the general assembly for nonrecurring emergency expenditures and shall not be appropriated for payment of any collective bargaining agreement or arbitrator's decision negotiated or awarded under chapter 20. Except as provided in section 8.58, the cash reserve fund shall be considered a special account for the purposes of section 8.53 in determining the cash position of the general fund of the state for the payment of state obligations.

4. *a.* Except as provided in subsection 1, an appropriation shall not be made from the cash reserve fund unless the appropriation is in accordance with all of the following:

(1) The appropriation is contained in a bill or joint resolution in which the appropriation is the only subject matter of the bill or joint resolution.

(2) The bill or joint resolution states the reasons the appropriation is necessary.

b. In addition to the requirements of paragraph *"a"*, an appropriation shall not be made from the cash reserve fund which would cause the fund's balance to be less than three and three-fourths percent of the adjusted revenue estimate for the year for which the appropriation is made unless the bill or joint resolution is approved by vote of at least three-fifths of the members of both chambers of the general assembly and is signed by the governor.

92 Acts, ch 1227, §6; 94 Acts, ch 1181, §9; 95 Acts, ch 214, §14; 2001 Acts, 2nd Ex, ch 6, §29 – 31; 2002 Acts, 2nd Ex, ch 1001, §27, 33; 2003 Acts, ch 179, §40

2002 amendment to subsection 4, paragraph b, takes effect July 1, 2004; 2002 Acts, 2nd Ex, ch 1001, §33; 2003 Acts, ch 179, §40

Subsection 4, paragraph b amended

8.57 Annual appropriations — reduction of GAAP deficit — rebuild Iowa infrastructure fund.

1. *a.* The *"cash reserve goal percentage"* for fiscal years beginning on or after July 1, 2004, is seven and one-half percent of the adjusted revenue estimate. For each fiscal year in which the appropriation of the surplus existing in the general fund of the state at the conclusion of the prior fiscal year pursuant to paragraph *"b"* was not sufficient for the cash reserve fund to reach the cash reserve goal percentage for the current fiscal year, there is appropriated from the general fund of the state an amount to be determined as follows:

(1) If the balance of the cash reserve fund in the current fiscal year is not more than six and one-half percent of the adjusted revenue estimate for the current fiscal year, the amount of the appropriation under this lettered paragraph is one percent of the adjusted revenue estimate for the current fiscal year.

(2) If the balance of the cash reserve fund in the current fiscal year is more than six and one-half percent but less than seven and one-half percent of the adjusted revenue estimate for that fiscal year, the amount of the appropriation under this lettered paragraph is the amount necessary for the cash reserve fund to reach seven and one-half percent of the adjusted revenue estimate for the current fiscal year.

(3) The moneys appropriated under this lettered paragraph shall be credited in equal and proportionate amounts in each quarter of the current fiscal year.

b. The surplus existing in the general fund of the state at the conclusion of the fiscal year is appropriated for distribution in the succeeding fiscal year as provided in subsections 3 and 4. Moneys credited to the cash reserve fund from the appropriation made in this paragraph shall not exceed the amount necessary for the cash reserve fund to reach the cash reserve goal percentage for the succeeding fiscal year. As used in this paragraph, *"surplus"* means the excess of revenues and other financing sources over expenditures and other financing uses for the general fund of the state in a fiscal year.

c. The amount appropriated in this section is not subject to the provisions of section 8.31, relating to requisitions and allotment, or to section 8.32, relating to conditional availability of appropriations.

2. *a.* There is appropriated from the surplus existing in the general fund of the state at the conclusion of the fiscal year beginning July 1, 2005, and ending June 30, 2006, and at the conclusion of each succeeding fiscal year for distribution to the senior living trust fund, an amount equal to one percent of the adjusted revenue estimate for the current fiscal year. However, if the amount of the surplus existing in the general fund of the state at the conclusion of a fiscal year is less than two percent of the adjusted revenue estimate for that fiscal year, the amount of the appropriation made in this paragraph shall be equal to fifty percent of the surplus amount. The appropriation made in this paragraph shall be distributed to the senior living trust fund in the succeeding fiscal year. For the purposes of this subsection, *"surplus"* means the same as defined in subsection 1, paragraph *"b"*.

b. The appropriation made in paragraph *"a"* shall be made before the appropriations are made pursuant to subsections 1, 3, and 4, of the surplus existing in the general fund of the state at the con-

clusion of the fiscal year beginning July 1, 2005, and ending June 30, 2006, and each succeeding fiscal year.

c. The appropriation made in paragraph *"a"* shall continue until the aggregate of the appropriations made or transferred to the senior living trust fund pursuant to paragraph *"a"* of this subsection and section 8.55, subsection 2, paragraph *"c"*, is equal to one hundred eighteen million dollars.

d. The aggregate amount of the appropriations to be transferred from the Iowa economic emergency fund to the senior living trust fund pursuant to section 8.55, subsection 2, paragraph *"c"*, shall be reduced by the appropriations made pursuant to paragraph *"a"* of this subsection.

e. This subsection is repealed when the aggregate amount of appropriations specified in paragraph *"c"* has been distributed or transferred to the senior living trust fund. The director of the department of management shall notify the Iowa Code editor when the aggregate amount has been distributed or transferred.

3. Moneys appropriated under subsection 1 shall be first credited to the cash reserve fund. To the extent that moneys appropriated under subsection 1 would make the moneys in the cash reserve fund exceed the cash reserve goal percentage of the adjusted revenue estimate for the fiscal year, the moneys are appropriated to the department of management to be spent for the purpose of eliminating Iowa's GAAP deficit, including the payment of items budgeted in a subsequent fiscal year which under generally accepted accounting principles should be budgeted in the current fiscal year. These moneys shall be deposited into a GAAP deficit reduction account established within the department of management. The department of management shall annually file with both houses of the general assembly at the time of the submission of the governor's budget, a schedule of the items for which moneys appropriated under this subsection for the purpose of eliminating Iowa's GAAP deficit, including the payment of items budgeted in a subsequent fiscal year which under generally accepted accounting principles should be budgeted in the current fiscal year, shall be spent. The schedule shall indicate the fiscal year in which the spending for an item is to take place and shall incorporate the items detailed in 1994 Iowa Acts, chapter 1181, section 17. The schedule shall list each item of expenditure and the estimated dollar amount of moneys to be spent on that item for the fiscal year. The department of management may submit during a regular legislative session an amended schedule for legislative consideration. If moneys appropriated under this subsection are not enough to pay for all listed expenditures, the department of management shall distribute the payments among the listed expenditure items. Moneys appropriated to the department of management under this subsection shall not be spent on items other than those included in the filed schedule. On September 1 following the close of a fiscal year, moneys in the GAAP deficit reduction account which remain unexpended for items on the filed schedule for the previous fiscal year shall be credited to the Iowa economic emergency fund.

4. To the extent that moneys appropriated under subsection 1 exceed the amounts necessary for the cash reserve fund to reach its maximum balance and the amounts necessary to eliminate Iowa's GAAP deficit, including elimination of the making of any appropriation in an incorrect fiscal year, the moneys shall be appropriated to the Iowa economic emergency fund.

5. As used in this section, *"GAAP"* means generally accepted accounting principles as established by the governmental accounting standards board.

6. *a.* A rebuild Iowa infrastructure fund is created under the authority of the department of management. The fund shall consist of appropriations made to the fund and transfers of interest, earnings, and moneys from other funds as provided by law. The fund shall be separate from the general fund of the state and the balance in the fund shall not be considered part of the balance 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.

b. Moneys in the infrastructure fund are not subject to section 8.33. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys in the infrastructure fund shall be credited to the infrastructure fund. Moneys in the infrastructure fund may be used for cash flow purposes during a fiscal year provided that any moneys so allocated are returned to the infrastructure fund by the end of that fiscal year.

c. Moneys in the fund in a fiscal year shall be used as directed by the general assembly for public vertical infrastructure projects. For the purposes of this subsection, *"vertical infrastructure"* includes only land acquisition and construction, major renovation and major repair of buildings, all appurtenant structures, utilities, site development, and recreational trails. *"Vertical infrastructure"* does not include routine, recurring maintenance or operational expenses or leasing of a building, appurtenant structure, or utility without a lease-purchase agreement. However, appropriations may be made for the fiscal years beginning July 1, 1997, and July 1, 1998, for the purpose of funding the completion of Part III of the Iowa communications network.

d. The general assembly may provide that all or part of the moneys deposited in the GAAP deficit reduction account created in this section shall be transferred to the infrastructure fund in lieu of appropriation of the moneys to the Iowa economic emergency fund.

e. Notwithstanding provisions to the contrary in sections 99D.17 and 99F.11, for the fiscal year beginning July 1, 2000, and for each fiscal year thereafter, not more than a total of sixty million dollars shall be deposited in the general fund of the state in any fiscal year pursuant to sections 99D.17 and 99F.11. The next fifteen million dollars of the moneys directed to be deposited in the general fund of the state in a fiscal year pursuant to sections 99D.17 and 99F.11 shall be deposited in the vision Iowa fund created in section 12.72 for the fiscal year beginning July 1, 2000, and for each fiscal year through the fiscal year beginning July 1, 2019. The next five million dollars of the moneys directed to be deposited in the general fund of the state in a fiscal year pursuant to sections 99D.17 and 99F.11 shall be deposited in the school infrastructure fund created in section 12.82 for the fiscal year beginning July 1, 2000, and for each fiscal year thereafter until the principal and interest on all bonds issued by the treasurer of state pursuant to section 12.81 are paid, as determined by the treasurer of state. The total moneys in excess of the moneys deposited in the general fund of the state, the vision Iowa fund, and the school infrastructure fund in a fiscal year shall be deposited in the rebuild Iowa infrastructure fund and shall be used as provided in this section, notwithstanding section 8.60.

If the total amount of moneys directed to be deposited in the general fund of the state under sections 99D.17 and 99F.11 in a fiscal year is less than the total amount of moneys directed to be deposited in the vision Iowa fund and the school infrastructure fund in the fiscal year pursuant to this paragraph *"e"*, the difference shall be paid from lottery revenues in the manner provided in section 99G.39, subsection 3.

f. There is appropriated from the rebuild Iowa infrastructure fund to the secure an advanced vision for education fund created in section 423E.4, for each fiscal year of the fiscal period beginning July 1, 2004, and ending June 30, 2014, the amount of the moneys in excess of the first forty-seven million dollars credited to the rebuild Iowa infrastructure fund during the fiscal year, not to exceed ten million dollars.

g. Notwithstanding any other provision to the contrary, and prior to the appropriation of moneys from the rebuild Iowa infrastructure fund pursuant to paragraph *"c"*, and section 8.57A, subsection 4, moneys shall first be appropriated from the rebuild Iowa infrastructure fund to the vertical infrastructure fund as provided in section 8.57B, subsection 4.

92 Acts, ch 1227, §7; 92 Acts, 2nd Ex, ch 1001, §229, 230; 94 Acts, ch 1181, §10, 11; 95 Acts, ch 209, §11, 12; 95 Acts, ch 214, §15, 16; 96 Acts, ch 1218, §25, 26, 71; 2000 Acts, ch 1225, §30, 38, 39; 2001 Acts, ch 185, §33, 49; 2002 Acts, 2nd Ex, ch 1001, §28, 29, 33, 52; 2003 Acts, ch 178, §99, 121; 2003 Acts, ch 179, §31, 40, 90, 142, 159; 2003 Acts, 1st Ex, ch 2, §91, 209; 2004 Acts, ch 1101, §100, 102; 2004 Acts, ch 1170, §3; 2004 Acts, ch 1175, §321

For temporary exceptions to appropriations contained in this section, see appropriations and other noncodified enactments in annual Acts of the general assembly

2002 amendment to subsection 1, paragraph a, is effective July 1, 2004; 2002 Acts, 2nd Ex, ch 1001, §33; 2004 Acts, ch 1101, §100, 102

Subsection 1, paragraph a amended

NEW subsection 2 and former subsections 2 – 5 renumbered as 3 – 6

Subsection 6, NEW paragraph g

8.57A Environment first fund.

1. An environment first fund is created under the authority of the department of management. The fund shall consist of appropriations made to the fund and transfers of interest, earnings, and moneys from other funds as provided by law. The fund shall be separate from the general fund of the state and the balance in the fund shall not be considered part of the balance 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.

2. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys in the environment first fund shall be credited to the rebuild Iowa infrastructure fund.

3. Moneys in the fund in a fiscal year shall be used as appropriated by the general assembly for the protection, conservation, enhancement, or improvement of natural resources or the environment.

4. There is appropriated from the rebuild Iowa infrastructure fund for the fiscal year beginning July 1, 2000, and for each fiscal year thereafter, the sum of thirty-five million dollars to the environment first fund, notwithstanding section 8.57, subsection 6, paragraph *"c"*.

2000 Acts, ch 1225, §22

8.57B Vertical infrastructure fund.

1. A vertical infrastructure fund is created under the authority of the department of management. The fund shall consist of appropriations made to the fund and transfers of interest, earnings, and moneys from other funds as provided by law. The fund shall be separate from the general fund of the state and the balance in the fund shall not be considered part of the balance 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.

2. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys in the vertical infrastructure fund shall be credited to the rebuild Iowa infrastructure fund.

3. Moneys in the fund in a fiscal year shall be used as appropriated by the general assembly for public vertical infrastructure projects. For the purposes of this section, *"vertical infrastructure"*

includes only land acquisition and construction, major renovation, and major repair of buildings, all appurtenant structures, utilities, and site development. *"Vertical infrastructure"* does not include routine, recurring maintenance, debt service, or operational expenses or leasing of a building, appurtenant structure, or utility without a lease-purchase agreement.

4. There is appropriated from the rebuild Iowa infrastructure fund to the vertical infrastructure fund, the following:

For the fiscal year beginning July 1, 2005, and ending June 30, 2006, the sum of fifteen million dollars.

2004 Acts, ch 1175, §322
Item veto applied
NEW section

8.58 Exemption from automatic application.

To the extent that moneys appropriated under section 8.57 do not result in moneys being credited to the general fund under section 8.55, subsection 2, moneys appropriated under section 8.57 and moneys contained in the cash reserve fund, rebuild Iowa infrastructure fund, environment first fund, and Iowa economic emergency fund shall not be considered in the application of any formula, index, or other statutory triggering mechanism which would affect appropriations, payments, or taxation rates, contrary provisions of the Code notwithstanding.

To the extent that moneys appropriated under section 8.57 do not result in moneys being credited to the general fund under section 8.55, subsection 2, moneys appropriated under section 8.57 and moneys contained in the cash reserve fund, rebuild Iowa infrastructure fund, environment first fund, and Iowa economic emergency fund shall not be considered by an arbitrator or in negotiations under chapter 20.

92 Acts, ch 1227, §8; 95 Acts, ch 214, §17; 2000 Acts, ch 1225, §23

APPROPRIATIONS FREEZE — USE OF DESIGNATED MONEYS

8.59 Appropriations freeze.

Notwithstanding contrary provisions of the Code, the amounts appropriated under the applicable sections of the Code for fiscal years commencing on or after July 1, 1993, are limited to those amounts expended under those sections for the fiscal year commencing July 1, 1992. If an applicable section appropriates moneys to be distributed to different recipients and the operation of this section reduces the total amount to be distributed under the applicable section, the moneys shall be prorated among the recipients. As used in this section, *"applicable sections"* means sections 53.50, 229.35, 230.8, 230.11, 411.20, and 663.44.

92 Acts, ch 1227, §9; 93 Acts, ch 180, §1; 97 Acts, ch 206, §5; 99 Acts, ch 135, §1; 2004 Acts, ch 1086, §5
Section amended

8.60 Use of designated moneys.

Moneys credited to or deposited in the general fund of the state on or after July 1, 1993, which under law were previously collected to be used for specific purposes, or to be credited to, or be deposited to a particular account or fund shall only be used for the purposes for which the moneys were collected, including but not limited to moneys collected in accordance with any of the following provisions:

1. Pari-mutuel regulation fund created in section 99D.17, Code Supplement 1993.
2. Excursion boat gambling special account pursuant to section 99F.4, subsection 2, Code Supplement 1993.
3. Milk fund created in section 192.111, Code Supplement 1993.
4. Commercial feed fund created in section 198.9, Code Supplement 1993.
5. Fertilizer fund created in section 200.9, Code Supplement 1993, and moneys collected for the administration of chapter 201A relating to the regulation of limestone products which were deposited in the fertilizer fund pursuant to section 201.13, Code 1993 and Code 1995.
6. Pesticide fund created in section 206.12, Code Supplement 1993.
7. Motor vehicle fraud account pursuant to section 312.2, subsection 13, Code Supplement 1993.
8. Public transit assistance fund pursuant to section 312.2, subsection 15, Code Supplement 1993, and section 324A.6, Code Supplement 1993.
9. Salvage vehicle fee paid to the Iowa law enforcement academy pursuant to section 321.52, Code Supplement 1993.
10. Railroad assistance fund created in section 327H.18, Code Supplement 1993.
11. Special railroad facility fund created in section 327I.23, Code Supplement 1993.
12. State aviation fund created in section 328.36, Code Supplement 1993.
13. Marine fuel tax fund created in section 452A.79, Code Supplement 1993.
14. Public outdoor recreation and resources fund pursuant to section 461A.79, Code Supplement 1993.
15. Energy research and development fund created in section 473.11, Code Supplement 1993.
16. Utilities trust fund created in section 476.10, Code Supplement 1993.
17. Banking revolving fund created in section 524.207, Code Supplement 1993.
18. Credit union revolving fund created in section 533.67, Code Supplement 1993.
19. Professional licensing revolving fund cre-

ated in section 546.10, Code Supplement 1993.

93 Acts, ch 131, §1; 94 Acts, ch 1107, §32; 94 Acts, ch 1199, §64; 96 Acts, ch 1096, §1, 15; 96 Acts, ch 1219, §34; 2000 Acts, ch 1224, §22, 32

8.61 Trust fund information.

The department of administrative services in cooperation with each appropriate agency shall track receipts to the general fund of the state which under law were previously collected to be used for specific purposes, or to be credited to, or be deposited to a particular account or fund, as provided in section 8.60.

The department of administrative services and each appropriate agency shall prepare reports detailing revenue from receipts previously deposited into each of the funds. A report shall be submitted to the legislative services agency at least once for each three-month period as designated by the legislative services agency.

96 Acts, ch 1214, §29; 2003 Acts, ch 35, §45, 49; 2003 Acts, ch 145, §286

USE OF REVERSIONS — INNOVATIONS FUND

8.62 Use of reversions.

1. For the purposes of this section, *"operational appropriation"* means an appropriation from the general fund of the state providing for salary, support, administrative expenses, or other personnel-related costs.

2. Notwithstanding the provisions of section 8.33 or any other provision of law to the contrary, if on June 30 of a fiscal year, a balance of an operational appropriation remains unexpended or unencumbered, not more than fifty percent of the balance may be encumbered by the agency to which the appropriation was made and used as provided in this section and the remaining balance shall be deposited in the cash reserve fund created in section 8.56. Moneys encumbered under this section shall only be used by the agency during the succeeding fiscal year for employee training, technology enhancement, or purchases of goods and services from Iowa prison industries. Unused moneys encumbered under this section shall be deposited in the cash reserve fund on June 30 of the succeeding fiscal year.

3. On or before June 30 of the fiscal year following the fiscal year in which funds were encumbered under this section, an agency encumbering funds under this section shall report to the joint appropriations subcommittee which recommends funding for the agency, the legislative services agency, the department of management, and the legislative fiscal committee of the legislative council detailing how the moneys were expended. Moneys shall not be encumbered under this section from an appropriation which received a transfer from another appropriation pursuant to section 8.39.

94 Acts, ch 1181, §2; 96 Acts, ch 1219, §1; 99 Acts, ch 182, §1, 2; 2003 Acts, ch 35, §45, 49

8.63 Innovations fund.

1. An innovations fund is created in the state treasury under the control of the department of management for the purpose of stimulating and encouraging innovation and entrepreneurship in state government by the awarding of repayable loans to state agencies.

2. The director of the department of management shall establish an eight-member committee to be called the state innovations fund committee. The committee shall review all requests for funds and approve loans of funds if the committee determines that the loan meets the requirements for a project loan or an enterprise loan as provided in this section.

3. A project loan can be funded if the committee determines that an agency request would result in cost savings or added revenue to the general fund of the state. Eligible projects are projects which cannot be funded from an agency's operating budget without adversely affecting the agency's normal service levels. Projects may include, but are not limited to, purchase of advanced technology, contracting for expert services, and acquisition of equipment or supplies.

4. An enterprise loan can be funded if the committee determines that the agency or business unit has a viable business plan and the capability to use the loan to provide internal services to government. The enterprise is expected to receive payment for services from its customers and use those payments to cover its expenses, including repayment of the loan.

5. A state agency seeking a loan from the innovations fund shall complete an application form designed by the state innovations fund committee which employs, for projects, a return on investment concept and demonstrates how state general fund expenditures will be reduced or how state general fund revenues will increase, or for enterprises, a business plan that shows how the enterprise will meet customer needs, provide value to customers, and demonstrate financial viability. Minimum loan requirements for state agency requests shall be determined by the committee. As an incentive to increase state general fund revenues, an agency may retain up to fifty percent of savings realized in connection with a project loan from the innovations fund. The amount retained shall be determined by the innovations fund committee. Savings realized but not retained by an agency shall not be deposited in the innovations fund.

6. *a.* In order for the innovations fund to be self-supporting, the innovations fund committee shall establish repayment schedules for each innovations fund loan awarded. Agencies shall re-

pay the funds over a period not to exceed five years with interest, at a rate to be determined by the innovations fund committee.

b. If the department of management and the department of revenue certify that the savings from a proposed innovations fund project will result in a net increase in the balance of the general fund of the state without a corresponding cost savings to the requesting agency, and if the requesting agency meets all other eligibility requirements, the innovations fund committee may approve the loan for the project and not require repayment by the requesting agency. There is appropriated from the general fund of the state to the department of management for deposit in the innovations fund an amount sufficient to repay the loan amount, which amount shall not exceed the principal amount of the loan plus interest on the loan.

7. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited in the innovations fund shall be credited to the innovations fund. Notwithstanding section 8.33, moneys remaining in the innovations fund at the end of a fiscal year shall not revert to the general fund of the state.

95 Acts, ch 214, §18; 99 Acts, ch 208, §16; 2003 Acts, ch 145, §125, 293; 2004 Acts, ch 1175, §27, 28
Subsection 5 amended
Subsection 6, paragraph b amended

8.64 Local government innovation fund — committee — loans.

1. The local government innovation fund is created in the state treasury under the control of the department of management for the purpose of stimulating and encouraging innovation in local government by the awarding of loans to cities and counties.

2. The director of the department of management shall establish a seven-member committee to be called the local government innovation fund committee. Committee members shall have expertise in local government. The committee shall review all requests for funds and approve loans of funds if the committee determines that a city or county project that is the subject of a request would result in cost savings, innovative approaches to service delivery, or added revenue to the city, county, or state. Eligible projects are projects which cannot be funded from a city's or county's operating budget without adversely affecting the city's or county's normal service levels. Preference shall be given to requests involving the sharing of services between two or more local governments. Projects may include, but are not limited to, purchase of advanced technology, contracting for expert services, and acquisition of equipment or supplies.

3. A city or county seeking a loan from the local government innovation fund shall complete an application form designed by the local government innovation fund committee which employs a return on investment concept and demonstrates how the project funded by the loan will result in reduced city, county, or state general fund expenditures or how city or county fund revenues will increase without an increase in state costs. Minimum loan requirements for city or county requests shall be determined by the committee.

4. *a.* In order for the local government innovation fund to be self-supporting, the local government innovation fund committee shall establish repayment schedules for each loan awarded. The loan requirements shall be outlined in a chapter 28E agreement executed between the state and the city or county receiving the loan. A city or county shall repay the loan over a period not to exceed five years, with interest, at a rate to be determined by the local government innovation fund committee.

b. The local government innovation fund committee shall utilize the department of management, the department of revenue, or other source of technical expertise designated by the committee to certify savings projected for a local government innovation fund project.

5. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited in the local government innovation fund shall be credited to the local government innovation fund. Notwithstanding section 8.33, moneys appropriated to and moneys remaining in the local government innovation fund at the end of a fiscal year shall not revert to the general fund of the state.

2003 Acts, ch 145, §286; 2003 Acts, ch 178, §27

CHAPTER 8A

DEPARTMENT OF ADMINISTRATIVE SERVICES

Continuation of effectiveness of rules, regulations, forms, orders, and directives promulgated under prior law, and validity of licenses and permits issued under prior law, by state agencies affected by 2003 Acts, ch 145; schedule for updating Iowa administrative code to conform to restructuring of state government; 2003 Acts, ch 145, §287
For transition provisions relating to the transfer of merit system personnel; the transfer of preexisting funds; applicability of causes of action and statutes of limitation to successor agencies; and the replacement of signs, logos, stationery, insignia, uniforms, and related items, see 2003 Acts, ch 145, §288
For provisions authorizing the department of administrative services to determine how designated state services are delivered to state agencies; requiring the department to conduct a managed competition for delivery of services pilot project and submit its report by July 1, 2005; requiring the department to submit a request for proposals for a managed competition for printing services by July 1, 2005, unless other methods are more efficient; authorizing the department to limit unified fleet management responsibilities to cars and small trucks and subjecting fleet management operations to a managed competition process by July 1, 2005, unless other methods are more efficient; and requiring periodic progress reports regarding implementation of 2003 Acts, ch 145, see 2003 Acts, ch 145, §289, 290

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SUBCHAPTER I

ADMINISTRATION

PART 1

GENERAL PROVISIONS

8A.101 Definitions.

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

1. *"Agency"* or *"state agency"* means a unit of state government, which is an authority, board, commission, committee, council, department, examining board, or independent agency as defined in section 7E.4, including but not limited to each principal central department enumerated in section 7E.5. However, *"agency"* or *"state agency"* does not mean any of the following:

a. The office of the governor or the office of an elective constitutional or statutory officer.

b. The general assembly, or any office or unit under its administrative authority.

c. The judicial branch, as provided in section 602.1102.

d. A political subdivision of the state or its offices or units, including but not limited to a county, city, or community college.

2. *"Department"* means the department of administrative services.

3. *"Director"* means the director of the department of administrative services or the director's designee.

4. *"Governmental entity"* means any unit of government in the executive, legislative, or judicial branch of government; an agency or political subdivision; any unit of another state government, including its political subdivisions; any unit of the United States government; or any association or other organization whose membership consists primarily of one or more of any of the foregoing.

5. *"Governmental subdivision"* means a county, city, school district, or combination thereof.

6. *"Public records"* means the same as defined in section 22.1.

2003 Acts, ch 145, §1

8A.102 Department created — director appointed.

1. The department of administrative services is created. The director of the department shall be appointed by the governor to serve at the pleasure of the governor and is subject to confirmation by the senate. If the office becomes vacant, the vacancy shall be filled in the same manner as provided for the original appointment.

2. The person appointed as director shall be professionally qualified by education and have no less than five years' experience in the field of management, public or private sector personnel administration including the application of merit principles in employment, financial management, and policy development and implementation. The appointment shall be made without regard for political affiliation. The director shall not be a member of any local, state, or national committee of a political party, an officer or member of a committee in any partisan political club or organization, or hold or be a candidate for a paid elective public office. The director is subject to the restrictions on political activity provided in section 8A.416. The governor shall set the salary of the director within pay grade nine.

2003 Acts, ch 145, §2
Confirmation, §2.32

8A.103 Department — purpose — mission.

The department is created for the purpose of managing and coordinating the major resources of state government including the human, financial, physical, and information resources of state government.

The mission of the department is to implement a world-class, customer-focused organization that provides a complement of valued products and services to the internal customers of state government.

2003 Acts, ch 145, §3

8A.104 Powers and duties of the director.

The director shall do all of the following:

1. Coordinate the internal operations of the department and develop and implement policies and procedures designed to ensure the efficient administration of the department.

2. Appoint all personnel deemed necessary for the administration of the department's functions as provided in this chapter.

3. Prepare an annual budget for the department.

4. Develop and recommend legislative proposals deemed necessary for the continued efficiency of the department's functions, and review legislative proposals generated outside the department which are related to matters within the depart-

ment's purview.

5. Adopt rules deemed necessary for the administration of this chapter in accordance with chapter 17A.

6. Develop and maintain support systems within the department to provide appropriate administrative support and sufficient data for the effective and efficient operation of state government.

7. Enter into contracts for the receipt and provision of services as deemed necessary. The director and the governor may obtain and accept grants and receipts to or for the state to be used for the administration of the department's functions as provided in this chapter.

8. Establish the internal organization of the department and allocate and reallocate duties and functions not assigned by law to an officer or any subunit of the department to promote economic and efficient administration and operation of the department.

9. Install a records system for the keeping of records which are necessary for a proper audit and effective operation of the department.

10. Determine which risk exposures shall be self-insured or assumed by the state with respect to loss and loss exposures of state government.

11. Keep in the director's office a complete record containing an itemized account of all state property, including furniture and equipment, under the director's care and control, and plans and surveys of the public grounds, buildings, and underground constructions at the seat of government and of the state laboratories facility in Ankeny.

12. Serve as the chief information officer for the state.

13. Exercise and perform such other powers and duties as may be prescribed by law.

2003 Acts, ch 145, §4

8A.105 Prohibited interests — penalty.

The director shall not have any pecuniary interest, directly or indirectly, in any contract for supplies furnished to the state, or in any business enterprise involving any expenditure by the state. A violation of the provisions of this section shall be a serious misdemeanor, and upon conviction, the director shall be removed from office in addition to any other penalty.

2003 Acts, ch 145, §5

8A.106 Public records.

1. The records of the department, except personal information in an employee's file if the publication of such information would serve no proper public purpose, shall be public records and shall be open to public inspection, subject to reasonable rules as to the time and manner of inspection which may be prescribed by the director. However, the department shall not be required to release financial information, business, or product plans which if released would give advantage to competitors and serve no public purpose, relating to commercial operations conducted or intended to be conducted by the department.

2. The state agency that is the lawful custodian of a public record shall be responsible for determining whether a record is required by federal or state statute to be confidential. The transmission of a record by a state agency by use of electronic means established, maintained, or managed by the department shall not constitute a transfer of the legal custody of the record from the individual state agency to the department or to any other person or entity.

3. The department shall not have authority to determine whether an individual state agency should automate records of which the individual state agency is the lawful custodian. However, the department may encourage state agencies to implement electronic access to public records.

4. A state agency shall not limit access to a record by requiring a citizen to receive the record electronically as the only means of providing the record. A person shall have the right to examine and copy a printed form of a public record as provided in section 22.2, unless the public record is confidential.

2003 Acts, ch 145, §6

8A.107 Oaths and subpoenas.

The director may administer oaths, subpoena witnesses, and compel the production of books and papers pertinent to any investigation or hearing authorized by this chapter. A person who fails to appear in response to a subpoena or produce books or papers pertinent to the investigation or hearing or who knowingly gives false testimony is guilty of a simple misdemeanor.

2003 Acts, ch 145, §7

8A.108 Acceptance of funds.

The department may receive and accept donations, grants, gifts, and contributions in the form of moneys, services, materials, or otherwise, from the United States or any of its agencies, from this state or any of its agencies, or from any other person, and may use or expend such moneys, services, materials, or other contributions, or issue grants, in carrying out the operations of the department. All federal grants to and the federal receipts of the department are hereby appropriated for the purpose set forth in such federal grants or receipts.

2003 Acts, ch 145, §8

8A.109 Federal funds.

1. Neither the provisions of this chapter nor rules adopted pursuant to this chapter shall apply in any situation where such provision or rule is in conflict with a governing federal regulation or where the provision or rule would jeopardize the receipt of federal funds.

2. If it is determined by the attorney general that any provision of this chapter would cause denial of funds or services from the United States government which would otherwise be available to an agency of this state, such provision shall be suspended as to such agency, but only to the extent necessary to prevent denial of such funds or services.

2003 Acts, ch 145, §9

8A.110 State employee suggestion system.

1. There is created a state employee suggestion system for the purpose of encouraging state employees to develop and submit ideas which will reduce costs and increase efficiency in state government and which will make monetary and other awards to state employees whose cost reduction ideas are adopted under the system.

2. The department shall provide necessary personnel for the efficient operation of the system. The department shall adopt rules as necessary for the administration of the system and to establish the award policy under which the system will operate. The rules shall include:

a. Eligibility standards and restrictions for both the state employee submitting the suggestion and the suggestion being submitted. The rules shall provide that suggestions relating to academic affairs, including teaching, research, and patient care programs at a university teaching hospital, are ineligible.

b. Procedures for submitting and evaluating suggestions, including the responsibilities of each person involved in the system and providing that the final decision to implement shall be made by the director of the applicable state agency.

c. The method of presentation of awards to employees.

d. The method of promoting the suggestion program in the broadest possible manner to state employees.

e. Any other policies necessary to properly administer the system.

3. *a.* When a suggestion is implemented and results in a direct cost reduction within state government, the suggester shall be awarded ten percent of the first year's net savings, not exceeding ten thousand dollars, and a certificate. A cash award shall not be awarded for a suggestion which saves less than one hundred dollars during the first year of implementation. The state agency head shall approve all awards and determine the amount to be awarded. Appeals of award amounts shall be submitted to the director whose decision is final.

b. Certificates shall be awarded to suggesters of implemented suggestions that result in a direct cost reduction of less than one hundred dollars. The state agency head shall make the determination as to who will receive certificates. That decision is final.

4. An award made pursuant to this section shall be paid for out of the appropriated funds of the state agency realizing the cost savings, but the payment for awards shall not violate any state or federal contract, law, or regulation, or impair any agency contractual obligation.

5. *a.* A state agency shall keep records of each suggestion implemented and the cost savings resulting from the suggestion for a period of one year from the date of implementation of the suggestion.

b. The director shall file a report with the governor and the general assembly for each fiscal year, relating to the administration and implementation of the suggestion system and the benefits for the state, the state departments, and state employees.

6. The ability of employees to patent ideas submitted under this section is subject to all other agency rules and Code requirements pertaining to patents.

2003 Acts, ch 145, §10

8A.111 through 8A.120 Reserved.

PART 2

SERVICES — PROVISION AND FUNDING

8A.121 Financing department services — customer councils.

1. The department shall establish a process by which the department shall determine which services provided by the department shall be funded by an appropriation to the department and which services shall be funded by the governmental entity receiving the service.

2. *a.* For services which the department determines shall be funded by the governmental entity receiving the service, the department shall establish a process for determining whether the department shall be the sole provider of the service or not.

b. If the department determines that it shall be the sole provider of a service, the department shall establish, by rule, a customer council responsible for overseeing departmental operations with regard to the service provided to ensure that the department meets the needs of affected governmental entities and the citizens those entities serve. The rules adopted shall provide, at a minimum, for the method of appointment of members to the council by governmental entities required to receive the service from the department and for the powers and duties of the council as it relates to the service provided, which shall include the authority of approving, on an annual basis, business plans submitted by the department for performance of the service, the procedure for resolving complaints concerning the service provided, and the procedure for setting rates for the service. In

addition, if the service to be provided may also be provided to the judicial branch and legislative branch, then the rules shall provide that the chief justice of the supreme court and the legislative council may, in their discretion, each appoint a member to the applicable customer council.

3. Departmental processes required to be established pursuant to this section shall provide, at a minimum, for input from affected governmental entities as well as for a biennial review by the appropriate customer council of the decision made by the department that the department should be the sole provider of a service.

4. The department shall annually prepare a listing separately identifying services to be provided by the department and funded by an appropriation, services to be provided by the department and funded by the governmental entity receiving the service, and services which the department is authorized to provide but which governmental entities may provide on their own or obtain from another provider of the service.

2003 Acts, ch 145, §11

8A.122 Services to governmental entities.

1. The director shall enter into agreements with state agencies, and may enter into agreements with any other governmental entity, to furnish services and facilities of the department to the applicable governmental entity. The agreement shall provide for the reimbursement to the department of the reasonable cost of the services and facilities furnished. All governmental entities of this state may enter into such agreements.

2. This chapter does not affect any city civil service programs established under chapter 400.

3. The state board of regents shall not be required to obtain any service for the state board of regents or any institution under the control of the state board of regents that is provided by the department pursuant to this chapter without the consent of the state board of regents.

2003 Acts, ch 145, §12

8A.123 Department internal service funds.

1. Activities of the department shall be accounted for within the general fund of the state, except that the director may establish and maintain internal service funds in accordance with generally accepted accounting principles, as defined in section 8.57, subsection 5, for activities of the department which are primarily funded from billings to governmental entities for services rendered by the department. The establishment of an internal service fund is subject to the approval of the director of the department of management and the concurrence of the auditor of state. At least ninety days prior to the establishment of an internal service fund pursuant to this section, the director shall notify in writing the general assembly, including the legislative council, legislative fiscal committee, and the legislative services agency.

2. Internal service funds shall be administered by the department and shall consist of moneys collected by the department from billings issued in accordance with section 8A.125 and any other moneys obtained or accepted by the department, including but not limited to gifts, loans, donations, grants, and contributions, which are designated to support the activities of the individual internal service funds. The director may obtain loans from the innovations fund created in section 8.63 for deposit in an internal service fund established pursuant to this section to provide seed and investment capital to enhance the delivery of services provided by the department.

3. The proceeds of an internal service fund established pursuant to this section shall be used by the department for the operations of the department consistent with this chapter. The director may appoint the personnel necessary to ensure the efficient provision of services funded pursuant to an internal service fund established under this section. However, this usage requirement shall not limit or restrict the department from using proceeds from gifts, loans, donations, grants, and contributions in conformance with any conditions, directions, limitations, or instructions attached or related thereto.

4. Section 8.33 does not apply to any moneys in internal service funds established pursuant to this section. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited in these funds shall be credited to these funds.

5. *a.* The director shall annually provide internal service fund service business plans and financial reports to the department of management and the general assembly. The business plans may include the recommendation that a portion of unexpended net income be periodically returned to the appropriate funding source.

b. The department shall submit an annual report not later than October 1 to the members of the general assembly and the legislative services agency of the activities funded by and expenditures made from an internal service fund established pursuant to this section during the preceding fiscal year.

2003 Acts, ch 35, §46, 49; 2003 Acts, ch 145, §13

8A.124 Additional personnel.

The department may employ, upon the approval of the department of management, additional personnel in excess of the number of full-time equivalent positions authorized by the general assembly if such additional personnel are reasonable and necessary to perform such duties as required to meet the needs of the department to provide services to other governmental entities and as authorized by this chapter. The director shall notify in

writing the department of management, the legislative fiscal committee, and the legislative services agency of any additional personnel employed pursuant to this section.

2003 Acts, ch 35, §46, 49; 2003 Acts, ch 145, §14; 2004 Acts, ch 1086, §6

Section amended

8A.125 Billing — credit card payments.

1. The director may bill a governmental entity for services rendered by the department in accordance with the duties of the department as provided in this chapter. Bills may include direct, indirect, and developmental costs which have not been funded by an appropriation to the department. The department shall periodically render a billing statement to a governmental entity outlining the cost of services provided to the governmental entity. The amount indicated on the statement shall be paid by the governmental entity and amounts received by the department shall be considered repayment receipts as defined in section 8.2, and deposited into the accounts of the department.

2. In addition to other forms of payment, a person may pay by credit card for services provided by the department, according to rules adopted by the treasurer of state. The credit card fees to be charged shall not exceed those permitted by statute. A governmental entity may adjust its payment to reflect the costs of processing as determined by the treasurer of state. The discount charged by the credit card issuer may be included in determining the fees to be paid for completing a financial transaction under this section by using a credit card. All credit card payments shall be credited to the fund used to account for the services provided.

2003 Acts, ch 145, §15

8A.126 Department debts and liabilities — appropriation request.

If a service provided by the department and funded from an internal service fund established under section 8A.123 ceases to be provided and insufficient funds remain in the internal service fund to pay any outstanding debts and liabilities relating to that service, the director shall notify the general assembly and request that moneys be appropriated from the general fund of the state to pay such debts and liabilities.

2003 Acts, ch 145, §16

8A.127 through 8A.200 Reserved.

SUBCHAPTER II

INFORMATION TECHNOLOGY

PART 1

GENERAL PROVISIONS

8A.201 Definitions.

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

1. *"Information technology"* means computing and electronics applications used to process and distribute information in digital and other forms and includes information technology devices, information technology services, and value-added services.

2. *"Information technology council"* means the information technology council established in section 8A.204.

3. *"Information technology device"* means equipment or associated software, including programs, languages, procedures, or associated documentation, used in operating the equipment which is designed for utilizing information stored in an electronic format. *"Information technology device"* includes but is not limited to computer systems, computer networks, and equipment used for input, output, processing, storage, display, scanning, and printing.

4. *"Information technology services"* means services designed to do any of the following:

a. Provide functions, maintenance, and support of information technology devices.

b. Provide services including, but not limited to, any of the following:

(1) Computer systems application development and maintenance.

(2) Systems integration and interoperability.

(3) Operating systems maintenance and design.

(4) Computer systems programming.

(5) Computer systems software support.

(6) Planning and security relating to information technology devices.

(7) Data management consultation.

(8) Information technology education and consulting.

(9) Information technology planning and standards.

(10) Establishment of local area network and workstation management standards.

5. *"Participating agency"* means any agency other than any of the following:

a. The state board of regents and institutions operated under the authority of the state board of regents.

b. The public broadcasting division of the department of education.

c. The state department of transportation mobile radio network.

d. The department of public safety law en-

forcement communications systems and capitol complex security systems in use for the legislative branch.

e. The telecommunications and technology commission established in section 8D.3, with respect to information technology that is unique to the Iowa communications network.

f. The Iowa lottery authority.

g. A judicial district department of correctional services established pursuant to section 905.2.

6. *"Value-added services"* means services that offer or provide unique, special, or enhanced value, benefits, or features to the customer or user including, but not limited to, services in which information technology is specially designed, modified, or adapted to meet the special or requested needs of the user or customer; services involving the delivery, provision, or transmission of information or data that require or involve additional processing, formatting, enhancement, compilation or security; services that provide the customer or user with enhanced accessibility, security or convenience; research and development services; and services that are provided to support technological or statutory requirements imposed on participating agencies and other governmental entities, businesses, and the public.

2003 Acts, ch 145, §17

8A.202 Information technology services — mission — powers and duties — responsibilities.

1. *Mission.* The mission of the department as it relates to information technology services is to provide high-quality, customer-focused information technology services and business solutions to government and to citizens.

2. *Powers and duties of department.* The powers and duties of the department as it relates to information technology services shall include, but are not limited to, all of the following:

a. Providing information technology to agencies and other governmental entities.

b. Implementing the strategic information technology plan.

c. Developing and implementing a business continuity plan, as the director determines is appropriate, to be used if a disruption occurs in the provision of information technology to participating agencies and other governmental entities.

d. Prescribing standards and adopting rules relating to information technology and procurement, including but not limited to system design and systems integration and interoperability, which shall apply to all participating agencies except as otherwise provided in this chapter. The department shall implement information technology standards as established pursuant to this chapter which are applicable to information technology procurements for participating agencies.

e. Developing and maintaining an electronic repository for public access to reference copies of agency mandated reports, newsletters, and publications in conformity with section 305.10, subsection 1, paragraph *"h"*. The department shall develop technical standards for an electronic repository in consultation with the state librarian and the state archivist.

f. Developing and maintaining security policies and systems to ensure the integrity of the state's information resources and to prevent the disclosure of confidential records.

g. Developing and implementing effective and efficient strategies for the use and provision of information technology for participating agencies and other governmental entities.

h. Coordinating the acquisition of information technology by participating agencies in furtherance of the purposes of this chapter. The department shall institute procedures to ensure effective and efficient compliance with the applicable standards established pursuant to this subchapter. This subchapter shall not be construed to prohibit or limit a participating agency from entering into an agreement or contract for information technology with a qualified private entity.

i. Entering into contracts, leases, licensing agreements, royalty agreements, marketing agreements, memorandums of understanding, or other agreements as necessary and appropriate to administer this subchapter.

j. Requesting that a participating agency provide such information as is necessary to establish and maintain an inventory of information technology used by participating agencies, and such participating agency shall provide such information to the department in a timely manner. The form and content of the information to be provided shall be determined by the department.

k. Charging reasonable fees, costs, expenses, charges, or other amounts to an agency, governmental entity, public official, or person or entity related to the provision, sale, use, or utilization of, or cost sharing with respect to, information technology and any intellectual property interests related thereto; research and development; proprietary hardware, software, and applications; and information technology architecture and design. The department may enter into nondisclosure agreements and take any other legal action reasonably necessary to secure a right to an interest in information technology development by or on behalf of the state of Iowa and to protect the state of Iowa's proprietary information technology and intellectual property interests. The provisions of chapter 23A relating to noncompetition by state agencies and political subdivisions with private enterprise shall not apply to department activities authorized under this paragraph.

l. Charging reasonable fees, costs, expenses, charges, or other amounts to an agency, governmental entity, public official, or other person or entity to or for whom information technology or other

services have been provided by or on behalf of, or otherwise made available through, the department.

m. Providing, selling, leasing, licensing, transferring, or otherwise conveying or disposing of information technology, or any intellectual property or other rights with respect thereto, to agencies, governmental entities, public officials, or other persons or entities.

n. Entering into partnerships, contracts, leases, or other agreements with public and private entities for the evaluation and development of information technology pilot projects.

o. Initiating and supporting the development of electronic commerce, electronic government, and internet applications across participating agencies and in cooperation with other governmental entities. The department shall foster joint development of electronic commerce and electronic government involving the public and private sectors, develop customer surveys and citizen outreach and education programs and material, and provide for citizen input regarding the state's electronic commerce and electronic government applications.

3. *Responsibilities.* The responsibilities of the department as it relates to information technology services include the following:

a. Coordinate the activities of the department in promoting, integrating, and supporting information technology in all business aspects of state government.

b. Provide for server systems, including mainframe and other server operations, desktop support, and applications integration.

c. Provide applications development, support, and training, and advice and assistance in developing and supporting business applications throughout state government.

4. *Information technology charges.* The department shall render a statement to an agency, governmental entity, public official, or other person or entity to or for whom information technology, value-added services, or other items or services have been provided by or on behalf of, or otherwise made available through, the department. Such an agency, governmental entity, public official, or other person or entity shall pay an amount indicated on such statement in a manner determined by the department.

5. *Dispute resolution.* If a dispute arises between the department and an agency for which the department provides or refuses to provide information technology, the dispute shall be resolved as provided in section 679A.19.

2003 Acts, ch 145, §18; 2003 Acts, ch 179, §57, 84

8A.203 Director — information technology services powers and duties.

The director shall do all of the following as it relates to information technology services:

1. Prescribe and adopt information technology standards and rules.

2. Develop and recommend legislative proposals deemed necessary for the continued efficiency of the department in performing information technology functions, and review legislative proposals generated outside of the department which are related to matters within the department's purview.

3. Provide advice to the governor on issues related to information technology.

4. Consult with agencies and other governmental entities on issues relating to information technology.

5. Work with all governmental entities in an effort to achieve the information technology goals established by the department.

2003 Acts, ch 145, §19

8A.204 Information technology council — members — powers and duties.

1. *Membership.*

a. The information technology council is composed of fourteen members including the following:

(1) The chairperson of the IowAccess advisory council established in section 8A.221, or the chairperson's designee.

(2) Two executive branch department heads appointed by the governor.

(3) Six persons appointed by the governor who are knowledgeable in information technology matters.

(4) One person representing the judicial branch appointed by the chief justice of the supreme court who shall serve in an ex officio, nonvoting capacity.

(5) Four members of the general assembly with not more than one member from each house being from the same political party. The two senators shall be designated by the president of the senate after consultation with the majority and minority leaders of the senate. The two representatives shall be designated by the speaker of the house of representatives after consultation with the majority and minority leaders of the house of representatives. Legislative members shall serve in an ex officio, nonvoting capacity. A legislative member is eligible for per diem and expenses as provided in section 2.10.

b. The members appointed pursuant to paragraph *"a"* shall serve four-year staggered terms and such appointments to the information technology council are subject to the requirements of sections 69.16, 69.16A, and 69.19. The four-year terms of members appointed by the governor shall be staggered as designated by the governor. Members appointed by the governor are subject to senate confirmation and may also be eligible to receive compensation as provided in section 7E.6. Members shall be reimbursed for actual and necessary expenses incurred in performance of the members' duties.

c. The information technology council shall annually elect its own chairperson from among the voting members of the council. A majority of the voting members of the council constitutes a quorum.

2. *Duties.* The information technology council shall do all of the following:

a. Advise the department in the development of recommended standards for consideration with respect to the procurement of information technology by all participating agencies.

b. Appoint advisory committees as appropriate to assist the department in developing strategies for the use and provision of information technology and establishing other advisory committees as necessary to assist the information technology council in carrying out its duties under this subchapter. The number of advisory committees and their membership shall be determined by the information technology council to assure that the public and agencies and other governmental entities have an opportunity to comment on the services provided and the service goals and objectives of the department.

c. Advise the department in the preparation and annual update of the strategic information technology plan for the use of information technology throughout state government. The plan shall promote participation in cooperative projects with other governmental entities. The plan shall establish a mission, goals, and objectives for the use of information technology, including goals for electronic access to public records, information, and services. The plan shall be submitted annually to the governor and the general assembly.

d. Review, as deemed appropriate by the information technology council, legislative proposals recommended by the director, or other legislative proposals as developed and deemed necessary by the information technology council.

e. Review the recommendations of the IowAccess advisory council regarding rates to be charged for access to and for value-added services performed through IowAccess. The information technology council shall report the establishment of a new rate or change in the level of an existing rate to the department who will then notify the department of management, and the department of management shall notify the legislative services agency regarding the rate establishment or change.

2003 Acts, ch 35, §46, 49; 2003 Acts, ch 145, §20, 293

Confirmation, §2.32

8A.205 Digital government.

1. The department is responsible for initiating and supporting the development of electronic commerce, electronic government, and internet applications across participating agencies and in cooperation with other governmental entities.

2. In developing the concept of digital government, the department shall do all of the following:

a. Establish standards, consistent with other state law, for the implementation of electronic commerce, including standards for digital signatures, electronic currency, and other items associated with electronic commerce.

b. Establish guidelines for the appearance and functioning of applications.

c. Establish standards for the integration of electronic data across state agencies.

d. Foster joint development of electronic commerce and electronic government involving the public and private sectors.

e. Develop customer surveys and citizen outreach and education programs and material, and provide for citizen input regarding the state's electronic commerce and electronic government applications.

f. Provide staff support for the IowAccess advisory council.

2003 Acts, ch 145, §21

8A.206 Information technology standards.

1. The department shall develop, in consultation with the information technology council, recommended standards for consideration with respect to the procurement of information technology by all participating agencies. It is the intent of the general assembly that information technology standards be established for the purpose of guiding such procurements. Such standards, unless waived by the department, shall apply to all information technology procurements for participating agencies.

2. The office of the governor or the office of an elective constitutional or statutory officer shall consult with the department prior to procuring information technology and consider the standards recommended by the department, and provide a written report to the department relating to the office's decision regarding such acquisitions.

2003 Acts, ch 145, §22

8A.207 Procurement of information technology.

1. Standards established by the department, unless waived by the department, shall apply to all information technology procurements for participating agencies.

2. The department shall institute procedures to ensure effective and efficient compliance with standards established by the department.

3. The department, by rule, may implement a prequalification procedure for contractors with which the department has entered or intends to enter into agreements regarding the procurement of information technology.

4. Notwithstanding the provisions governing purchasing as provided in subchapter III, the department may procure information technology as provided in this section. The department may cooperate with other governmental entities in the procurement of information technology in an effort to make such procurements in a cost-effective, efficient manner as provided in this section. The department, as deemed appropriate and cost-effective, may procure information technology using any of the following methods:

a. Cooperative procurement agreement. The department may enter into a cooperative procurement agreement with another governmental entity relating to the procurement of information technology, whether such information technology is for the use of the department or other governmental entities. The cooperative procurement agreement shall clearly specify the purpose of the agreement and the method by which such purpose will be accomplished. Any power exercised under such agreement shall not exceed the power granted to any party to the agreement.

b. Negotiated contract. The department may enter into an agreement for the purchase of information technology if any of the following applies:

(1) The contract price, terms, and conditions are pursuant to the current federal supply contract, and the purchase order adequately identifies the federal supply contract under which the procurement is to be made.

(2) The contract price, terms, and conditions are no less favorable than the contractor's current federal supply contract price, terms, and conditions; the contractor has indicated in writing a willingness to extend such price, terms, and conditions to the department; and the purchase order adequately identifies the contract relied upon.

(3) The contract is with a vendor which has a current exclusive or nonexclusive price agreement with the state for the information technology to be procured, and such information technology meets the same standards and specifications as the items to be procured and both of the following apply:

(a) The quantity purchased does not exceed the quantity which may be purchased under the applicable price agreement.

(b) The purchase order adequately identifies the price agreement relied upon.

c. Contracts let by another governmental entity. The department, on its own behalf or on the behalf of another participating agency or governmental entity, may procure information technology under a contract let by another agency or other governmental entity, or approve such procurement in the same manner by a participating agency or governmental entity.

d. Reverse auction.

(1) The department may enter into an agreement for the purchase of information technology utilizing a reverse auction process. Such process shall result in the purchase of information technology from the vendor submitting the lowest responsible bid amount for the information technology to be acquired. The department, in establishing a reverse auction process, shall do all of the following:

(a) Determine the specifications and requirements of the information technology to be acquired.

(b) Identify and provide notice to potential vendors concerning the proposed acquisition.

(c) Establish prequalification requirements to be met by a vendor to be eligible to participate in the reverse auction.

(d) Conduct the reverse auction in a manner as deemed appropriate by the department and consistent with rules adopted by the department.

(2) Prior to conducting a reverse auction, the department shall establish a threshold amount which shall be the maximum amount which the department is willing to pay for the information technology to be acquired.

(3) The department shall enter into an agreement with a vendor who is the lowest responsible bidder which meets the specifications or description of the information technology to be procured, or the department may reject all bids and begin the process again. In determining the lowest responsible bidder, the department may consider various factors including, but not limited to, the past performance of the vendor relative to quality of product or service, the past experience of the department in relation to the product or service, the relative quality of products or services, the proposed terms of delivery, and the best interest of the state.

e. Competitive bidding. The department may enter into an agreement for the procurement or acquisition of information technology in the same manner as provided under subchapter III for the purchasing of service.

f. Other agreements. In addition to the competitive bidding procedure provided for under paragraph *"e"*, the department may enter into an agreement for the purchase, disposal, or other disposition of information technology in the same manner and subject to the same limitations as otherwise provided in this chapter. The department, by rule, shall provide for such procedures.

5. The department shall adopt rules pursuant to chapter 17A to implement the procurement methods and procedures provided for in subsections 2 through 4.

2003 Acts, ch 145, §23

8A.208 through 8A.220 Reserved.

PART 2

IOWACCESS

8A.221 IowAccess advisory council established — duties — membership.

1. *Advisory council established.* An IowAccess advisory council is established within the department for the purpose of creating and providing a service to the citizens of this state that is the gateway for one-stop electronic access to government information and transactions, whether federal, state, or local. Except as provided in this section, IowAccess shall be a state-funded service providing access to government information and transactions. The department, in establishing the fees for value-added services, shall consider the reasonable cost of creating and organizing such government information through IowAccess.

2. *Duties.*

a. The advisory council shall do all of the following:

(1) Recommend to the information technology council rates to be charged for access to and for value-added services performed through IowAccess.

(2) Recommend to the director the priority of projects associated with IowAccess.

(3) Recommend to the director expected outcomes and effects of the use of IowAccess and determine the manner in which such outcomes are to be measured and evaluated.

(4) Review and recommend to the director the IowAccess total budget request and ensure that such request reflects the priorities and goals of IowAccess as established by the advisory council.

(5) Review and recommend to the director all rules to be adopted by the department that are related to IowAccess.

(6) Advocate for access to government information and services through IowAccess and for data privacy protection, information ethics, accuracy, and security in IowAccess programs and services.

(7) Receive status and operations reports associated with IowAccess.

(8) Other duties as assigned by the director.

b. The advisory council shall also advise the director with respect to the operation of IowAccess and encourage and implement access to government and its public records by the citizens of this state.

c. The advisory council shall serve as a link between the users of public records, the lawful custodians of such public records, and the citizens of this state who are the owners of such public records.

d. The advisory council shall ensure that IowAccess gives priority to serving the needs of the citizens of this state.

3. *Membership.*

a. The advisory council shall be composed of nineteen members including the following:

(1) Five persons appointed by the governor representing the primary customers of IowAccess.

(2) Six persons representing lawful custodians as follows:

(a) One person representing the legislative branch, who shall not be a member of the general assembly, to be appointed jointly by the president of the senate, after consultation with the majority and minority leaders of the senate, and by the speaker of the house of representatives, after consultation with the majority and minority leaders of the house of representatives.

(b) One person representing the judicial branch as designated by the chief justice of the supreme court.

(c) One person representing the executive branch as designated by the governor.

(d) One person to be appointed by the governor representing cities who shall be actively engaged in the administration of a city.

(e) One person to be appointed by the governor representing counties who shall be actively engaged in the administration of a county.

(f) One person to be appointed by the governor representing the federal government.

(3) Four members to be appointed by the governor representing a cross section of the citizens of the state.

(4) Four members of the general assembly, two from the senate and two from the house of representatives, with not more than one member from each chamber being from the same political party. The two senators shall be designated by the president of the senate after consultation with the majority and minority leaders of the senate. The two representatives shall be designated by the speaker of the house of representatives after consultation with the majority and minority leaders of the house of representatives. Legislative members shall serve in an ex officio, nonvoting capacity. A legislative member is eligible for per diem and expenses as provided in section 2.10.

b. Members appointed by the governor are subject to confirmation by the senate and shall serve four-year staggered terms as designated by the governor. The advisory council shall annually elect its own chairperson from among the voting members of the council. A majority of the voting members of the council constitutes a quorum. Members appointed by the governor are subject to the requirements of sections 69.16, 69.16A, and 69.19. Members appointed by the governor shall be reimbursed for actual and necessary expenses incurred in performance of their duties. Such members may also be eligible to receive compensation as provided in section 7E.6.

4. This section shall not be construed to impair the right of a person to contract to purchase information or data from the Iowa court information system or any other governmental entity. This

section shall not be construed to affect a data purchase agreement or contract in existence on April 25, 2000.

2003 Acts, ch 145, §24; 2004 Acts, ch 1101, §3; 2004 Acts, ch 1108, §1

Confirmation, §2.32

Initial appointments to IowAccess advisory council; 2000 Acts, ch 1141, §18, 19

See Code editor's note to §2A.8 at the end of Vol VI

Subsection 3, paragraph b amended

8A.222 Financial transactions.

1. Moneys paid to a participating agency from persons who complete an electronic financial transaction with the agency by accessing IowAccess shall be transferred to the treasurer of state for deposit in the general fund of the state, unless the disposition of the moneys is specifically provided for under other law. The moneys may include all of the following:

a. Fees required to obtain an electronic public record as provided in section 22.3A.

b. Fees required to process an application or file a document, including but not limited to fees required to obtain a license issued by a licensing authority.

c. Moneys owed to a governmental entity by a person accessing IowAccess in order to satisfy a liability arising from the operation of law, including the payment of assessments, taxes, fines, and civil penalties.

2. Moneys transferred using IowAccess may include amounts owed by a governmental entity to a person accessing IowAccess in order to satisfy a liability of the governmental entity. The moneys may include the payment of tax refunds, and the disbursement of support payments as defined in section 252D.16 or 598.1 as required for orders issued pursuant to section 252B.14.

3. In addition to other forms of payment, credit cards shall be accepted in payment for moneys owed to or fees imposed by a governmental entity in the same manner as provided in section 8A.125.

4. Notwithstanding any other provision of this section, the department may establish for the fiscal years beginning July 1, 2003, and ending June 30, 2005, a pilot project for fee collection. Fees shall be collected based on the ability to access court information from remote locations.

2003 Acts, ch 145, §25

8A.223 Audits required.

A technology audit of the electronic transmission system by which government records are transmitted electronically to the public shall be conducted not less than once annually for the purpose of determining that government records and other electronic data are not misappropriated or misused by the department or a contractor of the department.

2003 Acts, ch 145, §26

8A.224 IowAccess revolving fund.

An IowAccess revolving fund is created in the state treasury. The revolving fund shall be administered by the department and shall consist of moneys collected by the department as fees, moneys appropriated by the general assembly, and any other moneys obtained or accepted by the department for deposit in the revolving fund. The proceeds of the revolving fund are appropriated to and shall be used by the department to maintain, develop, operate, and expand IowAccess consistent with this subchapter. The department shall submit an annual report not later than January 31 to the members of the general assembly and the legislative services agency of the activities funded by and expenditures made from the revolving fund during the preceding fiscal year. Section 8.33 does not apply to any moneys in the revolving fund and, notwithstanding section 12C.7, subsection 2, earnings or interest on moneys deposited in the revolving fund shall be credited to the revolving fund.

2003 Acts, ch 35, §46, 49; 2003 Acts, ch 145, §27

8A.225 through 8A.300 Reserved.

SUBCHAPTER III

PHYSICAL RESOURCES

PART 1

GENERAL PROVISIONS

8A.301 Definitions.

When used in this subchapter, unless the context otherwise requires:

1. *"Bid specification"* means the standards or qualities which must be met before a contract to purchase will be awarded and any terms which the director has set as a condition precedent to the awarding of a contract.

2. *"Competitive bidding procedure"* means the advertisement for, solicitation of, or the procurement of bids; the manner and condition in which bids are received; and the procedure by which bids are opened, accessed, accepted, rejected, or awarded. A *"competitive bidding procedure"* may include a transaction accomplished in an electronic format.

3. *"Life cycle cost"* means the expected total cost of ownership during the life of a product.

4. *"Printing"* means, as used in chapter 7A and this subchapter, the reproduction of an image from a printing surface made generally by a contact impression that causes a transfer of ink, the reproduction of an impression by a photographic process, or the reproduction of an image by electronic means and shall include binding and may include material, processes, or operations necessary to produce a finished printed product, but shall not include binding, rebinding or repairs of books,

journals, pamphlets, magazines and literary articles by any library of the state or any of its offices, departments, boards, and commissions held as a part of their library collection.

5. *"State buildings and grounds"* excludes any building under the custody and control of the Iowa public employees' retirement system.

2003 Acts, ch 145, §28

8A.302 Departmental duties — physical resources.

The duties of the department as it relates to the physical resources of state government shall include but not necessarily be limited to the following:

1. Providing a system of uniform standards and specifications for purchasing. When the system is developed, all items of general use shall be purchased by state agencies through the department, except items used by the state department of transportation, institutions under the control of the state board of regents, the department for the blind, and any other agencies exempted by law. However, items of general use may be purchased through the department by any governmental entity.

2. Providing for the proper maintenance of the state laboratories facility in Ankeny and of the state capitol, grounds, and equipment, and all other state buildings, grounds, and equipment at the seat of government, except those referred to in section 216B.3, subsection 6.

3. Providing for mail services for all state officials, agencies, and departments located at the seat of government. However, postage shall not be furnished to the general assembly, its members, officers, employees, or committees.

4. Providing architectural services, contracting for construction and construction oversight for state agencies except for the state board of regents, state department of transportation, national guard, natural resource commission, and the Iowa public employees' retirement system. Capital funding appropriated to state agencies, except to the state board of regents, state department of transportation, national guard, natural resource commission, and the Iowa public employees' retirement system, for property management shall be transferred for administration to the director of the department of administrative services.

5. Developing and implementing procedures to conduct transactions, including purchasing, authorized by this subchapter in an electronic format to the extent determined appropriate by the department. The director shall adopt rules establishing criteria for competitive bidding procedures involving transactions in an electronic format, including criteria for accepting or rejecting bids which are electronically transmitted to the department, and for establishing with reasonable assurance the authenticity of the bid and the bidder's identity.

6. Providing insurance for motor vehicles owned by the state.

2003 Acts, ch 145, §29; 2004 Acts, ch 1101, §4
Subsection 2 amended

8A.303 through 8A.310 Reserved.

PART 2

PURCHASING

8A.311 Competitive bidding — preferences — reciprocal application — direct purchasing.

The director shall adopt rules establishing competitive bidding procedures.

1. All equipment, supplies, or services procured by the department shall be purchased by a competitive bidding procedure. However, the director may exempt by rule purchases of noncompetitive items and purchases in lots or quantities too small to be effectively purchased by competitive bidding. Preference shall be given to purchasing Iowa products and purchases from Iowa-based businesses if the Iowa-based business bids submitted are comparable in price to bids submitted by out-of-state businesses and otherwise meet the required specifications. If the laws of another state mandate a percentage preference for businesses or products from that state and the effect of the preference is that bids of Iowa businesses or products that are otherwise low and responsive are not selected in the other state, the same percentage preference shall be applied to Iowa businesses and products when businesses or products from that other state are bid to supply Iowa requirements.

2. The director may also exempt the purchase of an item or service from a competitive bidding procedure when the director determines that the best interests of the state will be served by the exemption which shall be based on one of the following:

a. An immediate or emergency need existing for the item or service.

b. A need to protect the health, safety, or welfare of persons occupying or visiting a public improvement or property located adjacent to the public improvement.

3. *a.* The director may contract for the purchase of items or services by the department. Contracts for the purchase of items or services shall be awarded on the basis of the lowest competent bid. Contracts not based on competitive bidding shall be awarded on the basis of bidder competence and reasonable price.

b. Architectural and engineering services shall be procured in a reasonable manner, as the director by rule may determine, on the basis of competence and qualification for the type of services required and for a fair and reasonable price.

4. The director may refuse all bids on any item or service and request new bids.

5. The director shall establish by rule the amount of security, if any, to accompany a bid or as a condition precedent to the awarding of any contract and the circumstances under which a security will be returned to the bidder or forfeited to the state.

6. The director shall adopt rules providing a method for the various state agencies to file with the department a list of those supplies, equipment, machines, and all items needed to properly perform their governmental duties and functions.

7. The director shall furnish a list of specifications, prices, and discounts of contract items to any governmental subdivision which shall be responsible for payment to the vendor under the terms and conditions outlined in the state contract.

8. The director shall adopt rules providing that any state agency may, upon request, purchase directly from a vendor if the direct purchasing is as economical or more economical than purchasing through the department, or upon a showing that direct purchasing by the state agency would be in the best interests of the state due to an immediate or emergency need. The rules shall include a provision permitting a state agency to purchase directly from a vendor, on the agency's own authority, if the purchase will not exceed five thousand dollars and the purchase will contribute to the agency complying with or exceeding the targeted small business procurement goals under sections 73.15 through 73.21.

Any member of the executive council may bring before the executive council for review a decision of the director granting a state agency request for direct purchasing. The executive council shall hear and review the director's decision in the same manner as an appeal filed by an aggrieved bidder, except that the three-day period for filing for review shall not apply.

9. *a.* When the estimated total cost of construction, erection, demolition, alteration, or repair of a public improvement exceeds twenty-five thousand dollars, the department shall solicit bids on the proposed improvement by publishing an advertisement in a print format. The advertisement shall appear in two publications in a newspaper published in the county in which the work is to be done. The first advertisement for bids appearing in a newspaper shall be not less than fifteen days prior to the date set for receiving bids. The department may publish an advertisement in an electronic format as an additional method of soliciting bids under this paragraph.

b. In awarding a contract under this subsection, the department shall let the work to the lowest responsible bidder submitting a sealed proposal. However, if the department considers the bids received not to be acceptable, all bids may be rejected and new bids requested. A bid shall be accompanied by a certified or cashier's check or bid bond in an amount designated in the advertisement for bids as security that the bidder will enter into a contract for the work requested. The department shall establish the bid security in an amount equal to at least five percent, but not more than ten percent of the estimated total cost of the work. The certified or cashier's checks or bid bonds of unsuccessful bidders shall be returned as soon as the successful bidder is determined. The certified or cashier's check or bid bond of the successful bidder shall be returned upon execution of the contract. This subsection does not apply to the construction, erection, demolition, alteration, or repair of a public improvement when the contracting procedure for the work requested is otherwise provided for in law.

10. The state and its political subdivisions shall give preference to purchasing Iowa products and purchasing from Iowa-based businesses if the bids submitted are comparable in price to those submitted by other bidders and meet the required specifications.

11. The director shall adopt rules which require that each bid received for the purchase of items purchased by the department includes a product content statement which provides the percentage of the content of the item which is reclaimed material.

12. The director shall review and, where necessary, revise specifications used by state agencies to procure products in order to ensure all of the following:

a. The procurement of products containing recovered materials, including but not limited to lubricating oils, retread tires, building insulation materials, and recovered materials from waste tires. The specifications shall be revised if they restrict the use of alternative materials, exclude recovered materials, or require performance standards which exclude products containing recovered materials unless the agency seeking the product can document that the use of recovered materials will hamper the intended use of the product.

b. The procurement by state agencies of biobased hydraulic fluids, greases, and other industrial lubricants manufactured from soybeans in accordance with the requirements of section 8A.316.

13. A bidder awarded a state construction contract shall disclose the names of all subcontractors, who will work on the project being bid, within forty-eight hours after the award of the contract.

If a subcontractor named by a bidder awarded a state construction contract is replaced, or if the cost of work to be done by a subcontractor is reduced, the bidder shall disclose the name of the new subcontractor or the amount of the reduced cost.

14. A state agency shall make every effort to purchase those products produced for sale by sheltered workshops, work activity centers, and other special programs funded in whole or in part by public moneys that employ persons with mental retardation or other developmental disabilities or mental illness if the products meet the required specifications.

15. A state agency shall make every effort to purchase products produced for sale by employers of persons in supported employment.

16. The department shall not award a contract to a bidder for a construction, reconstruction, demolition, or repair project or improvement with an estimated cost that exceeds twenty-five thousand dollars in which the bid requires the use of inmate labor supplied by the department of corrections, but not employed by private industry pursuant to section 904.809, to perform the project or improvement.

17. Life cycle cost and energy efficiency shall be included in the criteria used by the department, institutions under the control of the state board of regents, the state department of transportation, the department for the blind, and other state agencies in developing standards and specifications for purchasing energy-consuming products. For purposes of this subsection, the life cycle costs of American motor vehicles shall be reduced by five percent in order to determine if the motor vehicle is comparable to foreign-made motor vehicles. *"American motor vehicles"* includes those vehicles manufactured in this state and those vehicles in which at least seventy percent of the value of the motor vehicle was manufactured in the United States or Canada and at least fifty percent of the motor vehicle sales of the manufacturer are in the United States or Canada. In determining the life cycle costs of a motor vehicle, the costs shall be determined on the basis of the bid price, the resale value, and the operating costs based upon a useable life of five years or seventy-five thousand miles, whichever occurs first.

18. Preference shall be given to purchasing American-made products and purchases from American-based businesses if the life cycle costs are comparable to those products of foreign businesses and which most adequately fulfill the department's need.

2003 Acts, ch 145, §30; 2004 Acts, ch 1101, §5

Preferences; see also chapter 73, §73A.21

Subsection 17 stricken and former subsections 18 and 19 renumbered as 17 and 18

8A.312 Cooperative purchasing.

The director may purchase items through the state department of transportation, institutions under the control of the state board of regents, and any other agency exempted by law from centralized purchasing. These state agencies shall upon request furnish the director with a list of and specifications for all items of office equipment, furniture, fixtures, motor vehicles, heavy equipment, and other related items to be purchased during the next quarter and the date by which the director must file with the agency the quantity of items to be purchased by the state agency for the department. The department shall be liable to the state agency for the proportionate costs the items purchased for the department bear to the total purchase price. When items purchased have been delivered, the state agency shall notify the director and after receipt of the purchase price shall release the items to the director or upon the director's order.

2003 Acts, ch 145, §31

8A.313 Disputes involving purchasing from Iowa state industries.

Disputes arising between the department of corrections and a purchasing department or agency over the procurement of products from Iowa state industries as described in section 904.808 shall be referred to the director. The decision of the director is final unless a written appeal is filed with the executive council within five days of receipt of the decision of the director, excluding Saturdays, Sundays, and legal holidays. If an appeal is filed, the executive council shall hear and determine the appeal within thirty days. The decision of the executive council is final.

2003 Acts, ch 145, §32

8A.314 Purchasing revolving fund.

1. A purchasing revolving fund is established within the department. The director shall keep an accurate itemized account for each state agency purchasing through the department, using services provided for by the department, and using postage supplied by the department.

2. At the end of each month the director shall render a statement to each state agency for the actual cost of items purchased through the department, and the actual cost of services and postage used by the agency. The monthly statement shall also include a fair proportion of the administrative costs of the department during the month. The portion of administrative costs shall be determined by the director subject to review by the executive council upon complaint from any state agency adversely affected.

3. Statements rendered to the various state agencies shall be paid by the state agencies in the manner determined by the department. When the statements are paid the sums shall be credited to the purchasing revolving fund. If any funds accrue to the revolving fund in excess of two hundred twenty-five thousand dollars and there is no anticipated need or use for such funds, the governor shall order the excess funds credited to the general fund of the state.

2003 Acts, ch 145, §33

8A.315 State purchases — recycled products — soybean-based inks.

1. When purchasing paper products other than printing and writing paper, the department shall, when the price is reasonably competitive and the quality as intended, purchase the recycled product. The department shall also purchase, when the price is reasonably competitive and the quality as intended, and in keeping with the schedule established in this subsection, soybean-based inks and plastic products with recycled content including but not limited to plastic garbage can liners.

a. One hundred percent of the purchases of inks which are used for newsprint printing services performed internally or contracted for by the department shall be soybean-based.

b. One hundred percent of the purchases of inks, other than inks which are used for newsprint printing services, and which are used internally or contracted for by the department, shall be soybean-based to the extent formulations for such inks are available.

c. A minimum of fifty percent of the purchases of garbage can liners made by the department shall be plastic garbage can liners with recycled content.

d. The department shall report to the general assembly on February 1 of each year the following:

(1) A listing of plastic products which are regularly purchased by the department and other state agencies for which recycled content product alternatives are available, including the cost of the plastic products purchased and the cost of the recycled content product alternatives.

(2) Information relating to soybean-based inks and plastic garbage can liners with recycled content regularly purchased by the department and other state agencies, including the cost of purchasing soybean-based inks and plastic garbage can liners with recycled content and the percentages of soybean-based inks and plastic garbage can liners with recycled content that have been purchased.

e. For purposes of this subsection, *"recycled content"* means that the content of the product contains a minimum of thirty percent postconsumer material.

2. *a.* Except as otherwise provided in this section, the department shall purchase and use recycled printing and writing paper so that ninety percent of the volume of printing and writing paper purchased is recycled paper. The recycled printing and writing paper shall meet the requirements for procuring recycled printing and writing paper set forth in 40 C.F.R. pt. 247, and in related recovered materials advisory notices issued by the United States environmental protection agency.

b. The department shall establish a prioritization procedure for the purchase of recycled paper which provides for a five percent differential in the cost of the purchase of paper which has been recycled through the use of a nonchlorinated process.

c. If a provision under this subsection results in the limitation of sources for the purchase of printing and writing paper to three or fewer sources, the department may waive the requirement in order to purchase necessary amounts of printing and writing paper.

d. Notwithstanding the requirements of this subsection regarding the purchase of recycled printing and writing paper, the department shall purchase acid-free permanent paper in the amount necessary for the production or reproduction of documents, papers, or similar materials produced or reproduced for permanent preservation pursuant to law.

3. The department, in conjunction with the department of natural resources, shall review the procurement specifications currently used by the state to eliminate, wherever possible, discrimination against the procurement of products manufactured with recovered materials and soybean-based inks.

4. The department of natural resources shall assist the department in locating suppliers of recycled products and soybean-based inks and collecting data on recycled content and soybean-based ink purchases.

5. Information on recycled content shall be requested on all bids for paper products other than printing and writing paper issued by the state and on other bids for products which could have recycled content such as oil, plastic products, including but not limited to compost materials, aggregate, solvents, soybean-based inks, and rubber products. Except for purchases of printing and writing paper made pursuant to subsection 2, paragraphs *"c"* and *"d"*, the department shall require persons submitting bids for printing and writing paper to certify that the printing and writing paper proposed complies with the requirements referred to in subsection 2, paragraph *"a"*.

6. The department, in conjunction with the department of natural resources, shall adopt rules to administer this section.

7. All state agencies shall fully cooperate with the department and with the department of natural resources in all phases of implementing this section.

8. The department, whenever technically feasible, shall purchase and use degradable loose foam packing material manufactured from grain starches or other renewable resources, unless the cost of the packing material is more than ten percent greater than the cost of packing material made from nonrenewable resources. For the purposes of this subsection, *"packing material"* means material, other than an exterior packing shell,

that is used to stabilize, protect, cushion, or brace the contents of a package.

2003 Acts, ch 145, §34; 2004 Acts, ch 1101, §6
Subsection 1, paragraph c amended

8A.316 Lubricants and oils — preferences.

The department shall do all of the following:

1. Revise its procedures and specifications for the purchase of lubricating oil and industrial oil to eliminate exclusion of recycled oils and any requirement that oils be manufactured from virgin materials.

2. Require that purchases of lubricating oil and industrial oil be made from the seller whose oil product contains the greatest percentage of recycled oil, unless one of the following circumstances regarding a specific oil product containing recycled oil exists:

a. The product is not available within a reasonable period of time or in quantities necessary or in container sizes appropriate to meet a state agency's needs.

b. The product does not meet the performance requirements or standards recommended by the equipment or vehicle manufacturer, including any warranty requirements.

c. The product is available only at a cost greater than one hundred five percent of the cost of comparable virgin oil products.

3. Establish and maintain a preference program for procuring oils containing the maximum content of recycled oil. The preference program shall include but is not limited to all of the following:

a. The inclusion of the preferences for recycled oil products in publications used to solicit bids from suppliers.

b. The provision of a description of the recycled oil procurement program at bidders' conferences.

c. Discussion of the preference program in lubricating oil and industrial oil procurement solicitations or invitations to bid.

d. Efforts to inform industry trade associations about the preference program.

4. *a.* Provide that when purchasing hydraulic fluids, greases, and other industrial lubricants, the department or a state agency authorized by the department to directly purchase hydraulic fluids, greases, and other industrial lubricants shall give preference to purchasing bio-based hydraulic fluids, greases, and other industrial lubricants manufactured from soybeans.

b. Provide for the implementation of requirements necessary in order to carry out this subsection by the department or state agency making the purchase, which shall include all of the following:

(1) Including the preference requirements in publications used to solicit bids for hydraulic fluids, greases, and other industrial lubricants.

(2) Describing the preference requirements at bidders' conferences in which bids for the sale of hydraulic fluids, greases, and other industrial lubricants are sought by the department or authorized state agency.

(3) Discussing the preference requirements in procurement solicitations or invitations to bid for hydraulic fluids, greases, and other industrial lubricants.

(4) Informing industry trade associations about the preference requirements.

c. As used in this subsection, unless the context otherwise requires:

(1) *"Bio-based hydraulic fluids, greases, and other industrial lubricants"* means the same as defined by the United States department of agriculture, if the department has adopted such a definition. If the United States department of agriculture has not adopted a definition, *"bio-based hydraulic fluids, greases, and other industrial lubricants"* means hydraulic fluids, greases, and other lubricants containing a minimum of fifty-one percent soybean oil.

(2) *"Other industrial lubricants"* means lubricants used or applied to machinery.

2003 Acts, ch 145, §35

8A.317 through 8A.320 Reserved.

PART 3

PHYSICAL RESOURCES AND FACILITY MANAGEMENT

8A.321 Physical resources and facility management — director duties — appropriation.

In managing the physical resources of government, the director shall perform all of the following duties:

1. Provide for supervision over the custodians and other employees of the department in and about the state laboratories facility in Ankeny and in and about the capitol and other state buildings at the seat of government, except the buildings and grounds referred to in section 216B.3, subsection 6.

2. Institute, in the name of the state, and with the advice and consent of the attorney general, civil and criminal proceedings against any person for injury or threatened injury to any public property, including but not limited to intangible and intellectual property, under the person's control.

3. Under the direction of the governor, provide, furnish, and pay for public utilities service, heat, maintenance, minor repairs, and equipment in operating and maintaining the official residence of the governor of Iowa.

4. Contract, with the approval of the executive council, for the repair, remodeling, or, if the condition warrants, demolition of all buildings and grounds of the state at the seat of government, at the state laboratories facility in Ankeny, and the institutions of the department of human services

and the department of corrections for which no specific appropriation has been made, if the cost of repair, remodeling, or demolition will not exceed one hundred thousand dollars when completed. The cost of repair projects for which no specific appropriation has been made shall be paid from the fund provided in section 7D.29.

5. Dispose of all personal property of the state under the director's control as provided by section 8A.324 when it becomes unnecessary or unfit for further use by the state. If the director concludes that the personal property is contaminated, contains hazardous waste, or is hazardous waste, the director may charge the state agency responsible for the property for removal and disposal of the personal property. The director shall adopt rules establishing the procedures for inspecting, selecting, and removing personal property from state agencies or from state storage.

6. *a.* Lease all buildings and office space necessary to carry out the provisions of this subchapter or necessary for the proper functioning of any state agency at the seat of government. For state agencies at the seat of government, the director may lease buildings and office space in Polk county or in a county contiguous to Polk county. If no specific appropriation has been made, the proposed lease shall be submitted to the executive council for approval. The cost of any lease for which no specific appropriation has been made shall be paid from the fund provided in section 7D.29.

b. When the general assembly is not in session, the director may request moneys from the executive council for moving state agencies located at the seat of government from one location to another. The request may include moving costs, telecommunications costs, repair costs, or any other costs relating to the move. The executive council may approve and shall pay the costs from funds provided in section 7D.29 if it determines the agency or department has no available funds for these expenses.

c. Coordinate the leasing of buildings and office space by state agencies throughout the state and develop cooperative relationships with the state board of regents in order to promote the colocation of state agencies.

7. Unless otherwise provided by law, coordinate the location, design, plans and specifications, construction, and ultimate use of the real or personal property to be purchased by a state agency for whose benefit and use the property is being obtained. If the purchase of real or personal property is to be financed pursuant to section 12.28, the department shall cooperate with the treasurer of state in providing the information necessary to complete the financing of the property.

A contract for acquisition, construction, erection, demolition, alteration, or repair by a private person of real or personal property to be lease-purchased by the treasurer of state pursuant to section 12.28 is exempt from section 8A.311, subsections 1 and 9, unless the lease-purchase contract is funded in advance by a deposit of the lessor's moneys to be administered by the treasurer of state under a lease-purchase contract which requires rent payments to commence upon delivery of the lessor's moneys to the lessee.

8. With the authorization of a constitutional majority of each house of the general assembly and approval by the governor, dispose of real property belonging to the state and its state agencies upon terms, conditions, and consideration as the director may recommend. If real property subject to sale under this subsection has been purchased or acquired from appropriated funds, the proceeds of the sale shall be deposited with the treasurer of state and credited to the general fund of the state or other fund from which appropriated. There is appropriated from that same fund, with the prior approval of the executive council and in cooperation with the director, a sum equal to the proceeds so deposited and credited to the state agency to which the disposed real property belonged or by which it was used, for purposes of the state agency.

9. Subject to the selection procedures of section 12.30, employ financial consultants, banks, insurers, underwriters, accountants, attorneys, and other advisors or consultants necessary to implement the provisions of subsection 7.

10. Prepare annual status reports for all ongoing capital projects of all state agencies, as defined in section 8.3A, and submit the status reports to the legislative capital projects committee.

11. Call upon any state agency, as defined in section 8.3A, for assistance the director may require in performing the director's duties under subsection 10 regarding capital project status reports. All state agencies, upon the request of the director and with the approval of the director of the department of management, shall assist the director and are authorized to make available to the director any existing studies, surveys, plans, data, and other materials in the possession of the state agencies which are relevant to the director's duties.

12. In carrying out the requirements of section 64.6, purchase an individual or a blanket surety bond insuring the fidelity of state officers. The department may self-assume or self-insure fidelity exposures for state officials and employees. A state official is deemed to have furnished surety if the official has been covered by a program of insurance or self-insurance established by the department. To the extent possible, all bonded state employees shall be covered under one or more blanket bonds or position schedule bonds.

13. Review the management of state property loss exposures and state liability risk exposures for the capitol complex. Insurance coverage may include self-insurance or any type of insurance protection sold by insurers, including, but not limited to, full coverage, partial coverage, coinsur-

ance, reinsurance, and deductible insurance coverage.

14. Establish a monument maintenance account in the state treasury under the control of the department. Funds for the maintenance of a state monument, whether received by gift, devise, bequest, or otherwise, shall be deposited in the account. Funds in the account shall be deposited in an interest-bearing account. Notwithstanding section 12C.7, interest earned on the account shall be deposited in the account and shall be used to maintain the designated monument. Any maintenance funds for a state monument held by the state and interest earned on the funds shall be used to maintain the designated monument. Notwithstanding section 8.33, funds in the monument maintenance account at the end of a fiscal year shall not revert to the general fund of the state.

2003 Acts, ch 145, §36; 2004 Acts, ch 1101, §7
Subsection 1 amended

8A.322 Buildings and grounds — services — public use.

1. The director shall provide necessary lighting, fuel, and water services for the state laboratories facility in Ankeny and for the state buildings and grounds located at the seat of government, except the buildings and grounds referred to in section 216B.3, subsection 6.

2. Except for buildings and grounds described in section 216B.3, subsection 6; section 2.43, unnumbered paragraph 1; and any buildings under the custody and control of the Iowa public employees' retirement system, the director shall assign office space at the capitol, other state buildings, and elsewhere in the city of Des Moines, and the state laboratories facility in Ankeny, for all executive and judicial state agencies. Assignments may be changed at any time. The various officers to whom rooms have been so assigned may control the same while the assignment to them is in force. Official apartments shall be used only for the purpose of conducting the business of the state. The term *"capitol"* or *"capitol building"* as used in the Code shall be descriptive of all buildings upon the capitol grounds. The capitol building itself is reserved for the operations of the general assembly, the governor, and the courts and the assignment and use of physical facilities for the general assembly shall be pursuant to section 2.43.

3. The director shall establish, publish, and enforce rules regulating and restricting the use by the public of the capitol buildings and grounds and of the state laboratories facility in Ankeny. The rules when established shall be posted in conspicuous places about the capitol buildings and grounds and the state laboratories facility, as applicable. Any person violating any rule, except a parking regulation, shall be guilty of a simple misdemeanor.

2003 Acts, ch 145, §37; 2004 Acts, ch 1101, §8
Subsection 1 amended

8A.323 Parking regulations.

1. The director shall establish, publish, and enforce rules regulating, restricting, or prohibiting the use by state officials, state employees, and the public, of motor vehicle parking facilities at the state capitol complex and at the state laboratories facility in Ankeny. The assignment of legislative parking spaces shall be under the control of the legislative council. The rules established by the director may establish fines for violations and a procedure for payment of the fines. The director may order payment of a fine and enforce the order in the district court.

2. Motor vehicles parked in violation of the rules may be removed without the owner's or operator's consent and at the owner's or operator's expense. Motor vehicles removed and not claimed within thirty days of their removal or vehicles abandoned within the capitol grounds may be disposed of in accordance with the provisions of sections 321.85 through 321.91.

3. The parking rules established shall be posted in conspicuous places at the capitol complex and at the state laboratories facility in Ankeny, as applicable. Copies of the rules shall be made available to all state officials and employees and any other person who requests a copy of the rules.

4. All fines collected by the department shall be forwarded to the treasurer of state and deposited in the general fund of the state.

2003 Acts, ch 145, §38

8A.324 Disposal of personal property.

The director may dispose of personal property of the state under the director's control by any of the following means:

1. The director may dispose of unfit or unnecessary personal property by sale. Proceeds from the sale of personal property shall be deposited in the general fund of the state.

2. If the director concludes that the personal property has little or no value, the director may enter into an agreement with a not-for-profit organization or governmental agency to dispose of the personal property. The not-for-profit organization or governmental agency may charge the state agency in control of the property with the cost of removing and transporting the property. Title to the personal property shall transfer when the personal property is in the possession of the not-for-profit organization or governmental agency. If a governmental agency adds value to the property transferred to it and sells it, the proceeds from the sale shall be deposited with the governmental agency and not in the general fund of the state.

3. The director may dispose of presses, printing equipment, printing supplies, and other machinery or equipment used in the printing operation.

2003 Acts, ch 145, §39

8A.325 Services and commodities accepted.

The director may accept services, commodities, and surplus property and make provision for warehousing and distribution to various departments and governmental subdivisions of the state, and such other agencies, institutions, and authorized recipients within the state as may be from time to time designated in federal statutes and rules.

2003 Acts, ch 145, §40

8A.326 Terrace Hill commission.

1. The Terrace Hill commission is created consisting of nine persons, appointed by the governor, who are knowledgeable in business management and historic preservation and renovation. The governor shall appoint the chairperson. The terms of the commission members are for three years beginning on July 1 and ending on June 30.

2. The Terrace Hill commission may consult with the Terrace Hill society, Terrace Hill foundation, the executive and legislative branches of this state, and other persons interested in the property.

3. The Terrace Hill commission may enter into contracts, subject to this chapter, to execute its purposes.

4. The commission may adopt rules to administer the programs of the commission. The decision of the commission is final agency action under chapter 17A.

2003 Acts, ch 145, §41

8A.327 Rent revolving fund created — purpose.

1. A rent revolving fund is created in the state treasury under the control of the department to be used by the department to pay the lease or rental costs of all buildings and office space necessary for the proper functioning of any state agency at the seat of state government as provided in section 8A.321, subsection 6, except that this fund shall not be used to pay the rental or lease costs of a state agency which has not received funds budgeted for rental or lease purposes.

2. The director shall pay the lease or rental fees to the renter or lessor and submit a monthly statement to each state agency for which building and office space is rented or leased. If the director pays the lease or rental fees on behalf of a state agency, the state agency's payment to the department shall be credited to the rent revolving fund established by this section. With the approval of the director, a state agency may pay the lease or rental cost directly to the person who is due the payment under the lease or rental agreement.

2003 Acts, ch 145, §42

8A.328 Recycling revolving fund.

A recycling revolving fund is created within the state treasury under the control of the department. The fund shall consist of any moneys appropriated by the general assembly and any other moneys available to and obtained or accepted by the department from the federal government or private sources for placement in the fund. The assets of the fund shall be used by the department only for supporting recycling operations. Moneys in the fund shall be drawn upon the written requisition of the director or an authorized representative of the director. The fund is subject to an annual audit by the auditor of state. Section 8.33 does not apply to any moneys in the fund. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited in the fund shall be credited to the fund.

2003 Acts, ch 145, §43

8A.329 Wastepaper recycling program.

1. The department in accordance with recommendations made by the department of natural resources shall require all state agencies to establish an agency wastepaper recycling program. The director shall adopt rules which require a state agency to develop a program to ensure the recycling of the wastepaper generated by the agency. All state employees shall practice conservation of paper materials.

2. For the purposes of this section, *"agency wastepaper"* means wastepaper or wastepaper products generated by the agency.

3. The rules adopted by the director shall provide for the continuation of existing state agency contracts which provide for alternative waste management not including incineration or land burial of agency wastepaper.

2003 Acts, ch 145, §44

8A.330 through 8A.340 Reserved.

PART 4

PRINTING

Department shall submit a request for proposals for a managed competition for printing services by July 1, 2005, unless more efficient results can be obtained by other methods; 2003 Acts, ch 145, §290

8A.341 State printing — duties.

The director shall do all of the following as it relates to printing:

1. Provide general supervision of all matters pertaining to public printing, including the enforcement of contracts for printing, except as

otherwise provided by law. The supervision shall include providing guidelines for the letting of contracts for printing, the manner, form, style, and quantity of public printing, and the specifications and advertisements for public printing. In addition, the director shall have charge of office equipment and supplies and of the stock, if any, required in connection with printing contracts.

2. If money is appropriated for this purpose, by November 1 of each year supply a report which contains the name, gender, county, or city of residence when possible, official title, salary received during the previous fiscal year, base salary as computed on July 1 of the current fiscal year, and traveling and subsistence expense of the personnel of each of the departments, boards, and commissions of the state government except personnel who receive an annual salary of less than one thousand dollars. The number of the personnel and the total amount received by them shall be shown for each department in the report. All employees who have drawn salaries, fees, or expense allowances from more than one department or subdivision shall be listed separately under the proper departmental heading. On the request of the director, the head of each department, board, or commission shall furnish the data covering that agency. The report shall be distributed upon request without charge to each caucus of the general assembly, the legislative services agency, the chief clerk of the house of representatives, and the secretary of the senate. Copies of the report shall be made available to other persons in both print or electronic medium upon payment of a fee, which shall not exceed the cost of providing the copy of the report. Sections 22.2 through 22.6 apply to the report. All funds from the sale of the report shall be deposited in the printing revolving fund established in section 8A.345. Requests for print publications shall be handled only upon receipt of postage by the director.

3. Deposit receipts from the sale of presses, printing equipment, printing supplies, and other machinery or equipment used in the printing operation in the printing revolving fund established in section 8A.345.

2003 Acts, ch 35, §46, 49; 2003 Acts, ch 145, §45

Style, publication, and distribution of Iowa Code and Code Supplement, Iowa Acts, Iowa administrative code, Iowa administrative bulletin, and Iowa court rules; §2.42, 2A.5, 2A.6

8A.342 Contracts with state institutions.

The director may, without advertising for bids, enter into contracts or make provision for doing any of the work coming under the provisions of chapter 7A and this subchapter at any school or institution under the ownership or control of the state. The work shall be done under conditions substantially the same as those provided for in the case of contracts with individuals and the same standard of quality or product shall be required.

2003 Acts, ch 145, §46

8A.343 Specifications and requirements.

The director shall, from time to time, adopt and print specifications and requirements covering all matters relating to printing that are the subject of contracts.

2003 Acts, ch 145, §47

8A.344 Public printing — bidding procedures.

1. The director shall advertise for bids for public printing. Advertisements shall state where and how specifications and other necessary information may be obtained, the time during which the director will receive bids, and the day, hour, and place when bids will be publicly opened or accessed, and the manner by which the contracts will be awarded.

2. The director shall supply prospective bidders and others on request with the specifications and requirements, blank forms for bids, samples of printing so far as possible, and all other information pertaining to the subject.

3. The specifications shall be kept on file in the office of the director, open to public inspection, together with samples so far as possible, of the work to be done or the material to be furnished.

4. Bids submitted must be:

a. Secured in writing, by telephone, by facsimile, or in a format prescribed by the director as indicated in the bid specifications.

b. Signed by the bidder, or if a telephone or electronic bid, confirmed by the bidder in a manner prescribed by the director.

c. Submitted in a format prescribed by the director which reasonably assures the authenticity of the bid and the bidder's identity.

d. Submitted to the department as specified by the date and time established in the advertisements for bids.

5. When a bidder submits a bid to the department, the director may require the bidder to file a bid bond or a certified or cashier's check payable to the treasurer of state in an amount to be fixed in the bid specifications, either covering all classes or items or services, or separate certified or cashier's checks for each bid in case the bidder makes more than one bid. In lieu of a certified or cashier's check, the bidder may furnish a yearly bond in an amount to be established by the director. Certified or cashier's checks deposited by unsuccessful bidders, and by successful bidders when they have entered into the contract, shall be returned to them.

6. All bids shall be publicly opened or accessed and read and the contracts awarded in the manner designated in the bid specifications. In the award of a contract, due consideration shall be given to the price bid, mechanical and other equipment proposed to be used by the bidder, the financial responsibility of the bidder, the bidder's ability and experience in the performance of similar contracts, and any other factors that the department determines are relevant and that are included in

the bid specifications.

7. The director shall have the right to reject any or all bids, and in case of rejection or because of failure of a bidder to enter into a contract, the director may advertise for and secure new bids.

8. When the director is satisfied that bidders have presented bids pursuant to an agreement, understanding, or combination to prevent free competition, the director shall reject all of them and readvertise for bids as in the first instance.

2003 Acts, ch 145, §48

8A.345 Printing revolving fund.

A revolving fund is created in the state treasury under the control of the department and may be used in making payments for supplying paper stock, offset printing, copy preparation, binding, distribution costs, and original payment of printing and binding claims for any of the state departments, bureaus, commissions, or institutions. All salaries and expenses properly chargeable to the fund shall be paid from the fund. The director may also use the fund for the purchase of replacement or additional equipment if a sufficient balance will remain in the fund to enable the continued operation of the printing operations of the department.

2003 Acts, ch 145, §49

8A.346 through 8A.350 Reserved.

PART 5

DOCUMENT MANAGEMENT

8A.351 Distribution of documents — general provisions.

If money is appropriated for this purpose, the director shall do all of the following:

1. The director shall require from officials or heads of departments mailing lists, or addressed labels or envelopes, for use in distribution of reports and documents. The director shall revise such lists, eliminating duplications and adding to the lists libraries, institutions, public officials, and persons having actual use for the material. The director shall arrange the lists so as to reduce to the minimum the postage or other cost for delivery. Requests for publications shall be handled only upon receipt of postage by the director from the requesting agency or department.

2. The director shall furnish the various officials and departments with copies of their reports needed for office use or to be distributed to persons requesting the reports. Requests for publications shall be handled only upon receipt of postage by the director.

3. The director may send additional copies of publications to other state officials, individuals, institutions, libraries, or societies that may request them. Requests for publications shall be handled only upon receipt of postage by the director.

2003 Acts, ch 145, §50

8A.352 through 8A.360 Reserved.

PART 6

FLEET MANAGEMENT

Department may limit unified fleet management responsibilities to cars and small trucks; operations shall be subject to managed competition process by July 1, 2005, unless more efficient results can be obtained by other methods; 2003 Acts, ch 145, §290

8A.361 Vehicle assignment — authority in department.

The department shall provide for the assignment of all state-owned motor vehicles to all state officers and employees, and to all state offices, departments, bureaus, and commissions, except the state department of transportation, institutions under the control of the state board of regents, the department for the blind, and any other agencies exempted by law.

2003 Acts, ch 145, §51

8A.362 Fleet management — powers and duties — fuel economy requirements.

1. The director may provide for the assignment to a state officer or employee or to a state agency, of one or more motor vehicles which may be required by the state officer or employee or state agency, after the state officer or employee or state agency has shown the necessity for such transportation. The director may assign a motor vehicle either for part-time or full-time use. The director may revoke the assignment at any time.

2. The director may cause all state-owned motor vehicles to be inspected periodically. Whenever the inspection reveals that repairs have been improperly made on the motor vehicle or that the operator is not giving the motor vehicle the proper care, the director shall report this fact to the head of the state agency to which the motor vehicle has been assigned, together with recommendation for improvement.

3. The director shall provide for a record system for the keeping of records of the total number of miles state-owned motor vehicles are driven and the per-mile cost of operation of each motor vehicle. Every state officer or employee shall keep a record book to be furnished by the director in which the officer or employee shall enter all purchases of gasoline, lubricating oil, grease, and other incidental expense in the operation of the motor vehicle assigned to the officer or employee, giving the quantity and price of each purchase, including the cost and nature of all repairs on the motor vehicle. Each operator of a state-owned motor vehicle shall promptly prepare a report at the end of each month on forms furnished by the director and

forwarded to the director, giving the information the director may request in the report. Each month the director shall compile the costs and mileage of state-owned motor vehicles from the reports and keep a cost history for each motor vehicle and the costs shall be reduced to a cost-per-mile basis for each motor vehicle. The director shall call to the attention of an elected official or the head of any state agency to which a motor vehicle has been assigned any evidence of the mishandling or misuse of a state-owned motor vehicle which is called to the director's attention.

A motor vehicle operated under this subsection shall not operate on gasoline other than gasoline blended with at least ten percent ethanol, unless under emergency circumstances. A state-issued credit card used to purchase gasoline shall not be valid to purchase gasoline other than gasoline blended with at least ten percent ethanol, if commercially available. The motor vehicle shall also be affixed with a brightly visible sticker which notifies the traveling public that the motor vehicle is being operated on gasoline blended with ethanol. However, the sticker is not required to be affixed to an unmarked vehicle used for purposes of providing law enforcement or security.

4. *a.* The director shall provide for the purchase of all motor vehicles for all branches of the state government, except the state department of transportation, institutions under the control of the state board of regents, the department for the blind, and any other state agency exempted by law. The director shall purchase new vehicles in accordance with competitive bidding procedures for items or services as provided in this subchapter. The director may purchase used or preowned vehicles at governmental or dealer auctions if the purchase is determined to be in the best interests of the state.

b. The director, and any other state agency, which for purposes of this subsection includes but is not limited to community colleges and institutions under the control of the state board of regents, or local governmental subdivisions purchasing new motor vehicles, shall purchase new passenger vehicles and light trucks so that the average fuel efficiency for the fleet of new passenger vehicles and light trucks purchased in that year equals or exceeds the average fuel economy standard for the vehicles' model year as established by the United States secretary of transportation under 15 U.S.C. § 2002. This paragraph does not apply to vehicles purchased for law enforcement purposes or used for off-road maintenance work, or work vehicles used to pull loaded trailers.

c. Not later than February 15 of each year, the director shall report compliance with the corporate average fuel economy standards published by the United States secretary of transportation for new motor vehicles, other than motor vehicles purchased by the state department of transportation, institutions under the control of the state board of regents, the department for the blind, and any other state agency exempted from the requirements of this subsection. The report of compliance shall classify the vehicles purchased for the current vehicle model year using the following categories: passenger automobiles, enforcement automobiles, vans, and light trucks. The director shall deliver a copy of the report to the department of natural resources. As used in this paragraph, *"corporate average fuel economy"* means the corporate average fuel economy as defined in 49 C.F.R. § 533.5.

d. The director shall assign motor vehicles available for use to maximize the average passenger miles per gallon of motor vehicle fuel consumed. In assigning motor vehicles, the director shall consider standards established by the director, which may include but are not limited to the number of passengers traveling to a destination, the fuel economy of and passenger capacity of vehicles available for assignment, and any other relevant information, to assure assignment of the most energy-efficient vehicle or combination of vehicles for a trip from those vehicles available for assignment. The standards shall not apply to special work vehicles and law enforcement vehicles. The standards shall apply to the following agencies:

(1) State department of transportation.

(2) Institutions under the control of the state board of regents.

(3) Department for the blind.

(4) Any other state agency exempted from obtaining vehicles for use through the department.

e. As used in paragraph *"d"*, *"fuel economy"* means the average number of miles traveled by an automobile per gallon of gasoline consumed as determined by the United States environmental protection agency administrator in accordance with 26 U.S.C. § 4064(c).

5. Of all new passenger vehicles and light pickup trucks purchased by the director, a minimum of ten percent of all such vehicles and trucks purchased shall be equipped with engines which utilize alternative methods of propulsion including but not limited to any of the following:

a. A flexible fuel, which is any of the following:

(1) A fuel blended with not more than fifteen percent gasoline and at least eighty-five percent ethanol.

(2) A fuel which is a mixture of diesel fuel and processed soybean oil. At least twenty percent of the mixed fuel by volume must be processed soybean oil.

(3) A renewable fuel approved by the office of renewable fuels and coproducts pursuant to section 159A.3.

b. Compressed or liquefied natural gas.

c. Propane gas.

d. Solar energy.

e. Electricity.

This subsection does not apply to vehicles and

trucks purchased and directly used for law enforcement or purchased and used for off-road maintenance work or to pull loaded trailers.

6. All used motor vehicles turned in to the director shall be disposed of by public auction, and the sales shall be advertised in a newspaper of general circulation one week in advance of sale, and the receipts from the sale shall be deposited in the depreciation fund to the credit of the state agency turning in the vehicle; except that, in the case of a used motor vehicle of special design, the director may, instead of selling it at public auction, authorize the motor vehicle to be traded for another vehicle of similar design. If a vehicle sustains damage and the cost to repair exceeds the wholesale value of the vehicle, the director may dispose of the motor vehicle by obtaining two or more written salvage bids and the vehicle shall be sold to the highest responsible bidder.

7. The director may authorize the establishment of motor pools consisting of a number of state-owned motor vehicles under the director's supervision. The director may store the motor vehicles in a public or private garage. If the director establishes a motor pool, any state officer or employee desiring the use of a state-owned motor vehicle on state business shall notify the director of the need for a vehicle within a reasonable time prior to actual use of the motor vehicle. The director may assign a motor vehicle from the motor pool to the state officer or employee. If two or more state officers or employees desire the use of a state-owned motor vehicle for a trip to the same destination for the same length of time, the director may assign one vehicle to make the trip.

8. The director shall require that a sign be placed on each state-owned motor vehicle in a conspicuous place which indicates its ownership by the state. This requirement shall not apply to motor vehicles requested to be exempt by the director or by the commissioner of public safety. All state-owned motor vehicles shall display registration plates bearing the word *"official"* except motor vehicles requested to be furnished with ordinary plates by the director or by the commissioner of public safety pursuant to section 321.19. The director shall keep an accurate record of the registration plates used on all state-owned motor vehicles.

9. All fuel used in state-owned automobiles shall be purchased at cost from the various installations or garages of the state department of transportation, state board of regents, department of human services, or state motor pools throughout the state, unless the state-owned sources for the purchase of fuel are not reasonably accessible. If the director determines that state-owned sources for the purchase of fuel are not reasonably accessible, the director shall authorize the purchase of fuel from other sources. The director may prescribe a manner, other than the use of the revolving fund, in which the purchase of fuel from state-owned sources is charged to the state agency responsible for the use of the motor vehicle. The director shall prescribe the manner in which oil and other normal motor vehicle maintenance for state-owned motor vehicles may be purchased from private sources, if they cannot be reasonably obtained from a state motor pool. The director may advertise for bids and award contracts in accordance with competitive bidding procedures for items and services as provided in this subchapter for furnishing fuel, oil, grease, and vehicle replacement parts for all state-owned motor vehicles. The director and other state agencies, when advertising for bids for gasoline, shall also seek bids for ethanol blended gasoline.

2003 Acts, ch 145, §52

Marking vehicles generally, §721.8
"Official" plates, §321.19, 321.170

8A.363 Private use prohibited — rate for state business.

1. A state officer or employee shall not use a state-owned motor vehicle for personal private use. A state officer or employee shall not be compensated for driving a privately owned motor vehicle unless it is done on state business with the approval of the director. In that case the state officer or employee shall receive an amount to be determined by the director. The amount shall not exceed the maximum allowable under the federal internal revenue service rules per mile, notwithstanding established mileage requirements or depreciation allowances. However, the director may authorize private motor vehicle rates in excess of the rate allowed under the federal internal revenue service rules for state business use of substantially modified or specially equipped privately owned vehicles required by persons with disabilities. A statutory provision establishing reimbursement for necessary mileage, travel, or actual expenses to a state officer falls under the private motor vehicle mileage rate limitation provided in this section unless specifically provided otherwise. Any peace officer employed by the state as defined in section 801.4 who is required to use a private motor vehicle in the performance of official duties shall receive the private vehicle mileage rate at the rate provided in this section. However, the director may delegate authority to officials of the state, and department heads, for the use of private vehicles on state business up to a yearly mileage figure established by the director. If a state motor vehicle has been assigned to a state officer or employee, the officer or employee shall not collect mileage for the use of a privately owned motor vehicle unless the state motor vehicle assigned is not useable.

2. This section does not apply to any of the following:

a. Officials and employees of the state whose mileage is paid other than by a state agency.

b. Elected officers of the state.

c. Judicial officers or court employees.

d. Members and employees of the general assembly who shall be governed by policies relating to motor vehicle travel, including but not limited to reimbursement for expenses, if such policies are otherwise established by the general assembly.

2003 Acts, ch 145, §53

See also §2.10, 70A.9, 602.1509

8A.364 Fleet management revolving fund — replenishment.

1. A fleet management revolving fund is created in the state treasury under the control of the department. There is appropriated from moneys in the state treasury not otherwise appropriated the sum of twenty-five thousand dollars to the revolving fund. All purchases of gasoline, oil, tires, repairs, and all other general expenses incurred in the operation of state-owned motor vehicles, and all salaries and expenses of employees providing fleet management services shall be paid from this fund.

2. At the end of each month the director shall render a statement to each state department or agency for the actual cost of operation of all motor vehicles assigned to such department or agency, together with a fair proportion of the administrative costs for providing fleet management services during such month, as determined by the director, all subject to review by the executive council upon complaint of any state department or agency adversely affected. Such expenses shall be paid by the state departments or agencies in the same manner as other expenses of such department are paid, and when such expenses are paid, such sums shall be credited to the fleet management revolving fund. If any surplus accrues to the revolving fund in excess of twenty-five thousand dollars for which there is no anticipated need or use, the governor may order such surplus transferred to the general fund of the state.

2003 Acts, ch 145, §54

8A.365 Vehicle replacement — depreciation fund.

1. The director shall maintain a depreciation fund for the purchase of replacement motor vehicles and additions to the fleet. The director's records shall show the total funds deposited by and credited to each department or agency. At the end of each month, the director shall render a statement to each state department or agency for additions to the fleet and total depreciation credited to that department or agency. Such depreciation expense shall be paid by the state departments or agencies in the same manner as other expenses are paid, and shall be deposited in the depreciation fund to the credit of the department or agency. The funds credited to each department or agency shall remain the property of the department or agency. However, at the end of each biennium, the director shall cause to revert to the fund from which it accumulated any unassigned depreciation.

2. The department of corrections is not obligated to pay the depreciation expense otherwise required by this section.

2003 Acts, ch 145, §55

8A.366 Violations — withdrawing use of vehicle.

If any state officer or employee violates any of the provisions of sections 8A.361 through 8A.365, the director may withdraw the assignment of any state-owned motor vehicle to any such state officer or employee.

2003 Acts, ch 145, §56

8A.367 through 8A.400 Reserved.

SUBCHAPTER IV

STATE HUMAN RESOURCE MANAGEMENT — OPERATIONS

PART 1

GENERAL PROVISIONS

8A.401 Definitions.

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

1. *"Appointing authority"* means the chairperson or person in charge of any state agency including, but not limited to, boards, bureaus, commissions, and departments, or an employee designated to act for an appointing authority.

2. *"Merit system"* means the merit system established under this subchapter.

2003 Acts, ch 145, §57

8A.402 State human resource management — responsibilities.

1. The department is the central agency responsible for state human resource management, including the following:

a. Policy and program development, workforce planning, and research.

b. Employment activities and transactions, including recruitment, examination, and certification of personnel seeking employment or promotion.

c. Compensation and benefits, including position classification, wages and salaries, and employee benefits. Employee benefits include, but are not limited to, group medical, dental, life, and long-term disability insurance, workers' compensation, unemployment benefits, sick leave, deferred compensation, holidays and vacations, tuition reimbursement, and educational leaves.

d. Equal employment opportunity, affirmative action, and workforce diversity programs.

e. Education, training, and workforce development programs.

f. Personnel records and administration, including the audit of all personnel-related documents.

g. Employment relations, including the negotiation and administration of collective bargaining agreements on behalf of the executive branch of the state and its departments and agencies as provided in chapter 20. However, the state board of regents, for the purposes of implementing and administering collective bargaining pursuant to chapter 20, shall act as the exclusive representative of the state with respect to its faculty, scientific, and other professional staff.

h. The coordination and management of the state's human resource information system, except as otherwise required for those employees governed by chapter 262.

2. The department, as it relates to the human resources of state government, shall do the following:

a. Establish and maintain a list of all employees in the executive branch of state government and set forth, as to each employee, the class title, pay, status, and other pertinent data. For employees governed by chapter 262, the director shall work collaboratively with the state board of regents to collect such information.

b. Foster and develop, in cooperation with appointing authorities and others, programs for the improvement of employee effectiveness, including training, safety, health, counseling, and welfare.

c. Encourage and exercise leadership in the development of effective personnel administration within the several state agencies, and make available the facilities of the department to this end.

d. The director may delegate any or all aspects of the recruitment, examination, and selection processes to an agency in the executive branch upon request by that agency. The director shall oversee all activities delegated to that agency.

e. Utilize appropriate persons, including officers and employees in the executive branch, to assist in the recruitment and examination of applicants for employment. These officers and employees are not entitled to extra pay for their services, but shall be paid their necessary traveling and other expenses.

3. The human resource management powers and duties of the department do not extend to the legislative branch or the judicial branch of state government, except for functions related to administering compensation and benefit programs.

2003 Acts, ch 145, §58; 2004 Acts, ch 1086, §7
Subsection 2, paragraph c amended

8A.403 through 8A.410 Reserved.

PART 2

MERIT SYSTEM

Personnel in the state merit system who are mandatorily transferred due to effect of 2003 Acts, ch 145, shall retain salary, benefits, and accrued years of service; 2003 Acts, ch 145, §288

8A.411 Merit system established — collective bargaining — applicability.

1. The general purpose of this subchapter is to establish for the state of Iowa a system of human resource administration based on merit principles and scientific methods to govern the appointment, compensation, promotion, welfare, development, transfer, layoff, removal, and discipline of its civil employees, and other incidents of state employment.

2. It is also the purpose of this subchapter to promote the coordination of personnel rules and policies with collective bargaining agreements negotiated under chapter 20.

3. All appointments and promotions to positions covered by the state merit system shall be made solely on the basis of merit and fitness, to be ascertained by examinations or other appropriate screening methods, except as otherwise specified in this subchapter.

4. Provisions of this subchapter pertaining to qualifications, examination, certification, probation, and just cause apply only to employees covered by the merit system.

2003 Acts, ch 145, §59

8A.412 Merit system — applicability — exceptions.

The merit system shall apply to all employees of the state and to all positions in state government now existing or hereafter established. In addition, the director shall negotiate an agreement with the director of the department for the blind concerning the applicability of the merit system to the professional employees of the department for the blind. However, the merit system shall not apply to the following:

1. The general assembly, employees of the general assembly, other officers elected by popular vote, and persons appointed to fill vacancies in elective offices.

2. All judicial officers and court employees.

3. The staff of the governor.

4. All board members and commissioners whose appointments are provided for by the Code.

5. All presidents, deans, directors, teachers, professional and scientific personnel, and student employees under the jurisdiction of the state board of regents. The state board of regents shall adopt rules not inconsistent with the objectives of this subchapter for all of its employees not cited specifically in this subsection. The rules are subject to approval by the director. If at any time the director determines that the state board of regents

merit system rules do not comply with the intent of this subchapter, the director may direct the board to correct the rules. The rules of the board are not in compliance until the corrections are made.

6. All appointments which are by law made by the governor.

7. All personnel of the armed services under state jurisdiction.

8. Persons who are paid a fee on a contract-for-services basis.

9. Seasonal employees appointed during a state agency's designated six-month seasonal employment period during the same annual twelve-month period, as approved by the director.

10. Residents, patients, or inmates working in state institutions, or persons on parole working in work experience programs.

11. Professional employees under the supervision of the attorney general, the state public defender, the auditor of state, the treasurer of state, and the public employment relations board. However, employees of the consumer advocate division of the department of justice, other than the consumer advocate, are subject to the merit system.

12. Production and engineering personnel under the jurisdiction of the Iowa public broadcasting board.

13. Members of the Iowa state patrol and other peace officers employed by the department of public safety. The commissioner of public safety shall adopt rules not inconsistent with the objectives of this subchapter for the persons described in this subsection.

14. Professional employees of the arts division of the department of cultural affairs.

15. The chief deputy administrative officer and each division administrator of each state agency not otherwise specifically provided for in this section, and physicians not otherwise specifically provided for in this section. As used in this subsection, *"division administrator"* means a principal administrative or policymaking position designated by a chief administrative officer and approved by the director or as specified by law.

16. All confidential employees.

17. Other employees specifically exempted by law.

18. The administrator and the deputy administrator of the credit union division of the department of commerce, all members of the credit union review board, and all employees of the credit union division.

19. The superintendent of the banking division of the department of commerce, all members of the state banking council, and all employees of the banking division.

20. Chief deputy industrial commissioners.

21. The appointee serving as the coordinator of the office of renewable fuels and coproducts, as provided in section 159A.3.

22. All employees of the Iowa state fair authority.

23. Up to six nonprofessional employees designated at the discretion of each statewide elected official.

24. The position classifications of employees of statewide elected officials that were exempt from the merit system as of June 30, 1994, shall remain exempt and any employees subsequently hired to fill any exempt position vacancies shall be classified as exempt employees.

2003 Acts, ch 145, §60; 2004 Acts, ch 1101, §9; 2004 Acts, ch 1141, §1

Equal opportunity and special appointments; §19B.2
Subsections 5 and 19 amended

8A.413 State human resource management — rules.

The department shall adopt rules for the administration of this subchapter pursuant to chapter 17A. Rulemaking shall be carried out with due regard to the terms of collective bargaining agreements. A rule shall not supersede a provision of a collective bargaining agreement negotiated under chapter 20. The rules shall provide:

1. For the preparation, maintenance, and revision of a job classification plan that encompasses each job in the executive branch, excluding job classifications under the state board of regents, based upon assigned duties and responsibilities, so that the same general qualifications may reasonably be required for and the same pay plan may be equitably applied to all jobs in the same job classification. The director shall classify the position of every employee in the executive branch, excluding employees of the state board of regents, into one of the classes in the plan. An appointing authority or employee adversely affected by a classification or reclassification decision may file an appeal with the director. Appeals of a classification or reclassification decision shall be exempt from the provisions of section 17A.11 and shall be heard by a committee appointed by the director. The classification or reclassification of a position that would cause the expenditure of additional salary funds shall not become effective if the expenditure of funds would be in excess of the total amount budgeted for the department of the appointing authority until budgetary approval has been obtained from the director of the department of management.

When the public interest requires a decrease or increase of employees in any position or type of employment not otherwise provided by law, or the creation or abolishment of any position or type of employment, the director, acting in good faith, shall so notify the governor. Thereafter, the position or type of employment shall stand abolished or created and the number of employees therein reduced or increased.

2. For pay plans covering all employees in the executive branch, excluding employees of the

state board of regents, after consultation with the governor and appointing authorities, and consistent with the terms of collective bargaining agreements negotiated under chapter 20.

3. For examinations to determine the relative fitness of applicants for employment. Such examinations shall be practical in character and shall relate to such matters as will fairly assess the ability of the applicant to discharge the duties of the position to which appointment is sought.

Where the Code of Iowa establishes certification, registration, or licensing provisions, such documents shall be considered prima facie evidence of basic skills accomplishment and such persons shall be exempt from further basic skills examination.

Vacancies shall be announced publicly at least ten days in advance of the date fixed for the filing of applications for the vacancies, and shall be advertised through the communications media. The director may, however, in the director's discretion, continue to receive applications and examine candidates for a period adequate to assure a sufficient number of eligibles to meet the needs of the system, and may add the names of successful candidates to existing eligible lists.

4. For promotions which shall give appropriate consideration to the applicant's qualifications, record of performance, and conduct. A promotion means a change in the status of an employee from a position in one class to a position in another class having a higher pay grade.

5. For the establishment of lists for appointment and promotion, upon which lists shall be placed the names of successful candidates.

6. For the rejection of applicants who fail to meet reasonable requirements.

7. For the appointment by the appointing authority of a person on the appropriate list to fill a vacancy.

8. For a probation period of six months, excluding educational or training leave, before appointment may be made complete, and during which period a probationer may be discharged or reduced in class or pay. If the employee's services are unsatisfactory, the employee shall be dropped from the payroll on or before the expiration of the probation period. If satisfactory, the appointment shall be deemed permanent. The determination of the appointing authority shall be final and conclusive.

9. For temporary employment for not more than seven hundred eighty hours in a fiscal year.

10. For provisional employment when there is no appropriate list available. Such provisional employment shall not continue longer than one hundred eighty calendar days.

11. For transfer from a position in one state agency to a similar position in the same state agency or another state agency involving similar qualifications, duties, responsibilities, and salary ranges. Whenever an employee transfers or is transferred from one state agency to another state agency, the employee's seniority rights, any accumulated sick leave, and accumulated vacation time, as provided in the law, shall be transferred to the new place of employment and credited to the employee. Employees who are subject to contracts negotiated under chapter 20 which include transfer provisions shall be governed by the contract provisions.

12. For reinstatement of persons who have attained permanent status and who resign in good standing or who are laid off from their positions without fault or delinquency on their part.

13. For establishing in cooperation with the appointing authorities a performance management system for all employees in the executive branch, excluding employees of the state board of regents, which shall be considered in determining salary increases; as a factor in promotions; as a factor in determining the order of layoffs and in reinstatement; as a factor in demotions, discharges, and transfers; and for the regular evaluation, at least annually, of the qualifications and performance of those employees.

14. For layoffs by reason of lack of funds or work, or reorganization, and for the recall of employees so laid off, giving consideration in layoffs to the employee's performance record and length of service. An employee who has been laid off may be on a recall list for one year, which list shall be exhausted by the organizational unit enforcing the layoff before selection of an employee may be made from the promotional or nonpromotional list in the employee's classification. Employees who are subject to contracts negotiated under chapter 20 which include layoff and recall provisions shall be governed by the contract provisions.

15. For imposition, as a disciplinary measure, of a suspension from service without pay.

16. For discharge, suspension, or reduction in job classification or pay grade for any of the following causes: failure to perform assigned duties; inadequacy in performing assigned duties; negligence; inefficiency; incompetence; insubordination; unrehabilitated alcoholism or narcotics addiction; dishonesty; unlawful discrimination; failure to maintain a license, certificate, or qualification necessary for a job classification or position; any act or conduct which adversely affects the employee's performance or the employing agency; or any other good cause for discharge, suspension, or reduction. The person discharged, suspended, or reduced shall be given a written statement of the reasons for the discharge, suspension, or reduction within twenty-four hours after the discharge, suspension, or reduction. All persons concerned with the administration of this subchapter shall use their best efforts to ensure that this subchapter and the rules adopted pursuant to this subchapter shall not be a means of protecting or retaining unqualified or unsatisfactory employees, and shall discharge, suspend, or reduce in job clas-

sification or pay grade all employees who should be discharged, suspended, or reduced for any of the causes stated in this subsection.

17. For establishment of a uniform plan for resolving employee grievances and complaints. Employees who are subject to contracts negotiated under chapter 20 which include grievance and complaint provisions shall be governed by the contract provisions.

18. For attendance regulations, and special leaves of absence, with or without pay, or reduced pay, in the various classes of positions in the executive branch, excluding positions under the state board of regents. Employees who are subject to contracts negotiated under chapter 20 which include leave of absence provisions shall be governed by the contract provisions. Annual sick leave and vacation time shall be granted in accordance with section 70A.1.

19. For the development and operation of programs to improve the work effectiveness and morale of employees in the executive branch, excluding employees of the state board of regents, including training, safety, health, welfare, counseling, recreation, and employee relations.

20. Notwithstanding any provisions to the contrary, a rule or regulation shall not be adopted by the department which would deprive the state of Iowa, or any of its agencies or institutions, of federal grants or other forms of financial assistance.

21. For veterans preference through a provision that veterans, as defined in section 35.1, shall have five points added to the grade or score attained in qualifying examinations for appointment to jobs.

Veterans who have a service-connected disability or are receiving compensation, disability benefits, or pension under laws administered by the veterans administration shall have ten points added to the grades attained in qualifying examinations. A veteran who has been awarded the purple heart for disabilities incurred in action shall be considered to have a service-connected disability.

22. For acceptance of the qualifications, requirements, regulations, and general provisions established under other sections of the Code pertaining to professional registration, certification, and licensing.

2003 Acts, ch 145, §61

8A.414 Experimental research projects.

The director may conduct experimental or research personnel-related projects of limited duration designed to improve the quality of the employment system. The provisions of section 8A.413 or administrative rules adopted pursuant to that section are waived for the purposes of such projects. Projects adopted under this authority shall not violate existing collective bargaining agreements. Any projects that relate to issues covered by such agreements or issues that are mandatory subjects of collective bargaining are subject to negotiations as applicable. The director shall notify the chairpersons of the standing committees on appropriations of the senate and the house of representatives and the chairpersons of the appropriate subcommittees of those committees of the proposed projects. The notice from the director shall include the purpose of the project, a description of the project, and how the project will be evaluated. Chairpersons notified shall be given at least two weeks to review and comment on the proposal before the project is implemented. The director shall report the results of the experimental research projects conducted in the preceding fiscal year to the legislative council by September 30 of each year.

2003 Acts, ch 145, §62

8A.415 Grievances and discipline resolution.

1. *Grievances.* An employee, except an employee covered by a collective bargaining agreement which provides otherwise, who has exhausted the available agency steps in the uniform grievance procedure provided for in the department rules may, within seven calendar days following the date a decision was received or should have been received at the second step of the grievance procedure, file the grievance at the third step with the director. The director shall respond within thirty calendar days following receipt of the third step grievance.

If not satisfied, the employee may, within thirty calendar days following the director's response, file an appeal with the public employment relations board. The hearing shall be conducted in accordance with the rules of the public employment relations board and the Iowa administrative procedure Act, chapter 17A. Decisions rendered shall be based upon a standard of substantial compliance with this subchapter and the rules of the department. Decisions by the public employment relations board constitute final agency action.

For purposes of this subsection, *"uniform grievance procedure"* does not include procedures for discipline and discharge.

2. *Discipline resolution.* A merit system employee, except an employee covered by a collective bargaining agreement, who is discharged, suspended, demoted, or otherwise reduced in pay, except during the employee's probationary period, may bypass steps one and two of the grievance procedure and appeal the disciplinary action to the director within seven calendar days following the effective date of the action. The director shall respond within thirty calendar days following receipt of the appeal.

If not satisfied, the employee may, within thirty calendar days following the director's response, file an appeal with the public employment relations board. The employee has the right to a hear-

ing closed to the public, unless a public hearing is requested by the employee. The hearing shall otherwise be conducted in accordance with the rules of the public employment relations board and the Iowa administrative procedure Act, chapter 17A. If the public employment relations board finds that the action taken by the appointing authority was for political, religious, racial, national origin, sex, age, or other reasons not constituting just cause, the employee may be reinstated without loss of pay or benefits for the elapsed period, or the public employment relations board may provide other appropriate remedies. Decisions by the public employment relations board constitute final agency action.

2003 Acts, ch 145, §63

8A.416 Discrimination, political activity, use of official influence prohibited.

1. A person shall not be appointed or promoted to, or demoted or discharged from, any position in the merit system, or in any way favored or discriminated against with respect to employment in the merit system because of the person's political or religious opinions or affiliations or race or national origin or sex, or age.

2. A person holding a position in the classified service shall not, during the person's working hours or when performing the person's duties or when using state equipment or at any time on state property, take part in any way in soliciting any contribution for any political party or any person seeking political office, and such employee shall not engage in any political activity that will impair the employee's efficiency during working hours or cause the employee to be tardy or absent from work. This section does not preclude any employee from holding any office for which no pay is received or any office for which only token pay is received.

3. A person shall not seek or attempt to use any political endorsement in connection with any appointment to a position in the merit system.

4. A person shall not use or promise to use, directly or indirectly, any official authority or influence, whether possessed or anticipated, to secure or attempt to secure for any person an appointment or advantage in appointment to a position in the merit system, or an increase in pay or other advantage in employment in any such position, for the purpose of influencing the vote or political action of any person or for any consideration.

5. An employee shall not use the employee's official authority or influence for the purpose of interfering with an election or affecting the results thereof.

6. Any officer or employee who violates this section shall be subject to suspension, dismissal, or demotion subject to the right of appeal provided in this subchapter.

7. The director shall adopt any rules necessary for further restricting political activities of employees in the executive branch, but only to the extent necessary to comply with federal standards. Employees retain the right to vote as they please and to express their opinions on all subjects.

2003 Acts, ch 145, §64

See also chapters 39A and 721

8A.417 Prohibited actions.

1. A person shall not make any false statement, certificate, mark, rating, or report with regard to any examination or appointment made under this subchapter or in any manner commit or attempt to commit any fraud preventing the impartial execution of this subchapter and the rules adopted pursuant to this subchapter.

2. A person shall not, directly or indirectly, give, render, pay, offer, solicit, or accept any money, service, or other valuable consideration for or on account of any appointment, proposed appointment, promotion, or proposed promotion to, or any advantage in, a position in the merit system.

3. An employee of the department or any other person shall not defeat, deceive, or obstruct any person in the person's right to examination or appointment under this subchapter, or furnish to any person any special or secret information for the purpose of affecting the rights or prospects of any person with respect to employment in the merit system.

4. A person shall not discharge an employee from or take or fail to take action regarding an employee's appointment or proposed appointment to, promotion or proposed promotion to, or any advantage in, a position in a merit system administered by, or subject to approval of, the director as a reprisal for a failure by that employee to inform the person that the employee made a disclosure of information permitted by this section, or for a disclosure of any information by that employee to a member or employee of the general assembly, or for a disclosure of information to any other public official or law enforcement agency if the employee reasonably believes the information evidences a violation of law or rule, mismanagement, a gross abuse of funds, an abuse of authority, or a substantial and specific danger to public health or safety. However, an employee may be required to inform the person that the employee made a disclosure of information permitted by this section if the employee represented that the disclosure was the official position of the employee's immediate supervisor or employer. This subsection does not apply if the disclosure of the information is prohibited by statute.

2003 Acts, ch 145, §65

8A.418 Federal programs exemption exceptions — penalty.

1. Notwithstanding the provisions of this subchapter to the contrary, a person employed under a temporary, emergency employment utilization

program funded by the federal government which program does not exceed one year and which program is not subject to merit system standards by federal law, shall be exempt from this subchapter except as provided in this section.

2. A person employed as provided in this section shall be subject to the provisions of section 8A.416 relating to political activity and the civil penalties contained in such section and, consistent with subsection 1, the provisions of section 8A.417 relating to prohibited actions.

3. A person violating this section shall be subject to the penalty provided for in section 8A.458.

2003 Acts, ch 145, §66

8A.419 through 8A.430 Reserved.

PART 3

EMPLOYEE BENEFITS

8A.431 Iowa management training system — training revolving fund.

1. The department shall establish and administer an Iowa management training system for the state.

2. A training revolving fund is created in the state treasury under the control of the department. The moneys credited to the fund shall be used for the purpose of paying actual and necessary expenses incurred by the department in administering the training system. All fees, grants, or specific appropriations for this purpose shall be credited to the fund. The fees for the training system courses shall be set by the director to cover the costs of course development, training materials, facilities and equipment, professional instructors, and administration. The fees shall be paid to the department by the state agency sending the employees for training and the payment shall be credited to the training revolving fund. Notwithstanding section 8.33, moneys in the revolving fund shall not revert. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited in the fund shall be credited to the fund.

2003 Acts, ch 145, §67

8A.432 Combined charitable campaign program, fees, revolving fund.

1. The department shall establish and administer a combined charitable campaign program for state employees.

2. A combined charitable campaign revolving fund is created in the state treasury under the control of the department. The moneys credited to the fund shall be used for the purpose of paying actual and necessary expenses incurred by the department in administering the program. Administrative expenses shall not exceed five percent of the contributions pledged the previous year. All fees, grants, or specific appropriations for this purpose shall be credited to the fund. The fees for the program shall be set by the director to cover only the cost of administration and materials and shall not cover salaries of state employees involved in the administration of the program. The fees shall be paid to the department from the voluntary employee contributions and the payment shall be credited to the revolving fund. Notwithstanding section 8.33, any moneys in the fund shall not revert. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited in the fund shall be credited to the fund.

2003 Acts, ch 145, §68

8A.433 Deferred compensation plan.

The department shall make available to eligible state employees the option of utilizing mutual funds as an investment alternative to the state's deferred compensation plan established under section 509A.12. Participating employees shall, to the extent permitted by law, be allowed to transfer moneys deferred under the plan to a mutual fund offered pursuant to section 509A.12. The department may make the deferred compensation plan established pursuant to this section available to governmental employees of a public entity authorized to establish a deferred compensation program pursuant to section 509A.12.

2003 Acts, ch 145, §69

8A.434 Iowa state employee deferred compensation trust fund.

1. A separate, special Iowa state employee deferred compensation trust fund is created in the state treasury under the control of the department. The fund shall consist of all moneys deposited in the fund pursuant to this section, any other assets that must be held in trust for the exclusive benefit of participants in the state's deferred compensation program as required by section 457 of the federal Internal Revenue Code, and interest and earnings thereon, and shall be used for the exclusive benefit of participants in a deferred compensation program established by the state under section 509A.12.

2. The director is the trustee of the fund and shall administer the fund. Any loss to the fund shall be charged against the fund and the director shall not be personally liable for such loss. In addition, the director is the trustee of any trusts referenced in section 457(g) of the federal Internal Revenue Code. Any loss to the trusts shall be charged against the trusts and the director shall not be personally liable for such loss.

3. Any compensation or portion of compensation reduced by a participant in conjunction with a deferred compensation program established by the state under section 509A.12 and any earnings or income thereon shall be held in trust and used for the exclusive benefit of the participant or the participant's beneficiary as provided by section

457 of the federal Internal Revenue Code.

4. For purposes of this section, custodial accounts, annuity contracts, and any other contracts referenced in section 457(g) of the federal Internal Revenue Code shall be treated as trusts for purposes of section 457 of the federal Internal Revenue Code.

5. Moneys in the fund are not subject to section 8.33. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys in the fund shall be credited to the fund.

2003 Acts, ch 145, §70

8A.435 State employee deferred compensation match trust fund.

1. A separate, special Iowa state employee deferred compensation match trust fund is created in the state treasury under the control of the department. The trust fund shall consist of all moneys deposited in the fund, and other assets that must be held in trust for the exclusive benefit of participants in the state's deferred compensation match program as required by section 401(a) of the federal Internal Revenue Code, and interest and earnings thereon, and shall be used for the exclusive benefit of participants and their beneficiaries in a deferred compensation match program established by the state under section 509A.12.

2. The director is the trustee of the fund and shall administer the fund. Any loss to the fund shall be charged against the trust and the director shall not be personally liable for such loss.

3. Moneys in the fund are not subject to section 8.33. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys in the fund shall be credited to the fund.

2003 Acts, ch 145, §71

8A.436 State employee dependent care spending account trust fund.

1. A separate, special Iowa state employee dependent care spending account trust fund is created in the state treasury under the control of the department. The trust fund consists of all moneys, including monthly administrative charges paid by a state department or agency as authorized by section 8A.451, held in trust for the exclusive benefit of participants in the state's dependent care spending account plan. Moneys in the fund are not subject to section 8.33. Notwithstanding section 12C.7, interest and earnings from moneys in the trust fund shall be credited to the trust fund and shall be used exclusively for the benefit of plan participants.

2. The director shall serve as trustee of the trust fund and shall administer the fund as required by sections 125 and 129 of the federal Internal Revenue Code. Any loss to the fund shall be charged against the fund and the director shall not be personally liable for such loss. The director has the authority to direct expenditures as deemed appropriate to the exclusive benefit of the plan participants.

2003 Acts, ch 145, §72

8A.437 State employee health flexible spending account trust fund.

1. The director shall establish for state employees a health flexible spending account plan which offers multiple benefits to state employees. The state's health flexible spending account plan shall be established to meet the conditions of section 125 of the Internal Revenue Code of 1986.

2. A separate, special Iowa state employee health flexible spending account trust fund is created in the state treasury under the control of the department. The trust fund consists of all moneys appropriated to the fund, all monthly administrative charges paid by a state department or agency as authorized by section 8A.451, and any other assets directed to be held in trust for the exclusive benefit of participants in the state's health flexible spending account plan. Moneys in the fund are not subject to section 8.33. Notwithstanding section 12C.7, interest and earnings from moneys in the trust fund shall be credited to the trust fund and shall be used exclusively for the benefit of plan participants.

3. The director shall serve as trustee of the trust fund and has the authority to direct expenditures as deemed appropriate to the exclusive benefit of the plan participants.

2003 Acts, ch 145, §73

Authority of governing body, §509A.1

8A.438 Annuity contracts.

1. At the request of an employee of a state agency through contractual agreement, the director may arrange for the purchase of group or individual annuity contracts for any of the employees of that agency, which annuity contracts are issued by a nonprofit corporation issuing retirement annuities exclusively for educational institutions and their employees or are purchased from any company the employee chooses that is authorized to do business in this state or through an Iowa-licensed salesperson that the employee selects, on a group or individual basis, for retirement or other purposes, and may make payroll deductions in accordance with the arrangements for the purpose of paying the entire premium due and to become due under the contract. The deductions shall be made in the manner which will qualify the annuity premiums for the benefits afforded under section 403(b) of the Internal Revenue Code, as defined in section 422.3. The employee's rights under the annuity contract are nonforfeitable except for the failure to pay premiums. As used in this section, unless the context otherwise requires, *"annuity contract"* includes any custodial account which meets the requirements of section 403(b)(7) of the Internal Revenue Code, as defined in section 422.3.

2. Whenever an existing tax-sheltered annuity contract is to be replaced by a new contract, the agent or representative of the company shall send a letter of intent by registered mail at least thirty days prior to any action to the company being replaced, to the commissioner of insurance of this state, to the agent's own company, and to the director. The letter of intent shall contain the policy number and description of the contract being replaced and a description of the replacement contract.

2003 Acts, ch 145, §74

8A.439 Longevity pay prohibited — exception.

A state employee subject to the provisions of this subchapter shall not be entitled to longevity pay except for those employees granted longevity pay pursuant to section 307.48.

2003 Acts, ch 145, §75

8A.440 through 8A.450 Reserved.

PART 4

MISCELLANEOUS PROVISIONS

8A.451 Human resources administrative costs.

1. The department may quarterly render a statement to each department or agency which operates in whole or in part from other than general fund appropriations for a pro rata share of the cost of administration of the department, or a portion thereof, as it relates to the state human resources management duties of the department pursuant to this subchapter. The expense shall be paid by the state department or agency in the same manner as other expenses of that department or agency are paid and all moneys received shall be deposited in the general fund of the state.

2. The department shall render monthly a statement to each state department or agency for a pro rata share of the cost of administration of the state employee flexible spending accounts. The expense shall be paid by the state department or agency in the same manner as other expenses of that state department or agency are paid and all moneys received for administration costs shall be deposited in the appropriate fund.

2003 Acts, ch 145, §76

8A.452 Use of public buildings.

All officers and employees of the state and of political subdivisions of the state shall allow the department the reasonable use of public buildings under their control, and furnish heat, light, and furniture for any examination, hearing, or investigation authorized by this subchapter. The department shall pay to a political subdivision the reasonable cost of any such facilities furnished.

2003 Acts, ch 145, §77

8A.453 Aid by state employees — records and information.

1. All officers and employees of the state shall comply with and aid in all proper ways in carrying out the provisions of this subchapter and the rules and orders under this subchapter. All officers and employees shall furnish any records or information which the director requires for any purpose of this subchapter. The director may institute and maintain any action or proceeding at law or in equity that the director considers necessary or appropriate to secure compliance with this subchapter and the rules and orders under this subchapter.

2. The director may delegate to a person in any department, agency, board, commission, or office, located away from the seat of government, any of the duties imposed by this subchapter upon the director.

2003 Acts, ch 145, §78

8A.454 Health insurance administration fund.

1. A separate, special Iowa state health insurance administration fund is created in the state treasury under the control of the department. The fund shall consist of all moneys deposited in the fund from proceeds of a monthly per contract administrative charge assessed and collected by the department. Moneys deposited in the fund shall be expended by the department for health insurance program administration costs. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited in the fund shall be credited to the fund.

2. A monthly per contract administrative charge shall be assessed by the department on all health insurance plans administered by the department in which the contract holder has a state employer to pay the charge. The amount of the administrative charge shall be established by the general assembly. The department shall collect the administrative charge from each department utilizing the centralized payroll system and shall deposit the proceeds in the fund. In addition, the state board of regents, all library service areas, the state fair board, the state department of transportation, and each judicial district department of correctional services shall remit the administrative charge on a monthly basis to the department and shall submit a report to the department containing the number and type of health insurance contracts held by each of its employees whose health insurance is administered by the department.

3. The expenditure of moneys from the fund in any fiscal year shall not exceed the amount of the monthly charge established by the general assembly multiplied by the number of health insurance

contracts in effect at the beginning of the same fiscal year in which the expenditures shall be made. Any unencumbered or unobligated moneys in the fund at the end of the fiscal year shall not revert but shall be transferred to the health insurance premium reserve fund established pursuant to section 509A.5.

4. This section is repealed July 1, 2007.

2003 Acts, ch 145, §79

Monthly per contract administrative charge for fiscal year beginning July 1, 2003; 2003 Acts, ch 181, §38

8A.455 Certification of payrolls — actions.

1. A state disbursing or auditing officer shall not make or approve or take part in making or approving a payment for personnel services to any person unless the payroll voucher or account of the pay bears the certification of the director, or of the director's authorized agent, that the persons named have been appointed and employed in accordance with this subchapter and the rules and orders under this subchapter, and that funds are available for the payment of the persons.

2. The director may, for proper cause, withhold certification from an entire payroll or from any specific item or items on a payroll. The director may, however, provide that certification of payrolls may be made once every year, and such certification shall remain in effect except in the case of any officer or employee whose status has changed after the last certification of the officer's or employee's payroll. In the latter case a voucher for payment of salary to such employee shall not be issued or payment of salary shall not be made without further certification by the director.

3. Any citizen may maintain an action in accordance with chapter 17A to restrain a disbursing officer from making any payment in contravention of this subchapter, or rule or order under this subchapter. Any sum paid contrary to this subchapter or any rule or order under this subchapter may be recovered in an action in accordance with chapter 17A maintained by any citizen, from any officer who made, approved, or authorized such payment or who signed or countersigned a voucher, payroll, check, or warrant for such payment, or from the sureties on the official bond of any such officer. All moneys recovered in any such action shall be paid into the state treasury.

4. Any person appointed or employed in contravention of this subchapter or of any rule or order under this subchapter who performs service for which the person is not paid may maintain an action in accordance with chapter 17A against the officer or officers who purported so to appoint or employ the person to recover the agreed pay for such services or the reasonable value of the services if no pay was agreed upon. An officer shall not be reimbursed by the state at any time for any sum paid to such person on account of such services.

5. If the director wrongfully withholds certification of the payroll voucher or account of any employee, such employee may maintain a proceeding in accordance with chapter 17A in the courts to compel the director to certify such a payroll voucher or account.

2003 Acts, ch 145, §80

8A.456 Access to records.

1. An employee subject to the provisions of this subchapter shall have access to the employee's personal file.

2. An applicant for a position subject to the provisions of this subchapter shall be permitted to review, in accordance with such rules as the director may prescribe, any evaluation resulting from the application for employment.

2003 Acts, ch 145, §81

See also §91B.1

8A.457 Workers' compensation claims.

The director shall employ appropriate staff to handle and adjust claims of state employees for workers' compensation benefits pursuant to chapters 85, 85A, 85B, and 86, or with the approval of the executive council contract for the services or purchase workers' compensation insurance coverage for state employees or selected groups of state employees. A state employee workers' compensation fund is created in the state treasury under the control of the department to pay state employee workers' compensation claims and administrative costs. The department shall establish a rating formula and assess premiums to all agencies, departments, and divisions of the state including those which have not received an appropriation for the payment of workers' compensation insurance and which operate from moneys other than from the general fund of the state. The department shall collect the premiums and deposit them into the state employee workers' compensation fund. Notwithstanding section 8.33, moneys deposited in the state employee workers' compensation fund shall not revert to the general fund of the state at the end of any fiscal year, but shall remain in the state employee workers' compensation fund and be continuously available to pay state employee workers' compensation claims. The director may, to the extent practicable, contract with a private organization to handle the processing and payment of claims and services rendered under the provisions of this section.

2003 Acts, ch 145, §82

8A.458 Penalty.

A person who willfully violates this subchapter or any rules adopted pursuant to this subchapter, where no other penalty is prescribed, is guilty of a simple misdemeanor.

2003 Acts, ch 145, §83

8A.459 through 8A.501 Reserved.

SUBCHAPTER V

FINANCIAL ADMINISTRATION

8A.502 Financial administration duties.

The department shall provide for the efficient management and administration of the financial resources of state government and shall have and assume the following powers and duties:

1. *Centralized accounting system.* To assume the responsibilities related to a centralized accounting system for state government.

2. *Setoff procedures.* To establish and maintain a setoff procedure as provided in section 8A.504.

3. *Cost allocation system.* To establish a cost allocation system as provided in section 8A.505.

4. *Collection and payment of funds — monthly payments.* To control the payment of all moneys into the state treasury, and all payments from the state treasury by the preparation of appropriate warrants, or warrant checks, directing such collections and payment, and to advise the treasurer of state monthly in writing of the amount of public funds not currently needed for operating expenses. Whenever the state treasury includes state funds that require distribution to counties, cities, or other political subdivisions of this state, and the counties, cities, and other political subdivisions certify to the director that warrants will be stamped for lack of funds within the thirty-day period following certification, the director may partially distribute the funds on a monthly basis. Whenever the law requires that any funds be paid by a specific date, the director shall prepare a final accounting and shall make a final distribution of any remaining funds prior to that date.

5. *Preaudit system.* To establish and fix a reasonable imprest cash fund for each state department and institution for disbursement purposes where needed. These revolving funds shall be reimbursed only upon vouchers approved by the director. It is the purpose of this subsection to establish a preaudit system of settling all claims against the state, but the preaudit system is not applicable to any of the following:

a. Institutions under the control of the state board of regents.

b. The state fair board as established in chapter 173.

c. The Iowa dairy industry commission as established in chapter 179, the Iowa beef cattle producers association as established in chapter 181, the Iowa pork producers council as established in chapter 183A, the Iowa egg council as established in chapter 184, the Iowa turkey marketing council as established in chapter 184A, the Iowa soybean promotion board as established in chapter 185, and the Iowa corn promotion board as established in chapter 185C.

6. *Audit of claims.* To set rules and procedures for the preaudit of claims by individual agencies or organizations. The director reserves the right to refuse to accept incomplete or incorrect claims and to review, preaudit, or audit claims as determined by the director.

7. *Contracts.* To certify, record, and encumber all formal contracts to prevent overcommitment of appropriations and allotments.

8. *Accounts.* To keep the central budget and proprietary control accounts of the general fund of the state and special funds, as defined in section 8.2, of the state government. Upon elimination of the state deficit under generally accepted accounting principles, including the payment of items budgeted in a subsequent fiscal year which under generally accepted accounting principles should be budgeted in the current fiscal year, the recognition of revenues received and expenditures paid and transfers received and paid within the time period required pursuant to section 8.33 shall be in accordance with generally accepted accounting principles. Budget accounts are those accounts maintained to control the receipt and disposition of all funds, appropriations, and allotments. Proprietary accounts are those accounts relating to assets, liabilities, income, and expense. For each fiscal year, the financial position and results of operations of the state shall be reported in a comprehensive annual financial report prepared in accordance with generally accepted accounting principles, as established by the governmental accounting standards board.

9. *Fair board and board of regents.* To control the financial operations of the state fair board and the institutions under the state board of regents:

a. By charging all warrants issued to the respective educational institutions and the state fair board to an advance account to be further accounted for and not as an expense which requires no further accounting.

b. By charging all collections made by the educational institutions and state fair board to the respective advance accounts of the institutions and state fair board, and by crediting all such repayment collections to the respective appropriations and special funds.

c. By charging all disbursements made to the respective allotment accounts of each educational institution or state fair board and by crediting all such disbursements to the respective advance and inventory accounts.

d. By requiring a monthly abstract of all receipts and of all disbursements, both money and stores, and a complete account current each month from each educational institution and the state fair board.

10. *Entities representing agricultural producers.* To control the financial operations of the Iowa dairy industry commission as provided in chapter 179, the Iowa beef cattle producers associ-

ation as provided in chapter 181, the Iowa pork producers council as provided in chapter 183A, the Iowa egg council as provided in chapter 184, the Iowa turkey marketing council as provided in chapter 184A, the Iowa soybean promotion board as provided in chapter 185, and the Iowa corn promotion board as provided in chapter 185C.

11. *Custody of records.* To have the custody of all books, papers, records, documents, vouchers, conveyances, leases, mortgages, bonds, and other securities appertaining to the fiscal affairs and property of the state, which are not required to be kept in some other office.

12. *Interest of the permanent school fund.* To transfer the interest of the permanent school fund to the credit of the interest for Iowa schools fund.

13. *Forms.* To prescribe all accounting and business forms and the system of accounts and reports of financial transactions by all departments and agencies of the state government other than those of the legislative branch.

14. *Federal Cash Management and Improvement Act administrator.* To serve as administrator for state actions relating to the federal Cash Management and Improvement Act of 1990, Pub. L. No. 101-453, as codified in 31 U.S.C. § 6503. The director shall perform the following duties relating to the federal law:

a. Act as the designated representative of the state in the negotiation and administration of contracts between the state and federal government relating to the federal law.

b. Modify the centralized statewide accounting system and develop, or require to be developed by the appropriate departments of state government, the reports and procedures necessary to complete the managerial and financial reports required to comply with the federal law.

There is annually appropriated from the general fund of the state to the department an amount sufficient to pay interest costs that may be due the federal government as a result of implementation of the federal law. This paragraph does not authorize the payment of interest from the general fund of the state for any departmental revolving, trust, or special fund where monthly interest earnings accrue to the credit of the departmental revolving, trust, or special fund. For any departmental revolving, trust, or special fund where monthly interest is accrued to the credit of the fund, the director may authorize a supplemental expenditure to pay interest costs from the individual fund which are due the federal government as a result of implementation of the federal law.

2003 Acts, ch 145, §84; 2004 Acts, ch 1086, §8
Subsection 14, paragraph b, unnumbered paragraph 1 amended

8A.503 Rules — deposit of departmental moneys.

The director shall prescribe by rule the manner and methods by which all departments and agencies of the state who collect money for and on behalf of the state shall cause the money to be deposited with the treasurer of state or in a depository designated by the treasurer of state. All such moneys collected shall be deposited at such times and in such depositories to permit the state of Iowa to deposit the funds in a manner consistent with the state's investment policies. All such moneys shall be promptly deposited, as directed, even though the individual amount remitted may not be correct. If any individual amount remitted is in excess of the amount required, the department or agency receiving the same shall refund the excess amount. If the individual amount remitted is insufficient, the person, firm, or corporation concerned shall be immediately billed for the amount of the deficiency.

2003 Acts, ch 145, §85

8A.504 Setoff procedures.

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

a. "Collection entity" means the department of administrative services and any other state agency that maintains a separate accounting system and elects to establish a debt collection setoff procedure for collection of debts owed to the state or its agencies.

b. "Person" does not include a state agency.

c. "Qualifying debt" includes, but is not limited to, the following:

(1) Any debt, which is assigned to the department of human services, or which the child support recovery unit is otherwise attempting to collect, or which the foster care recovery unit of the department of human services is attempting to collect on behalf of a child receiving foster care provided by the department of human services.

(2) An amount that is due because of a default on a guaranteed student or parental loan under chapter 261.

(3) Any debt which is in the form of a liquidated sum due, owing, and payable to the clerk of the district court.

d. "State agency" means a board, commission, department, including the department of administrative services, or other administrative office or unit of the state of Iowa or any other state entity reported in the Iowa comprehensive annual financial report. *"State agency"* does include the clerk of the district court as it relates to the collection of a qualifying debt. *"State agency"* does not include the general assembly, the governor, or any political subdivision of the state, or its offices and units.

2. *Setoff procedure.* The collection entity shall establish and maintain a procedure to set off against any claim owed to a person by a state agency any liability of that person owed to a state agency, a support debt being enforced by the child support recovery unit pursuant to chapter 252B, or such other qualifying debt. The procedure shall

only apply when at the discretion of the director it is feasible. The procedure shall meet the following conditions:

a. Before setoff, a person's liability to a state agency and the person's claim on a state agency shall be in the form of a liquidated sum due, owing, and payable.

b. Before setoff, the state agency shall obtain and forward to the collection entity the full name and social security number of the person liable to it or to whom a claim is owing who is a natural person. If the person is not a natural person, before setoff, the state agency shall forward to the collection entity the information concerning the person as the collection entity shall, by rule, require. The collection entity shall cooperate with other state agencies in the exchange of information relevant to the identification of persons liable to or claimants of state agencies. However, the collection entity shall provide only relevant information required by a state agency. The information shall be held in confidence and used for the purpose of setoff only. Section 422.72, subsection 1, does not apply to this paragraph.

c. Before setoff, a state agency shall, at least annually, submit to the collection entity the information required by paragraph *"b"* along with the amount of each person's liability to and the amount of each claim on the state agency. The collection entity may, by rule, require more frequent submissions.

d. Before setoff, the amount of a person's claim on a state agency and the amount of a person's liability to a state agency shall constitute a minimum amount set by rule of the collection entity.

e. Upon submission of an allegation of liability by a state agency, the collection entity shall notify the state agency whether the person allegedly liable is entitled to payment from a state agency, and, if so entitled, shall notify the state agency of the amount of the person's entitlement and of the person's last address known to the collection entity. Section 422.72, subsection 1, does not apply to this paragraph.

f. Upon notice of entitlement to a payment, the state agency shall send written notification to that person of the state agency's assertion of its rights to all or a portion of the payment and of the state agency's entitlement to recover the liability through the setoff procedure, the basis of the assertion, the opportunity to request that a jointly or commonly owned right to payment be divided among owners, and the person's opportunity to give written notice of intent to contest the amount of the allegation. The state agency shall send a copy of the notice to the collection entity. A state agency subject to chapter 17A shall give notice, conduct hearings, and allow appeals in conformity with chapter 17A.

However, upon submission of an allegation of the liability of a person which is owing and payable to the clerk of the district court and upon the determination by the collection entity that the person allegedly liable is entitled to payment from a state agency, the collection entity shall send written notification to the person which states the assertion by the clerk of the district court of rights to all or a portion of the payment, the clerk's entitlement to recover the liability through the setoff procedure, the basis of the assertions, the person's opportunity to request within fifteen days of the mailing of the notice that the collection entity divide a jointly or commonly owned right to payment between owners, the opportunity to contest the liability to the clerk by written application to the clerk within fifteen days of the mailing of the notice, and the person's opportunity to contest the collection entity's setoff procedure.

g. Upon the timely request of a person liable to a state agency or of the spouse of that person and upon receipt of the full name and social security number of the person's spouse, a state agency shall notify the collection entity of the request to divide a jointly or commonly owned right to payment. Any jointly or commonly owned right to payment is rebuttably presumed to be owned in equal portions by its joint or common owners.

h. The collection entity shall, after the state agency has sent notice to the person liable or, if the liability is owing and payable to the clerk of the district court, the collection entity has sent notice to the person liable, set off the amount owed to the agency against any amount which a state agency owes that person. The collection entity shall refund any balance of the amount to the person. The collection entity shall periodically transfer amounts set off to the state agencies entitled to them. If a person liable to a state agency gives written notice of intent to contest an allegation, a state agency shall hold a refund or rebate until final disposition of the allegation. Upon completion of the setoff, a state agency shall notify in writing the person who was liable or, if the liability is owing and payable to the clerk of the district court, shall comply with the procedures as provided in paragraph *"j"*.

i. The department of revenue's existing right to credit against tax due or to become due under section 422.73 is not to be impaired by a right granted to or a duty imposed upon the collection entity or other state agency by this section. This section is not intended to impose upon the collection entity or the department of revenue any additional requirement of notice, hearing, or appeal concerning the right to credit against tax due under section 422.73.

j. If the alleged liability is owing and payable to the clerk of the district court and setoff as provided in this section is sought, all of the following shall apply:

(1) The judicial branch shall prescribe procedures to permit a person to contest the amount of the person's liability to the clerk of the district court.

(2) The collection entity shall, except for the procedures described in subparagraph (1), prescribe any other applicable procedures concerning setoff as provided in this subsection.

(3) Upon completion of the setoff, the collection entity shall file, at least monthly, with the clerk of the district court a notice of satisfaction of each obligation to the full extent of all moneys collected in satisfaction of the obligation. The clerk shall record the notice and enter a satisfaction for the amounts collected and a separate written notice is not required.

3. In the case of multiple claims to payments filed under this section, priority shall be given to claims filed by the child support recovery unit or the foster care recovery unit, next priority shall be given to claims filed by the college student aid commission, next priority shall be given to claims filed by the investigations division of the department of inspections and appeals, next priority shall be given to claims filed by a clerk of the district court, and last priority shall be given to claims filed by other state agencies. In the case of multiple claims in which the priority is not otherwise provided by this subsection, priority shall be determined in accordance with rules to be established by the director.

4. The director shall have the authority to enter into reciprocal agreements with the departments of revenue of other states that have enacted legislation that is substantially equivalent to the setoff procedure provided in this section for the recovery of an amount due because of a default on a guaranteed student or parental loan under chapter 261. A reciprocal agreement shall also be approved by the college student aid commission. The agreement shall authorize the department to provide by rule for the setoff of state income tax refunds or rebates of defaulters from states with which Iowa has a reciprocal agreement and to provide for sending lists of names of Iowa defaulters to the states with which Iowa has a reciprocal agreement for setoff of that state's income tax refunds.

5. Under substantive rules established by the director, the department shall seek reimbursement from other state agencies to recover its costs for setting off liabilities.

2003 Acts, ch 145, §86, 286

8A.505 Cost allocation system — appropriation.

1. The department shall develop and administer an indirect cost allocation system for state agencies. The system shall be based upon standard cost accounting methodologies and shall be used to allocate both direct and indirect costs of state agencies or state agency functions in providing centralized services to other state agencies. A cost that is allocated to a state agency pursuant to this system shall be billed to the state agency and the cost is payable to the general fund of the state. The source of payment for the billed cost shall be any revenue source except for the general fund of the state. If a state agency is authorized by law to bill and recover direct expenses, the state agency shall recover indirect costs in the same manner.

2. There is appropriated annually from the increase in indirect cost reimbursements over the amount of indirect cost reimbursements received during the fiscal year beginning July 1, 2002, to the office of grants enterprise management of the department of management the sum of up to one hundred twenty-five thousand dollars. The director shall transfer the funds appropriated to the department of management as provided in this subsection and shall make the funds resulting from the increase in reimbursements available during the fiscal year to the department of management on a monthly basis. If the amount of the increase in indirect cost reimbursements is insufficient to pay the maximum appropriation provided for in this subsection, the amount appropriated is equal to the amount of such increase.

2003 Acts, ch 145, §87; 2003 Acts, 1st Ex, ch 2, §34, 209

Office of grants enterprise management, see §8.9

8A.506 Accounting.

The director may at any time require any person receiving money, securities, or property belonging to the state, or having the management, disbursement, or other disposition of them, an account of which is kept in the department, to render statements of them and information in reference to them.

2003 Acts, ch 145, §88

8A.507 Stating account.

If an officer who is accountable to the state treasury for any money or property neglects to render an account to the director within the time prescribed by law, or if no time is so prescribed, within twenty days after being required to do so by the director, the director shall state an account against the officer from the books of the officer's office, charging ten percent damages on the whole sum appearing due, and interest at the rate of six percent per annum on the aggregate from the time when the account should have been rendered; all of which may be recovered by action brought on the account, or on the official bond of the officer.

2003 Acts, ch 145, §89

8A.508 Compelling payment.

If an officer fails to pay into the state treasury the amount received by the officer within the time prescribed by law, or having settled with the director, fails to pay the amount found due, the director shall charge the officer with twenty percent damages on the amount due, with interest on the aggregate from the time the amount became due at the rate of six percent per annum, and the whole

may be recovered by an action brought on the account, or on the official bond of the officer, and the officer shall forfeit the officer's commission.

2003 Acts, ch 145, §90

8A.509 Defense to claim.

The penal provisions in sections 8A.507 and 8A.508 are subject to any legal defense which the officer may have against the account as stated by the director, but judgment for costs shall be rendered against the officer in the action, whatever its result, unless the officer rendered an account within the time named in those sections.

2003 Acts, ch 145, §91

8A.510 Requested credits — oath required.

When a county treasurer or other receiver of public money seeks to obtain credit on the books of the department for payment made to the county treasurer, before giving such credit the director shall require that person to take and subscribe an oath that the person has not used, loaned, or appropriated any of the public money for the person's private benefit, nor for the benefit of any other person.

2003 Acts, ch 145, §92

8A.511 Requisition for information.

In those cases where the director is authorized to call upon persons or officers for information, or statements, or accounts, the director may issue a requisition therefor in writing to the person or officer called upon, allowing reasonable time, which, having been served and return made to the director, as a notice in a civil action, is evidence of the making of the requisition.

2003 Acts, ch 145, §93

8A.512 Limits on claims.

The director is limited in authorizing the payment of claims, as follows:

1. *Funding limit.*

a. A claim shall not be allowed by the department if the appropriation or fund of certification available for paying the claim has been exhausted or proves insufficient.

b. The authority of the director is subject to the following exceptions:

(1) Claims by state employees for benefits pursuant to chapters 85, 85A, 85B, and 86 are subject to limitations provided in those chapters.

(2) Claims for medical assistance payments authorized under chapter 249A are subject to the time limits imposed by rule adopted by the department of human services.

(3) Claims approved by an agency according to the provisions of sections 25.1 and 25.2.

2. *Convention expenses.* Claims for expenses in attending conventions, meetings, conferences, or gatherings of members of an association or society organized and existing as a quasi-public association or society outside the state of Iowa shall not be allowed at public expense, unless authorized by the executive council; and claims for these expenses outside of the state shall not be allowed unless the voucher is accompanied by the portion of the minutes of the executive council, certified to by its secretary, showing that the expense was authorized by the council. This section does not apply to claims in favor of the governor, attorney general, utilities board members, or to trips referred to in sections 97B.7A and 217.20.

3. *Payment from fees.* Claims for per diem and expenses payable from fees shall not be approved for payment in excess of those fees if the law provides that such expenditures are limited to the special funds collected and deposited in the state treasury.

2003 Acts, ch 145, §94

8A.513 Claims — approval.

The director before approving a claim on behalf of the department shall determine:

1. That the creation of the claim is clearly authorized by law. Statutes authorizing the expenditure may be referenced through account coding authorized by the director.

2. That the claim has been authorized by an officer or official body having legal authority to so authorize and that the fact of authorization has been certified to the director by such officer or official body.

3. That all legal requirements have been observed, including notice and opportunity for competition, if required by law.

4. That the claim is in proper form as the director may provide.

5. That the charges are reasonable, proper, and correct and no part of the claim has been paid.

2003 Acts, ch 145, §95

8A.514 Vouchers — interest — payment of claims.

1. Before a warrant or its equivalent is issued for a claim payable from the state treasury, the department shall file an itemized voucher showing in detail the items of service, expense, item furnished, or contract for which payment is sought. However, the director may authorize the prepayment of claims when the best interests of the state are served under rules adopted by the director. The claimant's original invoice shall be attached to a department's approved voucher. The director shall adopt rules specifying the form and contents for invoices submitted by a vendor to a department. The requirements apply to acceptance of an invoice by a department. A department shall not impose additional or different requirements on submission of invoices than those contained in rules of the director unless the director exempts the department from the invoice requirements or

a part of the requirements upon a finding that compliance would result in poor accounting or management practices.

2. Vouchers for postage, stamped envelopes, and postal cards may be audited as soon as an order for them is entered.

3. The departments, the general assembly, and the courts shall pay their claims in a timely manner. If a claim for services, supplies, materials, or a contract which is payable from the state treasury remains unpaid after sixty days following the receipt of the claim or the satisfactory delivery, furnishing, or performance of the services, supplies, materials, or contract, whichever date is later, the state shall pay interest at the rate of one percent per month on the unpaid amount of the claim. This subsection does not apply to claims against the state under chapters 25 and 669 or to claims paid by federal funds. The interest shall be charged to the appropriation or fund to which the claim is certified. Departments may enter into contracts for goods or services on payment terms of less than sixty days if the state may obtain a financial benefit or incentive which would not otherwise be available from the vendor. The department, in consultation with other affected departments, shall develop policies to promote consistency and fiscal responsibility relating to payment terms authorized under this subsection. The director shall adopt rules under chapter 17A relating to the administration of this subsection.

2003 Acts, ch 145, §96

8A.515 Warrants — form.

A warrant shall bear on its face the signature of the director or its facsimile, or the signature of an assistant or its facsimile in case of a vacancy in the office of the director; a proper number, date, amount, and name of payee; a reference to the law under which it is drawn; whether for salaries or wages, services, or supplies, and what kind of supplies; and from what office or department, or for what other general or special purposes; or in lieu thereof, a coding system may be used, which particulars shall be entered in a warrant register kept for that purpose in the order of issuance; and as soon as practicable after issuing a warrant register, the director shall certify a duplicate of it to the treasurer of state.

2003 Acts, ch 145, §97

8A.516 Required payee.

All warrants shall be drawn to the order of the person entitled to payment or compensation, except that when goods or materials are purchased in foreign countries, warrants may be drawn upon the treasurer of state, payable to the bearer for the net amount of invoice and current exchange, and the treasurer of state shall furnish a foreign draft payable to the order of the person from whom purchase is made.

2003 Acts, ch 145, §98

8A.517 Prohibited payee.

In no case shall warrants be drawn in the name of the certifying office, department, board, or institution, or in the name of an employee, except for personal service rendered or expense incurred by the employee, unless express statutory authority exists therefor.

2003 Acts, ch 145, §99

8A.518 Claims exceeding appropriations.

A claim shall not be allowed when the claim will exceed the amount specifically appropriated for the claim.

2003 Acts, ch 145, §100

8A.519 Cancellation of state warrants.

On the last business day of each month, the director shall cancel and request the treasurer of state to stop payment on all state warrants which have been outstanding and unredeemed by the treasurer of state for six months or longer.

2003 Acts, ch 145, §101

CHAPTER 8B

MIDWEST NUCLEAR COMPACT

Transferred to chapter 15D

CHAPTER 8C

MIDWEST INTERSTATE LOW-LEVEL RADIOACTIVE WASTE COMPACT

Transferred to chapter 457B

CHAPTER 8D

IOWA COMMUNICATIONS NETWORK

8D.1 Purpose.

It is the intent of the general assembly that communications of state government be co-ordinated to effect maximum practical consolidation and joint use of communications services.

[C71, 73, §8A.1; C75, 77, 79, 81, §18.132]
83 Acts, ch 126, §3; 94 Acts, ch 1184, §29
C95, §8D.1

8D.2 Definitions.

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

1. *"Commission"* means the Iowa telecommunications and technology commission established in section 8D.3.

2. *"Director"* means the executive director appointed pursuant to section 8D.4.

3. *"Network"* means the Iowa or state communications network.

4. *"Private agency"* means an accredited nonpublic school, a nonprofit institution of higher education eligible for tuition grants, or a hospital licensed pursuant to chapter 135B or a physician clinic to the extent provided in section 8D.13, subsection 16.

5. *a. "Public agency"* means a state agency, an institution under the control of the board of regents, the judicial branch as provided in section 8D.13, subsection 17, a school corporation, a city library, a library service area as provided in chapter 256, a county library as provided in chapter 336, or a judicial district department of correctional services established in section 905.2, to the extent provided in section 8D.13, subsection 15, an agency of the federal government, or a United States post office which receives a federal grant for pilot and demonstration projects.

b. For the purposes of this chapter, *"public agency"* also includes any homeland security or defense facility established by the administrator of the homeland security and emergency management division of the department of public defense or the governor or any facility connected with a security or defense system as required by the administrator of the homeland security and emergency management division of the department of public defense or the governor.

6. *"State communications"* refers to the transmission of voice, data, video, the written word or other visual signals by electronic means but does not include radio and television facilities and other educational telecommunications systems and services including narrowcast and broadcast systems under the public broadcasting division of the department of education, department of transportation distributed data processing and mobile radio network, or law enforcement communications systems.

[C71, 73, §8A.2; C75, 77, 79, 81, §18.133]
83 Acts, ch 126, §4, 5; 86 Acts, ch 1245, §308, 2049; 87 Acts, ch 211, §1; 89 Acts, ch 319, §31; 93 Acts, ch 48, §8; 94 Acts, ch 1184, §3, 4, 29
C95, §8D.2
98 Acts, ch 1047, §4; 2001 Acts, ch 158, §1; 2002 Acts, ch 1065, §1; 2003 Acts, ch 44, §2; 2003 Acts, ch 179, §157

8D.3 Iowa telecommunications and technology commission — members — duties.

1. *Commission established.* A telecommunications and technology commission is established with the sole authority to supervise the management, development, and operation of the network and ensure that all components of the network are technically compatible. The management, development, and operation of the network shall not be subject to the jurisdiction or control of any other state agency. However, the commission is subject to the general operations practices and procedures which are generally applicable to other state agencies.

The commission shall ensure that the network operates in an efficient and responsible manner consistent with the provisions of this chapter for the purpose of providing the best economic service

attainable to the network users consistent with the state's financial capacity. The commission shall ensure that educational users and the use, design, and implementation for educational applications be given the highest priority concerning use of the network. The commission shall provide for the centralized, coordinated use and control of the network.

2. *Members.* The commission is composed of five members appointed by the governor and subject to confirmation by the senate. Members of the commission shall not serve in any manner or be employed by an authorized user of the network or by an entity seeking to do or doing business with the network. The governor shall appoint a member as the chairperson of the commission from the five members appointed by the governor, subject to confirmation by the senate. Members of the commission shall serve six-year staggered terms as designated by the governor and appointments to the commission are subject to the requirements of sections 69.16, 69.16A, and 69.19. Vacancies shall be filled by the governor for the duration of the unexpired term. The salary of the members of the commission shall be twelve thousand dollars per year, except that the salary of the chairperson shall be seventeen thousand dollars per year. Members of the commission shall also be reimbursed for all actual and necessary expenses incurred in the performance of duties as members. Meetings of the commission shall be held at the call of the chairperson of the commission. In addition to the members appointed by the governor, the auditor of state or the auditor's designee shall serve as a nonvoting, ex officio member of the commission.

The benefits and salary paid to the members of the commission shall be adjusted annually equal to the average of the annual pay adjustments, expense reimbursements, and related benefits provided under collective bargaining agreements negotiated pursuant to chapter 20.

3. *Duties.* The commission shall do all of the following:

a. Enter into agreements pursuant to chapter 28E as necessary and appropriate for the purposes of the commission. However, the commission shall not enter into an agreement with an unauthorized user or any other person pursuant to chapter 28E for the purpose of providing such user or person access to the network.

b. Adopt rules pursuant to chapter 17A as deemed appropriate and necessary, and directly related to the implementation and administration of the duties of the commission. The commission, in consultation with the department of administrative services, shall also adopt and provide for standard communications procedures and policies relating to the use of the network which recognize, at a minimum, the need for reliable communications services.

c. Establish an appeal process for review by the commission of a scheduling conflict decision, including a scheduling conflict involving an educational user, or the establishment of a fee associated with the network upon the request of a person affected by such decision or fee. A determination made by the commission pursuant to this paragraph shall be final.

d. Review and approve for adoption, rules as proposed and submitted by an authorized user group necessary for the authorized user group's access and use of the network. The commission may refuse to approve and adopt a proposed rule, and upon such refusal, shall return the proposed rule to the respective authorized user group proposing the rule with a statement indicating the commission's reason for refusing to approve and adopt the rule.

e. (1) Develop and issue for response all requests for proposals for any construction, installation, repair, maintenance, or equipment and parts necessary for the network. In preparing the request for proposals, the commission shall do all of the following:

(a) Review existing requests for proposals related to the network.

(b) Consider and evaluate all competing technologies which could be used in any construction, installation, repair, or maintenance project.

(c) Allow flexibility for proposals to be submitted in response to a request for proposals issued by the commission such that any qualified provider may submit a bid on a site-by-site basis, or on a merged area or defined geographic area basis, or both, and by permitting proposals to be submitted for use of competing or alternative technologies in each defined area.

(d) Ensure that rural communities have access to comparable services to the services provided in urban areas resulting from any plans to construct, install, repair, or maintain any part of the network.

(2) In determining which proposal to recommend to the general assembly to accept, consider what is in the long-term best interests of the citizens of the state and the network, and utilize, if possible, the provision of services with existing service providers consistent with those best interests. In determining what is in the long-term best interests of the citizens of the state and the network, the commission, at a minimum, shall consider the cost to taxpayers of the state.

(3) Deliver a written report and all proposals submitted in response to the request for proposals for Part III to the general assembly no later than January 1, 1995. The commission shall not enter into any agreement related to such proposals without prior authorization by a constitutional majority of each house of the general assembly and approval by the governor.

f. Annually prepare a written five-year financial plan for the network which shall be provided to the general assembly and the governor no later

than January 15 of each year. The plan shall include estimates for income and expenses for the network for the five-year period and the actual income and expenses for the preceding fiscal year. The plan shall include the amount of general fund appropriations to be requested for the payment of operating expenses and debt service. The plan shall also include any recommendations of the commission related to changes in the system and other items as deemed appropriate by the commission. The recommendations of the commission contained in the plan shall include a detailed plan for the connection of all public schools to the network, including a discussion and evaluation of all potential financing options, an estimate of all costs incurred in providing such connections, and a schedule for completing such connections, including the anticipated final completion date for such connections.

g. Review existing maintenance contracts and past contracts to determine vendor capability to perform the obligations under such contracts. The commission shall report to the general assembly prior to January 1 of each year as to the performance of all vendors under each contract and shall make recommendations concerning continued funding for the contracts.

h. Pursue available opportunities to cooperate and coordinate with the federal government for the use and potential expansion of the network and for the financing of any such expansion.

i. Evaluate existing and projected rates for use of the system and ensure that rates are sufficient to pay for the operation of the system excluding the cost of construction and lease costs for Parts I, II, and III. The commission shall establish all hourly rates to be charged to all authorized users for the use of the network. A fee established by the commission to be charged to a hospital licensed pursuant to chapter 135B, a physician clinic, or the federal government shall be at an appropriate rate so that, at a minimum, there is no state subsidy related to the costs of the connection or use of the network related to such user.

j. Make recommendations to the general assembly, as deemed appropriate by the commission, concerning the operation of the network.

k. Provide necessary telecommunications cabling to provide state communications.

94 Acts, ch 1184, §5; 95 Acts, ch 210, §1; 96 Acts, ch 1200, §1; 99 Acts, ch 207, §8; 2000 Acts, ch 1141, §12, 19; 2003 Acts, ch 145, §286
Confirmation, see §2.32

8D.4 Executive director appointed.

The commission, in consultation with the director of the department of administrative services, shall appoint an executive director of the commission, subject to confirmation by the senate. Such individual shall not serve as a member of the commission. The executive director shall serve at the pleasure of the commission. The executive director shall be selected primarily for administrative ability and knowledge in the field, without regard to political affiliation. The governor shall establish the salary of the executive director within range nine as established by the general assembly. The salary and support of the executive director shall be paid from funds deposited in the Iowa communications network fund.

94 Acts, ch 1184, §6; 2003 Acts, ch 145, §126
Confirmation, see §2.32

8D.5 Education telecommunications council established — regional councils established.

1. An education telecommunications council is established. The council consists of eighteen members and shall include the following: two persons appointed by the state board of regents; two persons appointed by the Iowa association of community college trustees; two persons appointed by the area education agency boards; two persons appointed by the Iowa association of school boards; two persons appointed by the school administrators of Iowa; two persons appointed by the Iowa association of independent colleges and universities; two persons appointed by the Iowa state education association; three persons appointed by the director of the department of education including one person representing libraries and one person representing the Iowa association of nonpublic school administrators; and one person appointed by the administrator of the public broadcasting division of the department of education. The council shall establish scheduling and site usage policies for educational users of the network, coordinate the activities of the regional telecommunications councils, and develop proposed rules and changes to rules for recommendation to the commission. The council shall also recommend long-range plans for enhancements needed for educational applications. Administrative support and staffing for the council shall be provided by the department of education.

2. A regional telecommunications council is established in each of the merged areas established pursuant to chapter 260C consisting of nine members, including one member each to be appointed by each of the appointing authorities under subsection 1. Additional ex officio, nonvoting members may also be appointed to the regional telecommunications councils. The regional telecommunications councils shall advise the education telecommunications council on the assessment of local educational needs, and the coordination of program activities including scheduling. The community college located in the merged area of a regional telecommunications council shall staff and facilitate the activities of the council. The community college and the council may enter into a chapter 28E agreement for such arrangement.

3. The community college in each of the

merged areas shall be responsible for switching of Parts II and III of the network and for facilitating the organization and meetings of the regional telecommunications council.

94 Acts, ch 1184, §7

8D.6 Advisory groups established.

1. The commission shall establish an advisory group to examine the use of the network for telemedicine applications. The advisory group shall consist of representatives of hospitals and other health care facilities as determined by the commission.

2. The commission may establish other advisory committees as necessary representing authorized users of the network.

94 Acts, ch 1184, §8

8D.7 Telecommunications advisory committee.

A telecommunications advisory committee is established to advise the commission on telecommunications matters. The commission shall appoint five members to the advisory committee who shall represent specific telecommunications industries or persons with technical expertise related to the network.

94 Acts, ch 1184, §9

8D.8 Scheduling for authorized users.

Except as provided in section 8D.5, an authorized user is responsible for all scheduling of the use of the authorized user's facility. A person who disputes a scheduling decision of such user may petition the commission for a review of such decision pursuant to section 8D.3, subsection 3, paragraph *"c"*.

94 Acts, ch 1184, §10

8D.9 Certification of use — network use by certain authorized users.

1. A private or public agency, other than a state agency, local school district or nonpublic school, city library, library service area, county library, judicial branch, judicial district department of correctional services, agency of the federal government, a hospital or physician clinic, or a post office authorized to be offered access pursuant to this chapter as of May 18, 1994, shall certify to the commission no later than July 1, 1994, that the agency is a part of or intends to become a part of the network. Upon receiving such certification from an agency not a part of the network on May 18, 1994, the commission shall provide for the connection of such agency as soon as practical. An agency which does not certify to the commission that the agency is a part of or intends to become a part of the network as required by this subsection shall be prohibited from using the network.

2. *a.* A private or public agency which certifies to the commission pursuant to subsection 1 that the agency is a part of or intends to become a part of the network shall use the network for all video, data, and voice requirements of the agency unless the private or public agency petitions the commission for a waiver and one of the following applies:

(1) The costs to the authorized user for services provided on the network are not competitive with the same services provided by another provider.

(2) The authorized user is under contract with another provider for such services, provided the contract was entered into prior to April 1, 1994. The agency shall use the network for video, data, and voice requirements which are not provided pursuant to such contract.

(3) The authorized user has entered into an agreement with the commission to become part of the network prior to June 1, 1994, which does not provide for use of the network for all video, data, and voice requirements of the agency. The commission may enter into an agreement described in this subparagraph upon a determination that the use of the network for all video, data, and voice requirements of the agency would not be in the best interests of the agency.

b. A private or public agency shall petition the commission for a waiver of the requirement to use the network as provided in paragraph *"a"*, if the agency determines that paragraph *"a"*, subparagraph (1) or (2) applies. The commission shall establish by rule a review process for determining, upon application of an authorized user, whether paragraph *"a"*, subparagraph (1) or (2) applies. An authorized user found by the commission to be under contract for such services as provided in paragraph *"a"*, subparagraph (2), shall not enter into another contract upon the expiration of such contract, but shall utilize the network for such services as provided in this section unless paragraph *"a"*, subparagraph (1), applies.

3. A facility that is considered a public agency pursuant to section 8D.2, subsection 5, paragraph *"b"*, shall be authorized to access the Iowa communications network strictly for homeland security communication purposes. Any utilization of the network that is not related to communications concerning homeland security is expressly prohibited.

4. A community college receiving federal funding to conduct first responder training and testing regarding homeland security first responder communication and technology-related research and development projects shall be authorized to utilize the network for testing purposes.

94 Acts, ch 1184, §11; 98 Acts, ch 1047, §5; 2001 Acts, ch 158, §2; 2003 Acts, ch 44, §3; 2004 Acts, ch 1175, §194

NEW subsection 4

8D.10 Report of savings by state agencies.

A state agency which is a part of the network shall annually provide a written report to the general assembly certifying the identified savings associated with the state agency's use of the network. The report shall be delivered on or before January 15 for the previous fiscal year of the state agency.

94 Acts, ch 1184, §12

8D.11 Powers — facilities — leases.

1. The commission may purchase, lease, and improve property, equipment, and services for telecommunications for public and private agencies and may dispose of property and equipment when not necessary for its purposes. However, the commission shall not enter into a contract for the purchase, lease, or improvement of property, equipment, or services for telecommunications pursuant to this subsection in an amount greater than one million dollars without prior authorization by a constitutional majority of each house of the general assembly, or approval by the legislative council if the general assembly is not in session. The commission shall not issue any bonding or other long-term financing arrangements as defined in section 12.30, subsection 1, paragraph *"b"*. Real or personal property to be purchased by the commission through the use of a financing agreement shall be done in accordance with the provisions of section 12.28, provided, however, that the commission shall not purchase property, equipment, or services for telecommunications pursuant to this subsection in an amount greater than one million dollars without prior authorization by a constitutional majority of each house of the general assembly, or approval by the legislative council if the general assembly is not in session.

2. The commission also shall not provide or resell communications services to entities other than public and private agencies. The public or private agency shall not provide communication services of the network to another entity unless otherwise authorized pursuant to this chapter. The commission may arrange for joint use of available services and facilities, and may enter into leases and agreements with private and public agencies with respect to the Iowa communications network, and public agencies are authorized to enter into leases and agreements with respect to the network for their use and operation. Rentals and other amounts due under the agreements or leases entered into pursuant to this section by a state agency are payable from funds annually appropriated by the general assembly or from other funds legally available. Other public agencies may pay the rental costs and other amounts due under an agreement or lease from their annual budgeted funds or other funds legally available or to become available.

3. This section comprises a complete and independent authorization and procedure for a public agency, with the approval of the commission, to enter into a lease or agreement and this section is not a qualification of any other powers which a public agency may possess and the authorizations and powers granted under this section are not subject to the terms, requirements, or limitations of any other provisions of law, except that the commission must comply with the provisions of section 12.28 when entering into financing agreements for the purchase of real or personal property. All moneys received by the commission from agreements and leases entered into pursuant to this section with private and public agencies shall be deposited in the Iowa communications network fund.

4. A political subdivision receiving communications services from the state as of April 1, 1986, may continue to do so but communications services shall not be provided or resold to additional political subdivisions other than a school corporation, a city library, a library service area as provided in chapter 256, and a county library as provided in chapter 336. The rates charged to the political subdivision shall be the same as the rates charged to state agencies.

86 Acts, ch 1245, §309

C87, §18.134

87 Acts, ch 233, §131; 89 Acts, ch 319, §32; 93 Acts, ch 48, §9; 94 Acts, ch 1184, §13, 29

C95, §8D.11

96 Acts, ch 1177, §1; 2001 Acts, ch 158, §3

8D.11A Proprietary interests.

The commission may charge a negotiated fee, to recover a share of the costs related to the research and development, initial production, and derivative products of its proprietary software and hardware, telecommunications architecture design, and proprietary technology applications developed to support authorized users, to private vendors and to other political entities and subdivisions, including but not limited to states, territories, protectorates, and foreign countries. The commission may enter into nondisclosure agreements to protect the state of Iowa's proprietary interests. The provisions of chapter 23A relating to noncompetition by state agencies and political subdivisions with private enterprise shall not apply to commission activities authorized under this section.

2001 Acts, ch 22, §1

8D.12 Disposition of network — approval of general assembly and governor.

Notwithstanding any provision to the contrary, the commission or the department of administrative services shall not sell, lease, or otherwise dispose of the network without prior authorization by a constitutional majority of each house of the gen-

eral assembly and approval by the governor.

94 Acts, ch 1184, §14; 2003 Acts, ch 145, §286

8D.13 Iowa communications network.

1. Moneys in the Iowa communications network fund are appropriated to the Iowa telecommunications and technology commission for purposes of providing financing for the procurement, operation, and maintenance of the Iowa communications network with sufficient capacity to serve the video, data, and voice requirements of the educational telecommunications system consisting of Part I, Part II, and Part III, and other public and private agencies.

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

a. "Part I" means the communications connections between central switching and institutions under the control of the board of regents, nonprofit institutions of higher education eligible for tuition grants, and the regional switching centers for the remainder of the network.

b. "Part II" means the communications connections between the regional switching centers and the secondary switching centers.

c. "Part III" means the communications connection between the secondary switching centers and the agencies defined in section 8D.2, subsections 4 and 5, excluding state agencies, institutions under the control of the board of regents, nonprofit institutions of higher education eligible for tuition grants, and the judicial branch, judicial district departments of correctional services, hospitals and physician clinics, agencies of the federal government, and post offices.

3. The financing for the procurement costs for the entirety of Part I except for the communications connections between central switching and institutions under the control of the board of regents, and nonprofit institutions of higher education eligible for tuition grants, and for the video, data, and voice capacity for state agencies and for Part II and Part III, shall be provided by the state. The financing for the procurement and maintenance costs for Part III shall be provided by the state. A local school board, governing authority of a nonpublic school, or an area education agency board may elect to provide one hundred percent of the financing for the procurement and maintenance costs for Part III to become part of the network. The basis for the amount of state financing is one hundred percent of a single interactive audio and interactive video connection for Part III, and such data and voice capacity as is necessary. If a school board, governing authority of a nonpublic school, or area education agency board elects to provide one hundred percent of the financing for the leasing costs for Part III, the school district or area education agency may become part of the network as soon as the network can reasonably connect the district or agency. A local school board, governing authority of a nonpublic school, or an area education agency board may also elect not to become part of the network. Construction of Part III, related to a school board, governing authority of a nonpublic school, or area education agency board which provides one hundred percent of the financing for the leasing costs for Part III, may proceed as determined by the commission and consistent with the purpose of this chapter.

4. The commission shall develop the requests for proposals that are needed for the Iowa communications network with sufficient capacity to serve the video, data, and voice requirements of state agencies and for educational telecommunications applications. The commission shall develop a request for proposals for each of the systems that will make up the network. The commission may develop a request for proposals for each definitive component of the network or the commission may provide in the request for proposals for each such system that separate contracts may be entered into for each definitive component covered by the request for proposals. The requests for proposals may be for the purchase, lease-purchase, or lease of the component parts of the network consistent with the provisions of this chapter, may require maintenance costs to be identified, and the resulting contract may provide for maintenance for parts of the network. The master contract may provide for electronic classrooms, satellite equipment, receiving equipment, studio and production equipment, and other associated equipment as required.

5. The state shall lease all fiberoptic cable facilities or facilities with DS-3 capacity for Part III connections for which state funding is provided. The state shall lease all fiberoptic cable facilities or facilities with DS-3 or DS-1 capacity for the judicial branch, judicial district department of correctional services, and state agency connections for which state funding is provided. Such facilities shall be leased from qualified providers. The state shall not own such facilities, except for those facilities owned by the state as of January 1, 1994.

The lease provisions of this subsection do not apply to a school district which elects to provide one hundred percent of the financing for the district's connection.

6. It is the intent of the general assembly that during the implementation of Parts I and II of the system, the department of administrative services shall employ a consultant to report to it on the impact of changing technology on the potential cost and capabilities of the system. It is also the intent of the general assembly that the department of education shall study new techniques in distant teaching. These reports shall be made available to the general assembly.

7. The commission shall be responsible for the network design and shall be responsible for the implementation of each component of the network

as it is incorporated into the network. The final design selected shall optimize the routing for all users in order to assure maximum utilization by all agencies of the state. Efficiencies achieved in the implementation of the network shall be used to fund further implementation and enhancement of the network, and shall be considered part of the operational cost of the network. The commission shall be responsible for all management, operations, control switching, diagnostics, and maintenance functions of network operations as provided in this chapter. The performance of these duties is intended to provide optimal utilization of the facilities, and the assurance that future growth requirements will be provided for, and that sufficient network capacity will be available to meet the needs of all users.

8. The education telecommunications council shall review all requests for grants for educational telecommunications applications, if they are a part of the Iowa communications network, to ensure that the educational telecommunications application is consistent with the telecommunications plan. All other grant requests shall be reviewed as determined by the commission. If the education telecommunications council finds that a grant request is inconsistent with the telecommunications plan, the grant request shall not be allowed.

9. The procurement and maintenance of electronic equipment including, but not limited to, master receiver antenna systems, studio and production equipment, and broadcast system components shall be provided for under the commission's contracts. The Iowa public broadcasting board and other educational entities within the state have the option to use their existing or replacement resources and agreements in the operation and maintenance of these systems.

10. In addition to the other evaluation criteria specified in the request for proposals issued pursuant to this section, the commission, in evaluating proposals, shall base up to two percent of the total possible points on the public benefit that can be derived from a given proposal due to the increased private telecommunications capacity available to Iowa citizens located in rural Iowa. For purposes of this subsection, an area of the state is considered rural if it is not part of a federally designated standard metropolitan statistical area.

11. The fees charged for use of the network and state communications shall be based on the ongoing operational costs of the network and of providing state communications only. For the services rendered to state agencies by the commission, the commission shall prepare a statement of services rendered and the agencies shall pay in a manner consistent with procedures established by the department of administrative services.

12. The commission, on its own or as recommended by an advisory committee of the commission and approved by the commission, shall permit a fee to be charged by a receiving site to the originator of the communication provided on the network. The fee charged shall be for the purpose of recovering the operating costs of a receiving site. The fee charged shall be reduced by an amount received by the receiving site pursuant to a state appropriation for such costs, or federal assistance received for such costs. Fees established under this subsection shall be paid by the originator of the communication directly to the receiving site. In the event that an entity requests a receiving site location in a video classroom facility which is authorized by, but not funded by, the originator of the communication, the requesting entity shall be directly billed by the video classroom facility for operating costs relating to the communication. For purposes of this section, *"operating costs"* include the costs associated with the management or coordination, operations, utilities, classroom, equipment, maintenance, and other costs directly related to providing the receiving site.

13. The auditor of state shall, no less than annually, examine the financial condition and transactions of the commission as provided in chapter 11. A copy of the auditor's report concerning such examination shall be provided to the general assembly.

14. Access to the network shall be offered on an equal basis to public and private agencies under subsection 8 if the private agency contributes an amount toward the match requirement comparable to its share of use for the part of the system in which it participates.

15. Access to the network shall be offered to the judicial district departments of correctional services established in section 905.2, provided that such departments contribute an amount consistent with their share of use for the part of the system in which the departments participate, as determined by the commission.

16. Access shall be offered to hospitals licensed pursuant to chapter 135B and physician clinics for diagnostic, clinical, consultative, data, and educational services for the purpose of developing a comprehensive, statewide telemedicine network, to an agency of the federal government, and to a post office defined as a public agency pursuant to section 8D.2, subsection 5. A hospital, physician clinic, an agency of the federal government, or a post office defined as a public agency pursuant to section 8D.2, subsection 5, shall be responsible for all costs associated with becoming a part of the network.

17. Access shall be offered to the judicial branch provided that the judicial branch contributes an amount consistent with the judicial branch's share of use for the part of the network in which the judicial branch participates, as determined by the commission.

18. Notwithstanding chapter 476, the provisions of chapter 476 shall not apply to a public util-

ity in furnishing a telecommunications service or facility to the commission for the Iowa communications network or to any authorized user of the Iowa communications network for such authorized user's connection to the network.

19. Access to the network shall be offered to the department of public safety and the department of public defense for the purpose of establishing and operating a shared data-only network providing law enforcement, emergency management, disaster service, emergency warning, and other emergency information dissemination services to federal, state, and local law enforcement agencies as provided in section 80.9, and local emergency management offices established under the authority of sections 29C.9 and 29C.10.

89 Acts, ch 319, §33
CS89, §18.136
90 Acts, ch 1266, §35; 90 Acts, ch 1272, §34; 92 Acts, ch 1246, §24; 93 Acts, ch 179, §16; 94 Acts, ch 1184, §15 – 20, 29
C95, §8D.13
95 Acts, ch 20, §1; 96 Acts, ch 1034, §1; 96 Acts, ch 1218, §27; 97 Acts, ch 210, §17; 98 Acts, ch 1047, §6 – 8; 2003 Acts, ch 145, §286; 2004 Acts, ch 1175, §323
See Iowa Acts for provisions relating to appropriations for network costs in a given year
Subsection 12 amended

8D.14 Iowa communications network fund.

There is created in the office of the treasurer of state a fund to be known as the Iowa communications network fund under the control of the Iowa telecommunications and technology commission. There shall be deposited into the Iowa communications network fund proceeds from bonds issued for purposes of projects authorized pursuant to section 8D.13, funds received from leases pursuant to section 8D.11, and other moneys by law credited to or designated by a person for deposit into the fund.

89 Acts, ch 319, §34
CS89, §18.137
90 Acts, ch 1266, §36; 91 Acts, ch 264, §610; 94 Acts, ch 1184, §21, 29
C95, §8D.14
95 Acts, ch 210, §7

CHAPTER 8E

STATE GOVERNMENT ACCOUNTABILITY (ACCOUNTABLE GOVERNMENT ACT)

SUBCHAPTER I

GENERAL PROVISIONS

SUBCHAPTER II

STRATEGIC PLANNING AND PERFORMANCE MEASUREMENT

SUBCHAPTER III

INVESTMENT DECISIONS

SUBCHAPTER I

GENERAL PROVISIONS

8E.101 Title.

This chapter shall be known and may be cited as the *"Accountable Government Act"*.

2001 Acts, ch 169, §8

8E.102 Purposes.

This chapter is intended to create mechanisms to most effectively and efficiently respond to the needs of Iowans and continuously improve state government performance, including by doing all of the following:

1. Allocating human and material resources available to state government to maximize measurable results for Iowans.
2. Improving decision making at all levels of

state government.

3. Enhancing state government's relationship with citizens and taxpayers by providing for the greatest possible accountability of the government to the public.

2001 Acts, ch 169, §9

8E.103 Definitions.

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

1. *"Agency"* means a principal central department enumerated in section 7E.5. However, for purposes of this chapter, all of the following apply:

a. The department of agriculture and land stewardship is not considered an agency.

b. Each division within the department of commerce is considered an agency, and each bureau within a division of the department of commerce is considered a division, as otherwise provided in chapter 7E.

2. *"Agency performance plan"* means an action plan based on an agency strategic plan which utilizes performance measures, data sources, and performance targets to achieve the agency's goals adopted pursuant to section 8E.208.

3. *"Agency strategic plan"* means the strategic plan for the agency adopted pursuant to section 8E.206.

4. *"Department"* means the department of management.

5. *"Enterprise strategic plan"* means the strategic plan for the executive branch of state government adopted pursuant to section 8E.204.

6. *"Performance target"* means a desired level of performance, demonstrating specific progress toward the attainment of a goal which is part of a strategic plan as provided in section 8E.208.

7. *"Strategic plan"* means an enterprise strategic plan or an agency strategic plan.

2001 Acts, ch 169, §10; 2004 Acts, ch 1082, §11
Subsection 1 amended

8E.104 Administration.

The department shall oversee the administration of this chapter in cooperation with agencies as provided in this chapter. The department shall adopt rules as necessary in order to administer this chapter. However, the state board of regents shall oversee and implement the provisions of this chapter for institutions governed under chapter 262.

2001 Acts, ch 169, §11

8E.105 Chapter evaluation.

The department shall conduct an evaluation of the effectiveness of this chapter in carrying out the purposes of this chapter as provided in section 8E.102. The department shall submit a report of its findings and recommendations to the governor and general assembly not later than January 10, 2006.

2001 Acts, ch 169, §12

SUBCHAPTER II

STRATEGIC PLANNING AND PERFORMANCE MEASUREMENT

8E.201 Agency duties and powers.

Each agency shall administer the application of this chapter to the agency in cooperation with the department. Each agency shall measure and monitor progress toward achieving goals which relate to programs administered by the agency pursuant to the enterprise strategic plan, the agency strategic plan, and the agency performance plan.

2001 Acts, ch 169, §13

8E.202 Reports and records — access and purpose.

1. The department and each agency shall provide for the widest possible dissemination of information between agencies and the public relating to the enterprise strategic plan and agency strategic plans, including but not limited to internet access. This section does not require the department or an agency to release information which is classified as a confidential record under this Code, including but not limited to section 22.7.

a. In administering this subsection, the department shall provide for the dissemination of all of the following:

(1) The enterprise strategic plan, performance measures, performance targets based on performance data, performance data, and data sources used to evaluate agency performance, and explanations of the plan's provisions.

(2) Methods for the public and state employees to provide input including written and oral comments for the enterprise strategic plan, including a schedule of any public hearings relating to the plan or revisions.

b. In administering this subsection, each agency shall provide for the dissemination of all of the following:

(1) The agency strategic plan, performance measures, performance targets based on performance data, performance data, and data sources used by the agency to evaluate its performance, and explanations of the plan's provisions.

(2) Methods for the public and agency employees to provide input including written and oral comments for the agency strategic plan, including a schedule of any public hearings relating to the plan or revisions.

2. The department may review any records of an agency that relate to an agency strategic plan, an agency performance plan, or a performance audit conducted pursuant to section 8E.209.

3. A record which is confidential under this Code, including but not limited to section 22.7, shall not be released to the public under this section.

2001 Acts, ch 169, §14

8E.203 Strategic plan — purposes.

The purposes of strategic plans are to promote long-term and broad thinking, focus on results for Iowans, and guide the allocation of human and material resources and day-to-day activities.

2001 Acts, ch 169, §15

8E.204 Adoption and revision of an enterprise strategic plan and agency strategic plans.

1. The department, in consultation with agencies, shall adopt an enterprise strategic plan. Each agency shall adopt an agency strategic plan aligned with the enterprise strategic plan.

2. The department or an agency shall adopt and revise a strategic plan which includes input from customers and stakeholders following an opportunity for broad public participation in strategic planning. The department or an agency developing or revising a strategic plan shall include input from state employees, including written and oral comments. Upon adoption of the enterprise strategic plan by the department, the plan shall be disseminated to each agency and made available to all state employees. Upon adoption of the agency's strategic plan, the agency shall provide the department with a copy of the agency strategic plan and make the strategic plan available to all agency employees. The enterprise strategic plan and all agency strategic plans shall be available to the public.

3. The department and agencies shall annually review the enterprise strategic plan. An agency shall conduct an annual review of its agency strategic plan. Revisions in the strategic plan may be prompted by a reexamination of priorities or the need to redirect state resources based on new circumstances, including events or trends.

2001 Acts, ch 169, §16

8E.205 Enterprise strategic plan.

The enterprise strategic plan shall identify major policy goals of the state. The enterprise strategic plan shall also describe multiagency strategies to achieve major policy goals, and establish the means to gauge progress toward achieving the major policy goals.

2001 Acts, ch 169, §17

8E.206 Agency strategic plans.

1. An agency shall adopt an agency strategic plan which shall follow a format and include elements as determined by the department in consultation with agencies.

2. An agency shall align its agency strategic plan with the enterprise strategic plan and show the alignment.

2001 Acts, ch 169, §18

8E.207 Agency performance plans.

Each agency shall develop an annual performance plan to achieve the goals provided in the agency strategic plan, including the development of performance targets using its performance measures. The agency shall use its performance plan to guide its day-to-day operations and track its progress in achieving the goals specified in its agency strategic plan.

1. An agency shall align its agency performance plan with the agency strategic plan and show the alignment in the agency performance plan.

2. An agency shall align individual performance instruments with its agency performance plan.

2001 Acts, ch 169, §19

8E.208 Performance measures, performance targets, and performance data.

The department, in consultation with agencies, shall establish guidelines that will be used to create performance measures, performance targets, and data sources for each agency and each agency's functions.

2001 Acts, ch 169, §20

8E.209 Periodic performance audits and performance data validation.

1. The department, in consultation with the legislative services agency, the auditor of state, and agencies, shall establish and implement a system of periodic performance audits. The purpose of a performance audit is to assess the performance of an agency in carrying out its programs in light of the agency strategic plan, including the effectiveness of its programs, based on performance measures, performance targets, and performance data. The department may make recommendations to improve agency performance which may include modifying, streamlining, consolidating, expanding, redesigning, or eliminating programs.

2. The department, in cooperation with the legislative services agency and the auditor of state, shall provide for the analysis of the integrity and validity of performance data.

2001 Acts, ch 169, §21; 2003 Acts, ch 35, §45, 49

8E.210 Reporting requirements.

1. Each agency shall prepare an annual performance report stating the agency's progress in meeting performance targets and achieving its goals consistent with the enterprise strategic plan, its agency strategic plan, and its performance plan. An annual performance report shall include a description of how the agency has reallocated human and material resources in the previous fiscal year. The department, in conjunction with agencies, shall develop guidelines for annual performance reports, including but not limited to a reporting schedule. An agency may incorporate

its annual performance report into another report that the agency is required to submit to the department.

2. The annual performance reporting required under this section shall be used to improve performance, improve strategic planning and policy decision making, better allocate human and material resources, recognize superior performance, and inform Iowans about their return from investment in state government.

2001 Acts, ch 169, §22

SUBCHAPTER III

INVESTMENT DECISIONS

8E.301 Scope.

The department, in cooperation with agencies, shall establish methodologies for use in making major investment decisions, including methodologies based on return on investment and cost-benefit analysis. The department and agencies may also utilize these methodologies to review current investment decisions. The department shall establish procedures for implementing the methodologies, requiring independent verification and validation of investment results, and providing reports to the governor and the legislative services agency regarding the implementation.

2001 Acts, ch 169, §23; 2003 Acts, ch 35, §45, 49

See also §12B.10

CHAPTER 9

SECRETARY OF STATE

9.1 Duties — records.

The secretary of state shall keep the secretary of state's office at the seat of government, and perform all duties required by law; the secretary shall have charge of and keep all the Acts and resolutions of the territorial legislature and of the general assembly of the state, the enrolled copies of the Constitutions of the state, and all bonds, books, records, maps, registers, and papers which are now or may hereafter be deposited to be kept in the secretary of state's office, including all books, records, papers, and property pertaining to the state land office.

[C51, §43; R60, §59; C73, §61; C97, §66; C24, 27, 31, 35, 39, §**85;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §9.1]

Designated as state commissioner of elections, §47.1
Duties relating to filing of federal liens; see §331.609

9.2 Records relating to cities.

The secretary of state shall receive and preserve in the secretary's office all papers transmitted to the secretary in relation to city development, including incorporation, discontinuance, or boundary adjustment; and shall keep an alphabetical list of cities in a book provided for that purpose, in which shall be entered the name of the city, the county in which situated, and the date of incorporation, discontinuance, or boundary adjustment.

[R60, §1046; C73, §65; C97, §67; C24, 27, 31, 35, 39, §**86;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §9.2]

9.2A Records relating to condemnation.

The secretary of state shall receive and preserve in the secretary's office all papers transmitted to the secretary in relation to condemnation and shall keep an alphabetical list of acquiring agencies in a book provided for that purpose, in which shall be entered the name of the acquiring agency, the county in which the real property is located, and the date the condemnation application was filed.

99 Acts, ch 171, §25, 42

9.3 Commissions.

All commissions issued by the governor shall be countersigned by the secretary, who shall register each commission in a book to be kept for that purpose, specifying the office, name of officer, date of commission, and tenure of office, and forthwith forward to the directors of the departments of management and of administrative services copies of the registration.

[C51, §44; R60, §60; C73, §62; C97, §68; S13, §68; C24, 27, 31, 35, 39, §**87;** C46, 50, 54, 58, 62, 66, 71,

73, 75, 77, 79, 81, §9.3]
88 Acts, ch 1134, §8; 2003 Acts, ch 145, §127

9.4 Fees.
The secretary of state shall collect all fees directed by law to be collected by the secretary of state, including the following:
1. For certificate, with seal attached, three dollars.
2. For a copy of any law or record, upon the request of any person, a fee to be determined by the secretary of state by rule adopted pursuant to chapter 17A.
[C51, §2524; R60, §4133; C73, §3756; C97, §85; C24, 27, 31, 35, 39, §**88;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §9.4; 81 Acts, ch 21, §1]
93 Acts, ch 143, §1

9.5 Salary.
The salary of the secretary of state shall be as fixed by the general assembly.
[C31, 35, §88-c1; C39, §**88.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §9.5]

9.6 Iowa official register. Repealed by 2003 Acts, ch 35, § 47 – 49. See § 2A.5.

9.7 Access to corporation records.
The secretary of state shall offer to county recorders electronic access to corporation records. The secretary of state shall adopt rules providing for the electronic access and for the dissemination of the information by the county recorders.
91 Acts, ch 211, §1

CHAPTER 9A

REGISTRATION OF ATHLETE AGENTS

9A.1 Title.
This chapter shall be known as the *"Registration of Athlete Agents Act"*.
88 Acts, ch 1248, §1

9A.2 Definitions.
As used in this chapter, unless the context otherwise requires:
1. *"Athlete agent"* means a person representing a student athlete for compensation or any person who, directly or indirectly, recruits or solicits a student athlete to enter into an agent contract or professional sports services contract with the person, or who for a fee procures, offers, promises, or attempts to obtain employment for a student athlete with a professional sports team. *"Athlete agent"* does not include an individual licensed to practice as an attorney in this state when the individual is acting as a representative for a student athlete, unless the attorney also represents the student athlete in negotiations for an agent contract.
2. *"Institution of higher education"* means a public or private college or university in this state.
3. *"Student athlete"* means an individual enrolled at an institution of higher education who is eligible to participate in intercollegiate sports contests as a member of a sports team of an institution of higher education, or who is receiving partial or full financial assistance by way of an athletic scholarship and may in the future be eligible to participate in intercollegiate sports contests as a member of a sports team of an institution of higher education.
88 Acts, ch 1248, §2

9A.3 Registration requirements for athlete agents.
1. An athlete agent shall register with, and obtain a certificate of registration from, the secretary of state before contacting, either directly or indirectly, a student athlete concerning the possibility of the athlete agent's representing the student athlete. The athlete agent may apply for a certificate of registration by submitting the forms provided for that purpose and must provide all the information required by the secretary of state, including all of the following:

a. Name of the applicant and the address of the applicant's principal place of business.

b. Business or occupation engaged in by the applicant for the five years immediately preceding the date of application.

c. The athlete agent's educational background, training, and experience relating to being an athlete agent.

d. Names and addresses of all persons, except bona fide employees on stated salaries, who are financially interested as partners, associates, or profit sharers in the operation of the business of the athlete agent.

e. Record of all felony charges and convictions, and all misdemeanor charges and convictions of the athlete agent.

f. Record of all felony charges and convictions, and misdemeanor charges and convictions of all persons, except bona fide employees, who are financially interested as partners, associates, or profit sharers in the operation of the business of the athlete agent.

g. Record of all sanctions issued to or disciplinary actions taken against the athlete agent or against any student athlete or any institution of higher education in connection with any transaction or occurrence involving the athlete agent.

h. Additional information as deemed appropriate by the secretary of state.

2. In addition to the requirements of subsection 1, an athlete agent who is not a resident of this state must file with the secretary of state an irrevocable consent to service of process on a form prescribed by the secretary. The consent to service shall be signed by the athlete agent, or by an authorized representative of the athlete agent, and notarized. If the athlete agent is a corporation, the consent to service shall be accompanied by a copy of the corporation's authorization to do business in this state and a copy of the resolution of the corporation authorizing the consent to service. The consent to service shall indicate that service upon the secretary of state is sufficient service upon the athlete agent, if the plaintiff forwards by certified mail one copy of the service to the business address of the athlete agent on file at the office of the secretary of state.

3. A certificate of registration issued under this section is valid for one year from the date of issuance. A registered athlete agent may renew the certificate by filing a renewal application in the form prescribed by the secretary of state, accompanied by any applicable renewal fee.

4. The secretary of state shall:

a. Establish a reasonable registration fee sufficient to offset expenses incurred in the administration of this chapter.

b. Adopt rules necessary for the implementation and administration of this chapter.

88 Acts, ch 1248, §3

9A.4 Resident agent required.

A person registered under this chapter as an athlete agent who is not a resident of this state, or does not have a principal place of business in this state, shall not engage in any activity as an athlete agent in this state unless that person has entered into an agreement with a person who is a resident of this state or whose principal place of business is in this state, who is licensed pursuant to section 602.10101, and who is registered under this chapter as an athlete agent, to act on behalf of the nonresident athlete agent. The agreement shall provide that the resident athlete agent shall act as attorney in fact, on whom all process in any action involving the nonresident athlete agent may be served, as well as any other duties as negotiated by the nonresident and resident athlete agent. The agreement shall be filed with the secretary of state and shall include the name and address of the resident athlete agent.

88 Acts, ch 1248, §4

9A.5 Denial of certificate of registration.

The secretary of state may deny, suspend, or revoke an athlete agent's certificate of registration, following a hearing where a determination is made that the athlete agent has engaged in any of the following activities:

1. Made false or misleading statements of a material nature in the athlete agent's application for a certificate of registration or renewal of a certificate of registration.

2. Misappropriated funds, or engaged in other specific acts such as embezzlement, theft, or fraud, which in the judgment of the secretary of state would render the athlete agent unfit to serve in a fiduciary capacity.

3. Engaged in other conduct, including, but not limited to, conduct contributing to sanctions or disciplinary action against any student athlete or institution of higher education, whether within this state or not, which in the judgment of the secretary of state relates to the athlete agent's fitness to serve in a fiduciary capacity.

4. Engaged in a material violation of this chapter or a rule adopted pursuant to this chapter, as shown by a preponderance of the evidence. The suspension or revocation of an agent's registration may be reviewed pursuant to chapter 17A.

88 Acts, ch 1248, §5

9A.6 Bond required from athlete agent.

1. An athlete agent shall have on file with the secretary of state 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 twenty-five 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 agent

and to the secretary of state 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 athlete agent's willingness to comply with this chapter, pay all amounts due to any individual or group of individuals when due, and pay all damages caused to any student athlete or institution of higher education by reason of intentional misstatement, misrepresentation, fraud, deceit or any unlawful or negligent acts or omissions by the registered athlete agent or the athlete agent's representative or employee while acting within the scope of employment. This section shall not limit the recovery of damages to the amount of the surety bond.

2. The bond shall be made in a form prescribed by the secretary of state and written by a company authorized by the secretary of state to do business within the state.

88 Acts, ch 1248, §6

9A.7 Agent contract.

1. An agent contract to be entered into by a registered athlete agent and a student athlete who has not previously signed a contract of employment with a professional sports team shall be on a form approved by the secretary of state. Approval of the form shall not be withheld unless the proposed form is unfair, unjust, or oppressive to the student athlete. If the form of the contract is in compliance with any players association form contract, the contract shall be approved by the secretary of state.

2. The agent contract shall have printed on the face of the contract in bold print the following: **"The athlete agent is registered with the secretary of state. Registration does not imply approval or endorsement by the secretary of state of the specific terms and conditions of this contract or competence of the athlete agent. You have the right to terminate this contract within five calendar days after it is signed. You may jeopardize your standing as a student athlete by entering into this contract under the rules for eligibility established by or adhered to by your institution of higher education."**

3. A registered athlete agent shall file with the secretary of state a schedule of fees chargeable and collectible from a student athlete who has not previously signed a contract of employment with a professional sports team and shall file a description of the various professional services to be rendered in return for each fee. The athlete agent may impose charges only in accordance with the fee schedule. Changes in the fee schedule may be made from time to time, except that a change shall not become effective until the seventh day after the date the change is filed with the secretary of state.

88 Acts, ch 1248, §7

9A.8 Prohibited activities.

A person shall not do any of the following:

1. Act or offer to act as an athlete agent unless registered pursuant to this chapter.

2. Engage in conduct which violates, or causes or contributes to causing a student or institution of higher education to violate, any rule or regulation adopted by the national collegiate athletic association governing student athletes and their relationship with athlete agents and institutions of higher education.

3. Except as provided in subsection 5, enter into a written or oral agreement by which the athlete agent will represent a student athlete, or give anything of value to a student athlete, until after completion of the student athlete's last intercollegiate athletic contest including any postseason contest.

4. Enter into an agreement before the student athlete's last intercollegiate contest that purports to take effect at a time after that contest is completed.

5. Enter into an agreement where the athlete agent gives, offers, or promises anything of value to an employee or student of an institution of higher education in return for the referral of a student athlete by the employee or student.

6. Interfere with, impede, or obstruct the administration and enforcement of this chapter.

88 Acts, ch 1248, §8

9A.9 On-campus athlete agent interviews.

If an institution of higher education located in this state elects to permit athlete agent interviews on its campus during a student athlete's final year as a student athlete, a registered athlete agent may interview the student athlete to discuss the registered athlete agent's representation of the student athlete in the marketing of the student athlete's athletic ability and reputation. The registered athlete agent shall strictly adhere to the conditions imposed by each institution with regard to the time, place, manner, and duration of the interviews.

88 Acts, ch 1248, §9

9A.10 Contract void.

An agent contract negotiated by an athlete agent who has failed to comply with the provisions of this chapter is void. If the contract is void pursuant to this section, the athlete agent does not have a right of repayment of anything of value received by the student athlete as an inducement to enter into an agent contract or received by a student athlete before completion of the student athlete's last intercollegiate contest, and the athlete agent shall refund any consideration paid to the athlete agent by the student athlete or on the stu-

dent athlete's behalf.
88 Acts, ch 1248, §10

9A.11 Penalties — enforcement.
1. The attorney general may institute a legal proceeding against an athlete agent on behalf of the state, and shall institute legal proceedings at the request of the secretary of state, to enforce this chapter.
2. A person who knowingly and willfully violates a provision of this chapter is subject to a civil penalty in an amount not to exceed ten thousand dollars.
3. A person who violates a provision of section 9A.8 commits a serious misdemeanor.
88 Acts, ch 1248, §11; 89 Acts, ch 83, §2

9A.12 Costs.
A student athlete and an institution of higher education are entitled to recover reasonable attorney's fees and court costs against an athlete agent found to be in violation of this chapter.
88 Acts, ch 1248, §12

CHAPTER 9B

REGISTRATION OF WASTE TIRE HAULERS

Repealed by 2002 Acts, ch 1121, §6; see §455D.11I

CHAPTER 9C

TRANSIENT MERCHANTS

This chapter not enacted as a part of this title; transferred from chapter 81A in Code 1993

9C.1 Definitions.
The term *"transient merchant"* as used herein shall mean and include every merchant, whether an individual person, a firm, corporation, partnership or association, and whether owner, agent, bailee, consignee or employee, who shall bring or cause to be brought within the state of Iowa any goods, wares or merchandise of any kind, nature or description, with the intention of temporarily or intermittently selling or offering to sell at retail such goods, wares or merchandise within the state of Iowa. The term *"transient merchant"* shall also mean and include every merchant, whether an individual person, a firm, corporation, partnership or an association, who shall by itself, or by agent, consignee or employee temporarily or intermittently engage in or conduct at one or more locations a business within the state of Iowa for the sale at retail of any goods, wares or merchandise of any nature or description. A merchant engaging in business shall be presumed to be temporarily or intermittently in business unless it is the intention of such merchant to remain continuously in business at each location where the merchant is engaged in business within the state of Iowa as a merchant for a period of more than sixty days. The provisions of this chapter shall not be construed to apply to persons selling at wholesale to merchants, nor to transient vendors of drugs, nor to persons running a huckster wagon, or selling or distributing livestock feeds, fresh meats, fish, fruit, or vegetables, nor to persons selling their own work or production either by themselves or employees.
[C58, 62, 66, 71, 73, 75, 77, 79, 81, §81A.1]
C93, §9C.1

9C.2 License required.
It shall be unlawful for any transient merchant as herein defined, to sell, dispose of, or offer for sale any goods, wares or merchandise of any kind, nature or description, at any time or place within the state of Iowa, outside the limits of any city in the state of Iowa, or within the limits of any city in the state of Iowa that has not by ordinance provided for the licensing of transient merchants, unless such transient merchant, as herein defined, shall have a valid license as herein provided and

shall have complied with the regulations herein set forth.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §81A.2]
C93, §9C.2

9C.3 Application for license.

Any transient merchant as defined herein, desiring a transient merchant's license shall at least ten days prior to the first day any sale is made, file with the secretary of state of the state of Iowa an application in writing duly verified by the person, firm, corporation, partnership or association proposing to sell or offer to sell at retail any goods, wares or merchandise, or to engage in or conduct a temporary or intermittent business for the sale at retail of any goods, wares or merchandise, which application shall state the following facts:

1. The name, residence and post-office address of the person, firm, corporation, partnership or association making the application, and if a corporation, the names and addresses of the officers thereof, and if a firm, partnership or association and not a corporation, the names and addresses of all members thereof.

2. If the application be made by an agent, bailee, consignee or employee, the application shall so state and set out the name and address of such agent, bailee, consignee or employee and shall also set out the name and address of the owner of the goods, wares and merchandise to be sold or offered for sale.

3. The application shall state whether or not the applicant has an Iowa retailers sales tax permit and if the applicant has such permit, shall state the number of such permit.

4. If the applicant be a corporation, the application shall state whether or not the applicant is an Iowa corporation or a foreign corporation, and if a foreign corporation, shall state whether or not such corporation is authorized to do business in Iowa.

5. The value of the goods to be sold or offered for sale or the average inventory to be carried by any such transient merchant engaging in or conducting an intermittent or temporary business as the case may be.

6. The date or dates upon which said goods, wares or merchandise shall be sold or offered for sale, or the date or dates upon which it is the intention of the applicant to engage in or conduct a temporary or intermittent business.

7. The location and address where such goods, wares or merchandise shall be sold or offered for sale, or such business engaged in or conducted.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §81A.3]
C93, §9C.3

9C.4 Bond required — applicability — forfeiture.

At the time of filing said application and as a part thereof, the applicant shall file with the secretary of state a bond, with sureties to be approved by the secretary of state, in a penal sum two times the value of the goods, wares or merchandise to be sold or offered for sale or the average inventory to be carried by such transient merchant engaged in or conducting an intermittent or temporary business as the case may be as shown by the application, running to the state of Iowa, for the use and benefit of any purchaser of any merchandise from such transient merchant who might have a cause of action of any nature arising from or out of such sale against the applicant or the owner of such merchandise if other than the applicant; the bond to be further conditioned on the payment by the applicant of all taxes that may be payable by, or due from, the applicant to the state of Iowa or any subdivision thereof, the bond to be further conditioned for the payment of any fines that may be assessed by any court against the applicant for violation of the provision of this chapter, and further conditioned for the payment and satisfaction of any and all causes of action against the applicant commenced within one year from the date of sale thereof, and arising from such sale, provided, however, that the aggregate liability of the surety for all such taxes, fines and causes of action shall in no event exceed the principal sum of such bond.

In such bond the applicant and surety shall appoint the secretary of state, the agent of the applicant and surety for the service of process. In the event of such service, the agent upon whom such service is made shall within five days after the date of service, mail by ordinary mail a true copy of the process served upon the agent to each party for whom the agent is served, addressed to the last known address of such party. Failure to so mail said copy shall not, however, affect the jurisdiction of the court.

Such bond shall contain the consent of the applicant and surety that the district court of the county in which the plaintiff may reside or Polk county, Iowa shall have jurisdiction of all actions against the applicant or surety, or both, arising out of the sale. The state of Iowa, or any subdivision thereof, or any person having a cause of action against the applicant or surety arising out of said sale may join the applicant and surety on such bond in the same action, or may in such action sue either the applicant or the surety alone.

The requirements of this section also apply to transient merchants who are licensed in accordance with an ordinance of a city in the state of Iowa.

Notwithstanding the above provisions, the bond provided for in this section shall be forfeited to the state of Iowa upon the applicant's failure to pay the total of all taxes payable by or due from the applicant to the state which taxes are administered by the department of revenue. The department shall adopt administrative rules for the collection of the forfeiture. Notice shall be provided to the surety and to the applicant. Notice to the appli-

cant shall be mailed to the applicant's last known address. The applicant or the surety shall have the opportunity to apply to the director of revenue for a hearing within thirty days after the giving of such notice. Upon the failure to timely request a hearing, the bond shall be forfeited. If, after the hearing upon timely request, the director finds that the applicant has failed to pay the total of all taxes payable and the bond is forfeited, the director shall order the bond forfeited. The amount of the forfeiture shall be the amount of taxes payable or the amount of the bond. The surety shall not have standing to contest the amount of any taxes payable. For purposes of this section *"taxes payable"* means all tax, penalties, interest, and fees that the department has previously determined to be due by assessment or in an appeal of an assessment.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §81A.4]
87 Acts, ch 60, §1
C93, §9C.4
2003 Acts, ch 145, §286

9C.5 Issuance of license.

Upon receiving an application for a transient merchant's license, the secretary of state shall investigate or cause to be investigated, the reputation and character of the applicant. If, upon making such investigation, the secretary of state is satisfied that the statements and representations contained in the application are true, and that the applicant is of good reputation and character, and the holder of an Iowa retailer's sales tax permit, and if a foreign corporation, has authority to do business in the state of Iowa, the secretary shall issue to the applicant a license as a transient merchant upon payment of the fee as herein prescribed for the period of time requested in said application and for use at the location and place where it is stated in said application the sale will be held or the business conducted, both of which shall be set out in said license. Such license shall be valid only for the period of time and at the location and place described therein.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §81A.5]
C93, §9C.5

9C.6 License fee.

Prior to issuing the said transient merchant's license, the secretary of state shall collect for the state of Iowa a license fee in the sum of twenty-five dollars for each day the applicant, as shown by the application, shall propose to sell or offer for sale any goods, wares or merchandise, or for each day the applicant, as shown by the application, proposes to engage in and conduct a business as a transient merchant as the case may be.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §81A.6]
C93, §9C.6

9C.7 Misrepresentation.

It shall be unlawful for any transient merchant making sales or engaging in or conducting a business under a transient merchant's license to make any false or misleading statements or representation regarding any article sold or offered for sale by such transient merchant as to condition, quality, original cost, or cost to such transient merchant of any article sold or offered for sale or to sell or offer for sale goods, wares or merchandise of a value in excess of the value thereof as shown by said application, or to sell or offer for sale at retail any goods, wares or merchandise, or to engage in or conduct an intermittent or temporary business on any days or at any place other than those shown by such license.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §81A.7]
C93, §9C.7

9C.8 Revocation.

The secretary of state may revoke any license issued under the provisions of this chapter after proper hearing before the secretary, by the sending of due notice of said hearing by registered letter to the transient merchant at the merchant's last known address, return receipt requested, not less than twenty days before the date of said hearing, for any of the following causes:

1. For any violations of the provisions of this chapter.
2. For failure to pay the sales tax as provided by law or misrepresentation of the source, condition, quality, weight or measure of the product sold by the transient merchant.
3. If any judgment recovered against any transient merchant with reference to the operation of that business remains unpaid for a period of six months provided such judgment be not stayed under a supersedeas bond upon appeal from such judgment.

The secretary of state shall give immediate notice of the revocation of any license issued under the provisions of this chapter to the surety or sureties furnishing the bond provided for herein.

In the event of such revocation, no other transient merchant license shall be issued to such applicant for a period of two years thereafter.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §81A.8]
C93, §9C.8

9C.9 Penalty.

Any merchant, whether an individual person, a firm, corporation, partnership or association violating any of the provisions of this chapter shall be guilty of a simple misdemeanor. Each sale made in violation of the provisions hereof shall be and constitute a separate offense.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §81A.9]
C93, §9C.9

9C.10 Enforcement.

The attorney general, or designees of the attor-

ney general, may seek an injunction from a court of competent jurisdiction in order to prohibit sales by a transient merchant who is in violation of this chapter.

87 Acts, ch 60, §2
CS87, §81A.10
C93, §9C.10

CHAPTER 9D

TRAVEL AGENCIES AND AGENTS

This chapter not enacted as a part of this title; transferred from chapter 120 in Code 1993

9D.1 Definitions.

1. *"Applicant"* means a person applying for registration under this chapter.
2. *"Customer"* means a person who is offered or who purchases travel services.
3. *"Registrant"* means a person registered pursuant to this chapter.
4. *"Secretary"* means the secretary of state.
5. *"Solicitation"* means contact by a travel agency or travel agent of a customer for the purpose of selling or offering to sell travel services.
6. *"Travel agency"* means a person who represents, directly or indirectly, that the person is offering or undertaking by any means or method, to provide travel services for a fee, commission, or other valuable consideration, direct or indirect.
7. *"Travel agent"* means a person employed by a travel agency whose principal duties include consulting with and advising persons concerning travel arrangements or accommodations.
8. *"Travel services"* means arranging or booking vacation or travel packages, travel reservations or accommodations, tickets for domestic or foreign travel by air, rail, ship, bus, or other medium of transportation, or hotel or other lodging accommodations. Travel services include travel related prizes or awards for which the customer must pay a fee or, in connection with the prize or award, expend moneys for the direct or indirect monetary benefit of the person making the award, in order for the customer to collect or enjoy the benefits of the prize or award.

89 Acts, ch 274, §1
CS89, §120.1
C93, §9D.1

9D.2 Registration required.

1. *a.* A travel agency doing business in this state shall register with the secretary of state as a travel agency if it or its travel agent conducts the solicitation of an Iowa resident.

b. A travel agency required to register under paragraph *"a"* shall not permit a travel agent employed by the travel agency to do business in this state unless the agency has filed the required registration statement.

2. A travel agent shall not knowingly do business in this state unless and until the travel agency employing the travel agent has registered with the secretary of state as a travel agency if the travel agency or any of the agency's travel agents conduct the solicitation of an Iowa resident.

3. This section does not require registration for, or prohibit, solicitation by mail or telecommunications of a person with whom the travel agency has a previous travel services provider-customer relationship, having previously arranged travel related services for that customer on at least one prior occasion.

4. *"Doing business"* in this state, for purposes of this chapter, means any of the following:

a. Offering to sell or selling travel services, if the offer is made or received within the state.

b. Offering to arrange, or arranging, travel services for a fee or commission, direct or indirect, if the offer is made or received in this state.

c. Offering to, or awarding travel services as a prize or award, if the offer or award is made in or received in this state.

5. An applicant shall complete the registration statement form provided by the secretary. The registration statement must be accompanied by the required bond or evidence of financial responsibility and the registration fee. The registration statement shall include all of the following:

a. The name and signature of an officer or partner of a business entity or the names and signatures of the principal owner and operator if the agency is a sole proprietorship.

b. The name, address, and telephone number

of the applicant and the name of all travel agents employed by the applicant travel agency.

c. The name, address, and telephone number of any person who owns or controls, directly or indirectly, ten percent or more of the applicant.

d. If the applicant is a foreign corporation or business, the name and address of the corporation's agent in this state for service of process.

e. Any additional information required by rule adopted by the secretary pursuant to chapter 17A.

The application shall be accompanied by a written irrevocable consent to service of process. The consent must provide that actions in connection with doing business in this state may be commenced against the registrant in the proper jurisdiction in this state in which the cause of action may arise, or in which the plaintiff may reside, by service of process on the secretary as the registrant's agent and stipulating and agreeing that such service of process shall be taken and held in all courts to be as valid and binding as if service of process had been made upon the person according to the laws of this or any other state. The consent to service of process shall be in such form and supported by such additional information as the secretary may by rule require.

An annual registration fee as established by the secretary by rule is required at the time the registration statement is filed with the secretary, and on or before the anniversary date of the effective date of registration for each subsequent year. The registration fee shall be established at a rate deemed reasonably necessary by the secretary to support the administration of this chapter, but not to exceed fifteen dollars per year per agency. If a registrant fails to pay the annual registration fee, the registration lapses and becomes ineffective.

A registrant shall submit to the secretary corrections to the information supplied in the registration statement within a reasonable time after a change in circumstances, which circumstances would be required to be reported in an initial registration statement, except travel agents' names as required in subsection 5, paragraph *"b"*. The names of travel agents shall be updated at the time of annual registration.

The secretary may revoke or suspend a registration for cause subject to the contested case provisions of chapter 17A.

89 Acts, ch 274, §2
CS89, §120.2
C93, §9D.2

9D.3 Evidence of financial security.

1. An application for a travel agency must be accompanied by a surety or cash performance bond in conformity with rules adopted by the secretary in the principal amount of ten thousand dollars, with an aggregate limit of ten thousand dollars. The bond shall be executed by a surety company authorized to do business in this state, and the bond shall be continuous in nature until canceled by the surety with not less than sixty days' written notice to both the registrant and to the secretary. The notice shall indicate the surety's intent to cancel the bond on a date at least sixty days after the date of the notice.

2. The bond shall be payable to the state for the use and benefit of either:

a. A person who is injured by the fraud, misrepresentation, or financial failure of the travel agency or a travel agent employed by the travel agency.

b. The state on behalf of a person or persons under paragraph *"a"*.

The bond shall be conditioned such that the registrant will pay any judgment recovered by a person in a court of this state in a suit for actual damages, including reasonable attorney's fees, or for rescission, resulting from a cause of action involving the sale or offer of sale of travel services. The bond shall be open to successive claims, but the aggregate amount of the claims paid shall not exceed the principal amount of the bond.

3. If a registrant has contracted with the airlines reporting corporation or the passenger network services corporation, or similar organizations approved by the secretary of state with equivalent bonding requirements for participation, in lieu of the bond required by subsection 1, the registrant may file with the secretary a certified copy of the official approval and appointment of the applicant from the airlines reporting corporation or the passenger network services corporation.

4. In lieu of any bond or guarantee required to be provided by this section, a registrant may do any of the following:

a. File with secretary proof of professional liability and errors and omissions insurance in an amount of at least one million dollars annually.

b. Deposit with the secretary cash, securities, or a statement from a federally insured financial institution guaranteeing the performance of the registrant up to a maximum of ten thousand dollars to be held or applied to the purposes to which the proceeds of the bond would otherwise be applied.

89 Acts, ch 274, §3
CS89, §120.3
C93, §9D.3

9D.4 Penalties.

1. A person required to register as a travel agency, or an owner of ten percent or more of a travel agency, required to register by this chapter, which fails to register, fails to make required corrections to its registration statement, or fails to pay the required fee on or before thirty days after the fee becomes due, commits a serious misdemeanor.

2. If a person required to be registered or listed upon a registration statement by this chapter re-

ceives money, as a fee, commission, compensation, or profit in connection with doing business in this state in violation of section 9D.2, the person, in addition to the criminal penalty in subsection 1, shall be liable for a civil penalty of not less than three times the sum so received, as may be determined by the court, which penalty may be recovered in a court of competent jurisdiction by an aggrieved person, or by the attorney general for the benefit of an aggrieved person or class of persons.

3. A violation of this chapter is also a violation of section 714.16.

89 Acts, ch 274, §4
CS89, §120.4
C93, §9D.4

9D.5 Exemptions.

1. This chapter does not apply to:

a. A bona fide employee of a travel agency who is engaged solely in the business of the agency, and whose principal duties do not include consulting with and advising persons concerning travel arrangements or accommodations.

b. A direct common carrier of passengers or property regulated by an agency of the federal government or employees of a common carrier when engaged solely in the transportation business of the carrier as identified in the carrier's certificate.

2. A travel agency is subject to this chapter, notwithstanding that the customer's name was obtained from the customer as part of a promotion where the customer signed up to receive a sales presentation or to enter a drawing for a prize prior to the solicitation. These activities do not constitute a previous travel services provider-customer relationship.

89 Acts, ch 274, §5
CS89, §120.5
C93, §9D.5

CHAPTER 9E

NOTARIAL ACTS

This chapter not enacted as a part of this title; transferred from chapter 77A in Code 1993

9E.1 Title.

This chapter shall be known as the *"Iowa Law on Notarial Acts"*.

89 Acts, ch 50, §1
CS89, §77A.1
C93, §9E.1

9E.2 Definitions.

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

1. *"Acknowledgment"* means a declaration by a person that the person has executed an instrument for the purposes stated in the document and, if the instrument is executed in a representative capacity, that the person signed the instrument with proper authority and executed it as the act of the person or entity represented and identified in the document.

2. *"Notarial act"* means any act that a notary public of this state is authorized to perform, and includes, but is not limited to, taking an acknowledgment, administering an oath or affirmation, taking verification upon oath or affirmation, witnessing or attesting a signature, certifying or attesting a copy, and noting a protest of a negotiable instrument.

3. *"Notarial officer"* means a notary public or other officer authorized to perform notarial acts.

4. *"Representative capacity"* means any of the following:

a. A representative on behalf of a corporation, partnership, trust, or other entity, as an authorized officer, agent, partner, trustee, or other rep-

resentative.

b. A public officer, personal representative, guardian, or other representative, in the capacity recited in the instrument.

c. An attorney in fact for a principal.

d. Any other capacity as an authorized representative of another.

5. *"Verification upon oath or affirmation"* means a declaration that a statement is true, made by a person upon oath or affirmation.

89 Acts, ch 50, §2
CS89, §77A.2
C93, §9E.2

9E.3 Appointment — revocation.

1. The secretary of state may appoint residents of this state as notaries public and may revoke an appointment for cause.

2. The secretary of state shall appoint members of the general assembly as notaries public, upon request, and may revoke an appointment for cause.

3. The secretary of state may appoint as a notary public a resident of a state bordering Iowa if that person's place of work or business is within the state of Iowa. If a notary who is a resident of a state bordering Iowa ceases to work or maintain a place of business in Iowa, the notary commission expires.

4. A person shall not be appointed as a notary public by the secretary of state unless the person is at least eighteen years of age and not disqualified from voting as provided in section 48A.6.

89 Acts, ch 50, §3
CS89, §77A.3
C93, §9E.3
2001 Acts, ch 38, §1; 2001 Acts, ch 176, §45, 46

9E.4 Term of commission.

The term of a notary public who is an Iowa resident is three years. The term of a notary who is a resident of a state bordering Iowa and whose place of work or business is in Iowa, is one year. The term of a notary who is a member of the general assembly is the member's term of office.

89 Acts, ch 50, §4
CS89, §77A.4
C93, §9E.4

9E.5 Notice of expiration of term.

The secretary of state shall, two months preceding the expiration of a commission, notify the notary public of the expiration date and furnish a blank application for reappointment.

89 Acts, ch 50, §5
CS89, §77A.5
C93, §9E.5

9E.6 Application — fee.

1. Before a commission is delivered to a person appointed as a notary public, the person shall:

a. Complete an application for appointment as a notary public on a form prescribed by the secretary of state.

b. Remit the sum of thirty dollars to the secretary of state. However, persons appointed as notaries public under section 9E.3, subsection 2, are not subject to the fee imposed by this subsection.

2. When the secretary of state determines that the requirements of this section are satisfied, the secretary shall execute and deliver a certificate of commission to the person appointed.

89 Acts, ch 50, §6
CS89, §77A.6
C93, §9E.6
2001 Acts, ch 38, §2; 2001 Acts, ch 176, §45, 46

9E.6A Acquisition and use of stamp or seal.

Each person performing a notarial act pursuant to section 9E.10 must acquire and use a stamp or seal as provided in this chapter. However, this section shall not apply to a notarial act performed by a judicial officer as defined in section 602.1101, if the notarial act is performed in accordance with state or federal statutory authority, and shall not apply to a certification by a chief officer or a chief officer's designee of a peace officer's verification of a uniform citation and complaint pursuant to section 805.6, subsection 5.

The stamp or seal as required in this section shall contain all of the following:

1. For a person appointed as a notary public pursuant to section 9E.3, all of the following:

a. The words "Notarial Seal" and "Iowa".

b. The person's name.

c. The words "Commission Number" followed by a number assigned to the notary public by the secretary of state.

d. The words "My Commission Expires" followed either by the date that the notary public's term would ordinarily expire as provided in section 9E.4 or a blank line. If the seal or stamp contains a blank line, the person must print the date that the notary public's term would ordinarily expire on the blank line imprinted on each document, instrument, or paper subject to a notarial act.

2. For any other person, all of the following:

a. The words "Notarial Seal" and "Iowa".

b. The person's name.

c. The person's title under which the person may perform a notarial act under section 9E.10.

2001 Acts, ch 38, §3; 2001 Acts, ch 176, §45, 46; 2002 Acts, ch 1144, §1; 2004 Acts, ch 1054, §1, 2; 2004 Acts, ch 1175, §349
Unnumbered paragraph 1 amended

9E.7 Revocation — notice and hearing — rules.

If the commission of a person appointed notary public is revoked by the secretary of state, the sec-

retary shall immediately notify the person through the mail. The notice shall state the cause of the revocation and shall inform the person of the right to a hearing on the revocation. The secretary of state shall adopt rules under chapter 17A to provide for a hearing for persons whose commission is revoked.

89 Acts, ch 50, §7
CS89, §77A.7
C93, §9E.7

9E.8 Discretion — limitation.

A notary public may exercise reasonable discretion in performing or declining to perform notarial services, but a notary shall not condition the performance of notarial services upon the requirement that the person served be a customer or client of the establishment by which the notary is employed.

The employer of a notary public shall not condition the performing of notarial services upon the requirement that the person served be a customer or client of the establishment by which the notary is employed.

89 Acts, ch 50, §8
CS89, §77A.8
C93, §9E.8

9E.9 Notarial acts.

1. In taking an acknowledgment, the notarial officer must determine, either from personal knowledge or from satisfactory evidence, that the person appearing before the notary and making the acknowledgment is the person whose true signature is on the instrument.

2. In taking a verification upon oath or affirmation, the notarial officer must determine, either from personal knowledge or from satisfactory evidence, that the person appearing before the officer and making the verification is the person whose true signature is on the statement verified.

3. In witnessing or attesting a signature, the notarial officer must determine, either from personal knowledge or from satisfactory evidence, that the signature is that of the person appearing before the officer and named on the instrument.

4. In certifying or attesting a copy of a document or other item, the notarial officer must determine that the copy is a full, true, and accurate transcription or reproduction of that which was copied.

5. In making or noting a protest of a negotiable instrument, the notarial officer must determine whether there is evidence of dishonor as provided in section 554.3505.

6. A notarial officer has satisfactory evidence that a person is the person whose true signature is on a document in any of the following circumstances:

a. The person is personally known to the notarial officer.

b. The person is identified upon the oath or affirmation of a credible witness personally known to the notarial officer.

c. The person is identified on the basis of identification documents.

89 Acts, ch 50, §9
CS89, §77A.9
C93, §9E.9
94 Acts, ch 1167, §1

9E.9A Defective notarial act.

An instrument in writing to which is attached a defective certificate of acknowledgment attached by a notary public more than ten years earlier is valid, legal, and binding as if the instrument had been properly acknowledged by the notary public.

96 Acts, ch 1060, §1

9E.10 Notarial acts in this state.

1. A notarial act may be performed within this state by the following persons:

a. A notary public appointed by the secretary of state pursuant to section 9E.3.

b. A judge, clerk, or deputy clerk of a court of this state.

c. A person authorized by the law of this state to administer oaths.

d. Any other person authorized to perform the specific act by the law of this state.

e. A registrar of vital statistics or a designee of a registrar of vital statistics.

2. Notarial acts performed within this state under federal authority have the same effect as if performed by a notarial officer of this state.

3. The signature and title of a person performing a notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title.

89 Acts, ch 50, §10
CS89, §77A.10
C93, §9E.10
97 Acts, ch 58, §1
Administration of oaths, see chapter 63A

9E.10A Notarial acts — validity.

The validity of a notarial act shall not be affected or impaired by the fact that the notarial officer performing the notarial act is an officer, director, or shareholder of a corporation that may have a beneficial interest or other interest in the subject matter of the notarial act.

95 Acts, ch 105, §1, 2

9E.11 Notarial acts in other jurisdictions of the United States.

1. A notarial act has the same effect under the law of this state as if performed by a notarial officer of this state, if the notarial act is performed in another state, commonwealth, territory, district, or possession of the United States by any of the following persons:

a. A notary public of that jurisdiction.

b. A judge, clerk, or deputy clerk of a court of that jurisdiction.

c. Any other person authorized by the law of that jurisdiction to perform notarial acts.

2. Notarial acts performed in other jurisdictions of the United States under federal authority as provided in section 9E.12 have the same effect as if performed by a notarial officer of this state.

3. The signature and title of a person performing a notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title.

4. The signature and indicated title of an officer listed in subsection 1, paragraph *"a"* or *"b"* conclusively establish the authority of a holder of that title to perform a notarial act.

90 Acts, ch 1205, §4
C91, §77A.11
C93, §9E.11

9E.12 Notarial acts under federal authority.

1. A notarial act has the same effect under the law of this state as if performed by a notarial officer of this state, if the notarial act is performed anywhere by any of the following persons under authority granted by the law of the United States:

a. A judge, clerk, or deputy clerk of a court.

b. A commissioned officer on active duty in the military service of the United States.

c. An officer of the foreign service or consular officer of the United States.

d. Any other person authorized by federal law to perform notarial acts.

2. The signature and title of a person performing a notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title.

3. The signature and indicated title of an officer listed in subsection 1, paragraph *"a"*, *"b"*, or *"c"*, conclusively establish the authority of a holder of that title to perform a notarial act.

4. A certificate of a notarial act on an instrument to be recorded must also comply with the requirements of section 331.602, subsection 1.

90 Acts, ch 1205, §5
C91, §77A.12
C93, §9E.12

9E.13 Foreign notarial acts.

1. A notarial act has the same effect under the law of this state as if performed by a notarial officer of this state, if the notarial act is performed within the jurisdiction of and under authority of a foreign nation or its constituent units or a multinational or international organization by any of the following persons:

a. A notary public or notary.

b. A judge, clerk, or deputy clerk of a court of record.

c. Any other person authorized by the law of that jurisdiction to perform notarial acts.

2. An *"apostille"* in the form prescribed by the Hague convention of October 5, 1961, conclusively establishes that the signature of the notarial officer is genuine and that the officer holds the indicated office.

3. A certificate by a foreign service or consular officer of the United States stationed in the nation under the jurisdiction of which the notarial act was performed, or a certificate by a foreign service or consular officer of that nation stationed in the United States, conclusively establishes any matter relating to the authenticity or validity of the notarial act set forth in the certificate.

4. An official stamp or seal of the person performing the notarial act is prima facie evidence that the signature is genuine and that the person holds the indicated title.

5. An official stamp or seal of an officer listed in subsection 1, paragraph *"a"* or *"b"*, is prima facie evidence that a person with the indicated title has authority to perform notarial acts.

6. If the title of office and indication of authority to perform notarial acts appears either in a digest of foreign law or in a list customarily used as a source for that information, the authority of an officer with that title to perform notarial acts is conclusively established.

90 Acts, ch 1205, §6
C91, §77A.13
C93, §9E.13

9E.14 Certificate of notarial acts.

1. A notarial act must be evidenced by a certificate signed and dated by a notarial officer. The certificate must include identification of the jurisdiction in which the notarial act is performed and the title of the office of the notarial officer and shall include the official stamp or seal of the office. If the notarial officer is a commissioned officer on active duty in the military service of the United States, the certificate must also include the officer's rank.

2. A certificate of a notarial act is sufficient if it meets the requirements of subsection 1, and is in any of the following forms:

a. The short form set forth in section 9E.15.

b. A form otherwise prescribed by the law of this state, including those forms set out in chapter 558.

c. A form prescribed by the laws or regulations applicable in the place in which the notarial act was performed.

d. A form which sets forth the actions of the notarial officer and those are sufficient to meet the requirements of the designated notarial act.

3. By executing a certificate of a notarial act, the notarial officer certifies that the officer has

made the determinations required by section 9E.9.

90 Acts, ch 1205, §7
C91, §77A.14
C93, §9E.14
2001 Acts, ch 38, §4; 2001 Acts, ch 176, §45, 46

9E.15 Short forms.

The following short form certificates of notarial acts are sufficient for the purposes indicated, if completed with the information required by section 9E.14, subsection 1.

1. For an acknowledgment in an individual capacity:

State of . . . . . .
(County) of . . . . . .
This instrument was acknowledged before me on . . . . . by . . . . . .
(date) (name(s) of person(s))
. . . . . .
(signature of notarial officer)
(Stamp or Seal)
. . . . . .
Title (and Rank)

2. For an acknowledgment in a representative capacity:

State of . . . . . .
(County) of . . . . . .
This instrument was acknowledged before me on (date) by (name(s) of person(s)) as (type of authority, e.g., officer, trustee, etc.) of (name of party on behalf of whom instrument was executed).
. . . . . .
(signature of notarial officer)
(Stamp or Seal)
. . . . . .
Title (and Rank)

3. For a verification upon oath or affirmation:

State of . . . . . .
(County) of . . . . . .
Signed and sworn to (or affirmed) before me on . . . . . by . . . . . .
(date) (name(s) of person(s) making statement)
. . . . . .
(signature of notarial officer)
(Stamp or Seal)
. . . . . .
Title (and Rank)

4. For witnessing or attesting a signature:

State of . . . . . .
(County) of . . . . . .
Signed or attested before me on . . . . . by . . . . . .
(date) (name(s) of person(s))
. . . . . .
(signature of notarial officer)
(Stamp or Seal)
. . . . . .
Title (and Rank)

5. For attestation of a copy of a document:

State of . . . . . .
(County) of . . . . . .
I certify that this is a true and correct copy of a document in the possession of . . . . . .
Dated . . . . . .
. . . . . .
(signature of notarial officer)
(Stamp or Seal)
. . . . . .
Title (and Rank)

90 Acts, ch 1205, §8
C91, §77A.15
C93, §9E.15
2001 Acts, ch 38, §5; 2001 Acts, ch 176, §45, 46; 2002 Acts, ch 1119, §2
Stamp or seal requirements, §9E.6A

9E.16 Fees — certification.

The secretary of state shall collect the following fees, for use in offsetting the cost of administering this chapter:

1. For furnishing a certified copy of any document, instrument, or paper relating to a notary public, one dollar per page and five dollars for the certificate.

2. For furnishing an uncertified copy of any document, instrument, or paper relating to a notary public, one dollar per page.

3. For certifying, under seal of the secretary of state, a statement as to the status of a notary commission which would not appear from a certified copy of documents on file in the secretary of state's office, five dollars.

89 Acts, ch 50, §11
CS89, §77A.11
C91, §77A.16
C93, §9E.16

9E.17 Powers of the secretary of state.
The secretary of state has the power and authority reasonably necessary to administer this chapter efficiently and to perform the duties imposed upon the secretary of state. This power and authority includes rulemaking authority to provide for reciprocity in recognizing notarial acts performed under any other jurisdiction.

89 Acts, ch 50, §12
CS89, §77A.12
C91, §77A.17
C93, §9E.17

CHAPTER 9F

CENSUS

9F.1 Federal and state co-operation.
The secretary of state is authorized, so far as practicable, to co-operate with the census bureau of the United States in the gathering, compilation, and publication of census statistics.

[S13, §177-a; C24, 27, 31, 35, 39, §**424;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §26.1]
86 Acts, ch 1245, §1978
C93, §9F.1

9F.2 Federal census.
The secretary of state shall, whenever a general census is taken by the federal government, procure from the supervisor of such census, or other proper federal official, a copy of such part of said census as gives the population of the state of Iowa by counties, by townships, and by cities, and file the same in the secretary of state's office and attach thereto, dated and signed by the secretary, a certificate that the same is the census report furnished by said federal official.

[S13, §177-c; C24, 27, 31, 35, 39, §**425;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §26.2]
C93, §9F.2

9F.3 Certification — copies.
When certified by the secretary of state the census shall be in full force and effect throughout the state. On payment of a fee of two dollars by a requesting party, the secretary of state shall furnish a certified copy of the whole or any part of such census report.

[S13, §177-c; C24, 27, 31, 35, 39, §**426;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §26.3; 81 Acts, ch 29, §1]
C93, §9F.3

9F.4 Publication — official register.
The legislative services agency may publish the federal census report in each copy of the Iowa official register as provided in section 2A.5.

[S13, §177-c; C24, 27, 31, 35, 39, §**427;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §26.4]
C93, §9F.4
98 Acts, ch 1119, §25; 98 Acts, ch 1164, §40; 2003 Acts, ch 35, §24, 48, 49

9F.5 Evidence.
The certified census records in the office of the secretary of state shall be competent evidence of all matters therein contained.

[S13, §177-c; C24, 27, 31, 35, 39, §**428;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §26.5]
C93, §9F.5
2003 Acts, ch 35, §25, 49

9F.6 Population of counties, townships and cities.
Whenever the population of any county, township or city is referred to in any law of this state, it shall be determined by the last preceding certified federal census unless otherwise provided. Whenever a special federal census is taken by any city, the mayor and council shall certify the census as soon as possible to the secretary of state and to the treasurer of state as otherwise herein provided, and upon the failure to do so, the treasurer of state shall, after six months from the date of the special census, withhold allocation from the state to the city of any moneys the amount of which is based on the population of the city, and shall continue to do so until such time as certification by the mayor and council is made, or until the next decennial federal census. If there be a difference be-

tween the original certified record in the office of the secretary of state and the published census the former shall prevail.

[C97, §177; S13, §177-c; C24, 27, 31, 35, 39, §**429;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §26.6]

C93, §9F.6

Similar provision, §4.1(22)

CHAPTER 9G

LAND OFFICE

9G.1 Records.

The books and records of the land office shall be so kept as to show and preserve an accurate chain of title from the general government to the purchaser of each smallest subdivision of land; to preserve a permanent record, in books suitably indexed, of all correspondence with any of the departments of the general government in relation to state lands; to preserve, by proper records, copies of the original lists furnished by the selecting agents of the state, and of all other papers in relation to such lands which are of permanent interest.

[R60, §92, 95; C73, §83; C97, §72; C24, 27, 31, 35, 39, §**89;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §10.1]

C93, §9G.1

9G.2 Separate grants.

Separate tract books shall be kept for the university lands, the saline lands, the half-million acre grant, the sixteenth sections, the swamplands, and such other lands as the state now owns or may hereafter own, so that each description of state lands shall be kept separate from all others, and each set of tract books shall be a complete record of all the lands to which they relate.

[R60, §94; C73, §84; C97, §73; C24, 27, 31, 35, 39, §**90;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §10.2]

C93, §9G.2

9G.3 Tract books.

Said tract books shall be ruled in a manner similar to those used in the United States land offices, so as to record each tract by its smallest legal subdivisions, its section, township, and range, to whom sold, and when, the price per acre, to whom patented, and when.

[R60, §93; C73, §85; C97, §74; C24, 27, 31, 35, 39, §**91;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §10.3]

C93, §9G.3

9G.4 Land office — how kept — certified copies.

The land office shall be kept open during business hours. The documents and records therein shall be subject to inspection by parties having an interest therein, and certified copies thereof, signed by the secretary, with the seal of office attached, shall be deemed presumptive evidence of the facts to which they relate, and on request they shall be furnished by the secretary for a reasonable compensation.

[R60, §101; C73, §86; C97, §75; C24, 27, 31, 35, 39, §**92;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §10.4]

C93, §9G.4

9G.5 Patents.

Patents for lands shall issue from the land office, shall be signed by the governor and recorded by the secretary; and each patent shall contain therein a marginal certificate of the book and page on which it is recorded, which certificate shall be signed by the secretary, and all patents shall be delivered free of charge.

[R60, §97; C73, §87; C97, §76; C24, 27, 31, 35, 39, §**93;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §10.5]

C93, §9G.5

9G.6 When patents issued.

No patents shall be issued for any lands belonging to the state, except upon the certificate of the person or officer specially charged with the custody of the same, setting forth the appraised value per acre, name of person to whom sold, date of sale,

price per acre, amount paid, name of person making final payment, and of person who is entitled to the patent, and, if thus entitled by assignment from the original purchaser, setting forth fully such assignment, which certificate shall be filed and preserved in the land office.

Whenever the governor is satisfied that the purchase price has been paid by the person to whom the sale has been made and that a patent has not been issued to the purchaser, a patent shall be issued, signed by the governor and secretary of state and recorded by the secretary of state. The passage of seventy-five years from the date of sale without issuance of a patent shall be conclusive proof that the purchase price has been paid.

[R60, §98, 99; C73, §88; C97, §77; C24, 27, 31, 35, 39, §**94;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §10.6]

C93, §9G.6

9G.7 Corrections.

The secretary is authorized and required to correct all clerical errors of the secretary's office in name of grantee and description of tract of land conveyed by the state, found upon the records of such office; the secretary shall attach an official certificate to each conveyance so corrected, giving the reasons therefor; record the same with the record of the original conveyance, and make the necessary corrections in the tract and plat books of the secretary's office. Such corrections, when made in accordance with the foregoing provisions, shall have the force and effect of a deed originally correct, subject to prior rights accrued without notice.

[C73, §89; C97, §78; C24, 27, 31, 35, 39, §**95;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §10.7]

C93, §9G.7

9G.8 Maps — field notes — records — papers.

The secretary of state shall receive and safely keep in the secretary's office, as public records, any field notes, maps, records, or other papers relating to the public survey of this state, whenever turned over to the state in pursuance of law; the United States at all times to have free access thereto for the purpose of taking extracts therefrom or making copies thereof.

[C73, §90; C97, §79; C24, 27, 31, 35, 39, §**96;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §10.8]

C93, §9G.8

9G.9 Color of title relinquished.

Whenever the governor is satisfied by the commissioner of the general land office that the title to any lands which may have been certified to the state under any of the several grants is inferior to the rights of any valid interfering pre-emptor or claimant, the governor is authorized and required to release by deed of relinquishment such color of title to the United States, to the end that the requirements of the interior department may be complied with, and that such tract or tracts of land may be patented by the general government to the legal claimants.

[C73, §91; C97, §80; C24, 27, 31, 35, 39, §**97;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §10.9]

C93, §9G.9

9G.10 Quitclaim deeds.

Whenever the governor is satisfied by proper record evidence that any tract of land which may have been deeded by virtue of any donation or sale to the state is not the land intended to have been described, and that an error has been committed in making out the transfers, in order that such error may be corrected, the governor is authorized to quitclaim the same to the proper owner thereof, and to receive a deed or deeds for the lands intended to have been deeded to the state originally.

[C73, §92; C97, §81; C24, 27, 31, 35, 39, §**98;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §10.10]

C93, §9G.10

9G.11 Lists of federal granted lands.

In cases where lands have been granted to the state of Iowa by Act of Congress, and certified lists of lands inuring under the grant have been made to the state by the commissioner of the general land office, as required by Act of Congress, and such lands have been granted, by Act of the general assembly, to any person or company, and such person or company shall have complied with and fulfilled the conditions of the grant, the secretary of state is hereby authorized to prepare, on the application of such person or company, or on the application of a party claiming title to any land through such person or company, a list or lists of lands situated in each county inuring to such applicant, from the lists certified by the commissioner of the general land office, as aforesaid, which shall be signed by the governor of the state, and attested by the secretary of state, with the state seal, and then be certified to by the secretary to be true and correct copies of the lists made to this state, and deliver them to such applicant, who is hereby authorized to have them recorded in the proper county, and when so recorded they shall be notice to all persons the same as deeds now are, and shall be evidence of title in such grantee, or the grantee's assigns, to the lands therein described, under the grant of Congress by which the lands were certified to the state, so far as the certified lists made by the commissioner aforesaid conferred title to the state; but where lands embraced in such lists are not of the character embraced by such Acts of Congress or the Acts of the general assembly of the state, and are not intended to be granted thereby, the lists, so far as these lands are concerned, shall be void; but lands in litigation shall not be included in such lists until the actions are determined and such lands adjudged to be the property of the company; nor shall the secretary include, in

any of the lists so certified to the state, lands which have been adjudicated by the proper courts to belong to any other grant, or adjudicated to belong to any county or individual under the swampland grant, or any homestead or pre-emption settlement; nor shall said certificate so issued confer any right or title as against any person or company having any vested right, either legal or equitable, to any of the lands so certified.

[C73, §93; C97, §82; C24, 27, 31, 35, 39, §**99;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §10.11]

C93, §9G.11

9G.12 Dubuque and Pacific Railroad lands.

The secretary of state is hereby authorized upon the application of any person claiming title under the trust deeds executed by the Dubuque and Pacific Railroad Company, to secure its construction bonds, to any lands included in the list of lands certified to the state of Iowa, by the commissioner of the general land office and approved by the secretary of the interior, as selected to satisfy the grant made to the state of Iowa, by Act of Congress approved May 15, 1856 [11 Stat. L. 9], in aid of the construction of a railroad from Dubuque to Sioux City; to certify said land as inuring to the grantees of the said Dubuque and Pacific Railroad Company, which certificate shall be signed by the governor, and attested by the secretary of state, with the seal of the state, and deliver the same to such applicant who is hereby authorized to have said certificate recorded in the county in which the land so certified is situated, and when so recorded, shall be notice to all persons the same as deeds now are, and shall be evidence of the title from the state of Iowa to any person deriving title to said land under the Dubuque and Pacific Railroad Company, to the land therein described under the grant of Congress by which the land was certified to the state so far as the certified lists made by the commissioner aforesaid, conferred title to the state, but where lands embraced in such lists are not of the character embraced by such Acts of Congress or the Acts of the general assembly of the state, and are not intended to be granted thereby, the lists so far as these lands are concerned, shall be void; nor shall the secretary include, in any of the lists so certified to the state, lands which have been adjudicated by the proper courts to belong to any other grant, or adjudicated to belong to any county or individual under the swampland grant, or any homestead or pre-emption settlement; nor shall said certificate so issued confer any right or title as against any person or company having any vested right, either legal or equitable, to any of the lands so certified.

[C39, §**99.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §10.12]

C93, §9G.12

9G.13 University lands.

The secretary of state is hereby authorized to issue patents for lands, the legal title to which is vested in the state University of Iowa, in cases wherein it is shown to the satisfaction of the governor and attorney general that such lands have been in fact sold by the authority of the state and paid for, and that the certificates of purchase have been lost or destroyed.

[C97, §83; C24, 27, 31, 35, 39, §**100;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §10.13]

C93, §9G.13

9G.14 Effect of patents.

The patents thus issued shall inure to the benefit of the original purchaser and the original purchaser's grantees only, and a clause to this effect shall be inserted in the patent.

[C97, §84; C24, 27, 31, 35, 39, §**101;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §10.14]

C93, §9G.14

CHAPTER 9H

CORPORATE OR PARTNERSHIP FARMING

Life insurance company or association is a corporation for purposes of this chapter; §511.8A
This chapter not enacted as a part of this title; transferred from chapter 172C in Code 1993

9H.6 Lessees conducting research or experiments — reports. Transferred to §10B.7; 2003 Acts, ch 115, §16, 19.
9H.7 and 9H.8 Reserved.
9H.9 Reports by processors. Transferred to §202B.302; 2003 Acts, ch 115, §16, 19.
9H.10 Signing reports. Transferred to §202B.303; 2003 Acts, ch 115, §16, 19.
9H.11 Penalties — reports. Transferred to §202B.402; 2003 Acts, ch 115, §16, 19.
9H.12 and 9H.13 Reserved.
9H.14 Duties of secretary of state. Transferred to §202B.304; 2003 Acts, ch 115, §16, 19.
9H.15 Additional information. Transferred to §202B.305; 2003 Acts, ch 115, §16, 19.

9H.1 Definitions.

For the purposes of this chapter:

1. *"Actively engaged in farming"* means that a natural person who is a shareholder and an officer, director or employee of the corporation or who is a member or manager of the limited liability company either:

a. Inspects the production activities periodically and furnishes at least half of the value of the tools and pays at least half the direct cost of production; or

b. Regularly and frequently makes or takes an important part in making management decisions substantially contributing to or affecting the success of the farm operation; or

c. Performs physical work which significantly contributes to crop or livestock production.

2. *"Agricultural land"* means land suitable for use in farming.

3. *"Authorized farm corporation"* means a corporation other than a family farm corporation founded for the purpose of farming and the ownership of agricultural land in which:

a. The stockholders do not exceed twenty-five in number; and

b. The stockholders are all natural persons or persons acting in a fiduciary capacity for the benefit of natural persons or nonprofit corporations.

4. *"Authorized limited liability company"* means a limited liability company other than a family farm limited liability company founded for the purpose of farming and the ownership of agricultural land in which all of the following apply:

a. The members do not exceed twenty-five in number.

b. The members are all natural persons or persons acting in a fiduciary capacity for the benefit of natural persons or nonprofit corporations.

5. *"Authorized trust"* means a trust other than a family trust in which:

a. The beneficiaries do not exceed twenty-five in number; and

b. The beneficiaries are all natural persons, who are not acting as a trustee or in a similar capacity for a trust as defined in subsection 22 of this section, or persons acting in a fiduciary capacity, or nonprofit corporations; and

c. Its income is not exempt from taxation under the laws of either the United States or the state of Iowa.

6. *"Beneficial ownership"* includes interests held by a nonresident alien individual directly or indirectly holding or acquiring a ten percent or greater share in the partnership, limited partnership, corporation, limited liability company, or trust, or directly or indirectly through two or more such entities. In addition, the term beneficial ownership shall include interests held by all nonresident alien individuals if the nonresident alien individuals in the aggregate directly or indirectly hold or acquire twenty-five percent or more of the partnership, limited partnership, corporation, limited liability company, or trust.

7. *"Corporation"* means a domestic or foreign corporation subject to chapter 490, a nonprofit corporation, or a cooperative.

8. *"Family farm corporation"* means a corporation:

a. Founded for the purpose of farming and the ownership of agricultural land in which the majority of the voting stock is held by and the majority of the stockholders 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;

b. All of its stockholders are natural persons or persons acting in a fiduciary capacity for the benefit of natural persons or family trusts as defined in subsection 11 of this section; and

c. Sixty percent of the gross revenues of the corporation over the last consecutive three-year period comes from farming.

9. *"Family farm limited liability company"* means a limited liability company which meets all of the following conditions:

a. The limited liability company is founded for the purpose of farming and the ownership of agricultural land in which the majority of the 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.

b. All of the members of the limited liability company are natural persons or persons acting in

a fiduciary capacity for the benefit of natural persons or family trusts.

c. Sixty percent of the gross revenues of the limited liability company over the last consecutive three-year period comes from farming.

10. *"Family farm limited partnership"* means a limited partnership which meets all of the following conditions:

a. The limited partnership is formed for the purpose of farming and the ownership of agricultural land in which the general partner and a majority of the partnership interest is held by and the majority of limited partners 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.

b. The general partner manages and supervises the day-to-day farming operations on the agricultural land.

c. All of the limited partners are natural persons or persons acting in a fiduciary capacity for the benefit of natural persons or family trusts.

d. Sixty percent of the gross revenues of the partnership over the last consecutive three-year period come from farming.

11. *"Family trust"* means a trust:

a. In which a majority interest in the trust is held by and the majority of the beneficiaries 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

b. In which all the beneficiaries are natural persons, who are not acting as a trustee or in a similar capacity for a trust, as defined in subsection 22 of this section, or persons acting in a fiduciary capacity, or nonprofit corporations; and

c. If the trust is established on or after July 1, 1988, the trust must be established for the purpose of farming and sixty percent of the gross revenues of the trust over the last consecutive three-year period must come from farming.

12. *"Farming"* means the cultivation of land for the production of agricultural crops, the raising of poultry, the production of eggs, the production of milk, the production of fruit or other horticultural crops, grazing or the production of livestock. Farming shall not include the production of timber, forest products, nursery products, or sod and farming shall not include a contract where a processor or distributor of farm products or supplies provides spraying, harvesting or other farm services.

13. *"Fiduciary capacity"* means an undertaking to act as executor, administrator, personal representative, guardian, conservator or receiver.

14. *"Grantor"* means a natural person, other than a nonresident alien as defined under this section, who is the creator of a revocable trust or a trust.

15. *"Indirect"* means to act or attempt to accomplish an act through an interest in a business association, through one or more affiliates or intermediaries, or by any method other than a direct approach, including by any circuitous or oblique method.

16. *"Limited liability company"* means a limited liability company as defined in section 490A.102.

17. *"Limited partnership"* means a limited partnership as defined in section 487.101 or 488.102, or a limited liability limited partnership under section 487.1301 or chapter 488, which owns or leases agricultural land or is engaged in farming.

18. *"Nonprofit corporation"* means:

a. Corporations organized under the provisions of chapter 504, Code 1989, or current chapter 504 or 504A; or

b. Corporations which qualify under Title 26, section 501(c)(3) of the United States Code.

19. *"Nonresident alien"* means:

a. An individual who is not a citizen of the United States and who is not domiciled in the United States.

b. A corporation incorporated under the law of any foreign country.

c. A corporation organized in the United States, beneficial ownership of which is held, directly or indirectly, by nonresident alien individuals.

d. A trust organized in the United States or elsewhere if beneficial ownership is held, directly or indirectly, by nonresident alien individuals.

e. A partnership or limited partnership organized in the United States or elsewhere if beneficial ownership is held, directly or indirectly, by nonresident alien individuals.

f. A limited liability company organized in the United States or elsewhere, beneficial ownership of which is held, directly or indirectly, by nonresident alien individuals.

20. *"Revocable trust"* means a trust which provides that the grantor retains the power to amend, modify, or revoke the trust at any time prior to the death of the grantor, regardless of whether, subsequent to the execution of the revocable trust and at any time prior to death, the grantor is legally competent to exercise the power to amend, modify, or revoke the trust and regardless of when the trust is created.

21. *"Testamentary trust"* means a trust created by devising or bequeathing property in trust in a will as such terms are used in the Iowa probate code as provided in chapter 633. Testamentary trust includes a revocable trust that has not been revoked prior to the grantor's death.

22. *"Trust"* means a fiduciary relationship with respect to property, subjecting the person by whom the property is held to equitable duties to

deal with the property for the benefit of another person, which arises as a result of a manifestation of an intention to create it. Trust does not include a person acting in a fiduciary capacity, as defined in subsection 13, or a revocable trust. A trust includes a legal entity holding property as trustee, agent, escrow agent, attorney in fact, and in any similar capacity.

[C77, 79, 81, §172C.1; 82 Acts, ch 1103, §1108]

84 Acts, ch 1219, §6; 88 Acts, ch 1191, §1, 2; 91 Acts, ch 172, §2; 92 Acts, ch 1151, §2 – 4

C93, §9H.1

93 Acts, ch 39, §1 – 4; 94 Acts, ch 1153, §1 – 3; 99 Acts, ch 169, §1; 2000 Acts, ch 1024, §1; 2000 Acts, ch 1048, §1, 3; 2002 Acts, ch 1095, §1 – 3, 10 – 12; 2003 Acts, ch 108, §1, 2; 2003 Acts, ch 115, §11, 16, 19; 2004 Acts, ch 1175, §350, 394, 400

Former subsections 6, 8 – 13, 22, 27 – 29, 31, and 32 transferred to §202B.102 in Code Supplement 2003 pursuant to directive in 2003 Acts, ch 115, §16, 19

New subsection 26A, enacted in 2003 Acts, ch 115, §1, transferred to §202B.102 in Code Supplement 2003 pursuant to directive in 2003 Acts, ch 115, §16, 19

2004 amendments to subsections 17 and 18 take effect January 1, 2005; 2004 Acts, ch 1175, §350, 394, 400

Reference to chapter 504A in subsection 18 to be deleted editorially upon repeal of that chapter; 2004 Acts, ch 1049, §191

For future amendment to this section effective January 1, 2006, see 2004 Acts, ch 1175, §351, 400

Subsections 17 and 18 amended

9H.2 Prohibited operations and activities — exceptions. Transferred to § 202B.101, 202B.201, or 202B.202; 2003 Acts, ch 115, § 16, 19.

9H.2A Compliance requirements. Transferred to § 202B.202; 2003 Acts, ch 115, § 16, 19.

9H.3 Penalties — injunctive relief. Transferred to § 202B.401; 2003 Acts, ch 115, § 16, 19.

9H.3A Penalties — injunctive relief.

The courts of this state may prevent and restrain violations of this chapter through the issuance of an injunction. The attorney general or a county attorney shall institute suits on behalf of the state to prevent and restrain violations of this chapter.

2003 Acts, ch 115, §12, 19

9H.4 Restriction on increase of holdings — exceptions — penalty.

A corporation, limited liability company, or trust, other than a family farm corporation, authorized farm corporation, family farm limited liability company, authorized limited liability company, family trust, authorized trust, revocable trust, or testamentary trust shall not, either directly or indirectly, acquire or otherwise obtain or lease any agricultural land in this state. However, the restrictions provided in this section shall not apply to the following:

1. A bona fide encumbrance taken for purposes of security.

2. Agricultural land acquired for research or experimental purposes. Agricultural land is used for research or experimental purposes if any of the following apply:

a. Research and experimental activities are undertaken on the agricultural land and commercial sales of products produced from farming the agricultural land do not occur or are incidental to the research or experimental purposes of the corporation or limited liability company. Commercial sales are incidental to the research or experimental purposes of the corporation or limited liability company when such sales are less than twenty-five percent of the gross sales of the primary product of the research.

b. The agricultural land is used for the primary purpose of testing, developing, or producing seeds or plants for sale or resale to farmers as seed stock. Grain which is not sold as seed stock is an incidental sale and must be less than twenty-five percent of the gross sales of the primary product of the research and experimental activities.

c. The agricultural land is used by a corporation or limited liability company, including any trade or business which is under common control, as provided in 26 U.S.C. § 414 for the primary purpose of testing, developing, or producing animals for sale or resale to farmers as breeding stock. However, after July 1, 1989, to qualify under this paragraph, the following conditions must be satisfied:

(1) The corporation or limited liability company must not hold the agricultural land other than as a lessee. The term of the lease must be for not more than twelve years. The corporation or limited liability company shall not renew a lease. The corporation or limited liability company shall not enter into a lease under this paragraph, if the corporation or limited liability company has ever entered into another lease under this paragraph *"c"*, whether or not the lease is in effect. However, this subparagraph does not apply to a domestic corporation organized under chapter 504, Code 1989, or current chapter 504 or 504A.

(2) A term or condition of sale, including resale, of breeding stock must not relate to the direct or indirect control by the corporation or limited liability company of the breeding stock or breeding stock progeny subsequent to the sale.

(3) The number of acres of agricultural land held by the corporation or limited liability company must not exceed six hundred forty acres.

(4) The corporation or limited liability company must deliver a copy of the lease to the secretary of state. The secretary of state shall notify the lessee of receipt of the copy of the lease. However, this subparagraph does not apply to a domestic corporation organized under chapter 504, Code 1989, or current chapter 504 or 504A.

Culls and test animals may be sold under this paragraph *"c"*. For a three-year period beginning on the date that the corporation or limited liability

company acquires an interest in the agricultural land, the gross sales for any year shall not be greater than five hundred thousand dollars. After the three-year period ends, the gross sales for any year shall not be greater than twenty-five percent of the gross sales for that year of the breeding stock, or five hundred thousand dollars, whichever is less.

3. Agricultural land, including leasehold interests, acquired by a nonprofit corporation organized under the provisions of chapter 504, Code 1989, and current chapter 504 or 504A including land acquired and operated by or for a state university for research, experimental, demonstration, foundation seed increase or test purposes and land acquired and operated by or for nonprofit corporations organized specifically for research, experimental, demonstration, foundation seed increase or test purposes in support of or in conjunction with a state university.

4. Agricultural land acquired by a corporation or limited liability company for immediate or potential use in nonfarming purposes.

5. Agricultural land acquired by a corporation or limited liability company by process of law in the collection of debts, or pursuant to a contract for deed executed prior to August 15, 1975, or by any procedure for the enforcement of a lien or claim thereon, whether created by mortgage or otherwise.

6. A municipal corporation.

7. Agricultural land which is acquired by a trust company or bank in a fiduciary capacity or as trustee for a family trust, authorized trust or testamentary trust or for nonprofit corporations.

8. A corporation or its subsidiary organized under chapter 490 or a limited liability company organized under chapter 490A and to which section 312.8 is applicable.

9. Agricultural land held or leased by a corporation on July 1, 1975, as long as the corporation holding or leasing the land on this date continues to hold or lease such agricultural land.

10. Agricultural land held or leased by a trust on July 1, 1977, as long as the trust holding or leasing such land on this date continues to hold or lease such agricultural land.

11. Agricultural land acquired by a trust for immediate use in nonfarming purposes.

A corporation, limited liability company, or trust, other than a family farm corporation, authorized farm corporation, family farm limited liability company, authorized limited liability company, family trust, authorized trust, revocable trust, or testamentary trust, violating this section shall be assessed a civil penalty of not more than twenty-five thousand dollars and shall divest itself of any land held in violation of this section within one year after judgment. The courts of this state may prevent and restrain violations of this section through the issuance of an injunction. The attorney general or a county attorney shall institute suits on behalf of the state to prevent and restrain violations of this section.

[C77, 79, 81, §172C.4]

89 Acts, ch 311, §23; 91 Acts, ch 172, §4

C93, §9H.4

93 Acts, ch 39, §7 – 13; 94 Acts, ch 1153, §4, 5; 2003 Acts, ch 108, §3 – 5; 2004 Acts, ch 1175, §394

Exception to restrictions for cooperative corporations organized under chapter 501; requirements; see §501.103

References to chapter 504A in this section to be deleted editorially upon repeal of that chapter; 2004 Acts, ch 1049, §191

Subsection 2, paragraph c, subparagraphs (1) and (4) amended

Subsection 3 amended

9H.5 Restrictions on authorized farm corporations, authorized limited liability companies, authorized trusts, and limited partnerships — penalty.

1. An authorized farm corporation, authorized limited liability company, or authorized trust shall not, on or after July 1, 1987, and a limited partnership other than a family farm limited partnership shall not, on or after July 1, 1988, either directly or indirectly, acquire or otherwise obtain or lease agricultural land, if the total agricultural land either directly or indirectly owned or leased by the authorized farm corporation, authorized limited liability company, limited partnership, or authorized trust would then exceed one thousand five hundred acres.

a. However, the restrictions provided in this subsection do not apply to agricultural land that is leased by an authorized farm corporation, authorized trust, or limited partnership to the immediate prior owner of the land for the purpose of farming, as defined in section 9H.1. Upon cessation of the lease to the immediate prior owner, the authorized farm corporation, authorized trust, or limited partnership shall, within three years following the date of the cessation, sell or otherwise dispose of the agricultural land leased to the immediate prior owner.

b. This subsection also does not apply to land that is held or acquired and maintained by an authorized farm corporation, authorized trust, or limited partnership to protect significant elements of the state's natural open space heritage, including but not limited to significant river, lake, wetland, prairie, forest areas, other biologically significant areas, land containing significant archaeological, historical, or cultural value, or fish or wildlife habitats, as defined in rules adopted by the department of natural resources.

2. A person shall not, after July 1, 1988, become a stockholder of an authorized farm corporation, a beneficiary of an authorized trust, a member of an authorized limited liability company, or a limited partner in a limited partnership which owns or leases agricultural land if the person is also any of the following:

a. A stockholder of an authorized farm corporation.

b. A beneficiary of an authorized trust.

c. A limited partner in a limited partnership which owns or leases agricultural land.

d. A member of an authorized limited liability company.

However, this subsection shall not apply to limited partners in a family farm limited partnership.

3. *a.* An authorized farm corporation, authorized trust, authorized limited liability company, or limited partnership violating this section shall be assessed a civil penalty of not more than twenty-five thousand dollars and shall divest itself of any land held in violation of this section within one year after judgment. A civil penalty of not more than one thousand dollars may be imposed on a person who becomes a stockholder of an authorized farm corporation, beneficiary of an authorized trust, member of an authorized limited liability company, or limited partner in a limited partnership in violation of this section. The person shall divest the interest held by the person in the corporation, trust, limited liability company, or limited partnership to comply with this section. The court may determine the method of divesting an interest held by a person found to be in violation of this chapter. A financial gain realized by a person who disposes of an interest held in violation of this chapter shall be forfeited to the state's general fund. All court costs and fees shall be paid by the person holding the interest in violation of this chapter.

b. The courts of this state may prevent and restrain violations of this section through the issuance of an injunction. The attorney general or a county attorney shall institute suits on behalf of the state to prevent and restrain violations of this section.

4. As used in this section, *"authorized trust"* does not include a revocable trust.

87 Acts, ch 146, §1
CS87, §172C.5
88 Acts, ch 1191, §4; 91 Acts, ch 172, §5
C93, §9H.5
93 Acts, ch 39, §14 – 16; 94 Acts, ch 1153, §6

9H.5A Reports. Repealed by 2003 Acts, ch 115, § 17, 19.

9H.5B Reports by contract feeders. Transferred to § 202B.301; 2003 Acts, ch 115, § 16, 19.

9H.6 Lessees conducting research or experiments — reports. Transferred to § 10B.7; 2003 Acts, ch 115, § 16, 19.

9H.7 and 9H.8 Reserved.

9H.9 Reports by processors. Transferred to § 202B.302; 2003 Acts, ch 115, § 16, 19.

9H.10 Signing reports. Transferred to § 202B.303; 2003 Acts, ch 115, § 16, 19.

9H.11 Penalties — reports. Transferred to § 202B.402; 2003 Acts, ch 115, § 16, 19.

9H.12 and 9H.13 Reserved.

9H.14 Duties of secretary of state. Transferred to § 202B.304; 2003 Acts, ch 115, § 16, 19.

9H.15 Additional information. Transferred to § 202B.305; 2003 Acts, ch 115, § 16, 19.

CHAPTER 9I

NONRESIDENT ALIENS — LAND OWNERSHIP

Transferred from ch 567 in Code 2003 pursuant to Code editor directive; 2002 Acts, ch 1095, §10

9I.1 Definitions.

For the purpose of this chapter:

1. *"Agricultural land"* means land suitable for use in farming.

2. *"Farming"* means the cultivation of land for the production of agricultural crops, the raising of poultry, the production of eggs, the production of milk, the production of fruit or other horticultural crops, grazing or the production of livestock. Farming includes the production of timber, forest products, nursery products, or sod. Farming does not include a contract where a processor or distributor of farm products or supplies provides spraying, harvesting or other farm services.

3. *"Foreign business"* means a corporation incorporated under the laws of a foreign country, or a business entity whether or not incorporated, in which a majority interest is owned directly or indirectly by nonresident aliens. Legal entities, including but not limited to trusts, holding companies, multiple corporations and other business arrangements, do not affect the determination of ownership or control of a foreign business.

4. *"Foreign government"* means a government other than the government of the United States, its states, territories or possessions.

5. *"Nonresident alien"* means an individual who is not any of the following:

a. A citizen of the United States.

b. A person lawfully admitted into the United States for permanent residence by the United States immigration and naturalization service. An individual is lawfully admitted for permanent residence regardless of whether the individual's lawful permanent resident status is conditional.

[C79, §567.10; C81, §567.1]

2002 Acts, ch 1066, §1; 2002 Acts, ch 1095, §10

C2003, §9I.1

9I.2 Alien rights.

A nonresident alien, foreign business or foreign government may acquire, by grant, purchase, devise or descent, real property, except agricultural land or any interest in agricultural land in this state, and may own, hold, devise or alienate the real property, and shall incur the same duties and liabilities in relation thereto as a citizen and resident of the United States.

[C97, §1641; S13, §1641; C24, 27, 31, 35, 39, §**8403;** C46, 50, §491.67; C54, 58, 62, 66, 71, 73, 75, 77, 79, §491.67, 567.8; C81, §567.2]

2002 Acts, ch 1095, §10

C2003, §9I.2

9I.3 Restriction on agricultural land holdings.

1. A nonresident alien, foreign business or foreign government, or an agent, trustee or fiduciary thereof, shall not purchase or otherwise acquire agricultural land in this state. A nonresident alien, foreign business or foreign government, or an agent, trustee or fiduciary thereof, which owns or holds agricultural land in this state on January 1, 1980, may continue to own or hold the land, but shall not purchase or otherwise acquire additional agricultural land in this state.

2. A person who acquires agricultural land in violation of this chapter or who fails to convert the land to the purpose other than farming within five years, as provided for in this chapter, remains in violation of this chapter for as long as the person holds an interest in the land.

3. The restriction set forth in subsection 1 of this section does not apply to the following:

a. Agricultural land acquired by devise or descent.

b. A bona fide encumbrance on agricultural land taken for purposes of security.

c. Agricultural land acquired by a process of law in the collection of debts, by a deed in lieu of foreclosure, pursuant to a forfeiture of a contract for deed, or by any procedure for the enforcement of a lien or claim on the land, whether created by mortgage or otherwise. However, agricultural land so acquired shall be sold or otherwise disposed of within two years after title is transferred. Pending the sale or disposition, the land shall not be used for any purpose other than farming, and the land shall not be used for farming except under lease to an individual, trust, corporation, partnership or other business entity not subject to the restriction on the increase in agricultural land holdings imposed by section 9H.4. Agricultural land which has been acquired pursuant to this paragraph shall not be acquired or utilized by the nonresident alien, foreign business, or foreign government, or an agent, trustee, or fiduciary thereof, under either paragraph *"d"* or paragraph *"e"*.

d. Agricultural land acquired for research or experimental purposes. Agricultural land is used for research or experimental purposes if any of the following apply:

(1) Research and experimental activities are undertaken on the agricultural land and commercial sales of products produced from farming the agricultural land do not occur or are incidental to the research or experimental purposes of the corporation. Commercial sales are incidental to the research or experimental purposes of the corporation when such sales are less than twenty-five percent of the gross sales of the primary product of the research.

(2) The agricultural land is used for the primary purpose of testing, developing, or producing seeds or plants for sale or resale to farmers as seed stock. Grain which is not sold as seed stock is an incidental sale and must be less than twenty-five percent of the gross sales of the primary product of the research and experimental activities.

(3) Until July 1, 2001, the agricultural land is used for the primary purpose of testing, developing, or producing animals for sale or resale to

farmers as breeding stock. However, after July 1, 1989, to qualify under this paragraph, the following conditions must be satisfied:

(a) The nonresident alien, foreign business, or foreign government or an agent, trustee, or fiduciary of the alien, business, or government must not hold the agricultural land other than as a lessee. The term of the lease must be for not more than twelve years. A lessee shall not renew a lease entered into under this subparagraph (3). The lessee shall not enter into a lease under this paragraph, if another lease under this paragraph has been entered into by the lessee.

(b) A term or condition of sale, including resale, of seed stock or breeding stock must not relate to the direct or indirect control by the lessee of the breeding stock or breeding stock progeny subsequent to the sale.

(c) The number of acres of agricultural land held by the lessee must not exceed six hundred forty acres.

(d) The lessee must deliver a copy of the lease to the secretary of state. The secretary of state shall notify the lessee of receipt of the copy of the lease.

(4) Culls and test animals may be sold under subparagraph (3). For a three-year period beginning on the date that the lease takes effect, the gross sales for any year shall not be greater than five hundred thousand dollars. After the three-year period ends, the gross sales for any year shall not be greater than twenty-five percent of the gross sales for that year of the breeding stock, or five hundred thousand dollars, whichever is less. As used in subparagraph (3), *"lessee"* means a nonresident alien, foreign business, or foreign government, or an agent, trustee, or fiduciary acting on behalf of the nonresident alien, foreign business, or foreign government, or any other trade or business which is under the lessee's common control as provided in 26 U.S.C. § 414.

(5) Effective July 1, 2001, subparagraph (3) shall not be effective. However, a lessee may continue for the duration of the period of the lease to lease the agricultural land under subparagraph (3) if the lease was entered into prior to July 1, 2001.

(6) Effective July 1, 2001, a nonresident alien, foreign business, or foreign government or an agent, trustee, or fiduciary of the alien, business, or government shall not, except as provided in subparagraph (5), acquire or hold agricultural land used for the primary purpose of testing, developing, or producing animals.

e. An interest in agricultural land, not to exceed three hundred twenty acres, acquired for an immediate or pending use other than farming. However, a nonresident alien, foreign business or foreign government, or an agent, trustee or fiduciary thereof, who lawfully owns over three hundred twenty acres on January 1, 1980, may continue to own or hold the land, but shall not purchase or otherwise acquire additional agricultural land in this state except by devise or descent from a nonresident alien. Pending the development of the agricultural land for purpose other than farming, the land shall not be used for farming except under lease to an individual, trust, corporation, partnership or other business entity not subject to the restriction on the increase in agricultural land holdings imposed by section 9H.4.

4. A nonresident alien, foreign business or foreign government, or an agent, trustee or fiduciary thereof shall not transfer title to or interest in agricultural land to a nonresident alien, foreign business or foreign government, or an agent, trustee or fiduciary thereof except by devise or descent.

[C73, §1908; C97, §2889; C24, 27, 31, 35, 39, §**10214;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, §567.1; C81, §567.3]

86 Acts, ch 1214, §9; 89 Acts, ch 311, §31, 33; 2002 Acts, ch 1095, §10

C2003, §9I.3

Subsection 3, paragraph d, subparagraph (5), stricken effective July 1, 2013; 89 Acts, ch 311, §33

9I.4 Development of land acquired for nonfarming purposes.

Development of the agricultural land which is not subject to the restrictions of section 9I.3, subsections 1 and 2, because the land or interest in the land was acquired for an immediate or pending use other than farming, shall convert the land to the purpose other than farming, within five years after the acquisition of the agricultural land or the acquisition of the interest in the agricultural land.

[C81, §567.4]

2002 Acts, ch 1095, §10

C2003, §9I.4

9I.5 Land acquired by devise or descent.

A nonresident alien, foreign business or foreign government, or an agent, trustee or fiduciary thereof, which acquires agricultural land or an interest in agricultural land, by devise or descent after January 1, 1980, shall divest itself of all right, title and interest in the land within two years from the date of acquiring the land or interest. This section shall not require divestment of agricultural land or an interest in agricultural land, acquired by devise or descent from a nonresident alien, if such land or an interest in such land was acquired by any nonresident alien prior to July 1, 1979.

[C73, §1909; C97, §2889; C24, 27, 31, 35, 39, §**10214;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, §567.1; C81, §567.5]

2002 Acts, ch 1095, §10

C2003, §9I.5

9I.6 Change of status — divestment.

A person or business which purchases or other-

wise acquires agricultural land in this state except by devise or descent, after January 1, 1980, and whose status changes so that it becomes a foreign business or nonresident alien subject to this chapter, shall divest itself of all right, title and interest in the land within two years from the date that its status changed.

[C81, §567.6]
2002 Acts, ch 1095, §10
C2003, §9I.6

9I.7 Registration.

A nonresident alien, foreign business or foreign government, or an agent, trustee or fiduciary thereof, which owns an interest in agricultural land within this state on or after January 1, 1980, shall register the agricultural land with the secretary of state. The registration shall be made within sixty days after January 1, 1980, or within sixty days after acquiring the land or the interest in land, whichever time is the later. The registration shall be in the form and manner prescribed by the secretary and shall contain the name of the owner and the location and number of acres of the agricultural land by township and county. If the owner of the agricultural land or owner of the interest in agricultural land is an agent, trustee or fiduciary of a nonresident alien, foreign business or foreign government, the registration shall also include the name of any principal for whom that land, or interest in that land was purchased as agent.

[C81, §567.7]
2002 Acts, ch 1095, §10
C2003, §9I.7
Exception for persons required to file a report under chapter 10B, see §10B.4A

9I.8 Reports.

A nonresident alien, foreign business or foreign government, or an agent, trustee or fiduciary thereof, who acquires agricultural land not subject to the restrictions of section 9I.3 because the land was acquired for an immediate or pending use other than farming, shall file a report with the secretary of state before March 31 of each year. The report shall be in the form and manner prescribed by the secretary and shall contain the following:

1. The name of the owner of the agricultural land or owner of the interest in the agricultural land.
2. If the owner of the agricultural land or interest in agricultural land is an agent, trustee or fiduciary of a nonresident alien, foreign business or foreign government, the name of any principal for whom that land or interest in that land was acquired as agent.
3. The location and number of acres of the agricultural land by township and county.
4. The date the agricultural land or interest in agricultural land was acquired.
5. The immediate or pending use other than farming, for which the agricultural land or interest in agricultural land was acquired and the status of the land's development for the purpose other than farming.
6. The present use of the agricultural land.

[C77, 79, §567.9; C81, §567.8]
2002 Acts, ch 1095, §10
C2003, §9I.8
Suspension of filing requirement, §10B.4A

9I.9 Lessees conducting research or experiments.

Lessees of agricultural land under section 9I.3, subsection 3, paragraph *"d"*, subparagraph (3), for research or experimental purposes, shall file a report with the secretary of state on or before March 31 of each year on forms adopted pursuant to chapter 17A and supplied by the secretary of state. The report shall contain the following information for the last year:

1. The name and principal place of business of the lessee.
2. The location of the agricultural land used for research or experimental purposes.
3. The date that the lease became effective.
4. The name and address of each person purchasing breeding stock produced on the agricultural land.
5. The number or volume of breeding stock purchased by each person purchasing breeding stock produced on the agricultural land.

89 Acts, ch 311, §32
CS89, §567.8A
2002 Acts, ch 1095, §10
C2003, §9I.9

9I.10 Enforcement.

1. If the secretary of state finds that a nonresident alien, foreign business, foreign government, or an agent, trustee, or other fiduciary thereof, has acquired or holds title to or interest in agricultural land in this state in violation of this chapter or has failed to timely register as required under section 9I.7 or has failed to timely report as required under section 9I.8, the secretary shall report the violation to the attorney general.
2. Upon receipt of the report from the secretary of state, the attorney general shall initiate an action in the district court of any county in which the land is located.
3. The attorney general shall file a notice of the pendency of the action with the recorder of deeds of each county in which any of the land is located. If the court finds that the land in question has been acquired or held in violation of this chapter or the required registration has not been timely filed, it shall enter an order so declaring and shall file a copy of the order with the recorder of deeds of each county in which any portion of the land is located.

[C97, §2891; C24, 27, 31, 35, 39, §**10218;** C46, 50,

54, 58, 62, 66, 71, 73, 75, 77, 79, §567.5; C81, §567.9]
2002 Acts, ch 1095, §10
C2003, §9I.10

9I.11 Escheat.

If the court finds that the land in question has been acquired in violation of this chapter or that the land has not been converted to the purpose other than farming within five years as provided for in this chapter, the court shall declare the land escheated to the state. When escheat is decreed by the court, the clerk of court shall notify the governor that the title to the real estate is vested in the state by decree of the court. Any real estate, the title to which is acquired by the state under this chapter, shall be sold in the manner provided by law for the foreclosure of a mortgage on real estate for default of payment, the proceeds of the sale shall be used to pay court costs, and the remaining funds, if any, shall be paid to the person divested of the property but only in an amount not exceeding the actual cost paid by the person for that property. Proceeds remaining after the payment of court costs and the payment to the person divested of the property shall become a part of the funds of the county or counties in which the land is located, in proportion to the part of the land in each county.

[C97, §2891; C24, 27, 31, 35, 39, §**10218;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, §567.5; C81, §567.10]
83 Acts, ch 123, §192, 209; 2002 Acts, ch 1095, §10
C2003, §9I.11

9I.12 Penalty — failure to timely file.

A nonresident alien, foreign business or foreign government, or an agent, trustee or other fiduciary thereof, who fails to timely file the registration as required by section 9I.7, or who fails to timely file a report required by section 9I.8 shall, for each offense, be punished by a fine of not more than two thousand dollars.

[C81, §567.11]
2002 Acts, ch 1095, §10
C2003, §9I.12

CHAPTER 10

AGRICULTURAL LANDHOLDING RESTRICTIONS

SUBCHAPTER I

GENERAL PROVISIONS

10.1 Definitions.

As used in this chapter and in chapter 10B, unless the context otherwise requires:

1. *"Actively engaged in farming"* means that a natural person, including a shareholder or an officer, director, or employee of a corporation, or a member or manager of a limited liability company,

does any of the following:

a. Inspects the production activities periodically and furnishes at least half of the value of the tools used for crop or livestock production and pays at least half the direct cost of crop or livestock production.

b. Regularly and frequently makes or takes an important part in making management decisions substantially contributing to or affecting the success of the farm operation.

c. Performs physical work which significantly contributes to crop or livestock production.

2. *"Agricultural land"* means the same as defined in section 9H.1.

3. *"Authorized entity"* means an authorized farm corporation; authorized limited liability company; limited partnership, other than a family farm limited partnership; or an authorized trust as defined in section 9H.1.

4. *"Commodity share landlord"* means a natural person or a general partnership as provided in chapter 486A in which all partners are natural persons, who owns at least one hundred fifty acres of agricultural land, if the owner receives rent on a commodity share basis, which may be either a share of the crops or livestock produced on the land.

5. *"Cooperative association"* means an entity which is structured and operated on a cooperative basis pursuant to 26 U.S.C. § 1381(a) and which meets the definitional requirements of an association as provided in 12 U.S.C. § 1141(j)(a) or 7 U.S.C. § 291.

6. *"Family farm entity"* means a family farm corporation, family farm limited liability company, family farm limited partnership, or family trust, as defined in section 9H.1.

7. *"Farm estate"* means the real and personal property of a decedent, a ward, or a trust as provided in chapter 633, if at least sixty percent of the gross receipts from the estate comes from farming.

8. *"Farmers cooperative association"* means a cooperative association organized under chapter 490 or 499, if all of the following conditions are satisfied:

a. All of the following apply:

(1) Qualified farmers must hold at least a fifty-one percent equity interest in the cooperative association, including fifty-one percent of each class of members' equity.

(2) The following persons must hold at least a seventy percent equity interest in the cooperative association, including seventy percent of each class of members' equity:

(a) A qualified farmer.

(b) A family farm entity.

(c) A commodity share landlord.

b. As used in this subsection, *"members' equity"* includes but is not limited to issued shares, including common stock or preferred stock, regardless of a right to receive dividends or earning distributions. However, *"members' equity"* does not include nonvoting common stock or nonvoting membership interests. A security such as a warrant or option that may be converted to voting stock shall be considered as issued shares.

c. For purposes of this subsection, a person who was a qualified person within the last ten years shall be treated as a qualified person.

9. *"Farmers cooperative limited liability company"* means a limited liability company organized under chapter 490A, if cooperative associations hold one hundred percent of all membership interests in the limited liability company. Farmers cooperative associations must hold at least seventy percent of all membership interests in the limited liability company. If more than one type of membership interest is established, including any series as provided in section 490A.305 or any class or group as provided in section 490A.307, farmers cooperative associations must hold at least seventy percent of all membership interests of that type.

10. *"Farmers entity"* means a networking farmers entity, farmers cooperative limited liability company, or farmers cooperative association.

11. *"Farming"* means the same as defined in section 9H.1.

12. *"Grain"* means the same as defined in section 203.1.

13. *"Intra-company loan agreement"* means an agreement involving a loan, if the parties to the agreement are members of the same farmers cooperative limited liability company, and according to the terms of the loan a member which is a regional cooperative association directly or indirectly loans money to a member which is a farmers cooperative association, on condition that the money, including any interest, must be repaid by the member which is a farmers cooperative association to the regional cooperative association or another person. A loan agreement does not include an operating loan agreement, in which all of the following apply:

a. The money is required to be repaid within ninety days from the date that the farmers cooperative association receives the money, and the money is actually repaid by that date.

b. The money is used to pay for reasonable and ordinary expenses of the farmers cooperative association in conducting its affairs.

14. *"Livestock"* means an animal belonging to the bovine, caprine, equine, ovine, or porcine species, ostriches, rheas, emus, farm deer as defined in section 170.1, or poultry.

15. *"Networking farmers corporation"* means a corporation, other than a family farm corporation as defined in section 9H.1, organized under chapter 490 if all of the following conditions are satisfied:

a. All of the following apply:

(1) Qualified farmers must hold at least fifty-one percent of all issued shares of the corporation. If more than one class of shares is authorized, qualified farmers must hold at least fifty-one per-

cent of all issued shares in each class.

(2) Qualified persons must hold at least seventy percent of all issued shares of the corporation. If more than one class of shares is authorized, qualified persons must hold at least seventy percent of all issued shares in each class.

b. As used in paragraph *"a"*, *"issued shares"* includes but is not limited to common stock or preferred stock, or each class of common stock or preferred stock, regardless of voting rights or a right to receive dividends or earning distributions. A security such as a warrant or option that may be converted to stock shall be considered as issued shares.

16. *"Networking farmers entity"* means a networking farmers corporation or networking farmers limited liability company.

17. *"Networking farmers limited liability company"* means a limited liability company, other than a family farm limited liability company as defined in section 9H.1, organized under chapter 490A if all of the following conditions are satisfied:

a. Qualified farmers must hold at least fifty-one percent of all membership interests in the limited liability company. If more than one type of membership interest is established, including any series as provided in section 490A.305 or any class or group as provided in section 490A.307, qualified farmers must hold at least fifty-one percent of all membership interests of that type.

b. Qualified persons must hold at least seventy percent of all membership interests in the limited liability company. If more than one type of membership interest is established, including any series as provided in section 490A.305 or any class or group as provided in section 490A.307, qualified persons must hold at least seventy percent of all membership interests of that type.

18. *"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.

19. *"Qualified farmer"* means any of the following:

a. A natural person actively engaged in farming.

b. A general partnership as provided in chapter 486A in which all partners are natural persons actively engaged in farming.

c. A farm estate.

20. *"Qualified commodity share landlord"* means a commodity share landlord, if the owner of the agricultural land was actively engaged in farming the land or a family member of the owner is or was actively engaged in farming the land, if the family member is related to the owner as a spouse, parent, grandparent, lineal ascendant of a grandparent or spouse, or other lineal descendant of a grandparent or spouse.

21. *"Qualified person"* means a person who is any of the following:

a. A qualified farmer.

b. A family farm entity.

c. A qualified commodity share landlord.

22. *"Regional cooperative association"* means a cooperative association other than a farmers cooperative association.

98 Acts, ch 1110, §101, 301; 2002 Acts, ch 1119, §114, 115; 2003 Acts, ch 149, §1, 23

10.2 Interests described.

As used in this chapter, the following apply:

1. A person holds an interest in agricultural land if the person either directly or indirectly owns or leases the agricultural land in this state.

2. A person holds an interest in a farmers entity if the person holds an interest as any of the following:

a. A shareholder of a networking farmers corporation.

b. A member of a networking farmers limited liability company.

c. A member of a farmers cooperative association.

d. A member of a farmers cooperative limited liability company.

98 Acts, ch 1110, §102, 301

SUBCHAPTER II

RESTRICTIONS

PART 1

NETWORKING FARMERS CORPORATIONS

10.3 Landholdings restricted.

1. Notwithstanding section 9H.4, a networking farmers corporation may hold agricultural land in this state if it meets all of the following conditions:

a. The networking farmers corporation does not hold an interest in agricultural land of more than six hundred forty acres.

b. At least seventy-five percent of the networking farmers corporation's gross receipts are from the sale of livestock or livestock products.

2. *a.* An interest in agricultural land held by a networking farmers corporation shall be attributable as an interest in agricultural land held by a shareholder having an interest in the networking farmers corporation. The shareholder shall be deemed to hold an interest in agricultural land held by the networking farmers corporation in proportion to the interest that the shareholder holds in the networking farmers corporation.

b. Except to the extent provided in this paragraph, a shareholder holding agricultural land by attribution shall be subject to landholding restrictions imposed pursuant to the Code, including sec-

tions 9H.4, 9H.5, 9I.3, and 501.103. However, notwithstanding section 9H.4, a cooperative association may hold an interest in any number of farmers entities, if the total number of acres held by the farmers entities and attributable to the cooperative association is six hundred forty acres or less.

c. The shareholder's proportionate interest shall be calculated by multiplying the number of acres of agricultural land held by the networking farmers corporation by the percentage interest in the networking farmers corporation held by the shareholder.

3. In the event of a transfer of an interest in the networking farmers corporation by operation of law, the corporation may disregard the transfer for purposes of determining compliance with subsection 1 for a period of two years after the transfer.

98 Acts, ch 1110, §103, 301

10.4 Multiple interests restricted.

1. A person who holds an interest in a networking farmers corporation holding an interest in agricultural land pursuant to section 10.3 shall not hold an interest in another farmers entity if any of the following applies:

a. The person holds a twenty-five percent or greater interest in a networking farmers corporation having six or fewer stockholders.

b. The person holds a fifteen percent or greater interest in a networking farmers corporation having seven or more stockholders.

2. A person who holds a majority interest in an authorized entity shall not hold a majority interest in a networking farmers corporation.

3. A qualified commodity share landlord who owns an interest in a networking farmers corporation holding agricultural land under section 10.3 must rent an additional one hundred fifty acres of agricultural land on a commodity share basis for each farmers entity holding agricultural land under this chapter in which the commodity share landlord acquires an interest.

98 Acts, ch 1110, §104, 301

PART 2

NETWORKING FARMERS LIMITED LIABILITY COMPANIES

10.5 Landholdings restricted.

1. Notwithstanding section 9H.4, a networking farmers limited liability company may hold agricultural land in this state if it meets all of the following conditions:

a. The networking farmers limited liability company does not hold an interest in agricultural land of more than six hundred forty acres.

b. At least seventy-five percent of the networking farmers limited liability company's gross receipts from farming are from the sale of livestock or livestock products.

2. *a.* An interest in agricultural land held by a networking farmers limited liability company shall be attributable as an interest in agricultural land held by a member having an interest in the networking farmers limited liability company. The member shall be deemed to hold an interest in agricultural land held by the networking farmers limited liability company in proportion to the interest that the member holds in the networking farmers limited liability company.

b. Except to the extent provided in this paragraph, a member holding agricultural land by attribution shall be subject to landholding restrictions imposed pursuant to the Code, including sections 9H.4, 9H.5, 9I.3, and 501.103. However, notwithstanding section 9H.4, a cooperative association may hold an interest in any number of farmers entities, if the total number of acres held by the farmers entities and attributable to the cooperative association is six hundred forty acres or less.

c. The member's proportionate interest shall be calculated by multiplying the number of acres of agricultural land held by the networking farmers limited liability company by the percentage interest in the networking farmers limited liability company held by the member.

3. In the event of a transfer of an interest in the networking farmers limited liability company by operation of law, the networking farmers limited liability company may disregard the transfer for purposes of determining compliance with subsection 1 for a period of two years after the transfer.

98 Acts, ch 1110, §105, 301

10.6 Multiple interests restricted.

1. A person who holds an interest in a networking farmers limited liability company holding an interest in agricultural land pursuant to section 10.5 shall not hold an interest in another farmers entity, if any of the following applies:

a. The person holds a twenty-five percent or greater interest in a networking farmers limited liability company having six or fewer members.

b. The person holds a fifteen percent or greater interest in a networking farmers limited liability company having seven or more members.

2. A person who holds a majority interest in an authorized entity shall not hold a majority interest in a networking farmers limited liability company.

3. A qualified commodity share landlord who owns an interest in a networking farmers limited liability company holding agricultural land under section 10.5 must rent an additional one hundred fifty acres of agricultural land on a commodity share basis for each farmers entity holding agricultural land under this chapter in which the commodity share landlord acquires an interest.

98 Acts, ch 1110, §106, 301

PART 3

FARMERS COOPERATIVE ASSOCIATIONS

10.7 Landholdings restricted.

1. Notwithstanding section 9H.4, a farmers cooperative association may hold agricultural land in this state if it meets all of the following conditions:

a. The farmers cooperative association does not hold an interest in agricultural land of more than six hundred forty acres.

b. The farmers cooperative association does not produce, including by planting or harvesting, forage or grain on agricultural land in which the farmers cooperative association holds an interest. However, the farmers cooperative association may enter into an agreement under a lease or production contract with a person to produce the forage or grain, if the farmers cooperative association does not receive forage or grain in payment under the agreement. The lease or contract may specify the type of forage or grain that must be produced and provide that the farmers cooperative association has a right to purchase the forage or grain on the same terms and conditions as the highest bona fide offer received by the person for the forage or grain, within a period agreed to by the parties to the lease or production contract.

2. *a.* Except as provided in this section, an interest in agricultural land held by a farmers cooperative association shall be attributable as an interest in agricultural land held by a member having an interest in the farmers cooperative association. The member shall be deemed to hold an interest in agricultural land held by the farmers cooperative association in proportion to the interest that the member holds in the farmers cooperative association.

b. Except to the extent provided in this paragraph, a member holding agricultural land by attribution shall be subject to landholding restrictions imposed pursuant to the Code, including sections 9H.4, 9H.5, 9I.3, and 501.103. However, notwithstanding section 9H.4, all of the following shall apply:

(1) A cooperative association may hold an interest in any number of farmers entities, if the total number of acres held by the farmers entities and attributable to the cooperative association is six hundred forty acres or less.

(2) An interest in agricultural land held by a farmers cooperative association shall not be attributable to a member who is an entity organized under state law, if the entity holds a five percent or less interest in the farmers cooperative association.

c. The member's proportionate interest shall be calculated by multiplying the number of acres of agricultural land held by the farmers cooperative association by the percentage interest in the farmers cooperative association held by the member.

3. In the event of a transfer of an interest in a farmers cooperative association by operation of law, the association may disregard the transfer for purposes of determining compliance with subsection 1 for a period of two years after the transfer.

98 Acts, ch 1110, §107, 301

10.8 Multiple interests restricted.

1. A person who holds an interest in a farmers cooperative association holding an interest in agricultural land pursuant to section 10.7 shall not hold an interest in another farmers entity if any of the following applies:

a. The person holds a twenty-five percent or greater interest in a farmers cooperative association having six or fewer members.

b. The person holds a fifteen percent or greater interest in a farmers cooperative association having seven or more members.

2. A person who holds a majority interest in an authorized entity shall not hold a majority interest in a farmers cooperative association.

98 Acts, ch 1110, §108, 301

10.9 Procedure for acquisition — reverse referendum — dissent.

A farmers cooperative association shall not acquire an interest in agricultural land or in a farmers entity, unless all of the following apply:

1. The board of directors of the farmers cooperative association adopts a resolution authorizing the acquisition. Except as provided in this section, the resolution shall become effective thirty-one days from the date that the resolution was adopted. The farmers cooperative association is not required to comply with the procedures of this section for as long as the resolution remains in effect. The resolution shall contain all of the following:

a. A declaration stating that the farmers cooperative association reserves the right to acquire agricultural land or an interest in a farmers entity under this chapter.

b. A description of a planned acquisition, if any, including the location of agricultural land planned to be acquired, the identity of any farmers entity in which the farmers cooperative association plans to acquire an interest, and the nature of any farming operation which is planned to occur on land acquired by the farmers cooperative association or conducted by the farmers entity.

c. The date that the resolution was adopted and the date that it will take effect.

2. Within five days following the date that the resolution authorizing the farmers cooperative association to acquire an interest in agricultural land or acquire an interest in a farmers entity is adopted, the farmers cooperative association must provide notice of the resolution as provided in this section. The notice shall be in the following form:

NOTICE
MEMBERS OF THE (INSERT NAME OF THE FARMERS COOPERATIVE ASSOCIATION)
THE (INSERT NAME OF THE FARMERS COOPERATIVE ASSOCIATION) IS PLANNING ON ACQUIRING AN INTEREST IN AGRICULTURAL LAND WHICH MAY BE USED FOR FARMING OR ACQUIRING AN INTEREST IN A BUSINESS THAT OWNS AGRICULTURAL LAND THAT MAY BE USED FOR FARMING. UNDER IOWA CODE CHAPTER 10, THE (INSERT NAME OF THE FARMERS COOPERATIVE ASSOCIATION) IS A FARMERS COOPERATIVE ASSOCIATION. WITHIN A LIMITED TIME PERIOD: (1) VOTING MEMBERS MAY PETITION A FARMERS COOPERATIVE ASSOCIATION TO REQUIRE A MEMBERSHIP VOTE TO APPROVE THE ACQUISITION; AND (2) ALL HOLDERS OF MEMBERS' EQUITY MAY DEMAND PAYMENT OF THE FAIR VALUE OF THEIR INTERESTS.

a. The notice must be published in a newspaper having a general circulation in the county where the farmers cooperative association is located as provided in section 618.3. The notice shall be printed as provided in section 618.17.

b. The notice shall be delivered to all holders of members' equity in the farmers cooperative association, including members and shareholders, by mailing the notice to the holder's last known address as shown on the books of the farmers cooperative association. The notice shall be accompanied by a copy of the resolution adopted by the board pursuant to this section, and a copy of this section.

3. Within thirty days following the date that the resolution authorizing the farmers cooperative association to acquire an interest in agricultural land or acquire an interest in a farmers entity is adopted, at least twenty percent of the voting members of the farmers cooperative association may file a petition with the board of directors demanding a referendum under this subsection.

a. If a valid petition is filed, the board of directors shall call a special referendum of voting members at a regular or special meeting, as provided in section 499.27. The filing of the petition suspends the effectiveness of the resolution until a referendum is conducted as provided in this subsection.

b. The resolution shall not become effective as otherwise provided in this section, until the resolution is approved by a majority vote of the voting members of the farmers cooperative association casting ballots at the meeting to conduct the referendum.

4. *a.* Within thirty days following the date that the resolution authorizing the farmers cooperative association to acquire an interest in agricultural land or acquire an interest in a farmers entity is adopted, a holder of members' equity, including a member or shareholder, may dissent to an acquisition as expressed in the resolution adopted by the board of directors under this section.

b. The holder of members' equity shall dissent by filing a demand with the board of directors. The farmers cooperative association shall pay the holder the fair value of that holder's interest as if the holder were a member dissenting to a merger or consolidation, as provided in section 499.66, upon surrender of the holder's evidence of equity in the farmers cooperative association, including a certificate of membership or shares.

c. The farmers cooperative association is not required to pay the holder of members' equity the fair value of that holder's interest as provided in this subsection, if the resolution provided for in this section does not become effective.

98 Acts, ch 1110, §109, 301

PART 4

FARMERS COOPERATIVE LIMITED LIABILITY COMPANIES

10.10 Landholdings restricted.

1. Notwithstanding section 9H.4, a farmers cooperative limited liability company may hold agricultural land in this state if it meets all of the following conditions:

a. The farmers cooperative limited liability company does not hold an interest in agricultural land of more than six hundred forty acres.

b. The farmers cooperative limited liability company does not produce, including by planting or harvesting, forage or grain on agricultural land in which the farmers cooperative limited liability company holds an interest. However, the farmers cooperative limited liability company may enter into an agreement under a lease or production contract with a person to produce the forage or grain, if the farmers limited liability company does not receive forage or grain in payment under the agreement. The lease or contract may specify the type of forage or grain that must be produced and provide that the farmers cooperative limited liability company has a right to purchase the forage or grain on the same terms and conditions as the highest bona fide offer received by the person for the forage or grain, within a period agreed to by the parties to the lease or production contract.

c. Less than fifty percent of the interest in the farmers cooperative limited liability company is held by members which are parties to intra-company loan agreements. If more than one type of membership interest is established, including any series as provided in section 490A.305 or any class or group as provided in section 490A.307, less than fifty percent of the interest in each type of membership shall be held by members which are parties to intra-company loan agreements.

d. The farmers cooperative limited liability company does not own swine or contract for the

care and feeding of swine, if a member of the farmers cooperative limited liability company is a regional cooperative association.

2. *a.* An interest in agricultural land held by a farmers cooperative limited liability company shall be attributable as an interest in agricultural land held by a member cooperative association of the farmers cooperative limited liability company. The member cooperative association shall be deemed to hold an interest in agricultural land held by the farmers cooperative limited liability company in proportion to the interest that the member cooperative association holds in the limited liability company.

b. Except to the extent provided in this paragraph, a member holding agricultural land by attribution shall be subject to landholding restrictions imposed pursuant to the Code, including sections 9H.4, 9H.5, 9I.3, and 501.103. However, notwithstanding section 9H.4, a cooperative association may hold an interest in any number of farmers entities, if the total number of acres held by the farmers entities and attributable to the cooperative association is six hundred forty acres or less.

c. The member cooperative association's proportionate interest shall be calculated by multiplying the number of acres of agricultural land held by the farmers cooperative limited liability company by the percentage interest in the limited liability company held by the cooperative association as a member.

3. In the event of a transfer of an interest in the farmers cooperative limited liability company by operation of law, the farmers cooperative limited liability company may disregard the transfer for purposes of determining compliance with subsection 1 for a period of two years after the transfer.

98 Acts, ch 1110, §110, 301

SUBCHAPTER III

PENALTIES

10.11 Landholding restrictions — penalties.

A person violating the landholding restrictions in section 10.3, 10.5, 10.7, or 10.10 shall be assessed a civil penalty of not more than ten thousand dollars and shall divest itself of any land held in violation of the section within one year after judgment is entered ordering the farmers entity to comply with that section, as provided in section 10.13.

98 Acts, ch 1110, §111, 301

10.12 Multiple interests restricted — penalties.

1. A civil penalty of not more than one thousand dollars may be imposed on a person who becomes one of the following:

a. A stockholder of a networking farmers corporation as prohibited in section 10.4.

b. A member of a networking farmers limited liability company as prohibited in section 10.6.

c. A member of a farmers cooperative association as prohibited in section 10.8.

2. The person violating the section shall divest the interest held by the person in a farmers entity or authorized entity as is necessary to comply with this chapter, as provided in section 10.13.

98 Acts, ch 1110, §112, 301

10.13 Divestiture proceedings.

The court may determine the method of divesting an interest held by a person found to be in violation of this chapter. A financial gain realized by a person who disposes of an interest held in violation of this chapter shall be forfeited to the state's general fund. All court costs and fees shall be paid by the person holding the interest in violation of the section.

98 Acts, ch 1110, §113, 301

10.14 Injunctive relief.

The courts of this state may prevent and restrain violations of this chapter through the issuance of an injunction. The attorney general or a county attorney shall institute suits on behalf of the state to prevent and restrain violations of this chapter.

98 Acts, ch 1110, §114, 301

CHAPTER 10A

DEPARTMENT OF INSPECTIONS AND APPEALS

ARTICLE I

ORGANIZATION

ARTICLE I

ORGANIZATION

10A.101 Definitions.

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

1. *"Administrator"* means a person coordinating the administration of a division of the department.

2. *"Department"* means the department of inspections and appeals.

3. *"Director"* means the director of inspections and appeals.

86 Acts, ch 1245, §501; 88 Acts, ch 1109, §1; 89 Acts, ch 231, §1; 2000 Acts, ch 1148, §1; 2002 Acts, ch 1119, §200, 201; 2002 Acts, ch 1162, §1; 2003 Acts, ch 44, §4

10A.102 Department established.

The department of inspections and appeals is established. The director of the department shall be appointed by the governor to serve at the pleasure of the governor subject to confirmation by the senate no less frequently than every four years, whether or not there has been a new director appointed during that time. If the office becomes vacant, the vacancy shall be filled in the same manner as provided for the original appointment.

86 Acts, ch 1245, §502
Confirmation, see §2.32

10A.103 Purpose of the department.

The department is created for the purpose of coordinating and conducting various audits, appeals, hearings, inspections, and investigations related to the operations of the executive branch of state government.

86 Acts, ch 1245, §503

10A.104 Powers and duties of the director.

The director or designees of the director shall:

1. Coordinate the internal operations of the department and develop and implement policies and procedures designed to ensure the efficient administration of the department.

2. Appoint the administrators of the divisions within the department and all other personnel deemed necessary for the administration of this chapter, except the state public defender, assistant state public defenders, administrator of the racing and gaming commission, members of the employment appeal board, and administrator of the child advocacy board created in section 237.16. All persons appointed and employed in the department are covered by the provisions of chapter 8A, subchapter IV, but persons not appointed by the director are exempt from the merit system provisions of chapter 8A, subchapter IV.

3. Prepare an annual budget for the department.

4. Develop and recommend legislative proposals deemed necessary for the continued efficiency

of department functions, and review legislative proposals generated outside of the department which are related to matters within the department's purview.

5. Adopt rules deemed necessary for the implementation and administration of this chapter in accordance with chapter 17A.

6. Issue subpoenas and distress warrants, administer oaths, and take depositions in connection with audits, appeals, investigations, inspections, and hearings conducted by the department. If a person refuses to obey a subpoena or distress warrant issued by the department or otherwise fails to cooperate in proceedings of the department, the director may enlist the assistance of a court of competent jurisdiction in requiring the person's compliance. Failure to obey orders of the court renders the person in contempt of the court and subject to penalties provided for that offense.

7. Enter into contracts for the receipt and provision of services as deemed necessary. The director and the governor may obtain and accept federal grants and receipts to or for the state to be used for the administration of this chapter.

8. Establish by rule standards and procedures for certifying that targeted small businesses are eligible to participate in the procurement program established in sections 73.15 through 73.21. The procedure for determination of eligibility shall not include self-certification by a business. The director shall maintain a current directory of targeted small businesses that have been certified pursuant to this subsection.

9. Administer and enforce this chapter, and chapters 99B, 135B, 135C, 135H, 135J, 137C, 137D, and 137F.

10. Enter into and implement agreements or compacts between the state of Iowa and Indian tribes located in the state which are entered into under the authority of the Indian Gaming Regulatory Act (25 U.S.C. § 2701 et seq.). The agreements or compacts shall contain provisions intended to implement the policies and objectives of the Indian Gaming Regulatory Act.

11. Administer inspection and licensing of social and charitable gambling pursuant to chapter 99B.

12. Administer inspections and licensing of hotels, home food establishments, and egg handlers.

13. Administer inspections and licensing of food establishments, including but not limited to restaurants, vending machines, food processing plants, grocery stores, convenience stores, temporary food establishments, and mobile food units.

14. Administer inspections for sanitation in any locality of the state upon the written petition of five or more residents of the locality.

15. Administer inspections of cosmetology salons under section 157.7 and barbershops under section 158.6.

86 Acts, ch 1245, §504; 88 Acts, ch 1273, §3; 89 Acts, ch 231, §2 – 4; 92 Acts, ch 1141, §1; 93 Acts, ch 53, §1; 94 Acts, ch 1076, §1; 95 Acts, ch 67, §2; 96 Acts, ch 1052, §1; 96 Acts, ch 1079, §1; 98 Acts, ch 1162, §1, 30; 98 Acts, ch 1202, §1, 46; 2000 Acts, ch 1155, §1; 2002 Acts, ch 1162, §2, 3, 15, 75; 2003 Acts, ch 145, §128; 2004 Acts, ch 1026, §1

NEW subsections 12 – 15

10A.105 Confidentiality.

1. For the purposes of this section, *"governmental entity"* includes an administrative division within the department.

2. The confidentiality of all information in the department produced or collected during or as a result of a hearing, appeal, investigation, inspection, audit, or other function performed by the department on behalf of another governmental entity is governed by the law applicable to the records of that governmental entity. The department may provide information to a governmental entity for which it is conducting a hearing, appeal, inspection, audit, investigation, or other function.

3. The state shall maintain records and materials related to an agreement or compact entered into pursuant to the Indian Gaming Regulatory Act (25 U.S.C. § 2701 et seq.), as confidential records if confidentiality is required by the terms of the agreement or compact.

4. The lawful custodian of all records produced or collected during or as a result of any function performed by the department on behalf of another governmental entity is that governmental entity for the purpose of examination and copying pursuant to chapter 22.

5. If information in the possession of the department indicates that a criminal offense may have been committed, the information may be reported to the appropriate criminal justice or regulatory agency.

6. However, this section does not prohibit the department from releasing the minimal amount of information necessary in its judgment to conduct audits, inspections, investigations, appeals, and hearings, and does not prohibit the introduction of the information as evidence at any hearing conducted by the department.

7. The director, administrators, and their designees shall have access to all records deemed by the department to be pertinent to a hearing, appeal, audit, investigation, inspection, or other related function assigned under this chapter.

86 Acts, ch 1245, §505; 89 Acts, ch 231, §5

10A.106 Divisions of the department.

The department is comprised of the following divisions:

1. Administrative hearings division.
2. Investigations division.

3. Health facilities division.

The allocation of departmental duties to the divisions of the department in sections 10A.402, 10A.702, and 10A.801 does not prohibit the director from reallocating departmental duties within the department.

86 Acts, ch 1245, §506; 87 Acts, ch 234, §420; 88 Acts, ch 1134, §9; 89 Acts, ch 231, §6, 7; 98 Acts, ch 1202, §2, 46; 2000 Acts, ch 1155, §2; 2002 Acts, ch 1162, §4, 5; 2004 Acts, ch 1026, §2
Section amended

10A.107 Repayment receipts.

The department may charge state departments, agencies, and commissions for services rendered and the payment received shall be considered repayment receipts as defined in section 8.2.

90 Acts, ch 1247, §2

10A.108 Lien for entitlement benefits or provider payments inappropriately obtained from the department of human services — debt established — collection — action authorized.

1. If a person refuses or neglects to repay benefits or provider payments inappropriately obtained from the department of human services, the amount inappropriately obtained, including any interest, penalty, or costs attached to the amount, constitutes a debt and is a lien in favor of the state upon all property and any rights or title to or interest in property, whether real or personal, belonging to the person for the period established in subsection 2, with the exception of property which is exempt from execution pursuant to chapter 627.

A lien under this section shall not attach to any amount of inappropriately obtained benefits or provider payments, or portions of the benefits or provider payments, attributable to errors by the department of human services. Liens shall only attach to the amounts of inappropriately obtained benefits or provider payments or portions of the benefits or provider payments which were obtained due to false, misleading, incomplete, or inaccurate information submitted by a person in connection with the application for or receipt of benefits or provider payments.

2. *a.* The lien attaches at the time the notice of the lien is filed under subsection 3, and continues for ten years from that date, unless released or otherwise discharged at an earlier time.

b. The lien may be extended, within ten years from the date of attachment, if a person files a notice with the county recorder or other appropriate county official of the county in which the property is located at the time of filing the extension. From the time of the filing of the notice, the lien period shall be extended for ten years to apply to the property in the county in which the notice is filed, unless released or otherwise discharged at an earlier time. The number of extensions is not limited.

c. The director shall discharge any lien which 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. To preserve the lien against subsequent mortgagees, purchasers, or judgment creditors, for value and without notice of the lien, on any property located in a county, the director shall file a notice of the lien with the recorder of the county in which the property is located at the time of filing of the notice.

4. The county recorder of each county shall prepare and maintain in the recorder's office an index of liens of debts established based upon benefits or provider payments inappropriately obtained from and owed the department of human services, which provides appropriate columns for all of the following data, under the names of debtors, arranged alphabetically:

a. The name of the debtor.

b. "State of Iowa, Department of Human Services" as claimant.

c. The time that the notice of the lien was received.

d. The date of notice.

e. The amount of the lien currently due.

f. The date of the assessment.

g. The date of satisfaction of the debt.

h. Any extension of the time period for application of the lien and the date that the notice for extension was filed.

5. The recorder shall endorse on each notice of lien the day and time received and shall preserve the notice. The recorder shall index the notice and shall record the lien in the manner provided for recording real estate mortgages. The lien shall be effective from the time of the indexing.

6. The department shall pay, from moneys appropriated to the department for this purpose, a recording fee as provided in section 331.604, for the recording of the lien, or for satisfaction of the lien.

7. Upon payment of a debt for which the director has filed notice with a county recorder, the director shall file a satisfaction of the debt with the recorder and the recorder shall enter the satisfaction on the notice on file in the recorder's office.

8. The department of inspections and appeals, as provided in this chapter and chapter 626, shall proceed to collect all debts owed the department of human services as soon as practicable after the debt becomes delinquent. 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 investigators of the department of inspections and appeals 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 procedures shall be in compliance with chapter 626.

9. The distress warrant shall be in a form as prescribed by the director, shall be directed to the sheriff of the appropriate county, and shall identify the debtor, the type of debt, and the delinquent amount. The distress warrant 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 debtor to satisfy the amount of the delinquency plus costs. The distress warrant shall also direct the sheriff to make due and prompt return to the department or to the district court under chapter 626 of all amounts collected.

10. The attorney general, upon the request of the director of inspections and appeals, shall bring an action, as the facts may justify, without bond, to enforce payment of any debts under this section, and in the action the attorney general shall have the assistance of the county attorney of the county in which the action is pending.

11. The remedies of the state shall be cumulative and no action taken by the director of inspections and appeals 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 to the exclusion of any other remedy provided by law.

94 Acts, ch 1112, §1; 96 Acts, ch 1052, §2; 97 Acts, ch 23, §2, 3; 2002 Acts, ch 1113, §1

ARTICLE II

APPEALS AND FAIR HEARINGS DIVISION

See §10A.801

10A.201 Definitions. Repealed by 98 Acts, ch 1202, § 45, 46.

10A.202 Responsibilities. Repealed by 98 Acts, ch 1202, § 45, 46.

ARTICLE III

AUDITS DIVISION

10A.301 and 10A.302 Repealed by 2002 Acts, ch 1162, § 14.

ARTICLE IV

INVESTIGATIONS DIVISION

10A.401 Definitions.

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

1. *"Administrator"* means the person coordinating the administration of this division.

2. *"Division"* means the investigations division of the department of inspections and appeals.

86 Acts, ch 1245, §511; 2002 Acts, ch 1162, §6

10A.402 Responsibilities.

The administrator shall coordinate the division's conduct of various audits and investigations as provided by law including but not limited to the following:

1. Investigations relative to the practice of regulated professions and occupations, except those within the jurisdiction of the board of medical examiners, the board of pharmacy examiners, the board of dental examiners, and the board of nursing.

2. Audits relative to the administration of hospitals and health care facilities.

3. Audits relative to administration and disbursement of funding under the state supplementary assistance program and the medical assistance program.

4. Investigations and collections relative to the liquidation of overpayment debts owed to the department of human services. Collection methods include but are not limited to small claims filings, debt setoff, distress warrants, and repayment agreements, and are subject to approval by the department of human services.

5. Investigations relative to the operations of the department of elder affairs.

6. Investigations relative to the administration of the state supplementary assistance program, the state medical assistance program, the food stamp program, the family investment program, and any other state or federal benefit assistance program.

7. Investigations relative to the internal affairs and operations of agencies and departments within the executive branch of state government, except for institutions governed by the state board of regents.

86 Acts, ch 1245, §512; 90 Acts, ch 1204, §1; 91 Acts, ch 107, §1; 93 Acts, ch 53, §2; 93 Acts, ch 97, §23; 2000 Acts, ch 1155, §3; 2002 Acts, ch 1162, §7

10A.403 Investigators — peace officer status.

Investigators of the division shall have the powers and authority of peace officers when acting within the scope of their responsibilities to conduct investigations as specified in section 10A.402, subsection 6. An investigator shall not carry a weapon to perform responsibilities as described in this section.

99 Acts, ch 80, §1

ARTICLE V

INSPECTIONS DIVISION

10A.501 Definitions. Repealed by 2004 Acts, ch 1026, § 4.

10A.502 Responsibilities. Repealed by 2004 Acts, ch 1026, § 4. See § 10A.104.

ARTICLE VI

EMPLOYMENT APPEAL BOARD

10A.601 Employment appeal board — created — duties.

1. A full-time employment appeal board is created within the department of inspections and appeals to hear and decide contested cases under chapter 8A, subchapter IV, and chapters 80, 88, 91C, 96, and 97B.

2. The employment appeal board is composed of three members appointed by the governor, subject to confirmation by the senate, to six-year staggered terms beginning and ending as provided in section 69.19. One member shall be qualified by experience and affiliation to represent employers, one member shall be qualified by experience and affiliation to represent employees, and one member shall represent the general public. No more than two members shall be members of the same political party. A vacancy in membership shall be filled in the same manner as the original appointment. A member of the appeal board may be removed by the governor for inefficiency, neglect of duty, or malfeasance in office. The members of the employment appeal board shall receive an annual salary as set by the governor.

3. The members of the appeal board shall select a chairperson and vice chairperson from their membership. The appeal board shall meet at least once per month but may meet as often as necessary. Meetings shall be set by a majority of the appeal board or upon the call of the chairperson, or in the chairperson's absence, upon the call of the vice chairperson. The employment appeal board, subject to the approval of the director, may appoint personnel necessary for carrying out its functions and duties.

4. The appeal board may on its own motion affirm, modify, or set aside a decision of an administrative law judge on the basis of the evidence previously submitted in the contested case, or direct the taking of additional evidence, or may permit any of the parties to the decision to initiate further appeals before the appeal board. The appeal board shall permit further appeal by any of the parties interested in a decision of an administrative law judge and by the representative whose decision has been overruled or modified by the administrative law judge. The appeal board shall review the case pursuant to rules adopted by the appeal board. The appeal board shall promptly notify the interested parties of its findings and decision.

5. The appeal board may order testimony to be taken by deposition, and may compel persons to appear and testify and to produce books, papers, and documents in the same manner as witnesses may be deposed and compelled to appear and testify and produce documentary evidence before the district court. In the discharge of the duties imposed by this chapter, the chairperson of the appeal board and any duly authorized representative designated by the appeal board, may administer oaths and affirmations, take depositions, certify official acts, and issue subpoenas. Persons deposed or compelled to testify or produce documentary evidence shall be allowed the same fees and traveling expenses as allowed witnesses in the district court.

6. The appeal board shall adopt rules pursuant to chapter 17A to establish the manner in which contested cases are to be presented, reports are to be required from the parties, and hearings and appeals are to be conducted. The appeal board shall keep a full and complete record of all proceedings in connection with a contested case. All testimony at a hearing shall be recorded, but need not be transcribed unless the contested case is further appealed. The appeal board shall retain the record for at least sixty days following the final date for appeal of a contested case. A decision of the appeal board is final agency action and an appeal of the decision shall be made directly to the district court. Any party to a contested case may appeal the decision to the district court.

7. An application for rehearing before the appeal board shall be filed pursuant to section 17A.16, unless otherwise provided in chapter 8A, subchapter IV, or chapter 80, 88, 91C, 96, or 97B. A petition for judicial review of a decision of the appeal board shall be filed pursuant to section 17A.19. The appeal board may be represented in any such judicial review by an attorney who is a regular salaried employee of the appeal board or who has been designated by the appeal board for that purpose, or at the appeal board's request, by the attorney general. Notwithstanding the petitioner's residency requirement in section 17A.19, subsection 2, a petition for judicial review may be filed in the district court of the county in which the petitioner was last employed or resides, provided that if the petitioner does not reside in this state, the action shall be brought in the district court of Polk county, Iowa, and any other party to the proceeding before the appeal board shall be named in the petition. Notwithstanding the thirty-day requirement in section 17A.19, subsection 6, the appeal board shall, within sixty days after filing of the petition for judicial review or within a longer period of time allowed by the court, transmit to the reviewing court the original or a certified copy of the entire records of a contested case. The appeal board may also certify to the court, questions of law involved in any decision by the appeal board. Petitions for judicial review and the questions so certified shall be given precedence over all other civil cases except cases arising under the workers' compensation law of this state. No bond shall be

required for entering an appeal from any final order, judgment, or decree of the district court to the supreme court.

86 Acts, ch 1245, §515; 88 Acts, ch 1025, §1; 88 Acts, ch 1162, §10; 88 Acts, ch 1109, §3; 2003 Acts, ch 145, §129; 2004 Acts, ch 1107, §1, 30

Confirmation, see §2.32
Subsections 1 and 7 amended

ARTICLE VII

HEALTH FACILITIES DIVISION

10A.701 Definitions.

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

1. *"Administrator"* means the person coordinating the administration of this division.

2. *"Division"* means the health facilities division of the department of inspections and appeals.

2000 Acts, ch 1155, §5; 2002 Acts, ch 1162, §10

10A.702 Responsibilities.

The administrator shall coordinate the division's conduct of various inspections and investigations as otherwise provided by law including, but not limited to, all of the following:

1. Investigations relative to the standards and practices of hospitals, hospices, and health care facilities.

2. Inspections and other licensing procedures relative to the hospice program, hospitals, and health care facilities. The division is designated as the sole licensing authority for these programs and facilities.

3. Inspections relative to hospital and health care facility construction projects.

4. Inspections of child foster care facilities and private institutions for the care of dependent, neglected, and delinquent children.

2000 Acts, ch 1155, §6; 2002 Acts, ch 1162, §76

Employees of the department of elder affairs performing functions related to certification and monitoring of or complaint investigations related to assisted living programs as of June 30, 2003, shall become employees of the department of inspections and appeals without loss of classification, pay, or benefits, effective July 1, 2003; 2003 Acts, ch 166, §29

ARTICLE VIII

ADMINISTRATIVE HEARINGS DIVISION

10A.801 Division of administrative hearings — creation, powers, duties.

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

a. "Administrator" means the person coordinating the administration of the division.

b. "Division" means the administrative hearings division of the department of inspections and appeals.

2. The administrator shall coordinate the division's conduct of appeals and administrative hearings as provided by law.

3. *a.* The department shall employ a sufficient number of administrative law judges to conduct proceedings for which agencies are required, by section 17A.11 or any other provision of law, to use an administrative law judge employed by the division. An administrative law judge employed by the division shall not perform duties inconsistent with the judge's duties and responsibilities as an administrative law judge and shall be located in an office that is separated from the offices of the agencies for which that person acts as a presiding officer. Administrative law judges shall be covered by the merit system provisions of chapter 8A, subchapter IV.

b. The division shall facilitate, insofar as practicable, specialization by its administrative law judges so that particular judges may become expert in presiding over cases in particular agencies. An agency may, by rule, identify particular classes of its contested cases for which the administrative law judge who acts as presiding officer shall have specified technical expertness. After the adoption of such a rule, the division may assign administrative law judges to preside over those identified particular classes of contested cases only if the administrative law judge possesses the technical expertness specified by agency rule. The division may charge the applicable agency for the costs of any training required by the division's administrative law judges to acquire or maintain the technical expertise specified by agency rule.

4. If the division cannot furnish one of its administrative law judges in response to an agency request, the administrator shall designate in writing a full-time employee of an agency other than the requesting agency to serve as administrative law judge for the proceeding, but only with the consent of the employing agency. The designee must possess the same qualifications required of administrative law judges employed by the division.

5. The division may furnish administrative law judges on a contract basis to any governmental entity to conduct any proceeding.

6. After July 1, 1999, a person shall not be newly employed by the division as an administrative law judge to preside over contested case proceedings unless that person has a license to practice law in this state.

7. The division shall adopt rules pursuant to this chapter and chapter 17A to do all of the following:

a. To establish procedures for agencies to request and for the administrator to assign administrative law judges employed by the division.

b. To establish procedures and adopt forms, consistent with chapter 17A and other provisions of law, to govern administrative law judges employed by the division, but any rules adopted under this paragraph shall be applicable to a particu-

lar contested case proceeding only to the extent that they are not inconsistent with the rules of the agency under whose authority that proceeding is conducted. Nothing in this paragraph precludes an agency from establishing procedural requirements otherwise within its authority to govern its contested case proceedings, including requirements with respect to the timeliness of decisions rendered for it by administrative law judges.

c. To establish standards and procedures for the evaluation, training, promotion, and discipline for the administrative law judges employed by the division. The procedures shall include provisions for each agency for whom a particular administrative law judge presides to submit to the division on a periodic basis the agency's views with respect to the performance of that administrative law judge or the need for specified additional training for that administrative law judge. However, the evaluation, training, promotion, and discipline of all administrative law judges employed by the division shall remain solely within the authority of the department.

d. To establish, consistent with the provisions of this section and chapter 17A, a code of administrative judicial conduct that is similar in function and substantially equivalent to the Iowa code of judicial conduct, to govern the conduct, in relation to their quasi-judicial functions in contested cases, of all persons who act as presiding officers under the authority of section 17A.11, subsection 1. The code of administrative judicial conduct shall separately specify which provisions are applicable to agency heads or members of multimembered agency heads when they act as presiding officers, taking into account the objectives of the code and the fact that agency heads, unlike administrative law judges, have other duties imposed upon them by law. The code of administrative judicial conduct may also contain separate provisions, that are appropriate and consistent with the objectives of such a code, to govern the conduct of agency heads or the members of multimember agency heads when they act as presiding officers. However, a provision of the code of administrative judicial conduct shall not be made applicable to agency heads or members of multimember agency heads unless the application of that provision to agency heads and members of multimember agency heads has previously been approved by the administrative rules coordinator.

e. To facilitate the performance of the responsibilities conferred upon the division by this section, chapter 17A, and any other provision of law.

8. The division may do all of the following:

a. Provide administrative law judges, upon request, to any agency that is required to or wishes to utilize the services of an administrative law judge employed by the division.

b. Maintain a staff of reporters and other personnel.

c. Administer the provisions of this section and rules adopted under its authority.

9. The division may charge agencies for services rendered and the payment received shall be considered repayment receipts as defined in section 8.2.

10. Except to the extent specified otherwise by statute, decisions of administrative law judges employed by the division are subject to review by the agencies for which they act as presiding officers as provided by section 17A.15 or any other provision of law.

98 Acts, ch 1202, §3, 46; 2002 Acts, ch 1162, §11 – 13; 2003 Acts, ch 145, §130

CHAPTER 10B

AGRICULTURAL LANDHOLDING REPORTING

10B.1 Definitions.

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

1. *"Agricultural land"* means the same as defined in section 9H.1.

2. *"Cooperative association"* means any entity organized on a cooperative basis, including an association of persons organized under chapter 497, 498, or 499; an entity composed of entities organized under those chapters; or a cooperative organized under chapter 501.

3. *"Corporation"* means a domestic or foreign corporation, including an entity organized pursuant to chapter 490, or a nonprofit corporation.

4. *"Farming"* means the same as defined in section 9H.1.

5. *"Foreign business"* means the same as defined in section 9I.1.

6. *"Foreign government"* means the same as defined in section 9I.1.

7. *"Limited liability company"* means a foreign or domestic limited liability company, including a limited liability company as defined in section 490A.102.

8. *"Limited partnership"* means a foreign or domestic limited partnership, including a limited partnership as defined in section 487.101 or 488.102, and a domestic or foreign limited liability limited partnership under section 487.1301 or 487.1303, or chapter 488.

9. *"Nonprofit corporation"* means any of the following:

a. A corporation organized under the provisions of chapter 504, Code 1989, or current chapter 504 or 504A.

b. A corporation which qualifies under Title 26, section 501, of the United States Code.

10. *"Nonresident alien"* means the same as defined in section 9I.1.

11. *"Reporting entity"* means any of the following:

a. A corporation, other than a family farm corporation as defined in section 9H.1, including an authorized farm corporation as defined in section 9H.1 or networking farmers corporation as defined in section 10.1, holding an interest in agricultural land in this state.

b. A cooperative association holding an interest in agricultural land in this state.

c. A limited partnership, other than a family farm limited partnership as defined in section 9H.1, holding an interest in agricultural land in this state.

d. A person acting in a fiduciary capacity or as a trustee on behalf of a person, including a corporation, cooperative association, limited liability company, or limited partnership, which holds in a trust, other than through a family trust as defined in section 9H.1, including through an authorized trust, an interest in agricultural land in this state.

e. A limited liability company, other than a family farm limited liability company as defined in section 9H.1, including an authorized limited liability company as defined in section 9H.1, or a networking farmers limited liability company or farmers cooperative limited liability company as defined in section 10.1, holding an interest in agricultural land in this state.

f. A foreign business holding an interest in agricultural land in this state as provided in chapter 9I.

g. A foreign government holding an interest in agricultural land in this state as provided in chapter 9I.

h. A nonresident alien holding an interest in agricultural land in this state as provided in chapter 9I.

98 Acts, ch 1110, §201, 301; 2000 Acts, ch 1024, §2; 2002 Acts, ch 1050, §2; 2003 Acts, ch 108, §6; 2004 Acts, ch 1175, §352, 394, 400

2004 amendments to subsection 8 and subsection 9, paragraph a, take effect January 1, 2005; 2004 Acts, ch 1175, §352, 394, 400

Reference to chapter 504A in subsection 9, paragraph a, to be deleted editorially upon repeal of that chapter; 2004 Acts, ch 1049, §191

For future amendment to this section effective January 1, 2006, see 2004 Acts, ch 1175, §353, 400

Subsection 8 amended

Subsection 9, paragraph a amended

10B.2 Interests described.

A reporting entity holds an interest in agricultural land if the reporting entity directly or indirectly owns or leases agricultural land in this state.

98 Acts, ch 1110, §202, 301

10B.3 Persons required to file reports.

The reports required under section 10B.4 shall be signed and filed by the following individuals required to submit reports pursuant to that section for their respective reporting entities:

1. A person serving as the president or other officer or authorized representative of a corporation.

2. A person serving as the president or other officer or authorized representative of a cooperative association.

3. A person acting as the general partner of a limited partnership.

4. A person acting in a fiduciary capacity or as a trustee on behalf of a person.

5. A person who is a member, manager, or authorized representative of a limited liability company.

6. A person serving as the president or other officer or authorized representative of a foreign business.

7. A person authorized to make the report by a foreign government.

8. A nonresident alien or an agent, trustee, or fiduciary of the nonresident alien.

98 Acts, ch 1110, §203, 301

10B.4 Reporting requirements.

1. A biennial report shall be filed by a reporting entity with the secretary of state on or before March 31 of each odd-numbered year as required by rules adopted by the secretary of state pursuant to chapter 17A. However, a reporting entity required to file a biennial report pursuant to chapter 490, 496C, 497, 498, 499, 501, or 504A* shall file the report required by this section in the same year as required by that chapter. The reporting entity may file the report required by this section together with the biennial report required to be filed by one of the other chapters referred to in this subsection. The reports shall be filed on forms prepared and supplied by the secretary of state. The

secretary of state may provide for combining its reporting forms with other biennial reporting forms required to be used by the reporting entities.

2. A report required pursuant to this section shall contain information for the reporting period regarding the reporting entity as required by the secretary of state which shall at least include all of the following:

a. The name and address of the reporting entity.

b. The name and address of the person supervising the daily operations on the agricultural land in which the reporting entity holds an interest.

c. The following information regarding each person who holds an interest in the reporting entity:

(1) The name and address of the person.

(2) The person's citizenship, if other than the United States.

(3) The percentage interest held by the person in the reporting entity, unless the person is a natural person who holds less than a ten percent interest in a reporting entity.

d. The percentage interest that a reporting entity holds in another reporting entity, and the number of acres of agricultural land that is attributable to the reporting entity which holds an interest in another reporting entity as provided in chapter 10.

e. A certification that the reporting entity meets all of the requirements to lawfully hold agricultural land in this state.

f. The number of acres of agricultural land held by the reporting entity, including the following:

(1) The total number of acres in the state.

(2) The number of acres in each county identified by county name.

(3) The number of acres owned.

(4) The number of acres leased.

(5) The number of acres held other than by ownership or lease.

(6) The number of acres used for the production of row crops.

g. If the reporting entity is a life science enterprise, as provided in chapter 10C, as that chapter exists on or before June 30, 2004, the total amount of commercial sale of life science products and products other than life science products which are produced from the agricultural land held by the life science enterprise.

3. A reporting entity other than a foreign business, foreign government, or nonresident alien shall be excused from filing a report with the secretary of state during any reporting period in which the reporting entity holds an interest in less than twenty acres of agricultural land in this state and the gross revenue produced from all farming on the land equals less than ten thousand dollars.

98 Acts, ch 1110, §204, 301; 2000 Acts, ch 1197, §1, 10; 2004 Acts, ch 1147, §1 – 3

*See also chapter 504; reference to chapter 504A to be deleted editorially upon repeal of that chapter; 2004 Acts, ch 1049, §191

Subsection 1 amended

Subsection 2, unnumbered paragraph 1 amended

Subsection 3 amended

10B.4A Suspension of other filing requirements.

The secretary of state shall not prepare or distribute forms for reports or file reports otherwise required pursuant to section 9I.8 or 501.103. A person required to file a report pursuant to this chapter is not required to file a report under those sections. A person required to file a report pursuant to this chapter is not required to register with the secretary of state as otherwise required in section 9I.7.

2000 Acts, ch 1022, §2; 2002 Acts, ch 1028, §2, 6; 2003 Acts, ch 44, §5; 2003 Acts, ch 115, §14, 19

10B.5 Use of reports.

1. The secretary of state shall notify the attorney general when the secretary of state has reason to believe a violation of this chapter has occurred.

2. Information provided in reports required in this chapter is a confidential record as provided in section 22.7. The attorney general may have access to the reports, and may use information in the reports in any action to enforce state law, including but not limited to chapters 9H, 9I, and 10C. The reports shall be made available to members of the general assembly and appropriate committees of the general assembly in order to determine the extent that agricultural land is held in this state by corporations and other business and foreign entities and the effect of such land ownership upon the economy of this state. The secretary of state shall assist any committee of the general assembly studying these issues.

98 Acts, ch 1110, §205, 301; 2004 Acts, ch 1147, §4

Subsection 2 amended

10B.6 Penalties.

1. The failure to timely file a report or the filing of false information in a report as provided in section 10B.4 is punishable by a civil penalty not to exceed one thousand dollars.

2. The secretary of state shall notify a reporting entity which the secretary of state has reason to believe is required to file a report and who has not filed a timely report, that the person may be in violation of section 10B.4. The secretary of state shall include in the notice a statement of the penalty which may be assessed if the required report is not filed within thirty days. The secretary of state shall refer to the attorney general any reporting entity which the secretary of state has reason to believe is required to report if, after thirty days from receipt of the notice, the reporting entity has not filed the required report. The attorney

general may, upon referral from the secretary of state, file an action in district court to seek the assessment of a civil penalty of one hundred dollars for each day the report is not filed.

98 Acts, ch 1110, §206, 301

10B.7 Lessees conducting research or experiments — reports.

Lessees of agricultural land under section 9H.4, subsection 2, paragraph *"c"*, for research or experimental purposes, shall file a biennial report with the secretary of state on or before March 31 of each odd-numbered year on forms adopted pursuant to chapter 17A and supplied by the secretary of state. However, a lessee required to file a biennial report pursuant to chapter 490, 496C, 497, 498, 499, 501, or 504A* shall file the report required by this section in the same year as required by that chapter. The lessee may file the report required by this section together with the biennial report required to be filed by one of the other chapters referred to in this paragraph. The report shall contain the following information for the reporting period:

1. The name and principal place of business of the lessee.
2. The location of the agricultural land used for research or experimental purposes.
3. The date that the lease became effective.
4. The name and address of each person purchasing breeding stock produced on the agricultural land.
5. The number or volume of breeding stock purchased by each person purchasing breeding stock produced on the agricultural land.

89 Acts, ch 311, §24
CS89, §172C.6
C93, §9H.6
2003 Acts, ch 115, §16, 19
CS2003, §10B.7
2004 Acts, ch 1147, §5
*See also chapter 504; reference to chapter 504A to be deleted editorially upon repeal of that chapter; 2004 Acts, ch 1049, §191
Unnumbered paragraph 1 amended

CHAPTER 10C

LIFE SCIENCE PRODUCTS

10C.1 Definitions.

1. *"Actively engaged in farming"* means the same as defined in section 10.1.
2. *"Agricultural commodity"* includes but is not limited to livestock, crops, fiber, or food, such as vegetables, nuts, seeds, honey, eggs, or milk existing in an unprocessed state, which is produced on a farm and marketed for human or livestock consumption.
3. *"Agricultural land"* means land suitable for use in farming as defined in section 9H.1.
4. *"Animal"* means a creature belonging to the bovine, caprine, equine, ovine, or porcine species.
5. *"Corporation"* means a domestic or foreign corporation subject to chapter 490, a nonprofit corporation, or a cooperative.
6. *"Economic development board"* or *"board"* means the economic development board created pursuant to section 15.103.
7. *"Family farm entity"* means the same as defined in section 10.1.
8. *"Life science by-product"* means an agricultural commodity, other than a life science product, if the agricultural commodity derives from the production of a life science product and the agricultural commodity is not intended or used for human consumption.
9. *"Life science enterprise"* or *"enterprise"* means a corporation or limited liability company organized for the purpose of using biotechnological systems or techniques for the production of life science products.
10. *"Life science product"* or *"product"* means a product derived from an animal by using biotechnological systems or techniques and which includes only the following:

a. Embryos or oocytes for use in animal implantation.

b. Blood, milk, or urine for use in the manufacture of pharmaceuticals or nutriceuticals.

c. Cells, tissue, or organs for use in animal or human transplantation.

11. *"Limited liability company"* means a limited liability company as defined in section 490A.102.

2000 Acts, ch 1197, §2, 10; 2004 Acts, ch 1101, §10
Subsections 2 and 8 amended

10C.2 Purpose.

The purpose of this chapter is to promote economic growth in this state during this period of revolutionary technological advancement in animal and human health sciences, by providing for the development of industries unrelated to traditional farming, but devoted to the production of life science products derived from animals.

2000 Acts, ch 1197, §3, 10

10C.3 Life science enterprises — agricultural land interests.

Notwithstanding any other provision of law, a life science enterprise may acquire or hold an ownership or leasehold interest in agricultural land if the economic development board approves a life science enterprise plan as provided in section 15.104. A life science enterprise must acquire or hold the agricultural land pursuant to the plan which may be amended as provided by the board. However, the life science enterprise shall not hold a total of more than three hundred twenty acres of agricultural land. The life science enterprise shall hold the land only for purposes of producing life science products according to the life science enterprise plan. In addition, the life science enterprise shall not acquire or hold agricultural land if the life science enterprise receives any form of financing from an Iowa agricultural industry finance corporation as provided in chapter 15E. A life science enterprise that complies with this section may hold the interest in the agricultural land, as provided in the plan, for as long as commercial sales of products produced from the agricultural land are subject to the following:

1. The sale of life science products.

2. The sale of cull livestock kept on the agricultural land, surplus commodities produced as feed for livestock kept on the agricultural land, or life science by-products.

2000 Acts, ch 1197, §4, 10

10C.4 Enforcement — penalties.

1. The office of attorney general or a county attorney shall enforce the provisions of this chapter.

2. A life science enterprise violating this chapter shall be assessed a civil penalty of not more than twenty-five thousand dollars. Each day that a violation exists shall constitute a separate offense. In addition, the life science enterprise shall divest itself of any land held in violation of this chapter within one year after judgment. The court may determine the method of divesting an interest held by a life science enterprise found to be in violation of this chapter. A financial gain realized by the enterprise which disposes of an interest held in violation of this chapter shall be forfeited to the general fund of the state. All court costs and fees shall be paid by the enterprise holding the interest in violation of this chapter.

3. The courts of this state may prevent and restrain violations of this chapter through the issuance of an injunction. The attorney general or a county attorney shall institute suits on behalf of the state to prevent and restrain violations of this chapter.

2000 Acts, ch 1197, §5, 10

10C.5 Repeal.

Sections 10C.1 through 10C.4 and this section are repealed July 1, 2008.

2000 Acts, ch 1197, §6, 10; 2004 Acts, ch 1175, §218

Section amended

10C.6 Existing life science enterprises.

This section applies on and after July 1, 2004.

1. *a.* A life science enterprise may acquire or hold agricultural land, notwithstanding section 10C.5 as that section exists in the 2005 Code, if all of the following apply:

(1) The life science enterprise acquires the agricultural land on or before June 30, 2008.

(2) The enterprise acquires or holds the agricultural land pursuant to chapter 10C as that chapter exists in the 2005 Code.

(3) The economic development board has approved a life science enterprise plan filed on or before June 30, 2004, with the board. The enterprise must acquire or hold the agricultural land pursuant to the plan which may be amended at any time and approved by the board pursuant to section 15.104.

b. The life science enterprise must file a report with the secretary of state as provided in section 10B.4.

2. A person who is a successor in interest to a life science enterprise may acquire or hold agricultural land, notwithstanding section 10C.5 as that section exists in the 2003 Code or 2003 Code Supplement, if all of the following apply:

a. The person meets the qualifications of a life science enterprise and acquires or holds the agricultural land as provided in chapter 10C as that chapter exists in the 2003 Code or 2003 Code Supplement.

b. The person acquires or holds the agricultural land according to the life science enterprise plan filed by the person's predecessor in interest and approved by the economic development board. The plan may be amended at any time and approved by the board pursuant to section 15.104.

c. The person has filed a notice with the economic development board as required by the board. The notice shall state that the person is a successor in interest. The notice must be filed with the board within thirty days following the person's acquisition of the interest.

d. The person must file a report as a life science enterprise with the secretary of state as provided in section 10B.4.

2000 Acts, ch 1197, §7, 10; 2004 Acts, ch 1175, §219, 220

Subsection 1, paragraph a, unnumbered paragraph 1 amended
Subsection 1, paragraph a, subparagraphs (1) and (2) amended

CHAPTER 10D

AGRICULTURAL LAND INTERESTS OF QUALIFIED ENTERPRISES

Legislative purpose; 2002 Acts, ch 1028, §1

10D.1 Definitions.

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

1. *"Agricultural land"* means land suitable for use in farming as defined in section 9H.1.

2. *"Baby chicks"* means the same as defined in section 168.1.

3. *"Qualified enterprise"* or *"enterprise"* means a domestic or foreign corporation subject to chapter 490, a nonprofit corporation organized under chapter 504 or 504A, a limited liability company as defined in section 490A.102, a cooperative association as defined in section 10.1, or a foreign business as defined in section 9I.1.

2002 Acts, ch 1028, §3, 6; 2002 Acts, ch 1175, §74; 2004 Acts, ch 1175, §393

Reference to chapter 504A in subsection 3 to be deleted editorially upon repeal of that chapter; 2004 Acts, ch 1049, §191
Subsection 3 amended

10D.2 Qualified enterprises — agricultural land interests.

Notwithstanding any other provision of law, a qualified enterprise may acquire or hold an ownership or leasehold interest in agricultural land as long as the qualified enterprise complies with all of the following requirements:

1. The enterprise files a notice with the secretary of state not later than June 30, 2002. The notice shall be a simple statement providing the name of the enterprise and the address of the enterprise's registered office or registered agent. The notice shall indicate that the enterprise intends to acquire or hold an interest in agricultural land under this chapter. The secretary of state shall file the notice together with reports required for the enterprise as required in chapter 10B.

2. The enterprise holds a total of not more than one thousand two hundred eighty acres of agricultural land. The enterprise must hold not more than eight hundred acres of agricultural land in any one county.

3. The enterprise only holds the agricultural land for a designated or incidental use.

a. A designated use must relate to producing baby chicks or fertile chicken eggs for any of the following purposes:

(1) Sale or resale as breeding stock or breeding stock progeny.

(2) Research, testing, or experimentation related to the genetic characteristics of chickens.

(3) The production and sale of products using biotechnological systems or techniques for purposes of manufacturing animal vaccine, pharmaceutical, or nutriceutical products.

b. An incidental use must be for a purpose related to the sale of a surplus commodity or cull animal that is produced or kept on the agricultural land, or to the sale of any by-product that is produced as part of a designated use.

2002 Acts, ch 1028, §4, 6

10D.3 Enforcement — penalties.

1. The office of attorney general or a county attorney shall enforce the provisions of this chapter.

2. A person who violates a provision of this chapter shall be subject to all of the following:

a. The person shall be assessed a civil penalty of not more than twenty-five thousand dollars. Each day that a violation exists constitutes a separate offense.

b. The person shall be divested of any land held in violation of this chapter within one year after judgment. The court may determine the method of divesting an interest held by a person found to be in violation of this chapter. A financial gain realized by the person that disposes of an interest held in violation of this chapter shall be forfeited.

c. The person shall pay all court costs and fees associated with any enforcement action which shall be taxed as court costs.

3. If the attorney general is the prevailing party, the moneys required to be paid or forfeited

by a person who violates a provision of this chapter shall be deposited in the general fund of the state. If the county attorney is the prevailing party, the moneys shall be deposited in the general fund of the county.

4. The courts of this state may prevent and restrain violations of this chapter through the issuance of an injunction. The attorney general or a county attorney shall institute suits on behalf of the state to prevent and restrain violations of this chapter.

5. A person who is in violation of this chapter shall not be subject to an enforcement action other than as provided in this section.

2002 Acts, ch 1028, §5, 6

CHAPTER 11

AUDITOR OF STATE

Advisory role of auditor in managed competition process of department of administrative services; 2003 Acts, ch 145, §290

AUDIT OF STATE DEPARTMENTS

AUDIT OF COUNTIES, CITIES, AND SCHOOL DISTRICTS

REPORTS

SALARY

OUTSIDE ACCOUNTANTS

ACCOUNTING SYSTEMS OF PRIVATE AGENCIES

AUDIT OF STATE DEPARTMENTS

11.1 Definitions.

The term *"department"* shall be construed to mean any authority charged by law with official responsibility for the expenditure of public money of the state and any agency receiving money from the general revenues of the state.

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.

[C24, 27, 31, §339; C35, §101-a1; C39, §**101.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §11.1]

2000 Acts, ch 1148, §1

11.2 Annual settlements.

1. The auditor of state shall annually, and more often if deemed necessary, make a full settlement between the state and all state officers and departments and all persons receiving or expending state funds, and shall annually make a complete audit of the books and accounts of every department of the state.

Provided, that the accounts, records, and documents of the treasury department shall be audited daily.

Provided further, that a preliminary audit of the educational institutions and the state fair board shall be made periodically, at least quarterly, to check the monthly reports submitted to the director of the department of administrative services as required by section 8A.502, subsection 9, and that a final audit of such state agencies shall be made at the close of each fiscal year.

2. In conjunction with the audit of the state board of regents required under this section, the auditor of state, in accordance with generally accepted auditing standards, shall perform audit testing on the state board of regents' investments. The auditor shall report to the state board of regents concerning compliance with state law and state board of regents' investment policies. The state board of regents is responsible for remedying any reported noncompliance with its own policy or practices.

The state board of regents shall make available to the auditor of state and treasurer of state the most recent annual report of any investment entity or investment professional employed by an institution governed by the board.

All contracts or agreements with an investment entity or investment professional employed by an institution governed by the state board of regents shall require the investment entity or investment professional employed by an institution governed by the state board of regents to notify in writing the state board of regents within thirty days of receipt of all communication from an independent auditor or the auditor of state or any regulatory authority of the existence of a material weakness in internal control structure, or regulatory orders or sanctions against the investment entity or investment professional, with regard to the type of services being performed under the contracts or agreements. This provision shall not be limited or avoided by another contractual provision.

The audit under this section shall not be certified until the most recent annual reports of any investment entity or investment professional employed by an institution governed by the state board of regents are reviewed by the auditor of state.

The review of the most recent annual report to shareholders of an open-end management investment company or an unincorporated investment company or investment trust registered with the federal securities and exchange commission under the federal Investment Company Act of 1940, 15 U.S.C. § 80(a), pursuant to 17 C.F.R. § 270.30d-1 or the review, by the person performing the audit, of the most recent annual report to shareholders, call reports, or the findings pursuant to a regular examination under state or federal law, to the extent the findings are not confidential, of a bank, savings and loan association, or credit union shall satisfy the review requirements of this paragraph.

As used in this subsection, *"investment entity"* and *"investment professional"* exclude a bank, savings and loan association, or credit union when acting as an approved depository pursuant to chapter 12C.

[C97, §161; S13, §161-a; C24, 27, 31, §340; C35, §101-a2; C39, §**101.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §11.2]

92 Acts, ch 1156, §1; 2003 Acts, ch 145, §131

11.3 Repealed by 75 Acts, ch 70, § 1.

11.4 Report of audits.

The auditor of state shall make or cause to be made and filed and kept in the auditor's office written reports of all audits and examinations, which reports shall set out in detail the following:

1. The actual condition of such department found to exist on every examination.

2. Whether, in the auditor's opinion,

a. All funds have been expended for the purpose for which appropriated.

b. The department so audited and examined is efficiently conducted, and if the maximum results for the money expended are obtained.

c. The work of the departments so audited or examined needlessly conflicts with or duplicates the work done by any other department.

3. All illegal or unbusinesslike practices.

4. Any recommendations for greater simplicity, accuracy, efficiency, or economy in the operation of the business of the several departments and institutions.

5. Comparisons of prices paid and terms obtained by the various departments for goods and services of like character and reasons for differences therein, if any.

6. Any other information which, in the auditor's judgment, may be of value to the auditor.

All such reports shall be filed and kept in the auditor's office.

The state auditor is hereby authorized to obtain, maintain, and operate, under the auditor's exclusive control such machinery as may be necessary to print confidential reports and documents originating in the auditor's office.

[S13, §161-a; C24, 27, 31, §342; C35, §101-a4; C39, §**101.4;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §11.4]

92 Acts, ch 1242, §14

11.5 Method of keeping accounts.

Each department and institution of the state shall keep its records and accounts in such form and by such methods as to be able to exhibit in its reports the matters required by the auditor of state, unless otherwise specifically prescribed by law. Each department and institution of the state shall keep its records and accounts in a current condition. The failure of the head of any department of the state to comply with this provision shall be ground for the department head's suspension from office.

[S13, §161-a; C24, 27, 31, §343; C35, §101-a5; C39, §**101.5;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §11.5]

Suspension of state officers, chapter 67

11.5A Audit costs.

When requested by the auditor of state, the department of management shall transfer from any unappropriated funds in the state treasury an amount not exceeding the expenses and prorated salary costs already paid to perform examinations of state executive agencies and the offices of the judicial branch, and federal financial assistance, as defined in Pub. L. No. 98-502, received by all other departments for which payments by agencies have not been made. Upon payment by the departments, the auditor of state shall credit the payments to the state treasury.

87 Acts, ch 234, §422; 98 Acts, ch 1047, §9

11.5B Repayment of audit expenses by state departments and agencies.

The auditor of state shall be reimbursed by a department or agency for performing examinations of the following state departments or agencies, or funds received by a department or agency:

1. Department of commerce.
2. Department of human services.
3. State department of transportation.
4. Iowa department of public health.
5. State board of regents.
6. Department of agriculture and land stewardship.
7. Iowa veterans home.
8. Department of education.
9. Department of workforce development.
10. Department of natural resources.
11. Offices of the clerks of the district court of the judicial branch.
12. The Iowa public employees' retirement system.
13. Federal financial assistance, as defined in Pub. L. No. 98-502, received by all other departments.
14. Department of administrative services.

90 Acts, ch 1247, §3; 90 Acts, ch 1261, §24; 94 Acts, ch 1187, §16; 96 Acts, ch 1186, §23; 98 Acts, ch 1047, §10; 2000 Acts, ch 1141, §13, 19; 2003 Acts, ch 145, §286

AUDIT OF COUNTIES, CITIES, AND SCHOOL DISTRICTS

11.6 Examination of governmental subdivisions — consultative services — association of counties.

1. *a.* The financial condition and transactions of all cities and city offices, counties, county hospitals organized under chapters 347 and 347A, memorial hospitals organized under chapter 37, entities organized under chapter 28E having gross receipts in excess of one hundred thousand dollars in a fiscal year, merged areas, area education agencies, and all school offices in school districts, shall be examined at least once each year, except that cities having a population of seven hundred or more but less than two thousand shall be examined at least once every four years, and cities having a population of less than seven hundred may be examined as otherwise provided in this section. The examination shall cover the fiscal year next preceding the year in which the audit is conducted. The examination of school offices shall include an audit of all school funds, the certified annual financial report, and the certified enrollment as provided in section 257.6. Differences in certified enrollment shall be reported to the department of management. The examination of a city that owns or operates a municipal utility providing local exchange services pursuant to chapter 476 shall include an audit of the city's compliance with section 388.10. The examination of a city that owns or operates a municipal utility providing telecommunications services pursuant to section 388.10 shall include an audit of the city's compliance with section 388.10.

Subject to the exceptions and requirements of subsection 2 and subsection 4, paragraph *"c"*, examinations shall be made as determined by the governmental subdivision either by the auditor of state or by certified public accountants, certified in the state of Iowa, and they shall be paid from the proper public funds of the governmental subdivision.

b. (1) In conjunction with the audit of the governmental subdivision required under this section, the person performing the audit shall also perform tests for compliance with the investment policy of a reasonable number of investment transactions in relation to the total investments and quantity of transactions in the period audited. The results of the compliance testing shall be reported in accordance with generally accepted auditing standards. The person performing the audit may also make recommendations for changes to investment policy or practices. The governmental subdivision is responsible for the remedy of reported noncompliance with its policy or practices.

(2) As part of its audit, the governmental subdivision is responsible for obtaining and providing to the person performing the audit the audited fi-

nancial statements and related report on internal control structure of outside persons, performing any of the following during the period under audit for the governmental subdivision:

(a) Investing public funds.

(b) Advising on the investment of public funds.

(c) Directing the deposit or investment of public funds.

(d) Acting in a fiduciary capacity for the governmental subdivision.

The audit under this section shall not be certified until all material information required by this subparagraph is reviewed by the person performing the audit.

(3) The review by the person performing the audit of the most recent annual report to shareholders of an open-end management investment company or an unincorporated investment company or investment trust registered with the federal securities and exchange commission under the federal Investment Company Act of 1940, 15 U.S.C. § 80(a), pursuant to 17 C.F.R. § 270.30d-1 or the review, by the person performing the audit, of the most recent annual report to shareholders, call reports, or the findings pursuant to a regular examination under state or federal law, to the extent the findings are not confidential, of a bank, savings and loan association, or credit union shall satisfy the review requirements of this paragraph.

(4) All contracts or agreements with outside persons performing any of the functions listed in subparagraph (2) shall require the outside person to notify in writing the governmental subdivision within thirty days of receipt of all communication from the person performing the audit or any regulatory authority of the existence of a material weakness in internal control structure, or regulatory orders or sanctions against the outside person, with regard to the type of services being performed under the contracts or agreements. This provision shall not be limited or avoided by another contractual provision.

(5) As used in this subsection, *"outside person"* excludes a bank, savings and loan association, or credit union when acting as an approved depository pursuant to chapter 12C.

(6) A joint investment trust organized pursuant to chapter 28E shall file the audit reports required by this chapter with the administrator of the securities bureau of the insurance division of the department of commerce within ten days of receipt from the auditor. The auditor of a joint investment trust shall provide written notice to the administrator of the time of delivery of the reports to the joint investment trust.

(7) If during the course of an audit of a joint investment trust organized pursuant to chapter 28E, the auditor determines the existence of a material weakness in the internal control structure or a material violation of the internal control structure, the auditor shall report the determination to the joint investment trust which shall notify the administrator in writing within twenty-four hours, and provide a copy of the notification to the auditor. The auditor shall provide, within twenty-four hours of the receipt of the copy of the notice, written acknowledgment of the receipt to the administrator. If the joint investment trust does not make the notification within twenty-four hours, or the auditor does not receive a copy of the notification within twenty-four hours, the auditor shall immediately notify the administrator in writing of the material weakness in the internal control structure or the material violation of the internal control structure.

2. *a.* A city, community college, school district, area education agency, entity organized under chapter 28E, county, county hospital, or memorial hospital desiring to contract with or employ certified public accountants shall utilize procedures which include a request for proposals.

b. The governing body of a city, community college, school district, area education agency, entity organized under chapter 28E, county, county hospital, or memorial hospital utilizing the auditor of state instead of a certified public accountant to perform an audit shall notify the auditor of state by June 1 of the year to be audited. If the governing body fails to notify the auditor of state of the decision to use the auditor of state, the auditor of state may perform the audit required in subsection 1 only if provisions are not made by the governing body to contract for the audit.

3. A township or city for which examinations are not required under subsection 1 may contract with or employ the auditor of state or certified public accountants for an examination of its financial transactions and condition of its funds. A financial examination is mandatory on application by one hundred or more taxpayers, or if there are fewer than five hundred taxpayers in the township or city, then by fifteen percent of the taxpayers. Payment for the examination shall be made from the proper public funds of the township or city.

4. In addition to the powers and duties under other provisions of the Code, the auditor of state may at any time cause to be made a complete or partial reaudit of the financial condition and transactions of any city, county, county hospital, memorial hospital, entity organized under chapter 28E, merged area, area education agency, school corporation, township, or other governmental subdivision, or an office of any of these, if one of the following conditions exists:

a. The auditor of state has probable cause to believe such action is necessary in the public interest because of a material deficiency in an audit of the governmental subdivision filed with the auditor of state or because of a substantial failure of the audit to comply with the standards and procedures established and published by the auditor of state.

b. The auditor of state receives from an elected official or employee of the governmental subdivi-

sion a written request for a complete or partial reaudit of the governmental subdivision.

c. The auditor of state receives a petition signed by at least fifty eligible electors of the governmental subdivision requesting a complete or partial reaudit of the governmental subdivision. If the governmental subdivision has not contracted with or employed a certified public accountant to perform an audit of the fiscal year in which the petition is received by the auditor of state, the auditor of state may perform an audit required by subsection 1 or 3.

The state audit shall be paid from the proper public funds available in the office of the auditor of state. In the event the audited governmental subdivision recovers damages from a person performing a previous audit due to negligent performance of that audit or breach of the audit contract, the auditor of state shall be entitled to reimbursement on an equitable basis for funds expended from any recovery made by the governmental subdivision.

An examination under this subsection shall include a determination of whether investments by the governmental subdivision are authorized by state law.

5. The auditor of state may, within three years of filing, during normal business hours upon reasonable notice of at least twenty-four hours, review the audit work papers prepared in the performance of an audit or examination conducted pursuant to this section.

6. An audit required by this section shall be completed within nine months following the end of the fiscal year that is subject to the audit. At the request of the governmental subdivision, the auditor of state may extend the nine-month time limitation upon a finding that the extension is necessary and not contrary to the public interest and that the failure to meet the deadline was not intentional.

7. The auditor of state shall make guidelines available to the public setting forth accounting and auditing standards and procedures and audit and legal compliance programs to be applied in the examination of the governmental subdivisions of the state, which shall require a review of the internal control structure and specify testing of transactions for compliance. The guidelines shall include a requirement that the certified public accountant immediately notify the auditor of state regarding any suspected embezzlement or theft. The auditor shall also provide standard reporting formats for use in reporting the results of an examination of a governmental subdivision.

8. The auditor of state shall provide advice and counsel to public entities and certified public accountants concerning audit and examination matters. The auditor of state shall adopt rules in accordance with chapter 17A to establish a fee schedule based upon the prevailing rate for the service rendered. The auditor of state shall obtain payment from a public entity or certified public accountant for advisory and consultation services rendered pursuant to this subsection. The auditor of state may waive any charge provided in this subsection and may determine to provide certain services without cost.

9. The Iowa state association of counties shall keep accounts as required by the auditor of state. These accounts shall be audited annually by either the auditor of state or a certified public accountant certified in the state of Iowa. The audit shall state all moneys expended for expenses incurred by and salaries paid to legislative representatives and lobbyists of the association.

10. The auditor of state shall adopt rules in accordance with chapter 17A to establish and collect a filing fee for the filing of each report of examination conducted pursuant to subsections 1 through 3. The funds collected shall be maintained in a segregated account for use by the office of the auditor of state in performing audits conducted pursuant to subsection 4 and for work paper reviews conducted pursuant to subsection 5. Any funds collected by the auditor pursuant to subsection 4 shall be deposited in this account. Notwithstanding section 8.33, the funds in this account shall not revert at the end of any fiscal year.

[S13, §100-d, 1056-a11, -a13; C24, 27, 31, 35, 39, §**113;** C46, 50, 54, 58, 62, 66, 71, §11.6; C73, 75, 77, 79, 81, §11.6, 332.3(27); S81, §11.6; 81 Acts, ch 117, §1000]

84 Acts, ch 1123, §1; 84 Acts, ch 1128, §1; 89 Acts, ch 264, §1; 90 Acts, ch 1013, §1; 91 Acts, ch 267, §222; 92 Acts, ch 1156, §2 – 4; 92 Acts, ch 1187, §1; 92 Acts, ch 1232, §301; 92 Acts, ch 1242, §16, 17; 96 Acts, ch 1215, §20; 2004 Acts, ch 1022, §1; 2004 Acts, ch 1048, §1

See Code editor's note to §2A.8 at the end of Vol VI

Validity of actions taken by city or municipal utility to provide or finance the provision of cable, internet, or long distance service prior to July 1, 2004; 2004 Acts, ch 1048, §3

Subsection 1, paragraph a, unnumbered paragraph 1 amended

11.7 State auditors.

The auditor of state shall appoint such number of state auditors as may be necessary to make such examinations. Said auditors shall be of recognized skill and integrity, familiar with the system of accounting in county, school and municipal offices, and with the laws relating to the county, school and municipal affairs. Each auditor shall give bond in the sum of two thousand dollars, conditioned as bonds of county officers, which bonds shall be approved and filed as bonds of state officers. Such auditors shall be subject at all times to the direction of said auditor of state.

[S13, §100-a, 1056-a11; C24, 27, 31, 35, 39, §**114;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §11.7]

Conditions, approval, filing of bonds, § 64.2, 64.19, 64.23

11.8 Assistants.

The auditor of state shall appoint such additional assistants to the auditors as may be necessary, who shall be subject to discharge at any time by the auditor.

[S13, §100-a; C24, 27, 31, 35, 39, §**115;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §11.8]

11.9 County, municipal and school auditors' salaries and expenses.

Except as otherwise provided in section 11.6, subsection 4, for reaudits, county, municipal and school auditors and their assistants shall, in addition to salary, be reimbursed for their actual and necessary expenses. Salary payments shall include a prorated amount for vacation and sick leave. All payments shall be paid from funds in the state treasury upon certification of the auditor of state, and the general fund shall be reimbursed as provided in sections 11.20 and 11.21.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §11.9]

89 Acts, ch 264, §2

11.10 Examinations.

Said auditors shall have the right while making said examinations, to examine all papers, books, records, and documents of any of said officers and shall have the right, in the presence of the custodian or the custodian's deputy, to have access to the cash drawers and cash in the official custody of such officer, and a like right, during business hours, to examine the public accounts of the county, school or city in any depository which has public funds in its custody pursuant to the law.

[S13, §100-d, 1056-a11; C24, 27, 31, 35, 39, §**116;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §11.10]

11.11 Scope of examinations.

All examinations shall be made without notice to the office examined. On every examination inquiry shall be made as to the financial condition and resources of the county, school or city; whether the cost price for improvements and material in said county, school or city is in excess of the cost price for like things in other counties, schools or cities of the state; whether the county, school or city authorities are complying with the law; and whether the accounts and reports are being accurately kept.

[S13, §100-d, 1056-a11; C24, 27, 31, 35, 39, §**117;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §11.11]

11.12 Subpoenas.

The auditor of state and all auditors shall, in all matters pertaining to an authorized examination, have power to issue subpoenas of all kinds, administer oaths and examine witnesses, either orally or in writing, and the expense attending the same, including the expense of taking oral examinations in shorthand, shall be paid as other expenses of the auditor.

[S13, §100-d, 1056-a11; C24, 27, 31, 35, 39, §**118;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §11.12]

Expenses, §11.21

11.13 Refusal to testify.

In case any witness duly subpoenaed refuses to attend, or refuses to produce documents, books, and papers, or shall attend and refuse to make oath or affirmation, or, being sworn or affirmed, shall refuse to testify, the auditor of state or the auditor's designee may apply to the district court, or any judge of said district having jurisdiction thereof, for the enforcement of attendance and answers to questions as provided by law in the matter of taking depositions.

[S13, §100-d; C24, 27, 31, 35, 39, §**119;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §11.13]

Procedure for contempt, §622.76, 622.77, 622.84, 622.102; also chapter 665

11.14 Reports — public inspection.

A report of such examination shall be made in triplicate signed and verified by the officers making the examination; one copy to be filed with the auditor of state, one copy with the officer under investigation, and one copy to the county auditor who shall transmit same to the board of supervisors if a county office is under investigation, or with the president of the school board if a school is under investigation, or with the mayor and the council if a city office is under examination. All reports shall be open to public inspection, including copies on file in the office of the state auditor, and refusal on the part of any public official to permit such inspection when such reports have been filed with the state auditor shall constitute a simple misdemeanor.

In addition to the foregoing, notice that the report has been filed shall be forwarded immediately to each newspaper, radio station or television station located in the county, municipality or school district which is under investigation or audit; except that if there is no newspaper, radio station or television station located therein, such notice shall be sent to the official newspapers of the county.

[S13, §100-d, 1056-a11; C24, 27, 31, 35, 39, §**120;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §11.14]

11.15 Report filed with county attorney.

If said examination discloses any irregularity in the collection or disbursement of public funds or in the abatement of taxes a copy of said report shall be filed with the county attorney and it shall be the county attorney's duty to co-operate with the state auditor, and, in proper cases, with the attorney general, to secure the correction of the irregularity.

[S13, §100-d; C24, 27, 31, 35, 39, §**121;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §11.15]

11.16 Duty of attorney general.
In the event such examination discloses any grounds which would be ground for removal from office, a fourth copy of said report shall be provided and filed by the auditor of state in the office of the attorney general of the state, who shall thereupon take such action as, in the attorney general's judgment, the facts and circumstances warrant.
[S13, §100-d; C24, 27, 31, 35, 39, §**122;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §11.16]

11.17 Disclosures prohibited.
No such auditor shall make any disclosure of the result of any investigation, except as the auditor is required by law to report the same or to testify in court. Any violation of this provision shall be ground for removal.
[S13, §100-d; C24, 27, 31, 35, 39, §**123;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §11.17]

11.18 Examination of governmental subdivisions. Repealed by 89 Acts, ch 264, § 10. See § 11.6.

11.19 Auditor's powers and duties.
Where an examination is made under contract with, or employment of, certified or registered public accountants, the auditor shall, in all matters pertaining to an authorized examination, have all of the powers and be vested with all the authority of state auditors employed by the auditor of state, and the cost and expense of the examination shall be paid by the city, school district, or township procuring the examination. An itemized sworn statement of the per diem and expense of the auditor shall be filed with the clerk of the city, township, or school district, before payment thereof. Upon completion of such examination, a signed copy thereof shall be filed by the accountant employed with the auditor of state.
All reports shall be open to public inspection, including copies on file in the office of the state auditor, and refusal on the part of any public official to permit such inspection when such reports have been filed with the state auditor, shall constitute a simple misdemeanor.
In addition to the foregoing, notice that the report has been filed shall be forwarded immediately to each newspaper, radio station or television station located in the city, school district or township which is under investigation or audit; except that if there is no newspaper, radio station or television station located therein, the notice shall be sent to the official newspapers of the county.
Failure to file the report with the auditor of state within thirty days after receiving notification of not receiving the audit report shall bar the accountant from making any governmental subdivision audits under section 11.6 for the following fiscal year.
[C39, §**124.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §11.19]
89 Acts, ch 264, §3

11.20 Bills — audit and payment.
If the examination is made by the auditor of state under this chapter, each auditor shall file with the auditor of state an itemized, certified and sworn voucher of expense for the time the auditor is actually engaged in the examination. The salaries shall be included in a two-week payroll period. Upon approval of the auditor of state the director of the department of administrative services may issue warrants for the payment of the vouchers and salary payments, including a prorated amount for vacation and sick leave, from any unappropriated funds in the state treasury. Repayment to the state shall be made as provided by section 11.21.
[S13, §100-a, -e, 1056-a11; C24, 27, 31, 35, 39, §**125;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §11.20]
84 Acts, ch 1118, §1; 85 Acts, ch 67, §4; 2003 Acts, ch 145, §286

11.21 Repayment — objections.
Upon payment by the state of the salary and expenses, the auditor of state shall file with the warrant-issuing officer of the county, municipality or school, whose offices were examined, a sworn statement consisting of the itemized expenses paid and prorated salary costs paid under section 11.20. Upon audit and approval by the board of supervisors, council or school board, the warrant-issuing officer shall draw a warrant for the amount on the county, or on the general fund of the municipality or school in favor of the auditor of state, which warrant shall be placed to the credit of the general fund of the state. In the event of the disapproval of any items of said statement by the county, municipality, or school authorities, written objections shall be filed with the auditor of state within thirty days from the filing thereof. Disapproved items of the statement shall be paid the auditor of state upon receiving final decisions emanating from public hearing established by the auditor of state.
Whenever the county board of supervisors, the school board, or the council shall file written objections on the question of compensation and expenses with the auditor of state, the auditor or the auditor's representative shall hold a public hearing in the municipality where the examination was made and shall give the complaining board notice of the time and place of hearing. After such hearing the auditor shall have the power to reduce the compensation and expenses of the auditor whose bills have been questioned. Any auditor who shall be found guilty of falsifying an expense voucher or engagement report shall be immediately discharged by the auditor of state and shall not be eligible for re-employment. Such auditor must

thereupon reimburse the auditor of state for all such compensation and expenses so found to have been overpaid and in the event of failure to do so, the auditor of state may collect the same amount from the auditor's surety by suit, if necessary.

[S13, §100-a, -e, 1056-a11; C24, 27, 31, 35, 39, §**126;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §11.21]

83 Acts, ch 123, §28, 209

11.22 Uniform system of accounting. Repealed by 83 Acts, ch 123, § 206, 209. See § 333A.4.

11.23 Duty to install.

Each school officer shall install and use in the office a system of uniform blanks and forms as prescribed by law. State auditors shall assist the school officers in installing the system.

[S13, §100-b, -c, 1056-a10; C24, 27, 31, §112; C35, §130-a3; C39, §**130.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §11.23]

83 Acts, ch 123, §29, 209

REPORTS

11.24 Title of Act. Repealed by 2003 Acts, ch 44, § 110.

11.25 Reports required.

The auditor of state shall make the following reports:

1. A biennial report to the governor and the general assembly of all operations of the auditor's office.

2. Individual audit reports giving the results of all examinations and audits of all departments and establishments and all fiscal officers of the state and local governments.

[C35, §130-e2; C39, §**130.4;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §11.25]

11.26 Repealed by 72 Acts, ch 1088, § 206.

11.27 Biennial report.

The biennial report shall include:

1. A narrative report and such statistical statements as the state auditor deems essential to display the results of audits of the state departments and establishments.

2. The results of an audit of the documents and the records of the department of management created in chapter 8, which records shall be audited by the auditor; and, the results of the auditor's audit of all taxes and other revenue collected and paid into the treasury, and the sources thereof.

3. The auditor's recommendations to improve the business methods of the government and any other matters having for their purpose to bring about increased economy and efficiency in the conduct of the affairs of the government.

[C35, §130-e4; C39, §**130.6;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §11.27]

94 Acts, ch 1023, §2; 2004 Acts, ch 1086, §9

Subsection 2 amended

11.28 Individual audit reports.

The individual audit reports shall include exhibits and schedules to report data similar to that now required by section 11.4, and shall as nearly as possible correspond and be prepared similar in form to the audit reports rendered by certified public accountants, and such reports shall include information as to the assets and liabilities of the various departments and institutions audited as of the beginning and close of the fiscal year audited, the receipts and expenditures of cash, the disposition of materials and other properties, and the net income and net operating cost. These reports shall also set forth the cost as to each inmate, member, or student per year in the various classifications of expenses, and shall make comparisons thereof, and shall give such other information, suggestions, and recommendations as may be deemed of advantage and to the best interests of the taxpayers of the state; provided, that the daily audit report of the state treasury shall be submitted to the director of the department of administrative services and the director of the department of management; provided, further, that copies of all individual audit reports of all state departments and establishments shall be transmitted to the directors' offices after the completion of each audit, and that copies of all local government audits shall, until otherwise provided, be also supplied to the directors' offices; provided, further, that copies of such audit reports shall also be supplied to the officers of the counties, schools, and cities, as now provided by law; and, provided further, that summaries of the findings, recommendations, and comparisons, together with any other information deemed essential, shall be printed and distributed to members of the general assembly.

[C35, §130-e5; C39, §**130.7;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §11.28]

86 Acts, ch 1245, §1973; 2003 Acts, ch 145, §286

11.29 Fees. Repealed by 87 Acts, ch 115, § 83.

SALARY

11.30 Salary.

The salary of the auditor of state shall be as fixed by the general assembly.

[C31, 35, §130-c1; C39, §**130.9;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §11.30]

11.31 Repealed by 72 Acts, ch 1088, § 206.

OUTSIDE ACCOUNTANTS

11.32 Certified accountants employed.
Nothing in this chapter will prohibit the auditor of state, with the prior written permission of the state executive council, from employing certified public accountants or registered public accountants for specific assignments. Under the provision of this section, the auditor of state may employ such accountants for any assignment now expressly reserved to the auditor of state. Payments, after approval by the executive council, will be made to the accountants so employed from funds from which the auditor of state would have been paid had the auditor of state performed the assignment, or if no such specific funds are indicated, then payment will be made from the funds of the executive council.
[C66, 71, 73, 75, 77, 79, 81, §11.32]

11.33 through 11.35 Reserved.

ACCOUNTING SYSTEMS OF PRIVATE AGENCIES

11.36 Awards to private agencies — accounting system audit requirement.
The governor or a state agency, prior to awarding a grant or purchase of service contract to a private agency, shall obtain from the auditor of state or the auditor's designee a certification stating that the grantee or contractor has an accounting system adequate to effect compliance with the terms and conditions of the grant or contract. The certification shall include an evaluation of internal controls in the accounting system to determine whether the system provides reliable information and promotes efficient operation of the agency. A private agency awarded a grant or purchase of service contract by or through the governor or a state agency shall submit to the audit required by this section prior to the actual transfer of funds and shall pay for the audit under chapter 11. The auditor of state may accept an audit report by an independent certified public accountant as evidence of adequacy. To the extent possible, the auditor of state shall use existing records on file in the auditor's office to make a determination of adequacy. This section shall apply only when the grant or contract exceeds one hundred fifty thousand dollars or when the grant or contract together with other grants or contracts awarded by the governor or a state agency during the fiscal year exceeds one hundred fifty thousand dollars in the aggregate.
[C81, §7A.8]
C87, §11.36
See also §216A.98

CHAPTER 12

TREASURER OF STATE

12.1 Office — accounts — reports.

The treasurer shall keep the treasurer's office at the seat of government, and shall keep an accurate account of the receipts and disbursements at the treasury in books kept for that purpose, in which the treasurer shall specify the names of the persons from whom money is received, and on what account, and the time thereof.

The treasurer is responsible for reporting on the bonding activities of all political subdivisions, instrumentalities, and agencies of the state and shall make recommendations to the general assembly and the governor on modification in the bonding authority. The treasurer shall notify each political subdivision, instrumentality, and agency of the state to report to the treasurer the amount of bonds outstanding and each new bond issue. The treasurer shall adopt rules and establish forms for carrying out this provision. Each political subdivision, instrumentality, and agency of the state shall provide all the information required by the treasurer under this provision.

[C51, §62; R60, §83; C73, §75; C97, §101; C24, 27, 31, 35, 39, §**131;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §12.1]

86 Acts, ch 1245, §823

12.2 Daily balance sheet.

The treasurer of state shall so keep the books of the treasurer's office that at the close of each day's business the account of each fund will show the balance or deficit therein, and show also the total amount of the money in the state treasury, and should the books not be in balance, the daily statement shall show the amount of the surplus or deficit by which the books fail to balance.

[C24, 27, 31, 35, 39, §**132;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §12.2]

12.3 Record and payment of warrants.

The treasurer of state shall keep a record of warrants issued as certified by the director of the department of administrative services, and receive in payment of public dues the warrants so issued in conformity with law, and redeem the same, if there be money in the treasury not otherwise appropriated, and on receiving any such warrant shall cause the person presenting it to endorse it,

and shall indicate on its face in a suitable manner that it has been redeemed, and keep a record of warrants redeemed showing the name of the person to whom paid, date of payment, and amount of interest paid.

[C51, §63; R60, §84; C73, §76; C97, §102; C24, 27, 31, 35, 39, §**133;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §12.3]

2003 Acts, ch 145, §286

12.4 Receipts.

When money is paid to the treasurer, the treasurer shall execute receipts in duplicate therefor, stating the fund to which it belongs, one of which must be delivered to the director of the department of administrative services in order to obtain the proper credit, and the treasurer must be charged therewith.

[C51, §64; R60, §85; C73, §77; C97, §103; C24, 27, 31, 35, 39, §**134;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §12.4]

2003 Acts, ch 145, §286

12.5 Payment.

The treasurer shall pay no money from the treasury but upon the warrants of the director of the department of administrative services, and only in the order of their presentation.

[C51, §65; R60, §86; C73, §78; C97, §104; S13, §104; C24, 27, 31, 35, 39, §**135;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §12.5]

2003 Acts, ch 145, §286

Warrants not paid for want of funds, chapter 74

12.6 Report to and account with director of the department of administrative services.

Once in each week the treasurer shall certify to the director of the department of administrative services the number, date, amount, and payee of each warrant taken up by the treasurer, with the date when taken up, and the amount of interest allowed; and on the first Monday of January, and the first day of April, July, and October, annually, the treasurer is directed to account with the director of the department of administrative services and deposit with the department of administrative services all such warrants received at the treasury, and take the director's receipt therefor.

[C51, §67; R60, §88; C73, §80; C97, §106; S13, §106; C24, 27, 31, 35, 39, §**137;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §12.6]

2003 Acts, ch 145, §286

12.7 Interest on bonds.

When interest on any bonds of the state becomes due, the treasurer shall provide funds for the payment thereof on the day and at the place where payable; and persons holding such bonds are required to present the same at such place within ten days from such day, at the expiration of which time the funds remaining unexpended and vouchers for interest paid shall be returned to the treasury.

[C73, §82; C97, §108; C24, 27, 31, 35, 39, §**138;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §12.7]

Deposits in general, §12C.1

12.8 Investment or deposit of surplus — appropriation — investment income — lending securities.

The treasurer of state shall invest or deposit, as provided by law, any of the public funds not currently needed for operating expenses and shall do so upon receipt of monthly notice from the director of the department of administrative services of the amount not so needed. In the event of loss on redemption or sale of securities invested as prescribed by law, and if the transaction is reported to the executive council, neither the treasurer nor director of the department of administrative services is personally liable but the loss shall be charged against the funds which would have received the profits or interest of the investment and there is appropriated from the funds the amount so required.

Investment income may be used to maintain compensating balances, pay transaction costs for investments made by the treasurer of state, and pay administrative and related overhead costs incurred by the treasurer of state in the management of money. The treasurer of state shall coordinate with the affected departments to determine how compensating balances, transaction costs, or money management and related costs will be established. All charges against a retirement system must be documented and notification of the charges shall be made to the appropriate administration of the retirement system affected.

The treasurer of state, with the approval of the investment board of the Iowa public employees' retirement system, may conduct a program of lending securities in the Iowa public employees' retirement system portfolio. When securities are loaned as provided by this paragraph, the treasurer shall act in the manner provided for investment of moneys in the Iowa public employees' retirement fund under section 97B.7A. The treasurer of state shall report at least annually to the investment board of the Iowa public employees' retirement system on the program and shall provide additional information on the program upon the request of the investment board or the employees of the Iowa public employees' retirement system.

[C24, 27, 31, 35, 39, §**141;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §12.8]

84 Acts, ch 1180, §6; 85 Acts, ch 227, §6; 88 Acts, ch 1242, §1; 91 Acts, ch 268, §123; 94 Acts, ch 1001, §1; 2001 Acts, ch 68, §1, 24; 2003 Acts, ch 145, §286; 2004 Acts, ch 1101, §98, 102

Investment or deposit, §12B.10

12.9 Annual report of filing fees. Repealed by 95 Acts, ch 219, § 46.

12.10 Deposits by state officers.

Except as otherwise provided, all elective and appointive state officers, boards, commissions, and departments shall, within ten days succeeding the collection, deposit with the treasurer of state, or to the credit of the treasurer of state in any depository designated by the treasurer of state, ninety percent of all fees, commissions, and moneys collected or received. The balance actually collected in cash, remaining in the hands of any officer, board, or department shall not exceed the sum of five thousand dollars and money collected shall not be held more than thirty days. This section does not apply to the state fair board, the state board of regents, the utilities board of the department of commerce, the director of the department of human services, the Iowa finance authority or to the funds received by the state racing and gaming commission under sections 99D.7 and 99D.14.

[C73, §3778; C97, §191; S13, §170-d; C24, 27, 31, 35, 39, §**143;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §12.10]

83 Acts, ch 96, §157, 159; 83 Acts, ch 187, §29; 84 Acts, ch 1266, §2

12.11 Unclaimed fees. Repealed by 90 Acts, ch 1090, § 1. See chapter 556.

12.12 Statement required. Repealed by 95 Acts, ch 219, § 46.

12.13 Payment of claims. Repealed by 95 Acts, ch 219, § 46.

12.14 Statement itemized.

Each deposit shall be accompanied by an itemized statement of the sources from which the money has been collected, and the funds to be credited, a duplicate of which shall, at the time, be filed with the department of administrative services.

[S13, §170-d; C24, 27, 31, 35, 39, §**144;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §12.14]

2003 Acts, ch 145, §286

12.15 Director and treasurer to keep account.

The treasurer and director of the department of administrative services shall each keep an accurate account of the moneys so deposited.

[S13, §170-f; C24, 27, 31, 35, 39, §**145;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §12.15]

2003 Acts, ch 145, §286

12.16 Swampland indemnity.

All swampland indemnity money paid by the federal government to this state under any Act of Congress relating thereto shall be paid by the treasurer of state to the county treasurer of the county where the land, on account of which such payment is made, is located. The county treasurer shall be liable on a bond for the safe custody of said funds and shall promptly notify the board of supervisors of the receipt thereof. Said funds shall be applied by the said supervisors as required by law.

[S13, §116-d, -e, -f; C24, 27, 31, 35, 39, §**146;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §12.16]

12.17 Biennial report.

The treasurer of state shall, biennially, at the time provided by law, report to the governor the state of the treasury and exhibit therein the amount received and paid out by the treasurer since the last report, and the balance remaining in the treasury.

[C51, §68; R60, §89; C73, §81; C97, §107; C24, 27, 31, 35, 39, §**147;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §12.17]

See also §258.12

12.18 Salary.

The salary of the treasurer of state shall be as fixed by the general assembly.

[C31, 35, §147-c1; C39, §**147.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §12.18]

12.19 Six-months' limit on checks.

On the first day of each quarter of each fiscal year of the state, the state treasurer shall stop payment on and make void all treasury checks dated six months or more prior to that date, and the state treasurer shall not redeem any such check thereafter.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §12.19]

12.20 Issuance of new check.

Upon presentation of any check voided as above provided by the holder thereof after said six months' period, the state treasurer is hereby authorized to issue to said holder, a new check for the amount of the original check.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §12.20]

12.21 Accepting credit card payments.

The treasurer of state may enter into an agreement with a financial institution to provide credit card receipt processing for state departments which are authorized by the treasurer of state to accept payment by credit card. A department which accepts credit card payments may adjust its fees to reflect the cost of processing as determined by the treasurer of state. A fee may be charged by a department for using the credit card payment

method notwithstanding any other provision of the Code setting specific fees. The treasurer of state shall adopt rules to implement this section.

89 Acts, ch 120, §1; 92 Acts, ch 1126, §1; 95 Acts, ch 219, §36

12.22 through 12.24 Reserved.

12.25 Legislative findings.

The general assembly finds and declares that because of differences in the timing of the receipt of tax and other revenues and the expenditure of funds by the state, the state has been unable to remain timely on its obligations, including its payments of school aid; the untimely payment of state aid has created a hardship for schools by increasing their costs and hindering their ability to remain timely on their obligations; it would be advantageous to the state to be able to issue notes in anticipation of its tax and other revenues in order to coordinate its cash flow; and pending their use, the proceeds of notes issued in anticipation of tax and other revenues should be invested in order to pay the cost of issuing the notes and as a benefit to the state. It is the purpose of this section and section 12.26 to enable the state to make timely payments of its obligations, including its school aid payments, by securing funds through the issuance of notes in anticipation of the state's tax and other revenues.

85 Acts, ch 34, §18

12.26 Issuance of revenue anticipation notes.

1. In anticipation of the collection of revenues in and for a fiscal year, the treasurer of state may borrow money, and issue notes for the money, in an amount not exceeding the estimated state revenues for that year. The sums so anticipated are appropriated for the payment of the notes with interest at maturity. The notes may be issued prior to the beginning of a fiscal year, but the notes shall be payable not later than the end of the fiscal year for which they are issued. More than one series of notes may be issued in a fiscal year and the proceeds of notes may be used to retire a prior issue of notes provided that the total outstanding at any one time shall not exceed the limit prescribed in this section. The proceeds from the issuance of notes shall be invested in the same manner as other public funds and shall be used only for the purposes for which the anticipated tax revenues were levied, collected, and appropriated.

2. The principal of and the interest on notes are payable solely out of the taxes and revenues of the state for the fiscal year for which the notes are issued. The notes of each issue shall be dated, shall bear interest at a rate or rates which may be variable according to a method approved by the treasurer of state, without regard to any limit contained in chapter 74A or any other law of this state, and shall mature at a time or times not later than the end of the fiscal year, all as determined by the treasurer of state. The notes may be made redeemable before maturity, at the option of the treasurer of state, at the price and under the terms and conditions provided by the treasurer of state. The treasurer of state shall determine the form of the notes and shall fix the denomination of the notes and the place of payment of principal and interest which may be at any bank within or without the state. The notes shall be executed by the manual or facsimile signatures of the treasurer of state, the director of management, and the director of the department of administrative services. If an official whose signature or a facsimile of whose signature appears on any notes ceases to hold office before the delivery of the notes, the signature or the facsimile is valid and sufficient for all purposes the same as if the official had remained in office until the delivery. All notes issued under this section have the qualities and incidents of negotiable instruments under the laws of this state and without regard to any other law. The notes shall be issued in registered form. The notes may be sold in a manner, at public or private sale, as the treasurer of state may determine without regard to chapter 75.

3. Notes may be issued under this section without obtaining the consent of any officer or agency of this state, and without any other proceedings or conditions other than those proceedings and conditions which are specifically required by this section. The treasurer of state, the director of management, and the director of the department of administrative services are not liable personally on the notes or subject to any personal liability or accountability by reason of the issuance of the notes.

4. As used in this section, *"notes"* means notes and other obligations, including short term obligations backed by a commercial letter of credit, issued by the treasurer of state pursuant to this section.

85 Acts, ch 34, §19; 88 Acts, ch 1134, §11; 2003 Acts, ch 145, §286

12.27 Credit rules. Repealed by 99 Acts, ch 73, § 1.

12.28 Centralized financing for state agency purchase of real and personal property.

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

a. "Financing agreement" means any lease, lease-purchase agreement, or installment acquisition contract in which the lessee may purchase the leased property at a price which is less than the fair market value of the property at the end of the lease term, or any lease, agreement, or transaction which would be considered under criteria established by the internal revenue service to be a

conditional sale agreement for tax purposes.

b. "State agency" means a board, commission, bureau, division, office, department, or branch of state government. However, state agency does not mean the state board of regents, institutions governed by the board of regents, or authorities created under chapter 16, 16A, 175, 257C, 261A, or 327I.

2. The treasurer of state shall have sole authority to enter into financing agreements on behalf of state agencies. The treasurer of state may enter into financing agreements, including master lease-purchase agreements, for the purpose of funding state agency requests for the financing of real or personal property, wherever located within the state, including equipment, buildings, facilities, and structures, or additions or improvements to existing buildings, facilities, and structures. Subject to the selection procedures of section 12.30, the treasurer may employ financial consultants, banks, trustees, insurers, underwriters, accountants, attorneys, and other advisors or consultants as necessary to implement the provisions of this section. The costs of professional services and any other costs of entering into the financing agreements may be included in the financing agreement as a cost of the property being financed.

3. The financing agreement may provide for ultimate ownership of the property by the state. Title to all property acquired in this manner shall be taken and held in the name of the state. The state shall be the lessee or contracting party under all financing agreements entered into pursuant to this section. The financing agreements may contain provisions pertaining, but not limited to, interest, term, prepayment, and the state's obligation to make payments on the financing agreement beyond the current budget year subject to availability of appropriations. All projects financed under this section shall be deemed to be for an essential governmental purpose.

4. The treasurer of state may contract for additional security or liquidity for a financing agreement and may enter into agreements for letters of credit, lines of credit, insurance, or other forms of security with respect to rental and other payments due under a financing agreement. Fees for the costs of additional security or liquidity are a cost of entering into the financing agreement and may be paid from funds annually appropriated by the general assembly to the state agency for which the property is being obtained, from other funds legally available, or from proceeds of the financing agreement. The provision of a financing agreement which provides that a portion of the periodic rental or lease payment be applied as interest is subject to chapter 74A. Other laws relating to interest rates do not apply. Chapter 75 does not apply to financing agreements entered into pursuant to this section.

5. Payments and other costs due under financing agreements entered into pursuant to this section shall be payable from funds annually appropriated by the general assembly to the state agency for which the property is being obtained or from other funds legally available. The treasurer of state, in cooperation with the department of administrative services, shall implement procedures to ensure that state agencies are timely in making payments due under the financing agreements.

6. The maximum principal amount of financing agreements which the treasurer of state can enter into shall be one million dollars per state agency in a fiscal year, subject to the requirements of section 8.46. For the fiscal year, the treasurer of state shall not enter into more than one million dollars of financing agreements per state agency, not considering interest expense. However, the treasurer of state may enter into financing agreements in excess of the one million dollar per agency per fiscal year limit if a constitutional majority of each house of the general assembly, or the legislative council if the general assembly is not in session, and the governor, authorize the treasurer of state to enter into additional financing agreements above the one million dollar authorization contained in this section. The treasurer of state shall not enter into a financing agreement for real or personal property which is to be constructed for use as a prison or prison-related facility without prior authorization by a constitutional majority of each house of the general assembly and approval by the governor of the use, location, and maximum cost, not including interest expense, of the real or personal property to be financed. However, financing agreements for an energy conservation measure, as defined in section 7D.34, are exempt from the provisions of this subsection, but are subject to the requirements of section 7D.34 or 473.20A. In addition, financing agreements funded through the materials and equipment revolving fund established in section 307.47 are exempt from the provisions of this subsection.

7. The treasurer of state shall decide upon the most economical method of financing a state agency's request for funds. The treasurer of state may utilize master lease-purchase agreements, issue certificates of participation in lease-purchase agreements, or use any other financing method or method of sale which the treasurer believes will provide savings to the state in issuance or interest costs.

8. A financing agreement to which the state is a party is an obligation of the state for purposes of chapters 502 and 636, and is a lawful investment for banks, trust companies, building and loan associations, savings and loan associations, investment companies, insurance companies, insurance associations, executors, guardians, trustees, and other fiduciaries responsible for the investment of funds.

9. Publication of any notice, whether under section 73A.12 or otherwise, and other or further proceedings with respect to the financing agree-

ments referred to in this section are not required except as set forth in this section, notwithstanding any provisions of other statutes of the state to the contrary.

96 Acts, ch 1177, §2; 2003 Acts, ch 145, §286

12.29 Reserved.

12.30 Coordination of bonding activities.

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

a. "Authority" means a department, or public or quasi-public instrumentality of the state including, but not limited to, the authority created under chapter 12E, 16, 16A, 175, 257C, 261A, or 327I, which has the power to issue obligations, except that *"authority"* does not include the state board of regents or the Iowa finance authority to the extent it acts pursuant to chapter 260C.

b. "Obligations" means notes, bonds, including refunding bonds, and other evidences of indebtedness of an authority.

2. Notwithstanding any other provision of the Code the treasurer shall coordinate the issuance of obligations by authorities. The treasurer, or the treasurer's designee, shall serve as ex officio nonvoting member of each authority. Prior to the issuance of obligations, an authority shall notify the treasurer of its intention to do so. The treasurer shall:

a. Select and fix the compensation for, in consultation with the respective authority, through a competitive selection procedure, attorneys, accountants, financial advisors, banks, underwriters, insurers, and other employees and agents which in the treasurer's judgment are necessary to carry out the authority's intention. Prior to the initial selection, the treasurer shall, after consultation with the authorities, establish a procedure which provides for a fair and open selection process including, but not limited to, the opportunity to present written proposals and personal interviews. The treasurer shall maintain a list of firms which have requested to be notified of requests for proposal. The selection criteria shall take into consideration, but are not limited to, compensation, expenses, experience with similar issues, scheduling, ability to provide the services of individuals with specific knowledge in the relevant subject matter and length of the engagement. The treasurer may waive the requirements for a competitive selection procedure for any specific employment upon written notice to the executive council stating why the waiver is in the public interest. Upon selection by the treasurer, the authority shall promptly employ the individual or firm and be responsible for payment of costs.

b. Submit an account to the respective authority for all costs incurred in each transaction. The treasurer will charge an authority for costs of administration. The authority shall disburse to the treasurer the amounts set forth in the account.

c. Direct the investment or deposit of the proceeds of the sale of the obligations, in accordance with the language of the documents drafted to effectuate issuance of the obligations, except for the proceeds necessary to fund the ongoing operations of the authority. This paragraph does not apply to proceeds of obligations issued before July 1, 1986.

d. Collect from an authority and other sources, any statistical and financial information necessary to draft an offering document or prepare a presentation necessary for the issuance or marketing of the obligations.

3. Each respective authority shall consult with the treasurer on the following:

a. Amount, terms, and conditions of the obligations to be issued by the authority including other provisions deemed necessary by the treasurer or the authority.

b. The documents or instruments necessary to effectuate issuance of the obligation.

c. Presentations to rating agencies and marketing activities. The treasurer may choose to participate in these presentations.

4. Professional services, including but not limited to attorneys, accountants, financial advisors, banks, underwriters, insurers, and other employees employed by a project sponsor may be selected by the project sponsor, if the obligation is issued in behalf of the project sponsor and the purchaser of the obligation does not have recourse to the authority or state.

5. The treasurer may delay implementation of this section for up to six months following July 1, 1986, for an authority to facilitate an orderly transition.

86 Acts, ch 1245, §824; 90 Acts, ch 1254, §29; 2000 Acts, ch 1208, §19, 25

LINKED INVESTMENTS

12.31 Short title.

This section and sections 12.32 through 12.43B shall be known as the *"Linked Investments for Tomorrow Act"*.

86 Acts, ch 1096, §1; 89 Acts, ch 234, §1; 2000 Acts, ch 1058, §3

12.32 Definitions.

As used in section 12.31, this section, and sections 12.33 through 12.43B, unless the context otherwise requires:

1. *"Eligible borrower"* means any person who is in the business or is entering the business of producing, processing, or marketing horticultural crops or nontraditional crops in this state or any person in this state who is qualified to participate in one of the programs in this section and sections 12.33 through 12.43B. *"Eligible borrower"* does not include a person who has been determined to be delinquent in making child support payments

or any other payments due the state.

2. *"Eligible lending institution"* means a financial institution that is empowered to make commercial loans and is eligible pursuant to chapter 12C to be a depository of state funds.

3. *"Linked investment"* means a certificate of deposit placed pursuant to this section and sections 12.33 through 12.43B by the treasurer of state with an eligible lending institution, at an interest rate not more than three percent below current market rate on the condition that the institution agrees to lend the value of the deposit, according to the investment agreement provided in section 12.35, to an eligible borrower at a rate not to exceed four percent above the rate paid on the certificate of deposit. The treasurer of state shall determine and make available the current market rate which shall be used each month.

4. *"Qualified linked investment"* means a linked investment in which a certificate of deposit is placed by the treasurer of state with an eligible lending institution under the traditional livestock producers linked investment loan program established under section 12.43A.

86 Acts, ch 1096, §2; 89 Acts, ch 234, §2; 96 Acts, ch 1058, §1; 97 Acts, ch 195, §1, 2, 10; 99 Acts, ch 177, §1, 9; 2000 Acts, ch 1058, §4, 5; 2001 Acts, ch 24, §1

12.33 Public policy.

It is the public policy of this state that a linked investments for tomorrow program be established to provide statewide availability of lower cost funds for lending purposes that will inject needed capital into the business of, and stimulate existing or encourage new businesses in, the area of producing, processing, or marketing horticultural or nontraditional crops.

86 Acts, ch 1096, §3; 89 Acts, ch 234, §3; 97 Acts, ch 195, §3, 10

12.34 Linked investments — limitations — rules — maturity and renewal of certificates.

1. The treasurer of state may invest up to the lesser of one hundred eight million dollars or ten percent of the balance of the state pooled money fund in certificates of deposit in eligible lending institutions as provided in sections 12.32 and 12.33, this section, and sections 12.35 through 12.43B. The moneys invested pursuant to this section shall be used as follows:

a. The treasurer of state may invest up to sixty-eight million dollars to support programs provided in sections 12.32 and 12.33, this section, and sections 12.35 through 12.43B other than the traditional livestock producers linked investment loan program as provided in section 12.43A and the value-added agricultural linked investment loan program as provided in section 12.43B.

b. The treasurer of state shall invest the remaining amount as follows:

(1) At least twenty million dollars shall be invested in order to support the traditional livestock producers linked investment loan program as provided in section 12.43A.

(2) At least twenty million dollars shall be invested in order to support the value-added agricultural linked investment loan program as provided in section 12.43B.

2. *a.* The treasurer of state shall adopt rules pursuant to chapter 17A to administer sections 12.32 and 12.33, this section, and sections 12.35 through 12.43B.

b. The treasurer of state in cooperation with the board of directors of the agricultural development authority as established in section 175.3 shall adopt rules for the administration of the traditional livestock producers linked investment loan program as provided in section 12.43A. The treasurer of state in cooperation with the agricultural products advisory council established in section 15.203 shall adopt rules for the administration of the value-added agricultural linked investment loan program as provided in section 15.204.

3. A certificate of deposit, which is placed by the treasurer of state with an eligible lending institution on or after July 1, 1996, may be renewed at the option of the treasurer. The following shall apply to the certificate of deposit:

a. For a linked investment other than a qualified linked investment, the initial certificate of deposit for a given borrower shall have a maturity of one year. The certificate of deposit may be renewed on an annual basis for a total term not to exceed five years.

b. For a qualified linked investment, the initial certificate of deposit for a given borrower shall have a maturity of one year. The certificate of deposit may be renewed on an annual basis for a total term not to exceed three years.

86 Acts, ch 1096, §4; 89 Acts, ch 234, §4; 96 Acts, ch 1058, §2, 3, 9, 10, 12; 97 Acts, ch 195, §4, 10; 99 Acts, ch 177, §2, 7, 9; 2001 Acts, ch 24, §2

12.35 Agreement — loan applications.

1. An eligible lending institution that desires to receive a linked investment shall enter into an agreement with the treasurer of state, which shall include requirements necessary for the eligible lending institution to comply with sections 12.32 through 12.34, this section, and sections 12.36 through 12.43B.

2. An eligible lending institution that desires to receive a linked investment shall accept and review applications for loans from eligible borrowers.

3. The eligible lending institution shall forward to the treasurer of state a linked investment loan package in the form and manner as prescribed by the treasurer of state. The package shall include information required by the treasurer of state, including but not limited to the amount

of the loan requested and the purpose of the loan. The institution shall certify that the applicant is an eligible borrower.

86 Acts, ch 1096, §5; 89 Acts, ch 234, §5; 96 Acts, ch 1058, §4; 2001 Acts, ch 24, §3

12.36 Actions by treasurer.

1. The treasurer of state shall accept or reject a linked investment loan package or any portion of the package based on the type or terms of the loan involved, the availability of state funds, or the compliance of the eligible borrower or eligible lending institution.

2. Upon acceptance of the linked investment loan package or any portion of the package, the treasurer of state shall place certificates of deposit with the eligible lending institution at a rate not more than three percent below the current market rate. The treasurer of state shall not place a certificate of deposit with an eligible lending institution pursuant to sections 12.32 through 12.35, this section, and sections 12.37 through 12.43B, unless the certificate of deposit earns a rate of interest of at least two percent. Interest earned on the certificate of deposit and principal not renewed shall be remitted to the treasurer of state at the time the certificate of deposit matures. Certificates of deposit placed pursuant to sections 12.32 through 12.35, this section, and sections 12.37 through 12.43B are not subject to a penalty for early withdrawal.

86 Acts, ch 1096, §6; 89 Acts, ch 234, §6; 92 Acts, ch 1105, §1; 96 Acts, ch 1058, §5; 2001 Acts, ch 24, §4

12.37 Loans.

1. Upon the placement of a linked investment with an eligible lending institution, the institution is required to lend the funds to the eligible borrower listed in the linked investment loan package and in accordance with the investment agreement. The loan shall be at a rate not more than four percent above the rate paid the treasurer by the financial institution. The eligible lending institution shall be required to submit a certification of compliance with this section in the form and manner as prescribed by the treasurer of state.

2. The treasurer of state shall take all steps necessary to implement the linked investments for tomorrow program and monitor compliance of eligible lending institutions and eligible borrowers.

86 Acts, ch 1096, §7; 89 Acts, ch 234, §7

12.38 Reports.

By February 1 of each year, the treasurer of state shall report on the linked investments for tomorrow programs for the preceding calendar year to the governor, the department of economic development, the speaker of the house of representatives, and the president of the senate. The speaker of the house shall transmit copies of this report to the house co-chair of the joint economic development appropriations subcommittee and the chairs of the standing committees in the house which customarily consider legislation regarding agriculture and commerce, and the president of the senate shall transmit copies of this report to the senate co-chair of the joint economic development appropriations subcommittee and the chairs of the standing committees in the senate which customarily consider legislation regarding agriculture and commerce. The report shall set forth the linked investments made by the treasurer of state under the program during the year, the total amount deposited, the number of deposits, and an estimate of foregone interest, and shall include information regarding the nature, terms, and amounts of the loans upon which the linked investments were based and the eligible borrowers to which the loans were made.

86 Acts, ch 1096, §8; 89 Acts, ch 234, §8; 94 Acts, ch 1188, §31; 96 Acts, ch 1058, §6

12.39 Liability.

The state and the treasurer of state are not liable to an eligible lending institution in any manner for payment of the principal or interest on the loan to an eligible borrower. Any delay in payments or default on the part of an eligible borrower does not in any manner affect the investment agreement between the eligible lending institution and the treasurer of state.

86 Acts, ch 1096, §9; 90 Acts, ch 1168, §6

12.40 Rural small business transfer linked investment loan program.

1. As used in this section, *"rural small business"* means an existing rural small business, for which local competition does not exist in the principal realm of business activity of that business, and the loss of which will work a hardship on the rural community. A rural small business may include a grocery store, drug store, gasoline station, convenience store, hardware business, or farm supply store. A rural small business does not include a new business.

2. The treasurer of state shall adopt rules consistent with sections 12.32 through 12.39, this section, and sections 12.41 through 12.43B to implement a rural small business transfer linked investment loan program to maintain and expand existing employment opportunities and the provision of retail goods on a local level in small rural communities by assisting in the transfer of ownership of retail-oriented businesses where, in the absence of sufficient financial assistance, the businesses may close.

3. In order to qualify as an eligible borrower, the rural small business must be located in a city with a population of five thousand or less. A rural small business located in a city located in a county with a population in excess of three hundred thou-

sand, if the city is contiguous to another city in the county and that other city is contiguous to the largest city in that county, shall be ineligible to qualify as a borrower. In order to qualify under this program, all owners of the business or borrowers must not have a combined net worth exceeding five hundred thousand dollars as defined in rules adopted by the treasurer of state pursuant to chapter 17A and the rural small business must meet all of the following criteria:

a. Be a for-profit business.

b. Have annual sales of two million dollars or less.

c. Not be operated out of the home of any person, unless the person is eligible for a deduction on federal income taxes pursuant to 26 U.S.C. § 280A.

d. Not involve real estate investments, rental of real estate, leasing of real estate, or real estate speculation.

e. Liquor, beer, and wine sales must not exceed twenty percent of annual sales for establishments holding a class "C" liquor license issued pursuant to section 123.30.

4. In order to qualify as an eligible borrower, the transfer of the rural small business must be by purchase, lease-purchase, or contract of sale. The purchase must be for a portion of the business which is essential to its continued viability, including real estate where the business is located, fixtures attached to the real estate, equipment, supplies, and machinery relied upon by the business, and inventory for sale by the business.

5. In order to qualify as an eligible borrower, a borrower and the seller of the rural small business shall not be within the third degree of consanguinity or affinity.

6. Loan proceeds shall not be used to refinance existing debt, including credit card debt. However, proceeds may be used to refinance a short-term bridge loan made in anticipation of the treasurer's approval of the linked investment loan package.

7. During the lifetime of this loan program, the maximum amount of assistance that an eligible borrower or a business may receive through this loan program shall be fifty thousand dollars.

92 Acts, ch 1105, §2; 96 Acts, ch 1058, §7; 97 Acts, ch 23, §4; 97 Acts, ch 195, §5 – 7, 10; 2001 Acts, ch 24, §5

12.41 Horticultural and nontraditional crops linked investment loan program.

The treasurer of state shall adopt rules to implement a horticultural and nontraditional crops linked investment loan program to provide statewide availability of lower cost funds for lending that will stimulate existing or encourage new businesses in the areas of producing, processing, or marketing horticultural or nontraditional crops. The rules shall be in accordance with the following:

1. In order to qualify as an eligible borrower, the loan application must be for the purchase or lease of land, machinery, equipment, or the purchase of other inputs used in the business of producing, processing, or marketing horticultural or nontraditional crops as defined in rules adopted by the treasurer.

2. The gross income earned by the borrower's business of producing, processing, or marketing horticultural or nontraditional crops is not more than three hundred thousand dollars for the borrower's last tax year.

3. Loan proceeds shall not be used to refinance existing debt, including credit card debt. However, proceeds may be used to refinance a short-term bridge loan made in anticipation of the treasurer's approval of the linked investment loan package.

4. The maximum loan amount that an eligible borrower may receive under this program is two hundred thousand dollars for a production loan and five hundred thousand dollars for processing or marketing facilities.

96 Acts, ch 1058, §8; 97 Acts, ch 195, §8, 10; 99 Acts, ch 177, §3, 9

12.42 Reserved.

12.43 Focused small business linked investments program created — definitions.

The treasurer of state shall adopt rules to implement a focused small business linked investments program to increase the availability of lower cost funds to inject needed capital into small businesses owned and operated by women or minorities, which is the public policy of the state. The rules shall be in accordance with the following:

1. As used in this section:

a. "Disability" is defined as provided in section 15.102, subsection 5.

b. "Focused small business" means a new small business which is fifty-one percent or more owned, operated, and actively managed by one or more women, minority persons, or persons with a disability, provided the business meets all the requirements of subsection 5.

c. "Major life activity" is defined as provided in section 15.102, subsection 5.

d. "Minority person" is defined as provided in section 15.102, subsection 5.

2. Loan applications for a focused small business shall be for the purchase of land, machinery, equipment, or licenses, or patent, trademark, or copyright fees and expenses.

3. During the lifetime of this loan program, the maximum amount of assistance that an eligible borrower or business may borrow or receive through this loan program shall be one hundred thousand dollars. An eligible borrower or business under this program shall be limited to one loan from one financial institution.

4. A preference shall be given to those persons who are less able than other persons to secure

funds for a focused small business without participation in the focused small business linked investment program.

5. In order to qualify under this program, all owners of the business or borrowers must not have a combined net worth exceeding five hundred thousand dollars as defined in rules adopted by the treasurer of state pursuant to chapter 17A and the focused small business must meet all of the following criteria:

a. Be a for-profit business.

b. Have annual sales of two million dollars or less.

c. Not be operated out of the home of any person, unless the person is eligible for a deduction on federal income taxes pursuant to 26 U.S.C. § 280A.

d. Not involve real estate investments, rental of real estate, leasing of real estate, or real estate speculation.

e. Liquor, beer, and wine sales must not exceed twenty percent of annual sales for establishments holding a class "C" liquor license issued pursuant to section 123.30.

6. Loan proceeds shall not be used to refinance existing debt, including credit card debt. However, proceeds may be used to refinance a short-term bridge loan made in anticipation of the treasurer of state's approval of the linked investment loan package.

7. Eligible lending institutions shall verify the borrower is eligible to participate under the provisions of this section pursuant to rules adopted by the treasurer of state pursuant to chapter 17A.

87 Acts, ch 233, §128; 88 Acts, ch 1273, §4; 89 Acts, ch 234, §9; 94 Acts, ch 1201, §13; 97 Acts, ch 195, §9, 10

12.43A Traditional livestock producer's linked investment loan program.

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

a. "Farm operation" means the same as defined in section 352.2.

b. "Livestock" means cattle or swine.

c. "Livestock operation" means an animal feeding operation as defined in section 459.102 in which livestock is provided care and feeding, or any other area which is used for raising crops or other vegetation and upon which livestock is fed or allowed to graze.

d. "Traditional livestock producer" means a person who is the owner and operator of livestock subject to care and feeding at a livestock operation in which the person holds a legal interest. The person may own the livestock or own the livestock jointly with another person. The person must be actively engaged in the livestock operation by making management decisions and performing physical work relating to the care and feeding of the livestock on a regular, continuous, and substantial basis in a manner that is essential to the success of the livestock operation.

2. The treasurer of state shall adopt rules as provided in section 12.34 to implement a traditional livestock producers linked investment loan program. The purpose of the program is to increase the availability of lower cost loans to traditional livestock producers.

3. In order to qualify for a loan in accordance with an investment agreement under sections 12.32 through 12.43, this section, and section 12.43B, all of the following requirements must be satisfied:

a. In order to be an eligible borrower, all of the following must apply:

(1) The borrower must be a traditional livestock producer.

(2) The borrower must be a resident of this state who is at least eighteen years of age.

(3) The borrower must not be any of the following:

(a) 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.

(b) 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. The livestock operation must be located in this state.

c. The gross income earned by the borrower's farm operation must be more than fifty thousand dollars but not more than five hundred thousand dollars for the borrower's last tax year.

d. At least fifty percent of the average annual gross income earned by the borrower's farm operation derives from livestock owned and sold by the borrower. The average annual gross income shall be computed as the average of the gross income earned by the farm operation in the three preceding tax years.

4. An investment agreement shall not be for a loan of more than one hundred thousand dollars.

5. A borrower is not eligible to receive a loan as part of a linked investment loan package under this program if the borrower has received three loans pursuant to a linked investment loan package under this program approved by the treasurer of state within the last ten years. For purposes of this subsection, a loan provided as part of a renewed certificate of deposit shall be deemed to be a new loan.

99 Acts, ch 177, §4, 9; 2000 Acts, ch 1172, §2, 3; 2001 Acts, ch 24, §6

12.43B Value-added agricultural linked investment loan program.

1. The treasurer of state shall establish and

administer, and adopt rules as necessary to establish and administer, a value-added agricultural linked investment loan program. The purpose of the program is to provide capital in the form of low-interest loans in order to do any of the following:

a. Stimulate existing businesses or encourage the establishment of new businesses that add value through the processing of agricultural commodities.

b. Encourage the production of agricultural commodities, if a shortage in production exists.

2. A borrower shall be eligible to participate in the value-added agricultural linked investment loan program, to the extent that the borrower meets eligibility requirements established by the treasurer of state as provided in section 12.34.

3. A borrower shall not receive a loan of more than two hundred fifty thousand dollars under this program.

99 Acts, ch 177, §5, 9

TARGETED SMALL BUSINESSES — WAIVER OF BOND REQUIREMENT

12.44 Iowa satisfaction and performance bond program.

Agencies of state government shall be required to waive the requirement of satisfaction, performance, surety, or bid bonds for targeted small businesses which are able to demonstrate the inability of securing such a bond because of a lack of experience, lack of net worth, or lack of capital. This waiver shall not apply to businesses with a record of repeated failure of substantial performance or material breach of contract in prior circumstances. The waiver shall be applied only to a project or individual transaction amounting to fifty thousand dollars or less, notwithstanding section 573.2. In order to qualify, the targeted small business shall provide written evidence to the department of inspections and appeals that the bond would otherwise be denied the business. The granting of the waiver shall in no way relieve the business from its contractual obligations and shall not preclude the state agency from pursuing any remedies under law upon default or breach of contract.

The department of inspections and appeals shall certify targeted small businesses for eligibility and participation in this program and shall make this information available to other state agencies.

Subdivisions of state government may also grant such a waiver under similar circumstances.

87 Acts, ch 233, §129; 88 Acts, ch 1273, §5; 90 Acts, ch 1156, §1; 92 Acts, ch 1244, §10

12.45 through 12.50 Reserved.

MAIN STREET LINKED INVESTMENTS LOAN PROGRAM

12.51 Main street linked investments loan program. Repealed by 96 Acts, ch 1058, § 10 – 12.

12.52 Application process. Repealed by 96 Acts, ch 1058, § 10 – 12.

12.53 through 12.60 Reserved.

STATE-SPONSORED CREDIT CARD

12.61 State-sponsored credit card.

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

a. "Financial institution" means a state bank as defined in section 524.103, subsection 38, a federally chartered state bank having its principal office within this state, a federally chartered credit union having its principal office within this state, a federally chartered savings and loan association having its principal office within the state, a credit union organized under chapter 533, an association incorporated or authorized to do business under chapter 534, or a trust company organized or incorporated under the laws of this state.

b. "Financial institution credit card" means a credit card that entitles the holder to make open-account purchases up to an approved amount and is issued through the agency of a financial institution.

c. "Sponsoring entity" means an entity that allows its name or logo to be used on a particular financial institution credit card in exchange for a fee from the credit card issuer.

2. The treasurer is authorized to participate in a financial institution credit card program for the benefit of the state. Within six months of May 27, 1989, the treasurer shall contact each financial institution to determine if:

a. The financial institution or its Iowa holding company or Iowa affiliate currently administers a credit card program.

b. The credit card program provides a fee or commission on retail sales to the sponsoring entity for the issuance and use of the credit card.

c. The credit card program would accept the state as a sponsoring entity.

If the treasurer determines that the state may be a sponsoring entity for a financial institution credit card, the treasurer shall negotiate the most favorable rate for the state's fee by a credit card issuer. The state shall not offer a more favorable rate to any other credit card issuer. The rate must be expressed as a percentage of the gross sales from the use of the credit card. The proceeds of the fee shall be deposited in the Iowa resources enhancement and protection fund created under section 455A.18. The treasurer shall recommend a

logo or design for the state-sponsored credit card indicating the use for which the revenues will be used.

In selecting a credit card issuer, the treasurer shall consider the issuer's record of investments in the state, shall take into consideration credit card features which will enhance the promotion of the state-sponsored credit card including, but not limited to, favorable interest rates, annual fees, and other fees for using the card, and shall require that the card be available to any person who qualifies for a credit card. Upon entering into an agreement with the financial institution, the treasurer shall notify all state agencies then possessing a credit card to obtain the new state-sponsored credit card.

89 Acts, ch 236, §8; 90 Acts, ch 1255, §1

TECHNICAL INFORMATION AND ASSISTANCE

12.62 Investments by agencies and political subdivisions — technical information and assistance.

The treasurer of state shall adopt rules pursuant to chapter 17A for providing technical information and assistance to political subdivisions, the state board of regents, instrumentalities, and agencies of the state authorized to invest funds which are seeking to invest public funds. The treasurer or the treasurer's designee shall provide technical information and assistance to a political subdivision, the state board of regents, or an instrumentality, or agency of the state authorized to invest funds at the request of the political subdivision, the state board of regents, or an instrumentality, or agency of the state authorized to invest funds, including but not limited to technical information regarding the statutory requirements for investments by the political subdivision, the state board of regents, or an instrumentality, or agency and technical assistance to enable the political subdivision, the state board of regents, or an instrumentality, or agency to invest funds in accordance with state law. However, the fact that information and assistance are provided under this section to a political subdivision, the state board of regents, or an instrumentality, or agency authorized to invest funds shall not make the state, the treasurer of state, or the treasurer's designee liable to a political subdivision, the state board of regents, or an instrumentality, or agency of the state in any manner for any loss, damage, or expense incurred by the political subdivision, the state board of regents, or an instrumentality, or agency as a result of an investment.

92 Acts, ch 1156, §5

12.63 and 12.64 Reserved.

HEALTHY IOWANS TOBACCO TRUST

12.65 Healthy Iowans tobacco trust.

1. A healthy Iowans tobacco trust is created in the office of the treasurer of state. Moneys transferred to the healthy Iowans tobacco trust from the endowment for Iowa's health account of the tobacco settlement trust fund established in section 12E.12 and appropriated or transferred from any other source shall be deposited in the healthy Iowans tobacco trust.

2. Moneys deposited in the healthy Iowans tobacco trust shall be used only in accordance with appropriations from the healthy Iowans tobacco trust for purposes related to health care, substance abuse treatment and enforcement, tobacco use prevention and control, and other purposes related to the needs of children, adults, and families in the state.

3. Notwithstanding section 8.33, any unexpended balance in the healthy Iowans tobacco trust at the end of the fiscal year shall be retained in the trust. Notwithstanding section 12C.7, subsection 2, interest or earnings on investments or time deposits of the moneys in the healthy Iowans tobacco trust shall be credited to the healthy Iowans tobacco trust.

4. Moneys in the healthy Iowans tobacco trust shall be considered part of the general fund of the state for cash flow purposes only, provided any moneys used for cash flow purposes are returned to the trust by the close of each fiscal year.

97 Acts, ch 209, §19; 2000 Acts, ch 1232, §12, 17; 2001 Acts, ch 164, §1, 21; 2001 Acts, ch 184, §5, 16

12.66 through 12.70 Reserved.

VISION IOWA PROGRAM

12.71 General and specific bonding powers — vision Iowa program.

1. The treasurer of state may issue bonds upon the request of the vision Iowa board created in section 15F.102 and do all things necessary with respect to the purposes of the vision Iowa fund. The treasurer of state shall have all of the powers which are necessary to issue and secure bonds and carry out the purposes of the fund. The treasurer of state may issue bonds in principal amounts which, in the opinion of the board, are necessary to provide sufficient funds for the vision Iowa fund created in section 12.72, 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; provided, however, excluding the issuance of refunding bonds, bonds issued pursuant to this section shall not be issued in an ag-

gregate principal amount which exceeds three hundred million dollars. The bonds are investment securities and negotiable instruments within the meaning of and for purposes of the uniform commercial code.

2. Bonds issued under this section are payable solely and only out of the moneys, assets, or revenues of the vision Iowa fund and any bond reserve funds established pursuant to section 12.72, 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. Bonds issued under this section shall contain on their face a statement that the bonds do not constitute an indebtedness of the state. The treasurer of state shall not pledge the credit or taxing power of this state or any political subdivision of this state or make bonds issued pursuant to this section payable out of any moneys except those in the vision Iowa fund.

3. 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 or reinvested in any investment as directed by the board 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.

4. 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 the 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 section and as determined by the trust indenture, resolution, or other instrument authorizing their issuance.

5. 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, savings and loan 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.

6. 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 board the power to negotiate and fix the details of an issue of bonds.

7. 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 to be valid, binding, or effective.

8. Bonds issued under the provisions of this section are declared to be issued for a general public and governmental purpose and all bonds issued under this section 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 and estate tax.

9. Subject to the terms of any bond documents, moneys in the vision Iowa fund may be expended for administration expenses.

10. The treasurer of state may issue bonds for the purpose of refunding any bonds or notes issued pursuant to this section then outstanding, including the payment of any redemption premiums thereon and any interest accrued or to accrue to the date of redemption of the outstanding bonds or notes. Until the proceeds of bonds issued for the purpose of refunding outstanding bonds or notes are applied to the purchase or retirement of outstanding bonds or notes or the redemption of outstanding bonds or notes, the proceeds may be placed in escrow and be invested and reinvested in accordance with the provisions of this section. The interest, income, and profits earned or realized on an investment may also be applied to the payment of the outstanding bonds or notes to be refunded by purchase, retirement, or redemption. After the terms of the escrow have been fully satisfied and carried out, any balance of proceeds and interest earned or realized on the investments may be returned to the board for deposit in the vision Iowa fund established in section 12.72. All refunding bonds shall be issued and secured and subject to the provisions of this chapter in the same manner and to the same extent as other bonds issued pursuant to this section.

2000 Acts, ch 1174, §15

12.72 Vision Iowa fund and reserve funds.

1. A vision Iowa fund is created and established as a separate and distinct fund in the state treasury. The moneys in the fund are appropriated to the vision Iowa board for purposes of the vision Iowa program established in section 15F.302. Moneys 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 of the vision Iowa fund. The treasurer of

state shall act as custodian of the fund and disburse moneys contained in the fund as directed by the vision Iowa board, including automatic disbursements of funds received pursuant to the terms of bond indentures and documents and security provisions to trustees. The fund shall be administered by the vision Iowa board which shall make expenditures from the fund consistent with the purposes of the vision Iowa program without further appropriation. An applicant under the vision Iowa program shall not receive more than seventy-five million dollars in financial assistance from the fund.

2. Revenue for the vision Iowa fund shall include, but is not limited to, the following, which shall be deposited with the treasurer of state or the treasurer's designee as provided by any bond or security documents and credited to the fund:

a. The proceeds of bonds issued to capitalize and pay the costs of the fund and investment earnings on the proceeds.

b. Interest attributable to investment of money in the fund or an account of the fund.

c. 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.

3. Moneys in the vision Iowa fund are not subject to section 8.33. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys in the fund shall be credited to the fund.

4. *a.* The treasurer of state may create and establish one or more special funds, to be known as *"bond reserve funds"*, to secure one or more issues of bonds or notes issued pursuant to section 12.71. The treasurer of state shall pay into each bond reserve fund any moneys appropriated and made available by the state or the treasurer for the purpose of the fund, any proceeds of sale of notes or bonds to the extent provided in the resolutions authorizing their issuance, and any other moneys which may be available to the treasurer for the purpose of the fund from any other sources. All moneys held in a bond reserve fund, except as otherwise provided in this chapter, shall be used as required solely for the payment of the principal of bonds secured in whole or in part by the fund or of the sinking fund payments with respect to the bonds, the purchase or redemption of the bonds, the payment of interest on the bonds, or the payments of any redemption premium required to be paid when the bonds are redeemed prior to maturity.

b. Moneys in a bond reserve fund shall not be withdrawn from it at any time in an amount that will reduce the amount of the fund to less than the bond reserve fund requirement established for the fund, as provided in this subsection, except for the purpose of making, with respect to bonds secured in whole or in part by the fund, payment when due of principal, interest, redemption premiums, and the sinking fund payments with respect to the bonds for the payment of which other moneys of the treasurer are not available. Any income or interest earned by, or incremental to, a bond reserve fund due to the investment of it may be transferred by the treasurer to other funds or accounts to the extent the transfer does not reduce the amount of that bond reserve fund below the bond reserve fund requirement for it.

c. The treasurer of state shall not at any time issue bonds, secured in whole or in part by a bond reserve fund if, upon the issuance of the bonds, the amount in the bond reserve fund will be less than the bond reserve fund requirement for the fund, unless the treasurer at the time of issuance of the bonds deposits in the fund from the proceeds of the bonds issued or from other sources an amount which, together with the amount then in the fund, will not be less than the bond reserve fund requirement for the fund. For the purposes of this subsection, the term *"bond reserve fund requirement"* means, as of any particular date of computation, an amount of money, as provided in the resolutions authorizing the bonds with respect to which the fund is established.

d. To assure the continued solvency of any bonds secured by the bond reserve fund, provision is made in paragraph *"a"* for the accumulation in each bond reserve fund of an amount equal to the bond reserve fund requirement for the fund. In order further to assure maintenance of the bond reserve funds, the treasurer 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. 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 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 pursuant to this subsection shall be deposited by the treasurer in the applicable bond reserve fund.

2000 Acts, ch 1174, §16; 2001 Acts, ch 24, §7, 8; 2001 Acts, 1st Ex, ch 5, §3, 7; 2002 Acts, ch 1119, §3

2001 amendment to subsection 4 is effective July 5, 2001, and applies retroactively to July 1, 2001; 2001 Acts, 1st Ex, ch 5, §7

12.73 Vision Iowa fund moneys — administrative costs.

During the term of the vision Iowa program established in section 15F.302, two hundred thousand dollars of the moneys deposited each fiscal year in the vision Iowa fund and appropriated for the vision Iowa program shall be allocated each fiscal year to the department of economic develop-

ment for administrative costs incurred by the department for purposes of administering the vision Iowa program.

2000 Acts, ch 1225, §31, 38, 39; 2001 Acts, ch 185, §34

12.74 Pledges.

It is the intention of the general assembly that a pledge made in respect of bonds or notes shall be valid and binding from the time the pledge is made, that the money or property so pledged and received after the pledge by the treasurer of state shall immediately be subject to the lien of the pledge without physical delivery or further act, and that the lien of the pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the treasurer of state whether or not the parties have notice of the lien.

2000 Acts, ch 1174, §17; 2000 Acts, ch 1232, §42; 2001 Acts, ch 24, §9; 2001 Acts, ch 185, §35, 49

12.75 Projects.

1. The vision Iowa board may undertake a project for two or more applicants jointly or for any combination of applicants, and may combine for financing purposes, with the consent of all of the applicants which are involved, the project and some or all future projects of any applicant, and sections 12.71, 12.72, and 12.74, this section, and sections 12.76 and 12.77 apply to and for the benefit of the vision Iowa board and the joint applicants. However, the money set aside in a fund or funds pledged for any series or issue of bonds or notes shall be held for the sole benefit of the series or issue separate and apart from money pledged for another series or issue of bonds or notes of the treasurer of state. To facilitate the combining of projects, bonds or notes may be issued in series under one or more resolutions or trust agreements and may be fully open-ended, thus providing for the unlimited issuance of additional series, or partially open-ended, limited as to additional series.

2. For purposes of this section, *"applicant"* means a city or county or public organization applying for financial assistance under the vision Iowa program established in section 15F.302.

2000 Acts, ch 1174, §18

12.76 Limitations.

Bonds or notes issued pursuant to section 12.71 are not debts of the state, or of any political subdivision of the state, and do not constitute a pledge of the faith and credit of the state or a charge against the general credit or general fund of the state. The issuance of any bonds or notes pursuant to section 12.71 by the treasurer of state does not directly, indirectly, or contingently obligate the state or a political subdivision of the state to apply moneys from, or to levy or pledge any form of taxation whatever, to the payment of the bonds or notes. Bonds and notes issued under section 12.71 are payable solely and only from the sources and special fund provided in section 12.72.

2000 Acts, ch 1174, §19

12.77 Construction.

Sections 12.71 through 12.76, being necessary for the welfare of this state and its inhabitants, shall be liberally construed to effect its purposes.

2000 Acts, ch 1174, §20

12.78 through 12.80 Reserved.

SCHOOL INFRASTRUCTURE PROGRAM

12.81 General and specific bonding powers — school infrastructure program.

1. The treasurer of state may issue bonds for purposes of the school infrastructure program established in section 292.2. Excluding the issuance of refunding bonds, the treasurer of state shall not issue bonds which result in the deposit of bond proceeds of more than fifty million dollars into the school infrastructure fund. The treasurer of state shall have all of the powers which are necessary to issue and secure bonds and carry out the purposes of the fund. The treasurer of state may issue bonds in principal amounts which are necessary to provide funds for the fund as provided by this section, 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 treasurer of state 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.

2. Bonds issued under this section are payable solely and only out of the moneys, assets, or revenues of the school infrastructure fund and any bond reserve funds, all of which may be deposited with trustees or depositories in accordance with bond or security documents and pledged by the treasurer of state to the payment thereof. Bonds issued under this section shall contain on their face a statement that the bonds do not constitute an indebtedness of the state. The treasurer of state shall not pledge the credit or taxing power of this state or any political subdivision of this state or make bonds issued pursuant to this section payable out of any moneys except those in the school infrastructure fund.

3. 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 or reinvested in any investment approved by the treasurer of state and specified in the trust indenture, resolution, or other instru-

ment pursuant to which the bonds are issued without regard to any limitation otherwise provided by law.

4. 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 the 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 section and as determined by the trust indenture, resolution, or other instrument authorizing their issuance.

5. 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, savings and loan 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.

6. Bonds must be authorized by a trust indenture, resolution, or other instrument of the treasurer of state. 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.

7. 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 to be valid, binding, or effective.

8. Bonds issued under the provisions of this section are declared to be issued for a general public and governmental purpose and all bonds issued under this section 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 and estate tax.

9. Subject to the terms of any bond documents, moneys in the school infrastructure fund may be expended for administration expenses.

10. The treasurer of state may issue bonds for the purpose of refunding any bonds or notes issued pursuant to this section then outstanding, including the payment of any redemption premiums thereon and any interest accrued or to accrue to the date of redemption of the outstanding bonds or notes. Until the proceeds of bonds issued for the purpose of refunding outstanding bonds or notes are applied to the purchase or retirement of outstanding bonds or notes or the redemption of outstanding bonds or notes, the proceeds may be placed in escrow and be invested and reinvested in accordance with the provisions of this section. The interest, income, and profits earned or realized on an investment may also be applied to the payment of the outstanding bonds or notes to be refunded by purchase, retirement, or redemption. After the terms of the escrow have been fully satisfied and carried out, any balance of proceeds and interest earned or realized on the investments may be returned and deposited in the school infrastructure fund. All refunding bonds shall be issued and secured and subject to the provisions of this chapter in the same manner and to the same extent as other bonds issued pursuant to this section.

2000 Acts, ch 1174, §21

12.82 School infrastructure fund and reserve funds.

1. A school infrastructure fund is created and established as a separate and distinct fund in the state treasury under the control of the department of education. The fund shall be used for purposes of the school infrastructure program established in section 292.2.

2. Revenue for the school infrastructure fund shall include, but is not limited to, the following, which shall be deposited with the treasurer of state or its designee as provided by any bond or security documents and credited to the fund:

a. The proceeds of bonds issued to capitalize and pay the costs of the fund and investment earnings on the proceeds.

b. Interest attributable to investment of money in the fund or an account of the fund.

c. 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.

3. Moneys in the school infrastructure fund are not subject to section 8.33. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys in the fund shall be credited to the fund.

4. *a.* The treasurer of state may create and establish one or more special funds, to be known as *"bond reserve funds"*, to secure one or more issues of bonds or notes issued pursuant to section 12.81. The treasurer of state shall pay into each bond reserve fund any moneys appropriated and made available by the state or the treasurer for the purpose of the fund, any proceeds of sale of notes or bonds to the extent provided in the resolutions authorizing their issuance, and any other moneys which may be available to the treasurer for the purpose of the fund from any other sources. All moneys held in a bond reserve fund, except as

otherwise provided in this chapter, shall be used as required solely for the payment of the principal of bonds secured in whole or in part by the fund or of the sinking fund payments with respect to the bonds, the purchase or redemption of the bonds, the payment of interest on the bonds, or the payments of any redemption premium required to be paid when the bonds are redeemed prior to maturity.

b. Moneys in a bond reserve fund shall not be withdrawn from it at any time in an amount that will reduce the amount of the fund to less than the bond reserve fund requirement established for the fund, as provided in this subsection, except for the purpose of making, with respect to bonds secured in whole or in part by the fund, payment when due of principal, interest, redemption premiums, and the sinking fund payments with respect to the bonds for the payment of which other moneys of the treasurer are not available. Any income or interest earned by, or incremental to, a bond reserve fund due to the investment of it may be transferred by the treasurer to other funds or accounts to the extent the transfer does not reduce the amount of that bond reserve fund below the bond reserve fund requirement for it.

c. The treasurer of state shall not at any time issue bonds, secured in whole or in part by a bond reserve fund if, upon the issuance of the bonds, the amount in the bond reserve fund will be less than the bond reserve fund requirement for the fund, unless the treasurer at the time of issuance of the bonds deposits in the fund from the proceeds of the bonds issued or from other sources an amount which, together with the amount then in the fund, will not be less than the bond reserve fund requirement for the fund. For the purposes of this subsection, the term *"bond reserve fund requirement"* means, as of any particular date of computation, an amount of money, as provided in the resolutions authorizing the bonds with respect to which the fund is established.

d. To assure the continued solvency of any bonds secured by the bond reserve fund, provision is made in paragraph *"a"* for the accumulation in each bond reserve fund of an amount equal to the bond reserve fund requirement for the fund. In order further to assure maintenance of the bond reserve funds, the treasurer 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. 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 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 pursuant to this subsection shall be deposited by the treasurer in the applicable bond reserve fund.

2000 Acts, ch 1174, §22; 2001 Acts, 1st Ex, ch 5, §4, 7; 2002 Acts, ch 1119, §4

2001 amendment to subsection 4 is effective July 5, 2001, and applies retroactively to July 1, 2001; 2001 Acts, 1st Ex, ch 5, §7

12.83 School infrastructure fund moneys — state fire marshal.

During the term of the school infrastructure program established in section 292.2, up to fifty thousand dollars of the moneys deposited each fiscal year in the school infrastructure fund shall be allocated each fiscal year to the department of public safety for the use of the state fire marshal. The funds shall be used by the state fire marshal solely for the purpose of retaining an architect or architectural firm to evaluate structures for which school infrastructure program grant applications are made, to consult with school district representatives, to review construction drawings and blueprints, and to perform related duties at the direction of the state fire marshal to ensure the best possible use of moneys received by a school district under the school infrastructure program. The state fire marshal shall provide for the review of plans, drawings, and blueprints in a timely manner.

2000 Acts, ch 1225, §32, 38, 39

12.84 Pledges.

It is the intention of the general assembly that a pledge made in respect of bonds or notes shall be valid and binding from the time the pledge is made, that the money or property so pledged and received after the pledge by the treasurer of state shall immediately be subject to the lien of the pledge without physical delivery or further act, and that the lien of the pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the treasurer of state whether or not the parties have notice of the lien.

2000 Acts, ch 1174, §23; 2000 Acts, ch 1232, §43; 2001 Acts, ch 185, §36, 49

12.85 Limitations.

Bonds or notes issued pursuant to section 12.81 are not debts of the state, or of any political subdivision of the state, and do not constitute a pledge of the faith and credit of the state or a charge against the general credit or general fund of the state. The issuance of any bonds or notes pursuant to section 12.81 by the treasurer of state does not directly, indirectly, or contingently obligate the state or a political subdivision of the state to apply moneys from, or to levy or pledge any form of taxation whatever to, the payment of the bonds or notes. Bonds and notes issued under section 12.81 are payable solely and only from the sources and special fund provided in section 12.82. Ex-

penses incurred in carrying out sections 12.81 through 12.84, this section, and section 12.86 are payable solely from funds available under those sections.

2000 Acts, ch 1174, §24

12.86 Construction.

Sections 12.81 through 12.85, being necessary for the welfare of this state and its inhabitants, shall be liberally construed to effect its purposes.

2000 Acts, ch 1174, §25

CHAPTER 12A

RESTRICTIONS ON SOUTH AFRICA-RELATED INVESTMENTS AND DEPOSITS

Repealed effective February 1, 1994, by 94 Acts, ch 1001, §5, 6

CHAPTER 12B

SECURITY OF THE REVENUE

This chapter not enacted as a part of this title; transferred from chapter 452 in Code 1993

12B.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

Former §12B.1 transferred to §12B.1A

12B.1A County responsible to state.

Each county is responsible to the state for the full amount of tax levied for state purposes, excepting such amounts as are certified to be unavailable, double, or erroneous assessments.

[R60, §793; C73, §908; C97, §1453; C24, 27, 31, 35, 39, §**7398;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §452.1]

C93, §12B.1

C2001, §12B.1A

12B.2 Interest on warrants.

When interest is due and allowed by the treasurer of state on the redemption of state warrants, or by the county treasurer on the redemption of county warrants, the same shall be receipted on the warrants by the holder, with the date of the payment, and no interest shall be allowed by the department of administrative services or board of supervisors except such as is thus receipted.

[R60, §795; C73, §910; C97, §1455; C24, 27, 31, 35, 39, §**7400;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §452.2]

C93, §12B.2

2003 Acts, ch 145, §286

Analogous section, §74.7

12B.3 Discounting warrants.

If the treasurer of state or any county treasurer, personally or through another, discounts the director of the department of administrative services' or auditor's warrants, either directly or indirectly, the treasurer shall be guilty of a serious misdemeanor.

[R60, §796; C73, §911; C97, §1456; C24, 27, 31, 35, 39, §**7401;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §452.3]

C93, §12B.3

2003 Acts, ch 145, §286; 2004 Acts, ch 1101, §11

Section amended

12B.4 Loans by county treasurer.

A county treasurer shall be guilty of a serious misdemeanor for loaning out, or in any manner using for private purposes, state, county, or other funds in the treasurer's hands.

[R60, §797; C73, §912; C97, §1457; S13, §1457; C24, 27, 31, 35, 39, §**7402;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §452.4]

C93, §12B.4

12B.5 Loans by treasurer of state.

The treasurer of state shall be guilty of a serious misdemeanor for loaning out, or in any manner using for private purposes, state, county, or other funds in the treasurer's hands.

[R60, §797; C73, §912; C97, §1457; S13, §1457; C24, 27, 31, 35, 39, §**7403;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §452.5]

C93, §12B.5

12B.6 Reserved.

12B.7 Settlement by retiring treasurer.

When a county treasurer goes out of office, the treasurer shall make a full and complete settlement with the board of supervisors, and deliver up all books, papers, moneys, and all other property pertaining to the office, to the treasurer's successor, taking a receipt therefor.

[R60, §802; C73, §917; C97, §1461; C24, 27, 31, 35, 39, §**7409;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §452.7]

C93, §12B.7

12B.8 Supervisors to report to state auditor.

The board of supervisors shall make a statement of state dues to the auditor of state, showing all charges against the treasurer during the treasurer's term of office, and all credits made, the delinquent taxes and other unfinished business charged over to the treasurer's successor, and the amount of money paid over to the treasurer's successor, showing to what year and to what account the amount so paid over belongs.

[R60, §802; C73, §917; C97, §1461; C24, 27, 31, 35, 39, §**7410;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §452.8]

C93, §12B.8

12B.9 Correct balances.

The board of supervisors shall also see that the books of the treasurer are correctly balanced before passing into the possession and control of the treasurer-elect.

[R60, §802; C73, §917; C97, §1461; C24, 27, 31, 35, 39, §**7411;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §452.9]

C93, §12B.9

12B.10 Public funds investment standards.

1. In addition to investment standards and requirements otherwise provided by law, the investment of public funds by the treasurer of state, state agencies authorized to invest funds, and political subdivisions of this state, shall comply with this section, except where otherwise provided by another statute specifically referring to this section.

The treasurer of state and the treasurer of each political subdivision shall at all times keep funds coming into their possession as public money in a vault or safe to be provided for that purpose or in one or more depositories approved pursuant to chapter 12C. However, the treasurer of state and the treasurer of each political subdivision shall invest, unless otherwise provided, any public funds not currently needed in investments authorized by this section.

2. The treasurer of state, state agencies authorized to invest funds, and political subdivisions of this state, when investing or depositing public funds, shall exercise the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use to attain the goals of this subsection. This standard requires that when making investment decisions, a public entity shall consider the role that the investment or deposit plays within the portfolio of assets of the public entity and the goals of this subsection. The primary goals of investment prudence shall be based in the following order of priority:

a. Safety of principal is the first priority.

b. Maintaining the necessary liquidity to match expected liabilities is the second priority.

c. Obtaining a reasonable return is the third priority.

3. Investments of public funds shall be made in accordance with written policies. A written investment policy shall address the goals set out in subsection 2 and shall also address, but is not limited to, compliance with state law, diversification, maturity, quality, and capability of investment management.

The trading of securities in which any public funds are invested for the purpose of speculation and the realization of short-term trading profits is prohibited.

Investments by a political subdivision must have maturities that are consistent with the needs and use of that political subdivision or agency.

4. The treasurer of state and all other state agencies authorized to invest funds shall only purchase and invest in the following:

a. Obligations of the United States government, its agencies and instrumentalities.

b. Certificates of deposit and other evidences of deposit at federally insured depository institutions approved pursuant to chapter 12C.

c. Prime bankers' acceptances that mature within two hundred seventy days and that are eligible for purchase by a federal reserve bank, provided that at the time of purchase no more than thirty percent of the investment portfolio of the treasurer of state or any other state agency shall be in investments authorized by this paragraph and that at the time of purchase no more than five percent of the investment portfolio shall be invested in the securities of a single issuer.

d. Commercial paper or other short-term corporate debt that matures within two hundred seventy days and that is rated within the two highest classifications, as established by at least one of the standard rating services approved by the superintendent of banking by rule adopted pursuant to chapter 17A, provided that at the time of purchase no more than five percent of all amounts invested in commercial paper and other short-term corporate debt shall be invested in paper and debt rated in the second highest classification, and provided further that at the time of purchase no more than thirty percent of the investment portfolio of the treasurer of state or any other state agency shall be in investments authorized by this paragraph and that at the time of purchase no more than five percent of the investment portfolio shall be invested in the securities of a single issuer.

e. Repurchase agreements whose underlying collateral consists of the investments set out in paragraphs *"a"* through *"d"* if the treasurer of state or state agency takes delivery of the collateral either directly or through an authorized custodian. Repurchase agreements do not include reverse repurchase agreements.

f. Investments authorized for the Iowa public employees' retirement system in section 97B.7A, except that investment in common stocks is not permitted.

g. An open-end management investment company organized in trust form registered with the federal securities and exchange commission under the federal Investment Company Act of 1940, 15 U.S.C. § 80(a), and operated in accordance with 17 C.F.R. § 270.2a-7.

Futures and options contracts are not permissible investments.

5. Political subdivisions of this state, including entities organized pursuant to chapter 28E whose primary function is other than to jointly invest public funds, shall purchase and invest only in the following:

a. Obligations of the United States government, its agencies and instrumentalities.

b. Certificates of deposit and other evidences of deposit at federally insured depository institutions approved pursuant to chapter 12C.

c. Prime bankers' acceptances that mature within two hundred seventy days and that are eligible for purchase by a federal reserve bank, provided that at the time of purchase no more than ten percent of the investment portfolio shall be in investments authorized by this paragraph and that at the time of purchase no more than five percent of the investment portfolio shall be invested in the securities of a single issuer.

d. Commercial paper or other short-term corporate debt that matures within two hundred seventy days and that is rated within the two highest classifications, as established by at least one of the standard rating services approved by the superintendent of banking by rule adopted pursuant to chapter 17A, provided that at the time of purchase no more than five percent of all amounts invested in commercial paper and other short-term corporate debt shall be invested in paper and debt rated in the second highest classification, and provided further that at the time of purchase no more than ten percent of the investment portfolio shall be in investments authorized by this paragraph and that at the time of purchase no more than five percent of the investment portfolio shall be invested in the securities of a single issuer.

e. Repurchase agreements whose underlying collateral consists of the investments set out in paragraph *"a"* if the political subdivision takes delivery of the collateral either directly or through an authorized custodian. Repurchase agreements do not include reverse repurchase agreements.

f. An open-end management investment company registered with the federal securities and exchange commission under the federal Investment Company Act of 1940, 15 U.S.C. § 80(a), and operated in accordance with 17 C.F.R. § 270.2a-7.

g. A joint investment trust organized pursuant to chapter 28E prior to and existing in good standing on the effective date of this Act or a joint investment trust organized pursuant to chapter 28E after April 28, 1992, provided that the joint investment trust shall either be rated within the two highest classifications by at least one of the standard rating services approved by the superintendent of banking by rule adopted pursuant to chapter 17A and operated in accordance with 17 C.F.R. § 270.2a-7, or be registered with the federal securities and exchange commission under the federal Investment Company Act of 1940, 15 U.S.C. § 80(a), and operated in accordance with 17 C.F.R. § 270.2a-7. The manager or investment advisor of the joint investment trust shall be registered with the federal securities and exchange commission under the Investment Advisor Act of 1940, 15 U.S.C. § 80(b).

h. Warrants or improvement certificates of a levee or drainage district.

Futures and options contracts are not permissible investments.

6. The following investments are not subject to this section:

a. Investments by the public safety peace officers' retirement system governed by chapter 97A.

b. Investments by the Iowa public employees' retirement system governed by chapter 97B.

c. Investments by the Iowa finance authority

governed by chapter 16.

d. Investments by the state board of regents. However, investments by the state board of regents or institutions governed by the state board of regents are limited to the following:

(1) Those investments set out in subsection 4.

(2) The common fund for nonprofit organizations.

(3) Common stocks.

(4) For investments of short-term operating funds, the funds shall not be invested in investments having effective maturities exceeding sixty-three months.

e. A pension and annuity retirement system governed by chapter 294.

f. Investments by the statewide fire and police retirement system governed by chapter 411.

g. Investments by the judicial retirement system governed by chapter 602, article 9.

h. Investments under the deferred compensation plan established by the executive council pursuant to section 509A.12.

i. Investments made by city hospitals as provided in section 392.6. However, investments by city hospitals are limited to the following:

(1) The same types of investments as the treasurer of state and other state agencies may make under this section.

(2) Investment in common stocks.

j. Investments by the tobacco settlement authority governed by chapter 12E.

k. Investments by municipal utility retirement systems governed under chapter 412.

[R60, §804; C73, §918; C97, §1462; S13, §1462; C24, 27, 31, 35, 39, §**7412;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §452.10]

84 Acts, ch 1194, §1; 84 Acts, ch 1230, §4; 85 Acts, ch 194, §1; 87 Acts, ch 105, §3; 88 Acts, ch 1027, §1; 88 Acts, ch 1187, §1; 90 Acts, ch 1233, §30; 91 Acts, ch 249, §1; 92 Acts, ch 1156, §16

C93, §12B.10

94 Acts, ch 1012, §1; 96 Acts, ch 1187, §75; 97 Acts, ch 185, §1; 2000 Acts, ch 1156, §1; 2000 Acts, ch 1208, §20, 25; 2001 Acts, ch 68, §2, 24; 2001 Acts, ch 102, §1; 2003 Acts, ch 179, §91

12B.10A Public investment maturity and procedural limitations.

1. The investment of public funds which are operating funds by a political subdivision shall be subject to the following:

a. As used in this section, *"operating funds"* means those funds which are reasonably expected to be expended during a current budget year or within fifteen months of receipt.

b. Operating funds must be identified and distinguished from all other funds available for investment.

c. Operating funds may only be invested in investments which mature within three hundred ninety-seven days or less and which are authorized by law for the investing public entity.

2. All investments of public funds by political subdivisions shall be subject to the following:

a. Each investment must be authorized by applicable law and the written investment policy of the political subdivision.

b. Each political subdivision whose investments involve the use of a public funds custodial agreement, as defined in section 12B.10C, shall comply with rules adopted pursuant to section 12B.10C relating to those investments. All contracts providing for the investment of public funds shall be in writing and shall contain a provision requiring that all investments shall be made in accordance with the laws of this state.

c. A contract for the investment or deposit of public funds shall not provide for compensation of an agent or fiduciary based upon investment performance.

3. A treasurer of a political subdivision may invest funds of the political subdivision or agency that are not operating funds in investments having maturities longer than three hundred and ninety-seven days.

4. As used in this section, *"public funds"* means all funds that are public funds within the meaning of section 12C.1, subsection 2, paragraph *"e"*, except state funds invested by the treasurer of state.

5. This section shall not be construed to supersede any provision of this chapter or of chapter 12C.

6. The following entities are not subject to this section:

a. The public safety peace officers' retirement system governed by chapter 97A.

b. The Iowa public employees' retirement system governed by chapter 97B.

c. The Iowa finance authority governed by chapter 16.

d. The state board of regents. However, investments by the state board of regents or institutions governed by the state board of regents are limited to the following:

(1) Those investments set out in section 12B.10, subsection 4.

(2) The common fund for nonprofit organizations.

(3) Common stocks.

(4) For investments of short-term operating funds, the funds shall not be invested in investments having effective maturities exceeding sixty-three months.

e. A pension and annuity retirement system governed by chapter 294.

f. The statewide fire and police retirement system governed by chapter 411.

g. The judicial retirement system governed by chapter 602, article 9.

h. The deferred compensation plan established by the executive council pursuant to section 509A.12.

i. The tobacco settlement authority governed by chapter 12E.

7. A joint investment trust organized pursuant to chapter 28E whose primary function is to invest public funds shall report to the general assembly not later than January 1 of each year the amount of any trust royalty, residual payment, administrative or service fee, or other fee paid by the trust, the services performed for the fee, and the person receiving the fee.

92 Acts, ch 1156, §17; 96 Acts, ch 1187, §76; 97 Acts, ch 185, §2; 2000 Acts, ch 1208, §21, 25; 2003 Acts, ch 179, §92

12B.10B Written investment policies.

1. Political subdivisions shall approve written investment policies which incorporate the guidelines specified in section 12B.10, sections 12B.10A through 12B.10C, and any other provisions deemed necessary to adequately safeguard invested public funds.

2. The written investment policy required by section 12B.10 shall be delivered to all of the following:

a. The governing body or officer of the public entity to which the policy applies.

b. All depository institutions or fiduciaries for public funds of the public entity.

c. The auditor of the public entity.

3. The following entities are not subject to this section:

a. The public safety peace officers' retirement system governed by chapter 97A.

b. The Iowa public employees' retirement system governed by chapter 97B.

c. The Iowa finance authority governed by chapter 16.

d. The state board of regents governed by chapter 262.

e. A pension and annuity retirement system governed by chapter 294.

f. The statewide fire and police retirement system governed by chapter 411.

g. The judicial retirement system governed by chapter 602, article 9.

h. The deferred compensation plan established by the executive council pursuant to section 509A.12.

i. The tobacco settlement authority governed by chapter 12E.

j. Municipal utility retirement systems governed under chapter 412.

92 Acts, ch 1156, §18; 96 Acts, ch 1187, §77; 97 Acts, ch 185, §3; 2000 Acts, ch 1208, §22, 25; 2001 Acts, ch 102, §2

12B.10C Regulation of public funds custodial agreements.

The treasurer of state, in consultation with the attorney general, shall adopt rules under chapter 17A requiring the inclusion in public funds custodial agreements of any provisions necessary to prevent loss of public funds.

As used in this section, *"public funds custodial agreement"* means any contractual arrangement pursuant to which one or more persons, including but not limited to, investment advisors, investment companies, trustees, agents and custodians, are authorized to act as a custodian of or to designate another person to act as a custodian of public funds or any security or document of ownership or title evidencing public funds investments other than custodial agreements between an open-end management investment company registered with the federal securities and exchange commission under the federal Investment Company Act of 1940, 15 U.S.C. § 80(a) and a custodian bank.

As used in this section *"public funds"* means public funds as defined in section 12C.1. However, this section does not apply to public funds that are invested under the provisions of a resolution or indenture for the issuance of bonds, notes, certificates, warrants, or other evidences of indebtedness. To the extent that a provision of this section conflicts with federal law, it shall be construed to avoid the conflict.

The following entities are not subject to this section:

1. The public safety peace officers' retirement system governed by chapter 97A.

2. The Iowa public employees' retirement system governed by chapter 97B.

3. Investments by the Iowa finance authority governed by chapter 16.

4. A pension and annuity retirement system governed by chapter 294.

5. The statewide fire and police retirement system governed by chapter 411.

6. The judicial retirement system governed by chapter 602, article 9.

7. The deferred compensation plan established by the executive council pursuant to section 509A.12.

8. The tobacco settlement authority governed by chapter 12E.

9. Municipal utility retirement systems governed under chapter 412.

92 Acts, ch 1156, §19; 96 Acts, ch 1187, §78; 97 Acts, ch 185, §4; 2000 Acts, ch 1208, §23, 25; 2001 Acts, ch 102, §3

12B.11 Manner and details of settlement.

At the time of any examination of any such office, or at the time of any settlement with the treasurer in charge of any such public funds, the treasurer shall produce and count in the presence of the officer or officers making such examination or settlement, all moneys or funds then on deposit in the safe or vault in the treasurer's office, and shall produce a statement of all money or funds on deposit with any depository wherein the treasurer is authorized to deposit such funds, and shall correctly show the balance remaining on deposit in

such depository at the close of business on the day preceding the day of such settlement. The treasurer shall also file a statement setting forth the numbers, dates, and amounts of all outstanding checks, or other items of difference, reconciling the balance as shown by the treasurer's books with those of the depositories. The state treasurer shall also file a statement showing the numbers, dates and amounts of all United States government bonds held as part of said public fund.

[R60, §804; C73, §918; C97, §1462; S13, §1462; C24, 27, 31, 35, 39, §**7413;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §452.11]

C93, §12B.11

2003 Acts, ch 24, §1

12B.12 Duty of examining officer.

It shall be the duty of the officer or officers making such settlement to see that the amount of securities and money produced and counted, together with the amounts so certified by the legally designated depositories, agrees with the balance with which such treasurer should be charged, and the officer shall make a report in writing of any such settlement or examination, and attach thereto the certified statement of all such depositories.

[S13, §1462; C24, 27, 31, 35, 39, §**7414;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §452.12]

C93, §12B.12

12B.13 Report of settlement filed.

The report of any such settlement with the treasurer of state shall be filed in the office of the director of the department of management, and the report of a settlement with a county treasurer with the auditor of the county.

[S13, §1462; C24, 27, 31, 35, 39, §**7415;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §452.13]

C93, §12B.13

12B.14 False statements or reports.

Any officer or other person making a false statement or report or in any manner violating any of the provisions of sections 12B.10 to 12B.13 shall be guilty of a fraudulent practice.

[S13, §1462-a; C24, 27, 31, 35, 39, §**7416;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §452.14]

C93, §12B.14

12B.15 Official delinquency.

If any auditor or treasurer or other officer shall neglect or refuse to perform any act or duty specifically required of the officer, such officer shall be guilty of a simple misdemeanor, and the officer and the officer's surety shall be liable on the official bond for any fine imposed, and for the damages sustained by any person through such neglect or refusal.

[R60, §744, 749, 805; C73, §919; C97, §1463; C24, 27, 31, 35, 39, §**7417;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §452.15]

C93, §12B.15

12B.16 Refund to counties.

The director of the department of administrative services shall draw the warrant on the state treasury in favor of any county in the state for the amount of any excess in any fund or tax due the state from said county, excepting the state taxes.

[C97, §1464; C24, 27, 31, 35, 39, §**7418;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §452.16]

C93, §12B.16

2003 Acts, ch 145, §286

12B.17 Warrant for excess.

When it shall appear from the books in the department of administrative services that there is a balance due any county in excess of any revenue due the state, except state taxes, the director of the department of administrative services shall draw a warrant for such excess in favor of the county entitled thereto, and forward the same by mail, or otherwise, to the county auditor of the county to which it belongs, and charge the amount so sent to such county.

[C97, §1465; C24, 27, 31, 35, 39, §**7419;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §452.17]

C93, §12B.17

2003 Acts, ch 145, §286

12B.18 Delivery to treasurer.

The auditor to whom said warrant is sent shall immediately, upon receipt thereof, deliver it to the treasurer of the county, and charge the amount thereof to the treasurer, and shall acknowledge the receipt of the amount to the director of the department of administrative services.

[C97, §1466; C24, 27, 31, 35, 39, §**7420;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §452.18]

C93, §12B.18

2003 Acts, ch 145, §286

CHAPTER 12C

DEPOSIT OF PUBLIC FUNDS

This chapter not enacted as a part of this title; transferred from chapter 453 in Code 1993

12C.1 Deposits in general — definitions.

1. All funds held by the following officers or institutions shall be deposited in one or more depositories first approved by the appropriate governing body as indicated: for the treasurer of state, by the executive council; for judicial officers and court employees, by the supreme court; for the county treasurer, recorder, auditor, and sheriff, by the board of supervisors; for the city treasurer or other designated financial officer of a city, by the city council; for the county public hospital or merged area hospital, by the board of hospital trustees; for a memorial hospital, by the memorial hospital commission; for a school corporation, by the board of school directors; for a city utility or combined utility system established under chapter 388, by the utility board; for a library service area established under chapter 256, by the library service area board of trustees; and for an electric power agency as defined in section 28F.2 or 476A.20, by the governing body of the electric power agency. However, the treasurer of state and the treasurer of each political subdivision or the designated financial officer of a city shall invest all funds not needed for current operating expenses in time certificates of deposit in approved depositories pursuant to this chapter or in investments permitted by section 12B.10. The list of public depositories and the amounts severally deposited in the depositories are matters of public record. This subsection does not limit the definition of "public funds" contained in subsection 2. Notwithstanding provisions of this section to the contrary, public funds of a state government deferred compensation plan established by the executive council may also be invested in the investment products authorized under section 509A.12.

2. As used in this chapter unless the context otherwise requires:

a. "Bank" means a corporation engaged in the business of banking authorized by law to receive deposits and whose deposits are insured by the bank insurance fund or the savings association insurance fund of the federal deposit insurance corporation and includes any office of a bank. *"Bank"* also means a savings and loan or savings association.

b. "Credit union" means a cooperative, nonprofit association incorporated under chapter 533 or the federal Credit Union Act, 12 U.S.C. § 1751, et seq., and that is insured by the national credit union administration and includes an office of a credit union.

c. "Depository" means a bank, a savings and loan, or a credit union in which public funds are deposited under this chapter.

d. "Financial institution" means a bank or a credit union.

e. "Public funds" and *"public deposits"* mean any of the following:

(1) The moneys of the state or a political subdivision or instrumentality of the state including a county, school corporation, special district, drainage district, unincorporated town or township, municipality, or municipal corporation or any agency, board, or commission of the state or a polit-

ical subdivision. Moneys of the state include moneys which are transmitted to a depositary for purposes of completing an electronic financial transaction pursuant to section 159.35.

(2) The moneys of any court or public body noted in subsection 1.

(3) The moneys of a legal or administrative entity created pursuant to chapter 28E.

(4) The moneys of an electric power agency as defined in section 28F.2 or 476A.20.

(5) Federal and state grant moneys of a quasi-public state entity that are placed in a depository pursuant to this chapter.

(6) Moneys placed in a depository for the purpose of completing an electronic financial transaction pursuant to section 8A.222 or 331.427.

f. "Public officer" means the person authorized by and acting for a public body to deposit public funds of the public body.

g. "Savings and loan" means a corporation authorized to operate under chapter 534 or the federal Home Owner's Loan Act of 1933, 12 U.S.C. § 1461, et seq., and includes a savings and loan association, a savings bank, or any branch of a savings and loan association or savings bank.

h. "Uninsured public funds" means any amount of public funds of a public funds depositor on deposit in an account at a financial institution that exceeds the amount of public funds in that account that are insured by the federal deposit insurance corporation or the national credit union administration.

3. A deposit of public funds in a depository pursuant to this chapter shall be secured as follows:

a. If a depository is a credit union, then public deposits in the credit union shall be secured pursuant to sections 12C.16 through 12C.19 and sections 12C.23 and 12C.24.

b. If a depository is a bank, public deposits in the bank shall be secured pursuant to sections 12C.23A and 12C.24.

4. Ambiguities in the application of this section shall be resolved in favor of preventing the loss of public funds on deposit in a depository.

[C24, 27, §139, 4319, 5548, 5651, 7404; C31, 35, §7420-d1; C39, §**7420.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §453.1; 81 Acts, ch 148, §1; 82 Acts, ch 1202, §1]

83 Acts, ch 97, §1, 3; 83 Acts, ch 186, §1014, 10201; 84 Acts, ch 1230, §5; 85 Acts, ch 194, §2; 89 Acts, ch 39, §12; 92 Acts, ch 1156, §20 – 22

C93, §12C.1

93 Acts, ch 48, §3; 97 Acts, ch 185, §5; 99 Acts, ch 117, §1 – 4, 15; 99 Acts, ch 208, §42, 74; 2001 Acts, ch 158, §4; 2001 Acts, 1st Ex, ch 4, §1, 2, 36; 2002 Acts, ch 1096, §1, 2, 17; 2003 Acts, ch 18, §1; 2003 Acts, ch 48, §1; 2003 Acts, ch 179, §58, 84

12C.2 Approval — requirements.

The approval of a financial institution as a depository of public funds for a public body shall be by written resolution or order that shall be entered of record in the minutes of the approving board, and that shall distinctly name each depository approved, and specify the maximum amount that may be kept on deposit in each depository.

[C24, 27, §139; C31, 35, §7420-d2; C39, §**7420.02;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §453.2]

84 Acts, ch 1230, §6

C93, §12C.2

2002 Acts, ch 1096, §3, 17

12C.3 Reserved.

12C.4 Location of depositories.

Deposits by the treasurer of state shall be in depositories located in this state; by a county officer or county public hospital officer or merged area hospital officer, in depositories located in the county or in an adjoining county within this state; by a memorial hospital treasurer, in a depository located within this state which shall be selected by the memorial hospital treasurer and approved by the memorial hospital commission; by a city treasurer or other city financial officer, in depositories located in the county in which the city is located or in an adjoining county, but if there is no depository in the county in which the city is located or in an adjoining county then in any other depository located in this state which shall be selected as a depository by the city council; by a school treasurer or by a school secretary in a depository within this state which shall be selected by the board of directors or the trustees of the school district; by a township clerk in a depository located within this state which shall be selected by the township clerk and approved by the trustees of the township. However, deposits may be made in depositories outside of Iowa for the purpose of paying principal and interest on bonded indebtedness of any municipality when the deposit is made not more than ten days before the date the principal or interest becomes due. Further, the treasurer of state may maintain an account or accounts outside the state of Iowa for the purpose of providing custodial services for the state and state retirement fund accounts. Deposits made for the purpose of completing an electronic financial transaction pursuant to section 8A.222 or 331.427 may be made in any depository located in this state.

[C24, 27, §139, 4319, 5548, 5651, 7404; C31, 35, §7420-d4; C39, §**7420.04;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §453.4; 82 Acts, ch 1202, §2]

84 Acts, ch 1230, §8; 86 Acts, ch 1243, §31

C93, §12C.4

2003 Acts, ch 18, §2; 2003 Acts, 1st Ex, ch 2, §35, 209

12C.5 Refusal of deposits — procedure.

If the approved depositories will not accept the deposits under the conditions prescribed or authorized in this chapter, the funds may be deposited,

on the same or better terms as were offered to the depositories, in one or more approved depositories conveniently located within the state.

The treasurer of state may invest in any of the investments authorized for the Iowa public employees' retirement system in section 97B.7A except that investment in common stocks shall not be permitted.

[C24, 27, §5653; C31, 35, §7420-d5; C39, §**7420.05;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §453.5; 81 Acts, ch 149, §1]

84 Acts, ch 1230, §9

C93, §12C.5

2001 Acts, ch 68, §3, 24

12C.6 Interest rate — committee — notice.

Public deposits shall be deposited with reasonable promptness in a depository legally designated as depository for the funds. A committee composed of the superintendent of banking, the superintendent of credit unions, the auditor of state or a designee, and the treasurer of state shall meet on or about the first of each month or at other times as the committee may prescribe and by majority action shall establish a minimum rate to be earned on state funds placed in time deposits. State funds invested in depository time certificates of deposit shall draw interest at not less than the rate established, effective on the date of investment. An interest rate established by the committee under this section shall be in effect commencing on the eighth calendar day following the day the rate is established and until a different rate is established and takes effect. The committee shall give advisory notice of an interest rate established under this section. This notice may be given by publication in one or more newspapers, by publication in the Iowa administrative bulletin, by ordinary mail to persons directly affected, by any other method determined by the committee, or by a combination of these. In all cases, the notice shall be published in the Iowa administrative bulletin. The notice shall contain the following words:

"The rate of interest has been determined by a committee of the state of Iowa to be the minimum interest rate that shall be paid on public funds deposited in approved financial institutions. To be eligible to accept deposits of public funds of the state of Iowa, a financial institution shall demonstrate a commitment to serve the needs of the local community in which it is chartered to do business. These needs include credit services as well as deposit services. All such financial institutions are required to provide the committee with a written description of their commitment to provide credit services in the community. This statement is available for examination by citizens."

The notice shall also provide the name and address of a state official to whom inquiries can be sent. Actions of the committee under this section and section 12C.6A are exempt from chapter 17A.

Public funds invested in depositories' time certificates of deposit by a public body or officer other than the treasurer of state shall draw interest at rates to be determined by the public body or officer and the depository, which rates shall not be less than the minimum rate set under this section for state funds.

[C24, 27, §140, 4319, 5548, 5651, 7404; C31, 35, §7420-d6; C39, §**7420.06;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §453.6; 81 Acts, ch 39, §2, ch 149, §2]

84 Acts, ch 1230, §10

C93, §12C.6

96 Acts, ch 1021, §1

See §74A.6 for interest rates on public obligations

12C.6A Eligibility for state public funds — procedures.

1. Public funds of the state shall not be deposited in a financial institution which does not demonstrate a commitment to serve the needs of the local community in which it is chartered to do business, including the needs of neighborhoods, rural areas, and small businesses in communities served by the financial institution. These needs include credit services as well as deposit services.

2. In addition to establishing a minimum interest rate for public funds pursuant to section 12C.6, the committee composed of the superintendent of banking, the superintendent of credit unions, the auditor of state or a designee, and the treasurer of state shall develop a list of financial institutions eligible to accept state public funds. The committee shall require that a financial institution seeking to qualify for the list shall annually provide the committee a written statement that the financial institution has complied with the requirements of this chapter and has a commitment to community reinvestment consistent with the safe and sound operation of a financial institution, unless the financial institution has received a rating of satisfactory or higher pursuant to the federal Community Reinvestment Act, 12 U.S.C. § 2901 et seq., and such rating is certified to the committee by the superintendent of banking. To qualify for the list, a financial institution must demonstrate a continuing commitment to meet the credit needs of the local community in which it is chartered.

3. The committee may require a financial institution to provide public notice inviting the public to submit comments to the financial institution regarding its community lending activities. Each financial institution shall maintain a file open to public inspection which contains public comments received on its community investment activities, and the financial institution's response to those comments. The committee shall adopt procedures

for both of the following:

a. To receive information relating to a financial institution's commitment to community reinvestment.

b. To receive challenges from any person to a financial institution's continued eligibility to receive public funds.

4. At least once a year the committee shall review any challenges that have been filed pursuant to subsection 3. The committee may hold a public hearing to consider the challenge. In considering a challenge, the committee shall review documents filed with federal regulatory authorities pursuant to the Community Reinvestment Act, 12 U.S.C. § 2901 et seq., and regulations adopted pursuant to the Act, as amended to January 1, 1990. In addition, consistent with the confidentiality of financial institution records the committee shall consider other factors including, but not limited to, the following:

a. Activities conducted to determine the credit needs of the community.

b. Marketing and special credit-related programs to make citizens in the community aware of the credit services offered.

c. A description of how services actually provided satisfied the needs described under paragraph *"a"*.

d. Practices intended to discourage application for home mortgages, small business loans, small farm loans, community development loans, and, if consumer lending constitutes a substantial majority of a financial institution's business, consumer loans.

e. Geographic distribution of credit extensions, credit applications and credit denials.

f. Evidence of prohibited discriminatory or other illegal credit practices.

g. Participation in local community and rural development and redevelopment projects, and in state and federal business and economic development programs, including investment in an Iowa agricultural industry finance corporation formed under the Iowa agricultural industry finance Act pursuant to chapter 15E.

h. Origination or purchase of residential mortgage loans, housing rehabilitation loans, home improvement loans and business or farm loans within the community.

i. Ability to meet various community credit needs based on financial condition, size, legal impediments, and local economic conditions.

5. *a.* A person who believes a bank has failed to meet its community reinvestment responsibility may file a complaint with the committee detailing the basis for that belief.

b. If any committee member, in the member's discretion, finds that the complaint has merit, the member may order the bank alleged to have failed to meet its community reinvestment responsibility to attend and participate in a meeting with the complainant. The committee member may specify who, at minimum, shall represent the bank at the meeting. At the meeting, or at any other time, the bank may, but is not required to, enter into an agreement with a complainant to correct alleged failings.

c. A majority of the committee may order a bank against which a complaint has been filed pursuant to this subsection, to disclose such additional information relating to community reinvestment as required by the order of the majority of the committee.

d. This subsection does not preempt any other remedies available under statutory or common law available to the committee, the superintendent of banking, or aggrieved persons to cure violations of this section or chapter 524, or rules adopted pursuant to this section or chapter 524. The committee may conduct a public hearing as provided in subsection 4 based upon the same complaint. An order finding merit in a complaint and ordering a meeting is not an election of remedies.

84 Acts, ch 1230, §11
C85, §453.6A
90 Acts, ch 1002, §1
C93, §12C.6A
96 Acts, ch 1021, §2, 3; 99 Acts, ch 53, §1; 99 Acts, ch 117, §5, 15; 2000 Acts, ch 1154, §1; 2002 Acts, ch 1096, §4, 5, 17

12C.7 Interest — where credited.

1. A depository shall not directly or indirectly pay interest to a public officer on a demand deposit of public funds, and a public officer shall not take or receive interest on demand deposits of public funds. This provision does not apply to interest on time certificates of deposit or savings accounts for public funds.

2. Interest or earnings on investments and time deposits made in accordance with the provisions of sections 12.8, 12B.10, 12C.1, and 12C.6 shall be credited to the general fund of the governmental body making the investment or deposit, with the exception of specific funds for which investments are otherwise provided by law, constitutional funds, or when legally diverted to the state sinking fund for public deposits. Funds so excepted shall receive credit for interest or earnings derived from such investments or time deposits made from such funds.

[C31, 35, §7420-d7; C39, §**7420.07;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §453.7]
84 Acts, ch 1230, §12
C93, §12C.7
95 Acts, ch 25, §1

12C.8 Liability of public officers.

An officer who is referred to in section 12C.1 is not liable for loss of funds by reason of the insolvency of the depository institution when the funds have been deposited or invested as provided in this chapter.

[C27, §1090-a20; C31, 35, §7420-d8; C39,

§**7420.08;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §453.8]
84 Acts, ch 1230, §13
C93, §12C.8

12C.9 Investment of sinking funds — bond proceeds.
1. The treasurer of state and all other state agencies authorized to invest funds and the treasurer or other designated financial officer of each political subdivision including each school corporation shall invest the proceeds of notes, bonds, refunding bonds, and other evidences of indebtedness, and funds being accumulated for the payment of principal and interest or reserves in investments set out in section 12B.10, subsection 4, paragraphs *"a"* through *"g"*, section 12B.10, subsection 5, paragraphs *"a"* through *"g"*, an investment contract, or tax-exempt bonds. The investment shall be as defined and permitted by section 148 of the Internal Revenue Code and applicable regulations under that section. An investment contract or tax-exempt bonds shall be rated within the two highest classifications as established by at least one of the standard rating services approved by the superintendent of banking by rule adopted pursuant to chapter 17A.
2. Earnings and interest from investments pursuant to subsection 1 shall be used to pay the principal or interest as the principal or interest comes due on the indebtedness or to fund the construction of the project for which the indebtedness was issued, or shall be credited to the capital project fund for which the indebtedness was issued.
[C27, 31, 35, §12775-b1; C39, §**7420.43;** C46, 50, 54, §454.35; C58, 62, 66, 71, 73, 75, 77, 79, 81, §453.9]
84 Acts, ch 1230, §14; 91 Acts, ch 249, §2; 92 Acts, ch 1156, §23
C93, §12C.9
95 Acts, ch 25, §2

12C.10 Investment of funds created by election.
The governing council or board, who by law have control of any fund created by direct vote of the people, may invest any portion of the fund not currently needed, in investments authorized in section 12B.10. The treasurer of state may invest in any of the investments authorized for the Iowa public employees' retirement system in section 97B.7A except that investment in common stocks shall not be permitted. Interest or earnings on such funds shall be credited as provided in section 12C.7, subsection 2.
[C58, 62, 66, 71, 73, 75, 77, 79, 81, §453.10]
84 Acts, ch 1230, §15
C93, §12C.10
2001 Acts, ch 68, §4, 24

12C.11 Investment officer.
A county, city, county public hospital, merged area hospital, memorial hospital or school corporation governing body may delegate its investment authority, under the provisions of this chapter, to the treasurer or other financial officer of the governmental unit, who shall thereafter be responsible for handling investment transactions until such delegation of authority is revoked.
[C66, 71, 73, 75, 77, 79, 81, §453.11]
C93, §12C.11

12C.12 Service charge by depository.
A depository may make reasonable service charges with respect to the handling of public funds, but the service charges shall not be greater than the depository customarily requires from other depositors for similar services.
[C66, 71, 73, 75, 77, 79, 81, §453.12]
84 Acts, ch 1230, §16
C93, §12C.12

12C.13 Deposit not membership.
Notwithstanding chapter 534, the deposit of public funds in an association defined in section 533.1 or 534.102 does not constitute being a shareholder, stockholder, or owner of a corporation in violation of Article VIII of the Constitution of the State of Iowa or any other provision of law.
84 Acts, ch 1230, §17
C85, §453.13
C93, §12C.13

12C.14 School bonds and earnings. Repealed by 95 Acts, ch 25, § 3. See § 12C.9.

12C.15 Restriction on requiring collateral.
A local government shall not require a pledge of collateral for that portion of the local government's deposits in a credit union that is covered by insurance of a federal agency or instrumentality.
84 Acts, ch 1230, §19
C85, §453.15
92 Acts, ch 1156, §24
C93, §12C.15
99 Acts, ch 117, §6, 15

12C.16 Security for deposit of public funds.
1. Before a deposit of public funds is made by a public officer with a credit union in excess of the amount federally insured, the public officer shall obtain security for the deposit by one or more of the following:
a. The credit union may give to the public officer a corporate surety bond of a surety corporation approved by the treasury department of the United States and authorized to do business in this state, which bond shall be in an amount equal to the public funds on deposit at any time. The

bond shall be conditioned that the deposit shall be paid promptly on the order of the public officer making the deposit and shall be approved by the officer making the deposit.

b. The credit union may deposit, maintain, pledge and assign for the benefit of the public officer in the manner provided in this chapter, securities approved by the public officer, the market value of which is not less than one hundred ten percent of the total deposits of public funds placed by that public officer in the credit union. The securities shall consist of any of the following:

(1) Direct obligations of, or obligations that are insured or fully guaranteed as to principal and interest by, the United States of America or an agency or instrumentality of the United States of America.

(2) Public bonds or obligations of this state or a political subdivision of this state.

(3) Public bonds or obligations of another state or a political subdivision of another state whose bonds are rated within the two highest classifications of prime as established by at least one of the standard rating services approved by the superintendent of banking pursuant to chapter 17A.

(4) To the extent of the guarantee, loans, obligations, or nontransferable letters of credit upon which the payment of principal and interest is fully secured or guaranteed by the United States of America or an agency or instrumentality of the United States of America or the U.S. central credit union, and the rating of the U.S. central credit union remains within the two highest classifications of prime established by at least one of the standard rating services approved by the superintendent of banking by rule pursuant to chapter 17A. The treasurer of state shall adopt rules pursuant to chapter 17A to implement this section.

(5) First lien mortgages which are valued according to practices acceptable to the treasurer of state.

(6) Investments in an open-end management investment company registered with the federal securities and exchange commission under the federal Investment Company Act of 1940, 15 U.S.C. § 80(a), which is operated in accordance with 17 C.F.R. § 270.2a-7.

Direct obligations of, or obligations that are insured or fully guaranteed as to principal and interest by, the United States of America, which may be used to secure the deposit of public funds under subparagraph (1), include investments in an investment company or investment trust registered under the federal Investment Company Act of 1940, 15 U.S.C. § 80a, the portfolio of which is limited to the United States government obligations described in subparagraph (1) and to repurchase agreements fully collateralized by the United States government obligations described in subparagraph (1), if the investment company or investment trust takes delivery of the collateral either directly or through an authorized custodian.

2. If public funds are secured by both the assets of a credit union and a bond of a surety company, the assets and bond shall be held as security for a rateable proportion of the deposit on the basis of the market value of the assets and of the total amount of the surety bonds.

84 Acts, ch 1230, §20
C85, §453.16
85 Acts, ch 194, §3; 88 Acts, ch 1090, §1; 92 Acts, ch 1156, §25 – 30
C93, §12C.16
99 Acts, ch 117, §7, 15

12C.17 Deposit of securities.

1. A credit union which receives public funds shall pledge securities owned by it as required by this chapter in one of the following methods:

a. The securities shall be deposited with the county, city, or other public officers at the option of the officers.

b. The securities shall be deposited pursuant to a bailment agreement with a financial institution having facilities for the safekeeping of securities and doing business in the state. A financial institution which receives securities for safekeeping is liable to the public officer to whom the securities are pledged for any loss suffered by the public officer if the financial institution relinquishes custody of the securities contrary to the provisions of this chapter or the instrument governing the pledge of the securities.

c. The securities shall be deposited with the federal reserve bank, the federal home loan bank of Des Moines, Iowa, or the U.S. central credit union pursuant to a bailment agreement or a pledge custody agreement.

d. The securities may be deposited by any combination of methods specified in paragraphs *"a"*, *"b"*, and *"c"*.

2. A deposit of securities shall not be made in a facility owned or controlled directly or indirectly by the financial institution which deposits the securities.

3. All deposits of securities, other than deposits of securities with the appropriate public officer, shall have a joint custody receipt taken for the securities with one copy delivered to the public officer and one copy delivered to the credit union. A credit union pledging securities with a public officer may cause the securities to be examined in the officer's office to show the securities are placed with the officer as collateral security and are not transferable except upon the conditions provided in this chapter.

4. Upon written request from the appropriate public officer but not less than monthly, the federal home loan bank of Des Moines, Iowa, or the U.S. central credit union, shall report a description, the

par value and the market value of any pledged collateral by a credit union.

84 Acts, ch 1230, §21
C85, §453.17
85 Acts, ch 194, §4; 92 Acts, ch 1156, §31 – 33
C93, §12C.17
99 Acts, ch 117, §8, 15

12C.18 Condition of security.

The condition of the surety bond or the deposit of securities, instruments, or a joint custody receipt, must be that the credit union will promptly pay to the parties entitled public funds, including any interest on the funds, in its custody upon lawful demand and, when required by law, pay the funds to the public officer who made the deposit.

84 Acts, ch 1230, §22
C85, §453.18
92 Acts, ch 1156, §34
C93, §12C.18
99 Acts, ch 117, §9, 15

12C.19 Withdrawals, exchanges of security.

1. Securities pledged pursuant to this chapter may be withdrawn on application of the pledging depository institution, and as to securities pledged by a credit union upon approval of the public officer to whom the securities are pledged, if the deposit of securities is no longer necessary to comply with this chapter, or withdrawal is required for collection by virtue of maturity or exchange. The depository institution shall replace securities so withdrawn for collection or exchange.

2. In an exchange of deposited securities for new securities, the amount of security on deposit at any time shall not be decreased below that otherwise required by this chapter.

3. In the event of substitution, addition, or exchange of securities, the holder or custodian of the securities shall, on the same day, forward by regular mail to the public officer and the credit union, a receipt specifically describing and identifying both the substituted or additional securities.

4. The public officer which deposits public funds with a credit union shall require, if the market value of the securities deposited with or for the benefit of the officer falls below one hundred ten percent of the deposit liability to the public officer, the deposit of additional security to bring the total market value of the security to one hundred ten percent of the amount of public funds held by the credit union.

84 Acts, ch 1230, §23
C85, §453.19
92 Acts, ch 1156, §35
C93, §12C.19
99 Acts, ch 117, §10, 15; 2002 Acts, ch 1096, §6, 17; 2003 Acts, ch 44, §6

12C.20 Public funds reports.

1. On or before the tenth day of February, May, August, and November of each year, each savings and loan and each out-of-state bank that has one or more branches in the state shall calculate and certify to the superintendent of banking in the form prescribed by the superintendent the amount of public funds on deposit at the savings and loan and at each such branch of the out-of-state bank as of the end of the previous calendar quarter.

2. A bank shall, upon request of the superintendent, certify to the superintendent the amount of public funds on deposit at the bank and at each branch of an out-of-state bank on any day specified by the superintendent in such request.

3. The superintendent may at any time make such investigation as the superintendent deems necessary and appropriate to verify the information provided to the superintendent pursuant to subsections 1 and 2.

4. On or before the twentieth day of February, May, August, and November of each year, the superintendent shall notify the treasurer of state of the amount of collateral required to be pledged as of the end of the previous calendar quarter based upon the certification provided to the superintendent under subsection 1 or 2 and a review by the superintendent of the quarterly call report filed by each bank that is not a savings and loan or an out-of-state bank.

2002 Acts, ch 1096, §7, 17

12C.21 Required collateral — banks. Repealed by 99 Acts, ch 117, § 14, 15.

12C.22 Required collateral — banks.

1. A bank shall pledge to the treasurer of state the amount of collateral required under subsection 2 by depositing the collateral in restricted accounts at a financial institution that has been designated by the treasurer of state and that is not owned or controlled directly or indirectly by the bank pledging the collateral or any affiliate of the bank as defined in section 524.1101. Each bank shall execute as debtor and deliver to the treasurer of state a security agreement and such other documents, instruments, and agreements in form approved by the treasurer of state as are required to grant to the treasurer of state, as secured party in its capacity as agent for the depositors of all public funds from time to time deposited in the bank, a perfected security interest in the collateral described in the security agreement. The security agreement shall among other provisions contain all of the following provisions:

a. A security interest in the collateral is granted as collateral for the obligation of the bank to repay all uninsured public funds deposited in the bank.

b. In the event an assessment is paid by a bank to the treasurer of state pursuant to section

12C.23A, the bank is subrogated to the claim of a public funds depositor to the extent the claim is paid from funds paid by the bank.

c. The treasurer of state is appointed as agent of the bank to assert the claim on behalf of the bank as subrogee. Any amount recovered by the treasurer by reason of the claim shall be deposited in the state sinking fund for public deposits in banks.

2. The amount of the collateral required to be pledged by a bank shall at all times equal or exceed the total of the amount by which the public funds deposits in the bank exceeds the total capital of the bank. For purposes of this chapter, unless the context otherwise requires, *"total capital of the bank"* means its tier one capital plus both of the following components of tier two capital:

a. Qualifying subordinated debt and redeemable preferred stock.

b. Cumulative perpetual preferred stock.

3. The amount of collateral pledged by an out-of-state bank that operates a branch in Iowa shall be calculated in accordance with the following formula:

a. Total deposits of the bank.

b. Total deposits in Iowa branches of the bank.

c. The total of paragraph *"b"* divided by the total of paragraph *"a"*, in order to establish the deposits of Iowa branches as a percentage of total deposits.

d. Total capital of the bank as defined in subsection 2.

e. The total of paragraph *"d"* multiplied by the total of paragraph *"c"*, in order to establish Iowa branch capital.

f. Total public funds deposits in the bank.

g. The excess of the total of paragraph *"f"* over the total of paragraph *"e"*, if any.

4. The value of the collateral shall be its market value.

5. The treasurer of state shall adopt rules pursuant to chapter 17A to administer this section, including rules to do the following:

a. Designate not less than four financial institutions that may be custodians of collateral pledged under this chapter and establish regulations for qualification and compliance by the custodians and remedies and sanctions for noncompliance by the custodians.

b. Establish requirements for reporting to the treasurer of state by a financial institution of the amount and value of collateral held by the financial institution as custodian of collateral for the uninsured public funds on deposit in a bank.

c. Establish procedures for the valuation of collateral that does not have a readily ascertainable market value.

d. Establish procedures for adding collateral, releasing collateral, and substituting different collateral for collateral pledged under this section.

e. Establish procedures to determine the amount of the uninsured public funds of each bank or branch of an out-of-state bank as of the date of closing of a closed bank and the amount of the assessment to be made upon each bank.

f. Establish additional procedures necessary to administer this chapter and other rules as may be necessary to accomplish the purposes of this chapter.

g. Provide forms and procedures for compliance with this chapter, including electronic compliance.

h. Establish amounts and procedures for payment of fees to cover the costs of administration of this chapter.

6. The collateral used to secure public deposits shall be in one or more of the following forms acceptable to the treasurer of state:

a. Investment securities and shares in which a bank is permitted to invest under section 524.901, subsections 1, 2, and 3.

b. Investment securities, as defined in section 524.901, subsection 1, paragraph *"a"*, representing general obligations of a state or a political subdivision of a state that is geographically contiguous with the state, provided that such investment securities are rated within the four highest grades according to a reputable rating service or represent unrated issues of equivalent value.

c. Investment securities, as defined in section 524.901, subsection 1, paragraph *"a"*, representing general obligations of a state or a political subdivision of a state that is not contiguous with the state, provided that such investment securities are rated within the two highest grades according to a reputable rating service.

d. Nontransferable letters of credit upon which the payment of principal and interest is fully secured or guaranteed by the United States of America or an agency or instrumentality, including government-sponsored enterprises of the United States of America.

e. Private insurance policies or bonds written by companies approved by the superintendent.

7. A bank may borrow collateral to be pledged under subsection 2 if the collateral is free of any liens, security interests, claims, or encumbrances.

2002 Acts, ch 1096, §8, 17; 2004 Acts, ch 1080, §1 – 3, 7

Subsection 1, paragraph b stricken and former paragraph c amended and redesignated as b

Subsection 1, former paragraph d redesignated as c

Subsection 5, paragraph d amended

12C.23 Payment of losses in a credit union.

1. The pledging of securities by a credit union pursuant to this chapter constitutes consent by the credit union to the disposition of the securities in accordance with this section.

The acceptance of public funds by a credit union pursuant to this chapter constitutes consent by the credit union to assessments by the treasurer of state in accordance with this chapter.

2. The credit union and the security given for the public funds in its hands are liable for payment if the credit union fails to pay a check, draft, or warrant drawn by the public officer or to account for a check, draft, warrant, order, or certificates of deposit, or any public funds entrusted to it if, in failing to pay, the credit union acts contrary to the terms of an agreement between the credit union and the public body treasurer. The credit union and the security given for the public funds in its hands are also liable for payment if the credit union fails to pay an assessment by the treasurer of state when the assessment is due.

3. If a credit union is closed by its primary regulatory officials, the public body with deposits in the credit union may sell the collateral to pay for any loss of principal and accrued interest.

a. In cooperation with the responsible regulatory officials for the credit union, the public body shall validate the amount of public funds on deposit at the defaulting credit union and the amount of deposit insurance applicable to the deposits.

b. The loss to public depositors shall be satisfied, first through any applicable deposit insurance and then through the sale of securities pledged by the defaulting credit union, and then the assets of the defaulting credit union. The priority of claims are those established pursuant to section 533.22, subsection 1, paragraph *"b"*. To the extent permitted by federal law, in the distribution of an insolvent federally chartered credit union's assets, the order of payment of liabilities if its assets are insufficient to pay in full all its liabilities for which claims are made shall be in the same order as for the equivalent type of state chartered credit union as provided in section 533.22, subsection 1, paragraph *"b"*.

c. The claim of a public depositor for purposes of this section shall be the amount of the depositor's deposits plus interest to the date the funds are distributed to the public depositor at the rate the credit union agreed to pay on the funds reduced by the portion of the funds which is insured by federal deposit insurance.

d. If the loss to public funds is not covered by insurance and the proceeds of the failed credit union's assets which are liquidated within thirty days of the closing of the credit union and pledged collateral, the treasurer shall provide coverage of the remaining loss from the state sinking fund for public deposits in credit unions. If the funds are inadequate to cover the entire loss, then the treasurer shall make an assessment against other credit unions who hold public funds. The assessment shall be determined by multiplying the total amount of the remaining loss to public depositors by a percentage that represents the average of public funds deposits held by all credit unions during the preceding twelve-month period ending on the last day of the month immediately preceding the month the credit union was closed. Each credit union shall pay its assessment to the treasurer within three business days after it receives notice of assessment. If a credit union fails to pay its assessment when due, the treasurer of state shall initiate a lawsuit to collect the assessment. If a credit union is found to have failed to pay the assessment as required by this paragraph, the court shall order it to pay the assessment, court costs, reasonable attorney's fees based upon the amount of time the attorney general's office spent preparing and bringing the action, and reasonable expenses incurred by the treasurer of state's office. Idle balances in the fund are to be invested by the treasurer with earnings credited to the fund. Fees paid by credit unions for administration of this chapter will be credited to the fund and the treasurer may deduct actual costs of administration from the fund.

e. Any amount realized from the sale of collateral pursuant to paragraph *"d"*, in excess of the amount of a credit union's assessment, shall continue to be held by the treasurer, in the same interest bearing investments available for public funds, as collateral until that credit union provides substitute collateral or is otherwise entitled to its release.

85 Acts, ch 194, §6
CS85, §453.23
92 Acts, ch 1156, §37 – 40
C93, §12C.23
94 Acts, ch 1023, §3; 99 Acts, ch 117, §11, 15; 99 Acts, ch 208, §43, 74

12C.23A Payment of losses in a bank.

1. The acceptance of public funds by a bank pursuant to this chapter constitutes all of the following:

a. Agreement by the bank to pledge collateral as required by section 12C.22.

b. Consent by the bank to the disposition of the collateral in accordance with this section.

c. Consent by the bank to assessments by the treasurer of state in accordance with this chapter.

d. Agreement by the bank to provide accurate information and to otherwise comply with the requirements of this chapter.

2. A bank is liable for payment if the bank fails to pay a check, draft, or warrant drawn by a public funds depositor or to account for a check, draft, warrant, order, or certificate of deposit, or any public funds entrusted to the bank if, in failing to pay, the bank acts contrary to the terms of an agreement between the bank and the public funds depositor. The bank is also liable to the treasurer of state for payment if the bank fails to pay an assessment by the treasurer of state under subsection 3 when the assessment is due.

3. If a bank is closed by its primary state or federal regulator, each public funds depositor with

deposits in the bank shall notify the treasurer of state of the amount of any claim within thirty days of the closing. The treasurer of state shall implement the following procedures:

a. In cooperation with the responsible regulatory officials for the closed bank, the treasurer shall validate the amount of public funds on deposit at the closed bank and the amount of deposit insurance applicable to the deposits.

b. Any loss to a public funds depositor shall be satisfied first by any federal deposit insurance, then by the sale or other disposition of collateral pledged by the closed bank, then from the assets of the closed bank. To the extent permitted by federal law, the priority of claims are those established pursuant to section 524.1312, subsection 2. To the extent permitted by federal law, in the distribution of an insolvent federally chartered bank's assets, the order of payment of liabilities, if its assets are insufficient to pay in full all its liabilities for which claims are made, shall be in the same order as for a state bank as provided in section 524.1312, subsection 2.

c. The claim of a public funds depositor for purposes of this section shall be the amount of the depositor's public funds deposits plus interest to the date the funds are distributed to the public funds depositor at the rate the bank agreed to pay on the public funds reduced by the portion of the public funds that is insured by federal deposit insurance.

d. If the loss of public funds is not covered by federal deposit insurance and the proceeds of the closed bank's assets that are liquidated within thirty days of the closing of the bank are not sufficient to cover the loss, then any further payments to cover the loss will come from the state sinking fund for public deposits in banks. If the balance in that sinking fund is inadequate to pay the entire loss, then the treasurer shall obtain the additional amount needed by making an assessment against other banks whose public funds deposits exceed federal deposit insurance coverage. A bank's assessment shall be determined by multiplying the total amount of the remaining loss to all public depositors in the closed bank by a percentage that represents the assessed bank's proportional share of the total of uninsured public funds deposits held by all banks and all branches of out-of-state banks, based upon the average of the uninsured public funds of the assessed bank or branch of an out-of-state bank as of the end of the four calendar quarters prior to the date of closing of the closed bank and the average of the uninsured public funds in all banks and branches of out-of-state banks as of the end of the four calendar quarters prior to the date of closing of the closed bank, excluding the amount of uninsured public funds held by the closed bank at the end of the four calendar quarters. Each bank shall pay its assessment to the treasurer of state within three business days after it receives notice of assessment.

e. If a bank fails to pay its assessment when due, the treasurer of state shall make additional assessments as may be necessary against other banks that hold uninsured public funds to satisfy any unpaid assessment. Any additional assessments shall be determined, collected, and satisfied in the same manner as the first assessment except that in calculating the amount of each such additional assessment, the amount of uninsured public funds held by the bank that fails to pay the assessment shall not be counted.

f. If a bank fails to pay its assessment when due, the treasurer of state shall notify the superintendent or the comptroller of the currency, as applicable, of the failure to pay the assessment. If the bank that has failed to pay the assessment is a nationally chartered financial institution, the superintendent shall immediately notify the bank's primary federal regulator. If the assessment is not paid within thirty days after the bank received the notice of assessment, the treasurer of state shall initiate a lawsuit to collect the amount of the assessment. If a bank is found to have failed to pay the assessment as required by this subsection and is ordered to pay the assessment, the court shall also order that the bank pay court costs and reasonable attorney fees based on the amount of time the attorney general's office spent preparing and bringing the action, and reasonable expenses incurred by the treasurer of state.

g. Following collection of the assessments, the treasurer of state shall distribute funds to the public depositors of the closed bank according to their validated claims unless a public depositor requests in writing that the claims of other public depositors be paid prior to payment to the public depositor making the request. By receiving payment under this section, a public depositor shall be deemed to have assigned to the treasurer of state any claim the public depositor may have against the closed bank by reason of the deposit of its public funds and all rights the public depositor may have in funds that subsequently become available to depositors of the closed bank.

99 Acts, ch 117, §12, 15; 99 Acts, ch 208, §44, 45, 74; 2002 Acts, ch 1096, §9, 17; 2003 Acts, ch 44, §7; 2004 Acts, ch 1080, §4 – 7

Subsection 3, paragraph e amended

Subsection 3, paragraph f stricken and former paragraph g amended and redesignated as f

Subsection 3, former paragraph h redesignated as g

12C.24 Liability.

When public deposits are made in accordance with this chapter in a financial institution that is eligible to accept public funds deposits at the time a deposit of public funds is made, a public body depositing public funds, and any person that is an agent, employee, officer, or board member of the public funds depositor, is exempt from liability for any loss resulting from the loss of public funds in the absence of negligence, malfeasance, misfea-

sance, or nonfeasance on the part of the public body or such person.

85 Acts, ch 194, §7
CS85, §453.24
C93, §12C.24
2002 Acts, ch 1096, §10, 17

12C.25 State sinking funds created.

1. There are created in the treasurer of state's office the following funds:

a. A state sinking fund for public deposits in banks.

b. A state sinking fund for public deposits in credit unions.

2. Idle balances in the state sinking fund for public deposits in banks shall be invested by the treasurer of state with earnings credited to that fund. Fees paid by banks for administration of this chapter shall be credited to the state sinking fund for public deposits in banks and the treasurer of state may deduct actual costs of administration from that fund.

3. The funds shall be used to receive and disburse moneys pursuant to section 12C.23, subsection 3, paragraph *"d"* and section 12C.23A, subsection 3, paragraph *"d"*.

85 Acts, ch 194, §8
CS85, §453.25
86 Acts, ch 1237, §28
C93, §12C.25
99 Acts, ch 117, §13, 15; 2000 Acts, ch 1154, §2; 2002 Acts, ch 1096, §11, 17

12C.26 Refund from sinking funds.

1. If at the end of any calendar year the amount in the sinking fund exceeds three million one hundred thousand dollars, then to the extent the amount in the sinking fund exceeds three million dollars, the treasurer shall, on or before January 31 of the following year, refund to each bank that paid an assessment after the year 1999 to the sinking fund resulting from the closing of a bank, its pro rata share of the unreimbursed portion of the total assessment paid by all banks. If assessments remain unreimbursed by reason of the closing of more than one bank, the reimbursements shall be made to the banks that paid assessments by reason of the bank which closed first until those banks are reimbursed in full, and then to the banks that paid assessments by reason of the bank which closed next. Such a refund shall not be made to a bank if the refund would exceed the amount of previous assessments paid by the bank.

2. Upon recovery of a loss of public funds due to a closed credit union, the treasurer of state may refund all or a portion of the recovered amount to the credit unions that paid an assessment under this chapter as a result of the closing of that credit union.

2000 Acts, ch 1232, §22, 40; 2002 Acts, ch 1096, §12, 17

12C.27 Failure to maintain required collateral.

If the treasurer of state determines that a bank fails to comply with section 12C.22, subsections 2 and 3, the treasurer of state may restrict that bank from accepting uninsured public funds and shall notify the office of thrift supervision, the office of the comptroller of the currency, or the superintendent as applicable, who may take such action against the bank, its board of directors and officers as permitted by law.

2002 Acts, ch 1096, §13, 17; 2003 Acts, ch 179, §93

12C.28 Electronic reporting.

Any notice, information, report, or other communication required by this chapter shall be deemed effective and in compliance with this chapter if sent or given electronically as provided in rules adopted pursuant to chapter 17A by the superintendent or the treasurer of state.

2002 Acts, ch 1096, §14, 17

CHAPTER 12D

IOWA EDUCATIONAL SAVINGS PLAN TRUST

12D.1 Purpose and definitions.

The general assembly finds that the general welfare and well-being of the state are directly related to educational levels and skills of the citizens of the state, and that a vital and valid public purpose is served by the creation and implementation of programs which encourage and make possible the attainment of higher education by the greatest number of citizens of the state. The state has limited resources to provide additional programs for higher education funding and the continued operation and maintenance of the state's public institutions of higher education and the general welfare of the citizens of the state will be enhanced by establishing a program which allows citizens of the state to invest money in a public trust for future application to the payment of higher education costs. The creation of the means of encouragement for citizens to invest in such a program represents the carrying out of a vital and valid public purpose. In order to make available to the citizens of the state an opportunity to fund future higher education needs, it is necessary that a public trust be established in which moneys may be invested for future educational use.

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

1. *"Account balance limit"* means the maximum allowable aggregate balance of accounts established for the same beneficiary. Account earnings, if any, are included in the account balance limit.
2. *"Administrative fund"* means the administrative fund established under section 12D.4.
3. *"Beneficiary"* means the individual designated by a participation agreement to benefit from advance payments of higher education costs on behalf of the beneficiary.
4. *"Benefits"* means the payment of higher education costs on behalf of a beneficiary by the trust during the beneficiary's attendance at an institution of higher education.
5. *"Higher education costs"* means the certified costs of tuition, fees, books, supplies, and equipment required for enrollment or attendance at an institution of higher education. Reasonable room and board expenses, based on the minimum amount applicable for the institution of higher education during the period of enrollment, shall be included as a higher education cost for those students enrolled on at least a half-time basis. In the case of a special needs beneficiary, expenses for special needs services incurred in connection with enrollment or attendance at an institution of higher education shall be included as a higher education cost.
6. *"Institution of higher education"* means an institution described in section 481 of the federal Higher Education Act of 1965, 20 U.S.C. § 1088, which is eligible to participate in the United States department of education's student aid programs.
7. *"Internal Revenue Code"* means the same as defined in section 422.3.
8. *"Iowa educational savings plan trust"* or *"trust"* means the trust created under section 12D.2.
9. *"Participant"* means an individual, individual's legal representative, trust, or estate that has entered into a participation agreement under this chapter for the advance payment of higher education costs on behalf of a beneficiary.
10. *"Participation agreement"* means an agreement between a participant and the trust entered into under this chapter.
11. *"Program fund"* means the program fund established under section 12D.4.
12. *"Tuition and fees"* means the quarter or semester charges imposed to attend an institution of higher education and required as a condition of enrollment.

98 Acts, ch 1172, §1; 2000 Acts, ch 1163, §1, 6; 2004 Acts, ch 1079, §1, 17
Section amended

12D.2 Creation of Iowa educational savings plan trust.

An Iowa educational savings plan trust is created. The treasurer of state is the trustee of the trust, and has all powers necessary to carry out and effectuate the purposes, objectives, and provisions of this chapter pertaining to the trust, including the power to do all of the following:

1. Make and enter into contracts necessary for the administration of the trust created under this chapter.
2. Enter into agreements with any institution of higher education, the state, or any federal or other state agency, or other entity as required to implement this chapter.
3. Carry out the duties and obligations of the trust pursuant to this chapter.
4. Accept any grants, gifts, legislative appropriations, and other moneys from the state, any unit of federal, state, or local government, or any other person, firm, partnership, or corporation which the treasurer of state shall deposit into the administrative fund or the program fund.
5. Carry out studies and projections so the treasurer of state may advise participants regarding present and estimated future higher education costs and levels of financial participation in the trust required in order to enable participants to achieve their educational funding objectives.
6. Participate in any federal, state, or local governmental program for the benefit of the trust.
7. Procure insurance against any loss in connection with the property, assets, or activities of the trust.

8. Enter into participation agreements with participants.

9. Make payments to institutions of higher education, participants, or beneficiaries, pursuant to participation agreements on behalf of beneficiaries.

10. Make refunds to participants upon the termination of participation agreements, and partial nonqualified distributions to participants, pursuant to the provisions, limitations, and restrictions set forth in this chapter.

11. Invest moneys from the program fund in any investments which are determined by the treasurer of state to be appropriate.

12. Engage investment advisors, if necessary, to assist in the investment of trust assets.

13. Contract for goods and services and engage personnel as necessary, including consultants, actuaries, managers, legal counsel, and auditors for the purpose of rendering professional, managerial, and technical assistance and advice to the treasurer of state regarding trust administration and operation.

14. Establish, impose, and collect administrative fees and charges in connection with transactions of the trust, and provide for reasonable service charges, including penalties for cancellations and late payments with respect to participation agreements.

15. Administer the funds of the trust.

16. Adopt rules pursuant to chapter 17A for the administration of the trust.

98 Acts, ch 1172, §2; 99 Acts, ch 114, §1; 99 Acts, ch 122, §1, 10; 2004 Acts, ch 1079, §2 – 6, 17
Subsection 4 amended
Subsection 8 stricken and former subsection 9 renumbered as 8
Former subsections 10 – 12 amended and renumbered as 9 – 11
Former subsections 13 – 17 renumbered as 12 – 16

12D.3 Participation agreements for trust.

The trust may enter into participation agreements with participants on behalf of beneficiaries pursuant to the following terms and agreements:

1. *a.* Each participation agreement may require a participant to agree to invest a specific amount of money in the trust for a specific period of time for the benefit of a specific beneficiary. A participant shall not be required to make an annual contribution on behalf of a beneficiary. The maximum contribution that may be deducted for Iowa income tax purposes shall not exceed two thousand dollars per beneficiary per year adjusted annually to reflect increases in the consumer price index. The treasurer of state shall set an account balance limit to maintain compliance with section 529 of the Internal Revenue Code. A contribution shall not be permitted to the extent it causes the aggregate balance of all accounts established for the same beneficiary to exceed the applicable account balance limit.

b. Participation agreements may be amended to provide for adjusted levels of payments based upon changed circumstances or changes in educational plans.

2. The execution of a participation agreement by the trust shall not guarantee in any way that higher education costs will be equal to projections and estimates provided by the trust or that the beneficiary named in any participation agreement will attain any of the following:

a. Be admitted to an institution of higher education.

b. If admitted, be determined a resident for tuition purposes by the institution of higher education.

c. Be allowed to continue attendance at the institution of higher education following admission.

d. Graduate from the institution of higher education.

3. *a.* A beneficiary under a participation agreement may be changed as permitted under rules adopted by the treasurer of state upon written request of the participant as long as the substitute beneficiary is eligible for participation.

b. Participation agreements may otherwise be freely amended throughout their terms in order to enable participants to increase or decrease the level of participation, change the designation of beneficiaries, and carry out similar matters as authorized by rule.

4. Each participation agreement shall provide that the participation agreement may be canceled upon the terms and conditions, and upon payment of applicable fees and costs set forth and contained in the rules adopted by the treasurer of state.

98 Acts, ch 1172, §3; 99 Acts, ch 122, §2 – 4, 10; 2000 Acts, ch 1163, §2 – 4, 6; 2004 Acts, ch 1079, §7, 8, 17
Subsection 1, paragraph a amended
Subsections 2 and 3 stricken and former subsections 4 – 6 renumbered as 2 – 4

12D.4 Program and administrative funds — investment and payments.

1. *a.* The treasurer of state shall segregate moneys received by the trust into two funds: the program fund and the administrative fund.

b. All moneys paid by participants in connection with participation agreements shall be deposited as received into separate accounts within the program fund.

c. Contributions to the trust made by participants may only be made in the form of cash.

d. A participant or beneficiary shall not provide investment direction regarding program contributions or earnings held by the trust.

2. Moneys accrued by participants in the program fund of the trust may be used for payments to any institution of higher education. Payments can be made to the institution, the participant, or the beneficiary.

98 Acts, ch 1172, §4; 2004 Acts, ch 1079, §9, 17
Section stricken and rewritten

12D.4A Administrative fund — appropriation. Repealed by 2000 Acts, ch 1231, § 39; 2001 Acts, ch 24, § 72, 74.

12D.5 Cancellation of agreements.

A participant may cancel a participation agreement at will. Upon cancellation of a participation agreement, a participant shall be entitled to the return of the participant's account balance.

98 Acts, ch 1172, §5; 99 Acts, ch 96, §1; 99 Acts, ch 122, §6, 7, 10; 2003 Acts, ch 142, §1, 11; 2004 Acts, ch 1079, §10, 17

Section stricken and rewritten

12D.6 Repayment and ownership of payments and investment income — transfer of ownership rights.

1. *a.* A participant retains ownership of all payments made under a participation agreement up to the date of utilization for payment of higher education costs for the beneficiary.

b. All income derived from the investment of the payments made by the participant shall be considered to be held in trust for the benefit of the beneficiary.

2. In the event the program is terminated prior to payment of higher education costs for the beneficiary, the participant is entitled to a refund of the participant's account balance.

3. The institution of higher education shall obtain ownership of the payments made for the higher education costs paid to the institution at the time each payment is made to the institution.

4. Any amounts which may be paid to any person or persons pursuant to the Iowa educational savings plan trust but which are not listed in this section are owned by the trust.

5. A participant may transfer ownership rights to another eligible individual, including a gift of the ownership rights to a minor beneficiary. The transfer shall be made and the property distributed in accordance with rules adopted by the treasurer of state or with the terms of the participation agreement.

6. A participant shall not be entitled to utilize any interest in the trust as security for a loan.

98 Acts, ch 1172, §6; 99 Acts, ch 96, §2; 99 Acts, ch 114, §2; 99 Acts, ch 122, §8, 10; 2004 Acts, ch 1079, §11, 12, 17

Subsection 2 amended

Subsection 3 stricken and former subsections 4 – 7 renumbered as 3 – 6

12D.7 Effect of payments on determination of need and eligibility for student financial aid.

A student loan program, student grant program, or other program administered by any agency of the state, except as may be otherwise provided by federal law or the provisions of any specific grant applicable to that law, shall not take into account and shall not consider amounts available for the payment of higher education costs pursuant to the Iowa educational savings plan trust in determining need and eligibility for student aid.

98 Acts, ch 1172, §7

12D.8 Annual audited financial report to governor and general assembly.

1. The treasurer of state shall submit an annual audited financial report, prepared in accordance with generally accepted accounting principles, on the operations of the trust by November 1 to the governor and the general assembly.

The annual audit shall be made either by the auditor of state or by an independent certified public accountant designated by the auditor of state and shall include direct and indirect costs attributable to the use of outside consultants, independent contractors, and any other persons who are not state employees.

2. The annual audit shall be supplemented by all of the following information prepared by the treasurer of state:

a. Any related studies or evaluations prepared in the preceding year.

b. A summary of the benefits provided by the trust including the number of participants and beneficiaries in the trust.

c. Any other information which is relevant in order to make a full, fair, and effective disclosure of the operations of the trust.

98 Acts, ch 1172, §8

12D.9 Tax considerations.

1. For federal income tax purposes, the Iowa educational savings plan trust shall be considered a qualified state tuition program exempt from taxation pursuant to section 529 of the Internal Revenue Code. The Iowa educational savings plan trust meets the requirements of section 529(b), of the Internal Revenue Code, as follows:

a. Pursuant to section 12D.3, subsection 1, paragraph *"a"*, a participant may make contributions to an account which is established for the purpose of meeting the qualified higher education expenses of the designated beneficiary of the account.

b. Pursuant to section 12D.3, subsection 1, a maximum contribution level is established.

c. Pursuant to section 12D.4, subsection 1, paragraph *"b"*, a separate account is established for each beneficiary.

d. Pursuant to section 12D.4, subsection 1, paragraph *"c"*, contributions may only be made in the form of cash.

e. Pursuant to section 12D.4, subsection 1, paragraph *"d"*, a participant or beneficiary shall not provide investment direction regarding program contributions or earnings held by the trust.

f. Pursuant to section 12D.6, subsection 6, a participant shall not pledge any interest in the trust as security for a loan.

2. State income tax treatment of the Iowa educational savings plan trust shall be as provided in section 422.7, subsections 32, 33, and 34, and section 422.35, subsection 14.

98 Acts, ch 1172, §9; 99 Acts, ch 122, §9, 10; 2003 Acts, ch 142, §2, 11; 2004 Acts, ch 1079, §13, 14, 17
Subsection 1, paragraphs d and e amended
Subsection 1, paragraph f stricken and former paragraph g redesignated as f

12D.10 Property rights to assets in trust.

1. The assets of the trust shall at all times be preserved, invested, and expended solely and only for the purposes of the trust and shall be held in trust for the participants and beneficiaries.

2. No property rights in the trust shall exist in favor of the state.

3. The assets of the trust shall not be transferred or used by the state for any purposes other than the purposes of the trust.

98 Acts, ch 1172, §10; 2004 Acts, ch 1079, §15, 17
Subsection 1 amended

12D.11 Construction.

This chapter shall be construed liberally in order to effectuate its purpose.

98 Acts, ch 1172, §11

CHAPTER 12E

TOBACCO SETTLEMENT AUTHORITY

Chapter repeal rescinded; 2000 Acts, ch 1208, §24, 25; 2001 Acts, ch 5, §1, 2; 2001 Acts, ch 164, §19, 21

12E.1 Title.

This chapter shall be known and may be cited as the *"Tobacco Settlement Authority Act"*.

2000 Acts, ch 1208, §1, 25

12E.2 Definitions.

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

1. *"Authority"* means the tobacco settlement authority created in this chapter.

2. *"Board"* means the governing board of the authority.

3. *"Bonds"* means bonds, notes, and other obligations and financing arrangements issued or entered into by the authority pursuant to this chapter.

4. *"Financial institution"* means a bank or credit union as defined in section 12C.1.

5. *"Healthy Iowans tobacco trust"* means the healthy Iowans tobacco trust created in section 12.65.

6. *"Interest rate agreement"* means an interest rate swap or exchange agreement, an agreement establishing an interest rate floor or ceiling or both, or any similar agreement. Any such agreement may include the option to enter into or cancel the agreement or to reverse or extend the agreement.

7. *"Master settlement agreement"* means the master settlement agreement as defined in section 453C.1.

8. *"Net proceeds"* means the amount of proceeds remaining following each sale of bonds which are not required by the authority to establish and fund reserve funds and to pay the costs of issuance and other expenses and fees directly related to the authorization and issuance of bonds.

9. *"Notes"* means notes, warrants, loan agreements, and all other forms of evidence of indebtedness authorized under this chapter.

10. *"Program plan"* means the tobacco settlement program plan dated February 14, 2001, including exhibits to the program plan, submitted by

the authority to the legislative council and the executive council, to provide the state with a secure and stable source of funding for the purposes designated by this chapter and section 12.65.

11. *"Qualified investments"* means investments of the authority authorized pursuant to this chapter.

12. *"Sales agreement"* means any agreement authorized pursuant to this chapter in which the state provides for the sale of all or a portion of the state's share to the authority.

13. *"State's share"* means all of the following:

a. All payments required to be made by tobacco product manufacturers to the state, and the state's rights to receive such payments, under the master settlement agreement.

b. To the extent that such amounts have been assigned to the state, all payments of attorney fees required to be made by tobacco product manufacturers under the master settlement agreement, and all rights to receive such attorney fees.

14. *"Tax-exempt bonds"* means bonds issued by the authority that are accompanied by a written opinion of legal counsel to the authority that the bonds are excluded from the gross income of the recipients for federal income tax purposes.

15. *"Taxable bonds"* means bonds issued by the authority that are not accompanied by a written opinion of legal counsel to the authority that the bonds are excluded from the gross income of the recipients for federal income tax purposes.

16. *"Tobacco settlement trust fund"* means the tobacco settlement trust fund created in this chapter.

2000 Acts, ch 1208, §2, 25; 2000 Acts, ch 1232, §13, 15; 2001 Acts, ch 164, §2 – 5, 21

12E.3 Tobacco settlement authority — created — purposes — powers — restrictions.

1. A tobacco settlement authority is created and constitutes a public instrumentality and agency of the state, separate and distinct from the state, exercising public and essential governmental functions.

2. The purposes of the authority include all of the following:

a. To implement and administer the program plan and to establish a stable source of revenue to be used for the purposes designated in this chapter and section 12.65.

b. To enter into sales agreements.

c. To issue bonds and enter into funding options, consistent with this chapter, including refunding and refinancing its debt and obligations.

d. To sell, pledge, or assign, as security or consideration, all or a portion of the state's share sold to the authority pursuant to a sales agreement, to provide for and secure the issuance and repayment of its bonds.

e. To invest funds available under this chapter to provide for a source of revenue in accordance with the program plan.

f. To enter into agreements with the state for the periodic distribution of amounts due the state under any sales agreement.

g. To refund and refinance the authority's debts and obligations, and to manage its funds, obligations, and investments as necessary and if consistent with its purpose.

h. To sell, pledge, or assign, as security or consideration, all or a portion of the state's share to implement alternative funding options.

i. To implement the purposes of this chapter.

3. The authority shall invest its funds and accounts in accordance with this chapter and shall not take action or invest in any manner that would cause the state to become a stockholder in any corporation or that would cause the state to assume or agree to pay the debt or liability of any corporation in violation of the United States Constitution or the Constitution of the State of Iowa.

4. The authority shall not create any obligation of this state or any political subdivision of this state within the meaning of any constitutional or statutory debt limitation.

5. The authority shall not pledge the 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 authority specifically pledged for their payment.

6. The authority shall not pledge or make its debts payable out of the moneys deposited in the tobacco settlement trust fund.

2000 Acts, ch 1208, §3, 25; 2000 Acts, ch 1232, §14, 15; 2001 Acts, ch 164, §6, 21

12E.4 Powers not restricted — law complete in itself.

This chapter shall not restrict or limit the powers which the authority has under any other law of this state, but is cumulative as to any such powers. A proceeding, notice, or approval is not required for the creation of the authority or the issuance of obligations or an instrument as security, except as provided in this chapter.

2000 Acts, ch 1208, §4, 25

12E.5 Governing board.

1. The powers of the authority are vested in and shall be exercised by a board consisting of the treasurer of state, the auditor of state, and the director of the department of management. Notwithstanding the provisions of section 12.30, subsection 2, regarding ex officio nonvoting status, the treasurer of state shall act as a voting member of the authority.

2. Two members of the board constitute a quorum.

3. The members shall elect a chairperson, vice chairperson, and secretary, annually, and other officers as the members determine necessary. The

treasurer of state shall serve as treasurer of the authority.

4. Meetings of the board shall be held at the call of the chairperson or when a majority of the members so requests.

5. The members of the board shall not receive compensation by reason of their membership on the board.

2000 Acts, ch 1208, §5, 25

12E.6 Staff — assistance by state officers, agencies, and departments.

1. The staff of the office of the treasurer of state shall also serve as staff of the authority under the supervision of the treasurer.

2. State officers, agencies, and departments may render services to the authority within their respective functions, as requested by the authority.

2000 Acts, ch 1208, §6, 25

12E.7 Limitation of liability.

Members of the board and persons acting on the authority's behalf, while acting within the scope of their employment or agency, are not subject to personal liability resulting from carrying out the powers and duties conferred on them under this chapter.

2000 Acts, ch 1208, §7, 25

12E.8 General powers.

1. The authority has all the general powers necessary to carry out its purposes and duties and to exercise its specific powers, including but not limited to all of the following powers:

a. The power to issue its bonds and to enter into other funding options as provided in this chapter.

b. The power to have perpetual succession as a public instrumentality and agency of the state, until dissolved in accordance with this chapter.

c. The power to sue and be sued in its own name.

d. The power to make and execute agreements, contracts, and other instruments, with any public or private person, in accordance with this chapter.

e. The power to hire and compensate legal counsel, notwithstanding chapter 13.

f. The power to hire investment advisors and other persons as necessary to fulfill its purpose.

g. The power to invest or deposit moneys of or held by the authority in any manner determined by the authority, notwithstanding chapter 12B or 12C.

h. The power to procure insurance, other credit enhancements, and other financing arrangements, and to execute instruments and contracts and to enter into agreements convenient or necessary to facilitate financing arrangements of the authority and to fulfill the purposes of the authority under this chapter, including but not limited to such arrangements, instruments, contracts, and agreements as municipal bond insurance, liquidity facilities, interest rate agreements, and letters of credit.

i. The power to accept appropriations, gifts, grants, loans, or other aid from public or private entities.

j. The power to adopt rules, consistent with this chapter and in accordance with chapter 17A, as the board determines necessary.

k. The power to acquire, own, hold, administer, and dispose of property.

l. The power to determine, in connection with the issuance of bonds, and subject to the sales agreement, the terms and other details of financing, and the method of implementation of the program plan.

m. The power to perform any act not inconsistent with federal or state law necessary to carry out the purposes of the authority.

2. The authority is exempt from the requirements of chapter 8A, subchapter III.

2000 Acts, ch 1208, §8, 25; 2001 Acts, ch 164, §7, 8, 21; 2003 Acts, ch 145, §132

12E.9 Authorization of the sale of rights in the master settlement agreement.

1. *a.* The governor or the governor's designee shall sell and assign all or a portion of the state's share to the authority pursuant to one or more sales agreements for the purpose of securitization as described in the program plan and as specified in section 12E.10. The attorney general shall assist the governor in the preparation and review of all necessary documentation to effect such a sale as soon as reasonably practicable.

b. Any sales agreement shall be consistent with the program plan and this chapter. The terms and conditions of the sale established in such sales agreement may include but are not limited to any of the following:

(1) A requirement that the state enforce, at the sole expense of the authority, the provisions of the master settlement agreement that require payment of the state's share that has been sold to the authority under a sales agreement.

(2) A requirement that the state not agree to any amendment of the master settlement agreement that materially and adversely affects the authority's ability to receive the state's share that has been sold to the authority.

(3) An agreement that the anticipated use by the state of bond proceeds received pursuant to the sales agreement shall be for capital projects, certain debt service on outstanding obligations that funded capital projects, payment of attorney fees related to the master settlement agreement, and to provide a secure and stable source of funding to the state for purposes designated by this chapter and section 12.65.

(4) A statement that the net proceeds from the sale of bonds shall be deposited in the tobacco settlement trust fund established under section 12E.12 and that in no event shall the amounts in the trust fund be available or be applied for payment of bonds or any claim against the authority or any debt or obligation of the authority.

(5) A requirement that the net proceeds received by the authority from the sale of any tax-exempt bonds issued to provide funds for capital projects, certain debt service, and attorney fees related to the master settlement agreement be paid by the authority to the state as consideration for the sale of that portion of the state's share, that such net proceeds be deposited by the state upon receipt in the tax-exempt bond proceeds restricted capital funds account of the tobacco settlement trust fund, and that such proceeds are to be held by the authority solely for the benefit of the state, subject to annual appropriation by the state in accordance with section 12E.10, subsection 1, paragraph *"b"*.

(6) A requirement that the net proceeds received by the authority from the sale of taxable bonds or tax-exempt bonds issued to provide funds for the purposes specified in section 12.65 be deposited in the endowment for Iowa's health account of the tobacco settlement trust fund as moneys of the authority until transferred to the state pursuant to section 12E.12, subsection 1, paragraph *"b"*, subparagraph (2). Each amount transferred shall be the consideration received by the state for that portion of the state's share.

(7) An agreement that the effective date of the sale is the date of receipt of the bond proceeds by the authority and the deposits of the net proceeds of the tax-exempt bonds and any taxable bonds in the respective accounts of the tobacco settlement trust fund.

2. The sale made under this section shall be irrevocable during the time when bonds are outstanding under this chapter, and shall be a part of the contractual obligation owed to the bondholders. The sale shall constitute and be treated as a true sale and absolute transfer of the property so transferred and not as a pledge or other security interest for any borrowing. The characterization of such a sale as an absolute transfer shall not be negated or adversely affected by the fact that only a portion of the state's share is being sold, or by the state's acquisition or retention of an ownership interest in the residual assets.

3. On or after the effective date of such sale, the state shall not have any right, title, or interest in the portion of the master settlement agreement sold and such portion shall be the property of the authority and not the state, and shall be owned, received, held, and disbursed by the authority or its trustee or assignee, and not the state.

4. On or before the effective date of the sale, the state shall notify the escrow agent under the master settlement agreement of the sale and shall instruct the escrow agent that subsequent to that date, all payments constituting the portion sold shall be made directly to the authority.

5. The authority, the treasurer of state, and the attorney general shall report to the legislative council and the executive council on or before the date of the sale, advising them of the status of the sale, its terms, and conditions.

2000 Acts, ch 1208, §9, 25; 2001 Acts, ch 164, §9, 10, 21

Deposit of state's share in healthy Iowans tobacco trust under §12.65 until effective date of sale; 2001 Acts, ch 164, §20

12E.10 Tobacco settlement program plan.

1. *a.* (1) The authority shall implement the program plan and shall proceed with a securitization to maximize the transference of risks associated with the master settlement agreement.

(2) The authority shall issue tax-exempt bonds in an amount that is sufficient to provide net proceeds in an amount of not more than five hundred forty million dollars for deposit in the tax-exempt bond proceeds restricted capital funds account of the tobacco settlement trust fund, to be used for capital projects, certain debt service on outstanding obligations which funded capital projects, and attorney fees related to the master settlement agreement.

(3) The authority may also issue taxable bonds or tax-exempt bonds to provide additional amounts to be used for the purposes specified in section 12.65.

(4) Notwithstanding subparagraphs (1) and (2), the authority is not required to issue tax-exempt bonds if the authority determines that the issuance would not be in the best interest of the state due to market conditions.

b. It is the expectation of the state that not less than eighty-five percent of the proceeds deposited in the tax-exempt bond proceeds restricted capital funds account of the tobacco settlement trust fund will be expended within five years from the effective date of the sale, consistent with the requirements of federal law, and that the specific capital projects, debt service, and attorney fees payments shall be determined annually through appropriations authorized by a constitutional majority of each house of the general assembly and approved by the governor.

2. The authority shall periodically report to the legislative council and the governor regarding implementation of the program plan and shall, prior to any public offering of bonds, submit a report to the legislative council and the governor describing the terms of the proposed bond issue.

3. Any amendment to the program plan shall be authorized by a constitutional majority of each house of the general assembly and approved by the governor.

4. To the extent that any provision of the pro-

gram plan is inconsistent with this chapter, the provisions of this chapter shall govern.

2000 Acts, ch 1208, §10, 25; 2001 Acts, ch 164, §11, 21

12E.11 Authority — bonds.

1. The authority may issue bonds and, if bonds are issued, shall make the proceeds from the bonds available to the state pursuant to the sales agreement to fund capital projects, certain debt service on outstanding obligations that funded capital projects, and attorney fees related to the master settlement agreement, and to provide a secure and stable source of funding to the state, consistent with the purposes of this chapter and section 12.65. In connection with the issuance of bonds and subject to the terms of the sales agreement, the authority shall determine the terms and other details of the financing and the method of implementation of the program plan. Bonds issued pursuant to this section may be secured by a pledge of all or a portion of the state's share and any moneys derived from the state's share, and any other sources available to the authority with the exception of moneys in the tobacco settlement trust fund. The authority may also issue refunding bonds, including advance refunding bonds, for the purpose of refunding previously issued bonds, and may issue other types of bonds, debt obligations, and financing arrangements necessary to fulfill its purposes or the purposes of this chapter.

2. The authority may issue its bonds in principal amounts which, in the opinion of the authority, are necessary to provide sufficient funds for achievement of its purposes, the payment of interest on its bonds, the establishment of reserves to secure the bonds, the costs of issuance of its bonds, and all other expenditures of the authority incident to and necessary to carry out its purposes or powers. The bonds are investment securities and negotiable instruments within the meaning of and for the purposes of the uniform commercial code.

3. Bonds issued by the authority are payable solely and only out of the moneys, assets, or revenues pledged by the authority and are not a general obligation or indebtedness of the authority or an obligation or indebtedness of the state or any subdivision of the state. The authority shall not pledge the credit or taxing power of the state or any political subdivision of the state, or create a debt or obligation of the state, or make its debts payable out of any moneys except those of the authority, excluding those moneys deposited in the tobacco settlement trust fund.

4. Bonds shall state on their face that they are payable both as to principal and interest solely out of the assets of the authority pledged for their purpose and do not constitute an indebtedness of the state or any political subdivision of the state; are secured solely by and payable solely from assets of the authority pledged for such purpose; constitute neither a general, legal, or moral obligation of the state or any of its political subdivisions; and that the state has no obligation or intention to satisfy any deficiency or default of any payment of the bonds.

5. Any amount pledged by the authority to be received under the master settlement agreement shall be valid and binding at the time the pledge is made. Amounts so pledged and then or thereafter received by the authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act. The lien of any such pledge shall be valid and binding as against all parties having claims of any kind against the authority, whether such parties have notice of the lien. Notwithstanding any other provision to the contrary, the resolution of the authority or any other instrument by which a pledge is created need not be recorded or filed to perfect such pledge.

6. The proceeds of bonds issued by the authority and not required for deposit in the tobacco settlement trust fund may be invested in any manner approved by the board and specified in the trust indenture or resolution pursuant to which the bonds must be issued, notwithstanding any other provision to the contrary.

7. The bonds shall comply with all of the following:

a. The bonds shall be in a form, issued in denominations, executed in a manner, and payable over terms and with rights of redemption, as the board prescribes in the resolution authorizing their issuance.

b. The bonds shall be fully negotiable instruments under the laws of this state and may be sold at prices, at public or private sale, and in a manner as prescribed by the board. Chapters 73A, 74, 74A, and 75 shall not apply to the sale or issuance of bonds under this chapter.

c. The bonds shall be subject to the terms, conditions, and covenants providing for the payment of the principal, redemption premiums, if any, interest which may be fixed or variable during any period the bonds are outstanding, and other terms, conditions, covenants, and protective provisions safeguarding payment, not inconsistent with this chapter and as determined by resolution of the board authorizing their issuance.

8. The bonds issued under this chapter are securities in which insurance companies and associations and other persons engaged in the business of insurance; banks, trust companies, savings associations, savings and loan 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.

9. Bonds must be authorized by a resolution of

the board. However, a resolution authorizing the issuance of bonds may delegate to an officer of the authority the power to negotiate and fix the details of an issue of bonds by an appropriate certificate of the authorized officer.

10. To comply with federal law with respect to the issuance of bonds, the interest of which is tax-exempt pursuant to the Internal Revenue Code, the authority may issue a certain series of bonds, or periodically issue several series of bonds, so that interest on the bonds remains exempt from federal taxation or to comply with the purposes specified in this chapter.

11. The state reserves the right at any time to alter, amend, repeal, or otherwise change the structure, organization, programs, or activities of the authority, including the power to terminate the authority, except that a law shall not be enacted that impairs any obligation made pursuant to a sales agreement or any contract entered into by the authority with or on behalf of the holders of the bonds to the extent that any such law would contravene Article I, section 21, of the Constitution of the State of Iowa or Article I, section 10, of the Constitution of the United States.

2000 Acts, ch 1208, §11, 25; 2001 Acts, ch 164, §12 – 14, 21

12E.12 Tobacco settlement trust fund — established — investment — liability.

1. *a.* A tobacco settlement trust fund is established, separate and apart from all other public moneys or funds of the state, under the control of the authority. The fund shall consist of moneys paid to the authority and not pledged to the payment of bonds or otherwise obligated. Such moneys shall include but are not limited to payments received from the master settlement agreement which are not pledged to the payment of bonds or which are subsequently released from a pledge to the payment of any bonds; payments which, in accordance with any sales agreement with the state, are to be paid to the state and not pledged to the bonds, including that portion of the proceeds of any bonds designated for purchase of all or a portion of the state's share, which are designated for deposit in the fund, together with all interest, dividends, and rents on the bonds; and all securities or investment income and other assets acquired by and through the use of the moneys belonging to the fund and any other moneys deposited in the fund. Moneys in the fund are to be used solely and only for the payment of all amounts due and to become due to the state, and shall not be used for any other purpose. Such moneys shall not be available for the payment of any claim against the authority or any debt or obligation of the authority.

b. The fund shall consist of the following accounts:

(1) The tax-exempt bond proceeds restricted capital funds account. The net proceeds of tax-exempt bonds issued to provide funds for capital projects, certain debt service, and attorney fees related to the master settlement agreement which the state treasurer is authorized and directed to deposit on behalf of the state shall be deposited in the account and shall be used to fund capital projects, certain debt service, and the payment of attorney fees related to the master settlement agreement. With respect to capital projects, it is the intent of the general assembly to fund capital projects that qualify as vertical infrastructure projects as defined in section 8.57, subsection 6, paragraph *"c"*, to the extent practicable in any fiscal year and without limiting other qualifying capital expenditures considered and approved by a constitutional majority of each house of the general assembly and the governor.

(2) The endowment for Iowa's health account. The net proceeds of any taxable bonds or tax-exempt bonds issued to provide funds for the purposes specified in section 12.65 which the authority is directed to deposit in the account, any portion of the state's share which is not sold to the authority, and any other moneys appropriated by the state for deposit in the account shall be deposited in the account and shall be used for the purposes specified in section 12.65.

(a) There is transferred from the endowment for Iowa's health account of the tobacco settlement trust fund to the healthy Iowans tobacco trust for the fiscal year beginning July 1, 2001, and ending June 30, 2002, the amount of fifty-five million dollars, to be used for the purposes specified in section 12.65.

(b) For each fiscal year beginning July 1, 2002, and annually thereafter, there is transferred from the endowment for Iowa's health account of the tobacco settlement trust fund to the healthy Iowans tobacco trust fifty-five million dollars plus an inflationary factor of one and one-half percent of the amount transferred in the previous fiscal year. Any transfer in an amount not in accordance with this subparagraph shall not be made unless authorized by a three-fifths majority of each house and approved by the governor.

2. The treasurer of the authority shall act as custodian and trustee of the fund and shall administer the fund as directed by the authority. The treasurer of the authority shall do all of the following:

a. Hold the funds.

b. Invest the portion of the funds which, as deemed by the authority, is not necessary for current payment of sums to the state under this chapter or the program plan.

c. Disburse funds, if directed by the authority.

d. Sell any securities or other property held by the fund and reinvest the proceeds as directed by the authority, when deemed advisable by the authority for the protection of the fund or the preservation of the value of the investment. Such sale of securities or other property held by the fund

shall only be made with the advice of the board in the manner and to the extent provided in this chapter with regard to the purchase of investments.

e. Subscribe, at the direction of the authority, for the purchase of securities for future delivery in anticipation of future income. Such securities shall be paid for by such anticipated income or from funds from the sale of securities or other property held by the fund.

f. Pay for securities, as directed by the authority, on the receipt of the purchasing entity's paid statement or paid confirmation of purchase.

3. The authority shall execute the disposition and investment of moneys in the fund in accordance with the investment policy and goal statement established by the board.

a. In establishing the investment policy and goal statement of the fund, the standard utilized by the board shall be the exercise of judgment and care, under the prevailing circumstances, which persons of prudence, discretion, and intelligence exercise in the management of their own financial affairs, not for the purpose of speculation, but with regard to the permanent disposition of the funds, considering the probable income, as well as the probable safety, of their capital.

b. Within the limitations of the standard prescribed in this subsection and the program plan, the treasurer of the authority, the authority, and the board may acquire and retain any type of property or investment which persons of prudence, discretion, and intelligence would acquire or retain for their own financial interests.

c. The authority and the board shall give appropriate consideration to those facts and circumstances that the authority and board know or should know are relevant to the particular investment or investment policy involved, including the role the investment plays in the total value of the fund. For the purposes of this paragraph, *"appropriate consideration"* includes, but is not limited to, a determination by the authority and the board that the particular investment or investment policy is reasonably designed to further the purposes of the tobacco settlement program plan, taking into consideration the risk of loss and the opportunity for gain or other return associated with the investment or investment policy and consideration of all of the following as they relate to the tobacco settlement trust fund:

(1) The composition of the fund with regard to diversification.

(2) The liquidity and current return of the investments in the fund relative to the anticipated cash flow requirements of the program plan.

(3) The projected return of the investments relative to the funding objectives of the program plan.

d. Investments of moneys in the funds are not subject to sections 73.15 through 73.21.

e. If consistent with the investment policy established by the board, the authority may invest moneys of or held by the authority in structured notes and investment agreements, the repayment of the principal amount of which is protected or guaranteed.

4. The authority, its staff, members of the board, and the treasurer of the authority are not personally liable for actions or omissions under this chapter that do not involve malicious or wanton misconduct even if those actions or omissions violate the standards established in this section.

5. Except as provided in this section, if there is loss to the fund, the treasurer, the authority, the board, and the staff are not personally liable, and the loss shall be charged against the fund. The amount required to cover a loss may be paid from the fund.

6. *a.* Expenses incurred in the sale and purchase of securities belonging to the fund shall be charged to the fund, and the amount required for the investment management expenses may be paid from the fund, subject to the limitations stated in this subsection. The amount paid for investment management expenses for a fiscal year under this section shall not exceed the reasonable and customary charge to similar funds for similar purposes. The authority shall report the investment management expenses for a fiscal year as a percent of the market value of the fund in the annual report to the governor submitted pursuant to section 12E.15.

b. A person who has entered into a contract with the authority for investment management purposes shall meet the requirements for doing business in Iowa sufficient to be subject to taxation under the rules of the department of revenue.

7. All moneys paid to or deposited in the fund are available to the authority to be used for the exclusive purpose of the program plan in accordance with this chapter, including but not limited to all of the following:

a. For payment of amounts due to the state pursuant to the terms of the sales agreements entered into between the state and the authority.

b. For payment of other amounts provided for in the program plan.

c. For payment of the costs of administering the program plan and the costs of the authority.

8. With respect to the payment of certain debt service, the debt service to be paid shall be those installments of debt service on bonds selected by the treasurer of state and identified in the authority's tax certificate delivered at the time of the issuance of the bonds issued pursuant to this chapter, or as otherwise selected by the treasurer of state. Once the bonds and the installments of debt service thereon are so selected, that debt service and bonds shall not be paid, or provided to be paid, from any other source including the state or any of its departments or agencies. Provided, however, that if funds are not appropriated to pay debt service on such bonds when due, the issuing agency

shall pay the debt service from any available source as provided in the bond covenants. To the extent that this section does not allow proceeds of previously issued refunding bonds to be applied for the purpose of the refunding, the issuing agency may expend such proceeds to improve, remodel, or repair buildings or other infrastructure upon authorization of the issuing agency's authority.

2000 Acts, ch 1208, §12, 25; 2001 Acts, ch 164, §15, 16, 21; 2002 Acts, 2nd Ex, ch 1001, §35, 46; 2002 Acts, 2nd Ex, ch 1003, §229, 233; 2003 Acts, ch 145, §286; 2003 Acts, ch 179, §94, 159

See annual Iowa Acts for temporary exceptions, changes, or other noncodified enactments modifying these statutory provisions

12E.13 Moneys of the authority.

1. Moneys of the authority, except as otherwise provided in this chapter or specified in a trust indenture or resolution pursuant to which the bonds are issued, shall be paid to the authority and shall be deposited in a financial institution designated by the authority. The moneys shall be withdrawn on the order of the authority or its designee. Deposits shall be secured in the manner determined by the authority.

2. The auditor of state or the auditor's designee, which may include a person hired by the auditor with the approval of the board, may periodically examine the accounts and books, including its receipts, disbursements, contracts, leases, sinking funds, investments, and any other records and papers relating to its financial standing. The authority shall pay the costs of any such examination.

3. The authority may contract with the holders of its bonds relating to the custody, collection, security, investment, and payment of moneys of the authority, and relating to the moneys held in trust or otherwise for payment of bonds, with the exception of moneys in the tobacco settlement trust fund. Moneys held in trust or otherwise for the payment of bonds or in any way to secure bonds and deposits of the moneys may be secured in the same manner as moneys of the authority, and financial institutions and trust companies may provide security for the deposits.

4. The authority shall submit to the governor, the attorney general, the auditor of state, the department of management, and the legislative services agency, within thirty days of its receipt, a copy of the report of every external examination of the books and accounts of the authority, other than copies of the reports of examinations of the auditor of state.

5. All moneys of the authority or moneys held by the authority shall be invested and held in the name of the authority, whether they are held for the benefit, security, or future payment to holders of bonds or to the state. All such moneys and investments shall be considered moneys and investments of the authority with the exception of moneys in the tax-exempt bond proceeds restricted capital funds account of the tobacco settlement trust fund which are moneys of the state.

2000 Acts, ch 1208, §13, 25; 2001 Acts, ch 164, §17, 21; 2003 Acts, ch 35, §45, 49

12E.14 Exemption from competitive bid laws.

The authority and contracts entered into by the authority in carrying out its public and essential governmental functions are exempt from the laws of the state which provide for competitive bids and hearings in connection with contracts, except as provided in section 12.30.

2000 Acts, ch 1208, §14, 25

12E.15 Annual report.

1. The authority shall submit to the governor, the general assembly, and the attorney general, on or before December 31, annually, a report including information regarding all of the following:

a. Its operations and accomplishments.

b. Its receipts and expenditures during the previous fiscal year, in accordance with classifications it establishes for its operating and capital accounts.

c. Its assets and liabilities at the end of the previous fiscal year and the status of reserve, special, and other funds.

d. A schedule of its bonds outstanding at the end of the previous fiscal year, and a statement of the amounts redeemed and issued during the previous fiscal year.

e. A statement of its proposed and projected activities.

f. Recommendations to the governor and the general assembly, as deemed necessary.

g. Any other information deemed necessary.

2. The annual report shall identify performance goals of the authority, and clearly indicate the extent of progress, during the reporting period, in attaining these goals.

2000 Acts, ch 1208, §15, 25

12E.16 Bankruptcy.

Prior to the date which is three hundred sixty-six days after which the authority no longer has any bonds outstanding, the authority is prohibited from filing a voluntary petition under chapter 9 of the federal bankruptcy code or such corresponding chapter or section as may, from time to time, be in effect, and a public official or organization, entity, or other person shall not authorize the authority to be or become a debtor under chapter 9 or any successor or corresponding chapter or sections during such periods. The provisions of this section shall be part of any contractual obligation owed to the holders of bonds issued under this chapter. Any such contractual obligation shall not subsequently be modified by state law, during the period of the contractual obligation.

2000 Acts, ch 1208, §16, 25

12E.17 Dissolution of the authority.

The authority shall dissolve no later than two years from the date of final payment of all outstanding bonds and the satisfaction of all outstanding obligations of the authority, except to the extent necessary to remain in existence to fulfill any outstanding covenants or provisions with bondholders or third parties made in accordance with this chapter. Upon dissolution of the authority, all assets of the authority shall be returned to the state and shall be deposited in the healthy Iowans tobacco trust, unless otherwise directed by the general assembly, and the authority shall execute any necessary assignments or instruments, including any assignment of any right, title, or ownership to the state for receipt of payments under the master settlement agreement.

2000 Acts, ch 1208, §17, 25; 2001 Acts, ch 164, §18, 21

12E.18 Liberal interpretation.

This chapter, being deemed necessary for the welfare of the state and its people, shall be liberally construed to effect its purpose.

2000 Acts, ch 1208, §18, 25

CHAPTER 13

ATTORNEY GENERAL

SUBCHAPTER I

GENERAL PROVISIONS

SUBCHAPTER II

FARM ASSISTANCE PROGRAM

SUBCHAPTER III

VICTIM ASSISTANCE PROGRAM

SUBCHAPTER IV

LEGAL ASSISTANCE FOR PERSONS IN POVERTY

SUBCHAPTER I

GENERAL PROVISIONS

13.1 Department of justice.

The department of justice, with the attorney general as head thereof, shall be located at the seat of government.

[R60, §124; C73, §150, 3770; C97, §208, 211; S13, §208, 211; C24, 27, 31, 35, 39, §**148;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §13.1]

13.2 Duties.

It shall be the duty of the attorney general, except as otherwise provided by law to:

1. Prosecute and defend all causes in the appellate courts in which the state is a party or interested.

2. Prosecute and defend in any other court or tribunal, all actions and proceedings, civil or criminal, in which the state may be a party or interested, when, in the attorney general's judgment, the interest of the state requires such action, or when requested to do so by the governor, executive council, or general assembly.

3. Prosecute and defend all actions and proceedings brought by or against any state officer in the officer's official capacity.

4. Prosecute and defend all actions and proceedings brought by or against any employee of a judicial district department of correctional services in the performance of an assessment of risk pursuant to chapter 692A.

5. Give an opinion in writing, when requested, upon all questions of law submitted by the general assembly or by either house thereof, or by any state officer, elective or appointive. Questions submitted by state officers must be of a public nature and relate to the duties of such officer.

6. Prepare drafts for contracts, forms, and other writings which may be required for the use of the state.

7. Report to the governor, at the time provided by law, the condition of the attorney general's office, opinions rendered, and business transacted of public interest.

8. Supervise county attorneys in all matters pertaining to the duties of their offices, and from time to time to require of them reports as to the condition of public business entrusted to their charge.

9. Promptly account, to the treasurer of state, for all state funds received by the attorney general.

10. Keep in proper books a record of all official opinions, and a register of all actions, prosecuted and defended by the attorney general, and of all proceedings had in relation thereto, which books shall be delivered to the attorney general's successor.

11. Perform all other duties required by law.

12. Inform prosecuting attorneys and assistant prosecuting attorneys to the state of all changes in law and matters pertaining to their office and establish programs for the continuing education of prosecuting attorneys and assistant prosecuting attorneys. The attorney general may accept funds, grants and gifts from any public or private source which shall be used to defray the expenses incident to implementing duties under this subsection.

13. Establish and administer, in cooperation with the law schools of Drake university and the state university of Iowa, a prosecutor intern program incorporating the essential elements of the pilot program denominated *"law student intern program in prosecutors' office"* funded by the Iowa crime commission and participating counties. The attorney general shall consult with an advisory committee including representatives of each participating law school and the Iowa county attorneys association, inc. concerning development, administration, and critique of this program. The attorney general shall report on the program's operation annually to the general assembly and the supreme court.

14. Develop written procedures and policies to be followed by prosecuting attorneys in the prosecution of domestic abuse cases under chapters 236 and 708.

Executing the duties of this section shall not be deemed a violation of section 68B.6.

[R60, §124 – 127, 130, 131; C73, §150 – 153; C97, §208 – 210; S13, §208-a; C24, 27, 31, 35, 39, §**149;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §13.2]

95 Acts, ch 180, §1; 99 Acts, ch 112, §1; 2004 Acts, ch 1091, §1

NEW unnumbered paragraph 2

13.3 Disqualification — substitute.

1. If, for any reason, the attorney general be disqualified from appearing in any action or proceeding, the executive council shall appoint some suitable person for that purpose and defray the reasonable expense thereof from any unappropriated funds in the state treasury. The department involved in the action or proceeding shall be requested to recommend a suitable person to represent the department and when the executive council concurs in the recommendation, the person recommended shall be appointed.

2. If the governor or a department is represented by an attorney other than the attorney general in a court proceeding as provided in this section, at the conclusion of the court proceedings, the court shall review the fees charged to the state to determine if the fees are fair and reasonable. The executive council shall not reimburse attorneys' fees in excess of those determined by the court to be fair and reasonable.

[C24, 27, 31, 35, 39, §**150;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §13.3]

92 Acts, ch 1240, §12

13.4 Assistant attorneys general.

The attorney general may appoint a first assistant attorney general and such other assistant attorneys general as may be authorized by law, who shall devote their entire time to the duties of their positions. The assistant attorneys general shall, subject to the direction of the attorney general, have the same power and authority as the attorney general.

[C97, §212; S13, §212; C24, 27, 31, 35, 39, §**151;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §13.4]

13.5 Assistant for department of revenue.

The attorney general may appoint one assistant attorney general to perform and supervise the legal work of the department of revenue, and in such event the salary and necessary traveling expenses of such assistant attorney general shall be paid from the appropriation to said department of revenue, and upon request of the attorney general the department of revenue shall provide and equip a suitable office and the necessary secretarial assistance for such assistant attorney general.

[C39, §**151.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §13.5]
2003 Acts, ch 145, §286

13.6 Assistant for human services department.

The attorney general may appoint one assistant attorney general to perform and supervise the legal work of the division of child and family services of the department of human services, and in such event the salary and necessary traveling expenses of such assistant attorney general shall be paid from the appropriation to said division, and upon request of the attorney general the director of the department of human services shall provide and equip a suitable office and the necessary secretarial assistance for such assistant attorney general.
[C39, §**151.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §13.6]
83 Acts, ch 96, §157, 159

13.7 Special counsel.

Compensation shall not be allowed to any person for services as an attorney or counselor to an executive department of the state government, or the head thereof, or to a state board or commission. However, the executive council may employ legal assistance, at a reasonable compensation, in a pending action or proceeding to protect the interests of the state, but only upon a sufficient showing, in writing, made by the attorney general, that the department of justice cannot for reasons stated by the attorney general perform the service, which reasons and action of the council shall be entered upon its records. When the attorney general determines that the department of justice cannot perform legal service in an action or proceeding, the executive council shall request the department involved in the action or proceeding to recommend legal counsel to represent the department. If the attorney general concurs with the department that the person recommended is qualified and suitable to represent the department, the person recommended shall be employed. If the attorney general does not concur in the recommendation, the department shall submit a new recommendation. This section does not affect the general counsel for the utilities board of the department of commerce, or the legal counsel of the department of workforce development.
[S13, §208-b; C24, 27, 31, 35, 39, §**152;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §13.7; 81 Acts, ch 22, §1]
83 Acts, ch 127, §1; 96 Acts, ch 1186, §23

13.8 Expenses.

The attorney general and the attorney general's assistants shall be repaid their actual and necessary expenses incurred in transacting their official duties at places other than the seat of government.
[C73, §3770; C97, §211; S13, §211; C24, 27, 31, 35, 39, §**153;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §13.8]

13.9 Salary.

The salary of the attorney general shall be as fixed by the general assembly, and the salaries of the first assistant attorney general and other assistant attorneys general shall be such as may be fixed by law.
[C31, 35, §153-c1; C39, §**153.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §13.9]

13.10 Physical criminal evidence — DNA profiling.

1. The attorney general shall adopt rules in consultation with the division of criminal investigation, department of public safety, for the purpose of classifying felonies and indictable misdemeanors which shall require the offender to submit a physical specimen for DNA profiling upon confinement in or prior to release from a county jail, upon commitment to the custody of the director of the department of corrections, or prior to discharge of sentence, or as a condition of probation. Factors to be considered shall include the deterrent effect of DNA profiling, the likelihood of repeated violations, and the seriousness of the offense. The offenses that require the offender to submit a physical specimen for DNA profiling shall include but are not limited to the following:

a. Murder in violation of section 707.2 or 707.3.

b. Attempt to commit murder in violation of section 707.11.

c. Kidnapping in violation of section 710.1, 710.2, or 710.3.

d. Sexual abuse in violation of section 709.2, 709.3, or 709.4.

e. Assault with intent to commit sexual abuse in violation of section 709.11.

f. Assault while participating in a felony in violation of section 708.3.

g. Burglary in the first degree in violation of section 713.3.

2. The division of criminal investigation shall carry out DNA profiling of submitted physical specimens. The division may contract with private entities for DNA profiling. *"DNA profiling"* means the procedure established by the division of criminal investigation, department of public safety, for determining a person's genetic identity.
89 Acts, ch 156, §1; 2000 Acts, ch 1122, §1
For future repeal of section effective upon appropriation or receipt of funds, see 2002 Acts, ch 1080, §5, 6

13.11 and 13.12 Reserved.

SUBCHAPTER II

FARM ASSISTANCE PROGRAM

Legislative findings; 90 Acts, ch 1143, §1

13.13 Farm assistance program coordinator — contract for mediation services.

1. The attorney general or the attorney general's designee shall serve as the farm assistance program coordinator. The coordinator has the powers and duties specified in this subchapter.

2. The farm assistance program coordinator shall contract with a nonprofit organization chartered in this state to provide mediation services as provided in chapters 654A, 654B, and 654C. The contract may be terminated by the coordinator upon written notice and for good cause. The organization awarded the contract is designated as the farm mediation service for the duration of the contract. The organization may, upon approval by the coordinator, provide mediation services other than as provided by law. The farm mediation service is not a state agency for the purposes of chapter 8A, subchapter IV, and chapters 20 and 669.

90 Acts, ch 1143, §3; 95 Acts, ch 195, §1; 2003 Acts, ch 145, §133

13.14 Farm mediation service — confidentiality.

1. Meetings of the farm mediation service are closed meetings and are not subject to chapter 21.

2. Confidentiality is also protected as provided in section 679C.2.

90 Acts, ch 1143, §4; 98 Acts, ch 1062, §6

13.15 Rules and forms — fees.

The farm mediation service shall recommend rules to the farm assistance program coordinator. The coordinator shall adopt rules pursuant to chapter 17A to set the compensation of mediators and to implement this subchapter and chapters 654A, 654B, and 654C.

The rules shall provide for an hourly mediation fee not to exceed fifty dollars for the borrower and one hundred dollars for the creditor. The hourly mediation fee may be waived for any party demonstrating financial hardship upon application to the farm mediation service.

The compensation of a mediator shall be no more than twenty-five dollars per hour, and all parties shall contribute an equal amount of the cost.

The coordinator shall adopt voluntary mediation application and mediation request forms.

90 Acts, ch 1143, §5; 91 Acts, ch 267, §410; 95 Acts, ch 195, §2

13.16 Limitation on liability — immunity from special actions.

1. A member of the farm mediation staff, including a mediator, employee, or agent of the service, or member of a board for the service, is not liable for civil damages for a statement or decision made in the process of mediation, unless the member acts in bad faith, with malicious purpose, or in a manner exhibiting willful and wanton disregard of human rights, safety, or property.

2. A judicial action which seeks an injunction, mandamus, or similar equitable relief shall not be brought against the farm mediation service, including a mediator, employee, or agent of the service, or a member of a board for the service until completion of the mediation process.

90 Acts, ch 1143, §6

13.17 through 13.19 Reserved.

13.20 Authority to contract for legal assistance program.

The farm assistance program coordinator, provided in this subchapter, shall contract with an eligible nonprofit organization to provide legal assistance to financially distressed farmers. The contract shall be awarded within thirty days after May 30, 1986. The contract may be terminated by the coordinator upon written notice and for good cause.

86 Acts, ch 1214, §2; 90 Acts, ch 1143, §7

13.21 Eligible organization.

To be eligible for a contract under section 13.20, an organization must:

1. Be a nonprofit organization chartered in the state.

2. Have attorneys admitted to practice in the Iowa supreme court and the United States district courts.

3. Have offices throughout the state of Iowa.

4. Have attorneys and staff qualified to address agricultural legal problems and agricultural credit problems affecting financially distressed farmers.

86 Acts, ch 1214, §3

13.22 Program requirements.

A legal services provider which enters into a contract with the coordinator under authority of section 13.20 shall:

1. Offer direct representation of individual farmers in litigation and administrative cases.

2. Offer technical support to individual farmers.

3. Cooperate to the fullest extent feasible with the Iowa state university agricultural extension service so that its economic and farm management counseling services are utilized by eligible persons.

4. Utilize, to the fullest extent feasible, existing resources of accredited law schools within the state of Iowa to provide consulting assistance to attorneys in the agricultural law field.

5. Assist, to the fullest extent feasible, accred-

ited law schools within the state of Iowa in enhancing their expertise in the area of agricultural law so that all attorneys within the state will have a resource available to provide training and experience in the agricultural law field.

6. Cooperate to the fullest extent feasible with the existing informational and referral networks among farmers, farmer advocates, and others concerned with the economic crisis in agricultural areas. The legal services provider is not a state agency for the purposes of chapter 8A, subchapter IV, and chapters 20 and 669.

86 Acts, ch 1214, §4; 2003 Acts, ch 145, §134

13.23 Persons eligible for legal assistance.

A person may obtain legal representation and legal assistance from the contracting legal services provider if the person meets all of the following criteria:

1. Is a resident of the state of Iowa.
2. Is a farmer, or a family shareholder of a family farm corporation, and has an occupation of farming.
3. Is engaged in a farm business that has a debt-to-asset ratio greater than fifty percent.
4. Has received less than twenty thousand dollars of taxable income in the last taxable year.
5. Is financially unable to acquire legal assistance.

86 Acts, ch 1214, §5

13.24 Report.

1. The legal services provider which enters into a contract with the coordinator under authority of 1986 Iowa Acts, chapter 1214 shall submit to the coordinator a working plan for the accomplishment of the objectives of chapter 1214 within thirty days after the contract is awarded. The plan must establish priorities and procedures, and set forth its annual operating budget for the fiscal year including projected salaries and all anticipated expenses. This budget shall set forth the maximum obligation of financial aid proposed for payment by the state and the availability of any additional funds or resources from the federal government and other sources to meet such expenses of operation.

2. At the end of each fiscal year the contracting legal services provider shall provide to the coordinator an audited statement of actual expenses incurred. The report shall also summarize the legal services provided and make recommendations for improved services for financially distressed farmers.

3. The contract entered into pursuant to section 13.20 shall provide that any contractual payments to the legal services provider are to be made monthly.

86 Acts, ch 1214, §6

13.25 Repeal of farm mediation and legal assistance provisions. Repealed by 94 Acts, ch 1106, § 1.

13.26 through 13.30 Reserved.

SUBCHAPTER III

VICTIM ASSISTANCE PROGRAM

13.31 Victim assistance program.

A victim assistance program is established in the department of justice, which shall do all of the following:

1. Administer grants received under the federal Victims of Crime Act pursuant to Pub. L. No. 98-473, title 2, ch. 14, 42 U.S.C. § 10601, as amended by the federal Children's Justice and Assistance Act, Pub. L. No. 99-401, 100 Stat. 903 (1986).
2. Administer the state crime victim compensation program as provided in chapter 915.
3. Administer the domestic abuse program provided in chapter 236.
4. Administer the family violence prevention and services grants pursuant to the federal Child Abuse Amendments of 1984, Pub. L. No. 98-457, 42 U.S.C. § 10401.
5. Administer payment for sexual abuse medical examinations pursuant to section 915.41.
6. Administer the violence against women program and grants received pursuant to the federal Violence Against Women Act, Title IV of the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 42 U.S.C. § 13701.

89 Acts, ch 279, §1; 90 Acts, ch 1251, §1; 91 Acts, ch 181, §16; 98 Acts, ch 1090, §58, 84; 2002 Acts, ch 1016, §1

13.32 and 13.33 Reserved.

SUBCHAPTER IV

LEGAL ASSISTANCE FOR PERSONS IN POVERTY

13.34 Legal services for persons in poverty grant program.

1. For the purposes of this section, *"eligible individual"* means an individual or household with an annual income which is less than one hundred twenty-five percent of the poverty guidelines established by the United States office of management and budget. The attorney general shall contract with an eligible nonprofit organization to provide legal assistance to eligible individuals in poverty. The contract shall be awarded within thirty days after May 30, 1996. The contract may be terminated by the attorney general after a hearing upon written notice and for good cause.

2. A nonprofit organization must comply with all of the following to be eligible for a contract un-

der this section:

a. Be a nonprofit organization incorporated in this state.

b. Has lost or will lose funding due to a reduction in federal funding for the legal services corporation for federal fiscal year 1995-1996.

c. Employ attorneys admitted to practice before the Iowa supreme court and the United States district courts.

d. Employ attorneys and staff qualified to address legal problems experienced by eligible individuals.

3. The contracting nonprofit organization shall do all of the following:

a. Offer direct representation of eligible individuals in litigation and administrative cases, in accordance with priorities established by the organization's board.

b. Offer technical support to eligible individuals.

c. Involve private attorneys through volunteer lawyer projects to represent eligible individuals.

d. Utilize, to the fullest extent feasible, existing resources of accredited law schools within this state to provide consulting assistance to attorneys in the practice of law in their representation of persons in poverty.

e. Assist, to the fullest extent feasible, accredited law schools within this state in enhancing the schools' expertise in the practice of law representing persons in poverty so that all attorneys within the state will have a resource available to provide training and experience in the practice of law representing persons in poverty.

f. Cooperate, to the fullest extent feasible, with existing informational and referral networks among persons in poverty, providers of assistance to persons in poverty, and others concerned with assistance to persons in poverty.

4. The contracting nonprofit organization is not a state agency for the purposes of chapter 8A, subchapter IV, and chapters 20 and 669.

5. An individual is eligible to obtain legal representation and legal assistance from the contracting nonprofit organization if the eligible individual meets all of the following criteria:

a. The eligible individual is a resident of this state.

b. The eligible individual is financially unable to acquire legal assistance, in accordance with criteria established by the organization's board.

96 Acts, ch 1216, §27; 2003 Acts, ch 145, §135

CHAPTER 13A

PROSECUTING ATTORNEYS TRAINING COORDINATOR

See also chapter 679

13A.1 Definitions.

As used in this chapter unless the context otherwise requires:

1. *"Coordinator"* means the prosecuting attorneys training coordinator.

2. *"Council"* means the prosecuting attorneys training coordination council.

3. *"Office"* means the office of prosecuting attorneys training coordinator established in this chapter.

4. *"Prosecuting attorneys"* means county attorney, district attorney, or any attorney charged with responsibility of prosecution of violation of state laws.

[C77, 79, 81, §13A.1]

13A.2 Establishment of office and council — coordinator.

1. The office of the prosecuting attorneys training coordinator is established as an entity in the department of justice.

2. The prosecuting attorneys training coordination council is established to consult with and advise the attorney general and the coordinator on the operation of the office.

3. The attorney general shall, with the advice and consent of the council, appoint an attorney with knowledge and experience in prosecution to the office of prosecuting attorneys training coordinator. The prosecuting attorneys training coordinator shall be the administrator of the office of the

prosecuting attorneys training coordinator. The coordinator's term of office is four years, beginning on July 1 of the year of appointment and ending on June 30 of the year of expiration.

4. If a vacancy occurs in the office of prosecuting attorneys training coordinator, the vacancy shall be filled for the unexpired portion of the term in the same manner as the original appointment was made.

5. The attorney general may, with the advice of the council, remove the prosecuting attorneys training coordinator for malfeasance or nonfeasance in office, for any cause which renders the coordinator ineligible for appointment, or for any cause which renders the coordinator incapable or unfit to discharge the duties of office. The prosecuting attorneys training coordinator may also be removed upon the unanimous vote of the council. The removal of a prosecuting attorneys training coordinator under this section is final.

[C77, 79, 81, §13A.2]

86 Acts, ch 1245, §2056; 93 Acts, ch 171, §16, 17

13A.3 Membership and terms.

The council shall consist of five members as follows:

1. The attorney general or the attorney general's designated representative.

2. The president of the Iowa county attorneys association or its successor.

3. Three members elected by the Iowa county attorneys association or its successor.

A member shall vacate an appointment upon termination of the member's official position as a prosecuting attorney or an attorney general. A vacancy shall be filled in the same manner as the original appointment. A member appointed to fill a vacancy created other than by expiration of a term on the council shall be appointed for the unexpired term of the member whom the new member is to succeed in the same manner as the original appointment. Any member may be reappointed for an additional term.

The terms of the elected members shall be three years and shall begin January 1, 1976, but initial terms shall be staggered so that the elected members shall serve terms of one, two, and three years respectively.

[C77, 79, 81, §13A.3]

13A.4 Organization.

The council shall designate from among its members a chairperson and vice chairperson who shall serve for one-year terms and who may be reelected. Membership on the council shall not constitute holding a public office, and members of the council shall not be required to take and file oaths of office before serving on the council. A member of the council shall not be disqualified from holding any public office or employment by reason of membership on the council, nor shall one member forfeit the office or employment, by reason of appointment under this chapter, notwithstanding the provisions of any law, ordinance or city charter.

[C77, 79, 81, §13A.4]

13A.5 Meetings.

The council shall meet at least four times each year and shall hold meetings when called by the chairperson, or in the absence of the chairperson, by the vice chairperson or when called by the chairperson upon the written request of three members of the council. The council shall establish its own procedures and requirements with respect to quorum, place and conduct of its meetings and other matters.

[C77, 79, 81, §13A.5]

13A.6 Report required.

The prosecuting attorneys training coordinator shall make an annual report to the attorney general, the governor, and to the Iowa county attorneys association or its successor regarding the efforts of the office to implement the purposes of this chapter.

[C77, 79, 81, §13A.6]

86 Acts, ch 1245, §2057

13A.7 Expenses paid.

The members of the council shall serve without compensation but shall be entitled to their actual expenses in attending meetings and in the performance of their duties.

[C77, 79, 81, §13A.7]

13A.8 Duties.

The office shall keep the prosecuting attorneys and assistant prosecuting attorneys of the state informed of all changes in law and matters pertaining to their office to the end that a uniform system of conduct, duty and procedure is established in each county of the state.

[C77, 79, 81, §13A.8]

86 Acts, ch 1245, §2058

13A.9 Authority.

The prosecuting attorneys training coordinator may:

1. Enter into agreements with other public or private agencies or organizations to implement this chapter.

2. Co-operate with and assist other public or private agencies or organizations to implement this chapter.

3. Make recommendations to the general assembly on matters pertaining to the responsibilities of the office under this chapter.

[C77, 79, 81, §13A.9]

86 Acts, ch 1245, §2059

13A.10 Receipt of funds.

The office of the prosecuting attorneys training coordinator may accept funds, grants and gifts from any public or private source which shall be used to defray the expenses incident to implementing the responsibilities of the office under this chapter.

[C77, 79, 81, §13A.10]

86 Acts, ch 1245, §2060

13A.11 Citation.

This chapter shall be known and may be cited as the *"Prosecuting Attorneys Training Coordinator Act of 1975"*.

[C77, 79, 81, §13A.11]

CHAPTER 13B

PUBLIC DEFENDERS

13B.1 Definitions.

As used in this chapter unless the context otherwise requires:

1. *"Appointed attorney"* means an attorney appointed by the court and compensated by the state to represent an indigent defendant.
2. *"Department"* means the department of inspections and appeals.
3. *"Financial statement"* means a full written disclosure of all assets, liabilities, current income, dependents, and other information required to determine if a client qualifies for legal assistance by an appointed attorney.
4. *"State public defender"* means the state public defender appointed pursuant to this chapter.

[81 Acts, ch 23, §1, 8]

88 Acts, ch 1161, §1; 91 Acts, ch 268, §408, 439; 96 Acts, ch 1040, §1; 96 Acts, ch 1193, §1

13B.2 Position established.

The position of state public defender is established within the department of inspections and appeals. The governor shall appoint the state public defender, who shall serve at the pleasure of the governor, subject to confirmation by the senate, no less frequently than once every four years, whether or not there has been a new state public defender appointed during that time, and shall establish the state public defender's salary.

[81 Acts, ch 23, §2, 8]

86 Acts, ch 1245, §516; 88 Acts, ch 1161, §2

Confirmation, see §2.32

13B.2A Indigent defense advisory commission.

An indigent defense advisory commission is established within the department to advise and make recommendations to the legislature and the state public defender regarding the hourly rates paid to court-appointed counsel and per case fee limitations. These recommendations shall be consistent with the constitutional requirement to provide effective assistance of counsel to those indigent persons for whom the state is required to provide counsel.

The advisory commission shall consist of five members. The governor shall appoint three members, including one member from nominations by the Iowa state bar association and one member from nominations by the supreme court. Two members, one from each chamber of the general assembly, shall be appointed, with no more than one appointed from the same political party. Each member shall serve a three-year term, with initial terms to be staggered. No more than three members shall be licensed to practice law in Iowa. The state public defender shall serve as an ex officio member of the commission and shall serve as the nonvoting chair of the commission.

The members of the commission are entitled to receive reimbursement for actual expenses incurred as provided for in section 7E.6, subsection 2, while engaged in the performance of the duties of the commission.

The advisory commission shall file a written report every three years with the governor and the

general assembly by January 1 of a year in which a report is due regarding the recommendations and activities of the commission. The first such report shall be due on January 1, 2003.

99 Acts, ch 135, §2

13B.2B Duties and powers of the indigent defense advisory commission. Repealed by 91 Acts, ch 268, § 439.

13B.3 Qualifications of state public defender.

Only persons admitted to practice law in this state shall be appointed state public defender or assistant state public defender.

[81 Acts, ch 23, §3, 8]

88 Acts, ch 1161, §3

13B.4 Duties and powers of state public defender.

1. The state public defender shall coordinate the provision of legal representation of all indigents under arrest or charged with a crime, seeking postconviction relief, against whom a contempt action is pending, in proceedings under section 811.1A or chapter 229A or 812, in juvenile proceedings, on appeal in criminal cases, on appeal in proceedings to obtain postconviction relief when ordered to do so by the district court in which the judgment or order was issued, and on a reopening of a sentence proceeding, and may provide for the representation of indigents in proceedings instituted pursuant to section 908.11. The state public defender shall not engage in the private practice of law.

2. The state public defender shall file a notice with the clerk of the district court in each county served by a public defender designating which public defender office shall receive notice of appointment of cases. The state public defender may also designate a nonprofit organization which has a contract with the state public defender to provide legal services to eligible indigent persons prior to July 1, 2004. Except as otherwise provided, in each county in which the state public defender files a designation, the state public defender's designee shall be appointed by the court to represent all eligible indigents in all of the cases and proceedings specified in the designation. The appointment shall not be made if the state public defender notifies the court that the public defender designee will not provide legal representation in certain cases as identified in the designation by the state public defender.

3. The state public defender may contract with persons admitted to practice law in this state and nonprofit organizations employing persons admitted to practice law in this state for the provision of legal services to indigent persons.

4. *a.* The state public defender shall establish fee limitations for particular categories of cases. The fee limitations shall be reviewed at least every three years. In establishing and reviewing the fee limitations, the state public defender shall consider public input during the establishment and review process, and any available information regarding ordinary and customary charges for like services; the number of cases in which legal services to indigents are anticipated; the seriousness of the charge; an appropriate allocation of resources among the types of cases; experience with existing hourly rates, claims, and fee limitations; and any other factors determined to be relevant.

b. The state public defender shall establish a procedure for the submission of all claims for payment of indigent defense costs, including the submission of interim claims in appropriate cases.

c. The state public defender may review any claim for payment of indigent defense costs and may take any of the following actions:

(1) If the charges are appropriate and reasonable, approve the claim for payment.

(2) Deny the claim under any of the following circumstances:

(a) If it is not timely.

(b) If it is not payable as an indigent defense claim under chapter 815.

(c) If it is not payable under the contract between the claimant and the state public defender.

(d) If the claimant was appointed contrary to section 814.11, or the claimant failed to comply with section 815.10, subsection 5.

(3) Request additional information or return the claim to the attorney, if the claim is incomplete.

(4) If any portion of the claim is excessive, notify the attorney that the claim is excessive and will be reduced to an amount which is not excessive, and reduce and approve the balance of the claim.

(5) If any portion of the claim is not payable within the scope of appointment of the attorney, notify the attorney that a portion of the claim is not within the scope of appointment and is not payable, deny those portions of the claim that are not payable, and approve the balance of the claim.

d. Notwithstanding chapter 17A, the attorney may seek review of any action or intended action denying or reducing any claim by filing a motion with the court with jurisdiction over the original appointment for review.

(1) The motion must be filed within twenty days of any action taken by the state public defender.

(2) The motion shall be set for hearing by the court and the state public defender shall be provided with at least ten days' notice of the hearing. The state public defender shall not be required to file a resistance to the motion filed under this paragraph *"d"*.

(3) The state public defender or the attorney may participate by telephone. If the state public defender participates by telephone, the state pub-

lic defender shall be responsible for initiating and paying for all telephone charges.

(4) The filing of a motion shall not delay the payment of the amount approved by the state public defender.

(5) If a claim or portion of the claim is denied, the action of the state public defender shall be affirmed unless the action conflicts with an administrative rule or the law.

(6) If the claim is reduced for being excessive, the attorney shall have the burden to establish by a preponderance of the evidence that the amount of compensation and expenses is reasonable and necessary to competently represent the client.

(7) Any court order entered after the state public defender has taken action on a claim, which affects that claim, without first notifying the state public defender and permitting the state public defender an opportunity to be heard, is void.

5. In reviewing a claim for compensation submitted by an attorney who had been retained or agreed to represent an indigent person prior to appointment, the state public defender may consider any moneys earned or paid to the attorney prior to the appointment in determining whether the claim is reasonable and necessary or excessive. The attorney shall provide the state public defender with a copy of any representation agreement, and information on any moneys earned or paid to the attorney prior to the appointment.

6. The state public defender is authorized to contract with county attorneys to provide collection services related to court-ordered indigent defense restitution of court-appointed attorney fees or the expense of a public defender.

7. The state public defender shall not revise the allocations to the office of the state public defender and the allocations for fees of court-appointed attorneys for indigent adults and juveniles, unless notice of the revisions is given prior to their effective date to the legislative services agency, the cochairpersons and ranking members of the joint appropriations subcommittee on the justice system, and the cochairpersons and ranking members of the house and senate committees on appropriations.

8. The state public defender shall adopt rules, as necessary, pursuant to chapter 17A to administer this chapter and chapter 815.

9. Executing the duties of this section shall not be deemed a violation of section 68B.6.

[81 Acts, ch 23, §4, 8]

85 Acts, ch 36, §1; 88 Acts, ch 1161, §4; 89 Acts, ch 51, §1; 91 Acts, ch 268, §411, 439; 92 Acts, ch 1242, §18; 93 Acts, ch 175, §15; 94 Acts, ch 1107, §20; 94 Acts, ch 1187, §17; 96 Acts, ch 1040, §2; 99 Acts, ch 12, §1; 99 Acts, ch 135, §3 – 6; 99 Acts, ch 208, §46; 2000 Acts, ch 1154, §3; 2002 Acts, ch 1067, §1 – 5; 2002 Acts, ch 1119, §116; 2003 Acts, ch 35, §46, 49; 2003 Acts, ch 51, §1 – 3; 2004 Acts, ch 1040, §1 – 3; 2004 Acts, ch 1084, §1; 2004 Acts, ch 1091, §2; 2004 Acts, ch 1175, §195

Intent that state public defender provide for defense of major felony case defendants by public defenders on regional basis; 91 Acts, ch 268, §440

Subsections 1 – 3 amended

Subsection 4, paragraph c, subparagraph (2), subparagraph subdivision (d) amended

NEW subsection 9

13B.5 Staff.

The state public defender may appoint assistant state public defenders who, subject to the direction of the state public defender, shall have the same duties as the state public defender and shall not engage in the private practice of law. The salaries of the staff shall be fixed by the state public defender. The state public defender and the state public defender's staff shall receive actual and necessary expenses, including travel at the state rate set forth in section 8A.363.

[81 Acts, ch 23, §5, 8]

88 Acts, ch 1161, §5; 2003 Acts, ch 145, §136

13B.6 Account established.

1. There is established in the state general fund an account to be known as the state public defender operating account. The state public defender may bill a county for services rendered to the county by the office of the state public defender. Receipts shall be deposited in the operating account established under this section. There is appropriated from the state general fund all amounts deposited in the state public defender operating account for use in maintaining the operations of the office of state public defender.

2. The department of inspections and appeals shall provide internal accounting and related fiscal services for the state public defender.

[81 Acts, ch 23, §6, 8]

83 Acts, ch 200, §10; 86 Acts, ch 1245, §517; 88 Acts, ch 1161, §6

13B.7 Legal services to inmates.

The state public defender may supervise the provision of legal services, funded by an appropriation to the Iowa department of corrections, to inmates of adult correctional institutions in civil cases involving prison litigation.

83 Acts, ch 96, §160; 83 Acts, ch 203, §12; 88 Acts, ch 1161, §7

13B.8 Office of local public defender.

1. The state public defender may establish or abolish local public defender offices. In determining whether to establish or abolish a local public defender office, the state public defender shall consider the following:

a. The number of cases or potential cases where a local public defender is or would be involved.

b. The population of the area served or to be served.

c. The willingness of the local private bar to

participate in cases where a public defender is or would be involved.

d. Other factors which the state public defender deems to be important.

2. The state public defender may appoint and may, for cause, remove the local public defender, assistant local public defenders, clerks, investigators, secretaries, or other employees. Each local public defender, and any assistant local public defender, must be an attorney admitted to the practice of law before the Iowa supreme court.

3. The compensation of the local public defender and staff of the local public defender offices shall be fixed by the state public defender.

4. The state public defender shall provide separate and suitable office space, furniture, equipment, computers, computer networks, support staff, and supplies for each office of the local public defender out of funds appropriated to the state public defender for this purpose.

5. An employee of a local public defender office shall not have access to any confidential client information in any other local public defender office, and the state public defender shall not have access to such confidential information.

88 Acts, ch 1161, §8; 91 Acts, ch 268, §412, 439; 95 Acts, ch 67, §3; 99 Acts, ch 135, §7; 2000 Acts, ch 1115, §1; 2000 Acts, ch 1154, §4; 2002 Acts, ch 1067, §6 – 8; 2002 Acts, ch 1119, §117

13B.8A Public defender property.

1. Notwithstanding section 13B.8, subsection 4, public property referred to in subsection 2 in the custody of a person or agency referred to in subsection 3 shall not be property of the department of inspections and appeals, but shall be devoted for the use of the department of inspections and appeals in its course of business. The department of inspections and appeals shall only be responsible for maintenance contracts or contracts for purchase entered into by the department of inspections and appeals. Upon replacement of the property by the department of inspections and appeals, the property shall revert to the use of the appropriate county.

2. This section applies to the following property:

a. Books, accounts, and records that pertain to the operation of the public defender's offices.

b. Forms, materials, and supplies that are consumed in the usual course of business.

c. Tables, chairs, desks, lamps, curtains, window blinds, rugs and carpeting, flags and flag standards, pictures and other wall decorations, and other similar furnishings.

d. Typewriters, adding machines, desk calculators, cash registers and similar business machines, reproduction machines and equipment, microfiche projectors, tape recorders and associated equipment, microphones, amplifiers and speakers, film projectors and screens, overhead projectors, and similar personal property.

e. Filing cabinets, shelving, storage cabinets, and other property used for storage.

f. Books of statutes, books of ordinances, books of judicial decisions, and reference books, except those that are customarily held in a law library for use by the public.

g. All other personal property that is in use in the operation of the offices of the public defender.

3. This section applies to the following persons and agencies:

a. Offices of the public defender.

b. Persons who are employed by an office of the public defender.

4. Subsections 1 through 3 and 5 do not apply to electronic data storage equipment, commonly referred to as computers, or to computer terminals or any machinery, equipment, or supplies used in the operation of computers. Those counties providing computer services to the public defender shall continue to provide these services until the general assembly provides otherwise. The state shall reimburse these counties for the cost of providing these services. Each county providing computer services to an office of the public defender shall submit a bill for these services to the department of inspections and appeals at the end of each calendar quarter. Reimbursement shall be payable from funds appropriated to the department for operating expenses of the offices of the public defender and shall be paid within thirty days after receipt by the department of inspections and appeals of the quarterly billing.

5. Personal property of a type that is subject to subsections 1 through 3 shall be subject to the control of the offices of the public defender. The offices of the public defender may issue necessary orders to preserve the use of the property by the public defender. The offices of the public defender shall establish and maintain an inventory of property used by the offices of the public defender.

89 Acts, ch 321, §23

13B.9 Powers and duties of local public defenders — referrals to outside counsel.

1. The local public defender shall do all of the following:

a. Represent without fee an indigent person who is under arrest or charged with a crime if the indigent person requests representation or the court orders representation. The local public defender shall counsel and defend an indigent defendant at every stage of the criminal proceedings and prosecute before or after conviction any appeals or other remedies which the local public defender considers to be in the interest of justice unless other counsel is appointed to the case.

b. Represent an indigent party, without fee and upon an order of the court, in child in need of assistance, family in need of assistance, delinquency, and termination of parental rights pro-

ceedings pursuant to chapter 232 in a county served by a public defender. The local public defender shall counsel and represent an indigent party in all proceedings pursuant to chapter 232 in a county served by a public defender and prosecute before or after judgment any appeals or other remedies which the local public defender considers to be in the interest of justice unless other counsel is appointed to the case.

c. Make an annual report to the state public defender. The report shall include all cases handled by the local public defender during the preceding calendar year.

2. An attorney appointed under this section is not liable to a person represented by the attorney for damages as a result of a conviction in a criminal case unless the court determines in a postconviction proceeding or on direct appeal that the person's conviction resulted from ineffective assistance of counsel, and the ineffective assistance of counsel is the proximate cause of the damage. In juvenile or civil proceedings, an attorney appointed under this section is not liable to a person represented by the attorney for damages unless it has been determined that the attorney has provided ineffective assistance of counsel and the ineffective assistance of counsel claim is the proximate cause of the damage.

3. The local public defender shall handle every case to which the local public defender is appointed if the local public defender can reasonably handle the case. The local public defender shall be responsible for assigning cases to individual attorneys within the local public defender office and for making decisions concerning cases in which the local public defender has been appointed.

4. If a conflict of interest arises or if the local public defender is unable to handle a case because of a temporary overload of cases, the local public defender shall return the case to the court. If the case is returned and the state public defender has filed a successor designation, the court shall appoint the successor designee. If there is no successor designee on file, the court shall make the appointment pursuant to section 815.10. As used in this subsection, *"successor designee"* may include another local public defender office or a nonprofit organization that has contracted with the state public defender under section 13B.4, subsection 3.

88 Acts, ch 1161, §9; 89 Acts, ch 83, §4; 91 Acts, ch 268, §413, 439; 94 Acts, ch 1187, §18, 19; 96 Acts, ch 1040, §3, 4; 99 Acts, ch 135, §8 – 10; 2002 Acts, ch 1067, §9 – 12; 2003 Acts, ch 51, §4; 2004 Acts, ch 1017, §1; 2004 Acts, ch 1040, §4

Subsections 2 and 4 amended

13B.10 Determination of indigence.

For purposes of this chapter, a determination of indigence shall be made pursuant to section 815.9.

88 Acts, ch 1161, §10; 89 Acts, ch 83, §5; 93 Acts, ch 175, §16; 96 Acts, ch 1193, §2; 99 Acts, ch 135, §11

13B.11 State appellate defender.

The state public defender shall appoint a state appellate defender who shall represent indigents on appeal in criminal cases and on appeal in proceedings to obtain postconviction relief when appointed to do so by the district court in which the judgment or order was issued, and may represent indigents in proceedings instituted pursuant to chapter 908 when required to do so by the state public defender, and shall not engage in the private practice of law.

89 Acts, ch 51, §2

CHAPTER 13C

ORGANIZATIONS SOLICITING PUBLIC DONATIONS

This chapter not enacted as a part of this title; transferred from chapter 122 in Code 1993

13C.1 Definitions.

1. *"Charitable organization"* means a person who solicits or purports to solicit contributions for a charitable purpose and which receives contributions. *"Charitable organization"* does not include a political organization, a religious organization, or a state, regionally, or nationally accredited college or university.

2. *"Charitable purpose"* means a benevolent, educational, philanthropic, humane, scientific,

patriotic, social welfare or advocacy, public health, environmental, conservation, civic, or other charitable objective. In the case of law enforcement, emergency medical technician, paramedic, and fire fighter organizations, *"charitable purpose"* does not include funds raised through the sale of advertisements, products, or tickets for an event unless the organization represents that part of proceeds will be used to assist individuals other than the organization, its members, or their families.

3. *"Political organization"* means a political party, a candidate for office, or a political action committee required to file financial information with federal or state election or campaign commissions.

4. *"Professional commercial fund-raiser"* means any person who for compensation solicits contributions in Iowa for a charitable organization other than the person. A person whose sole responsibility is to mail fund-raising literature is not a professional commercial fund-raiser. A lawyer, investment counselor, or banker who advises a person to make a charitable contribution is not, as a result of such advice, a professional commercial fund-raiser. A bona fide salaried officer, employee, or volunteer of a charitable organization is not a professional commercial fund-raiser.

5. *"Religious organization"* means a religious corporation, trust, foundation, association, or organization incorporated or established for religious purposes.

6. *"Solicit"* or *"solicitation"* means the request, directly or indirectly, for a contribution on the pleas or representation that the contribution will be used for a charitable purpose. A solicitation is deemed to have taken place whether or not the person making the solicitation receives a contribution. *"Solicitation"* does not include an application for a grant from any governmental entity or private nonprofit foundation.

[S13, §5077-c; C24, §1916; C27, 31, 35, §1921-b1; C39, §**1915.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §122.1]

89 Acts, ch 93, §1; 90 Acts, ch 1202, §1

C93, §13C.1

13C.2 Registration permit required — disclosure.

1. *a.* A professional commercial fund-raiser shall not solicit contributions for charitable purposes in this state unless the professional commercial fund-raiser has registered with the attorney general, has provided the attorney general with a listing of the professional commercial fund-raiser's clients, and has obtained a registration permit from the attorney general. The attorney general may require that registration information be updated on a quarterly basis.

b. The attorney general shall prescribe and furnish the registration permit application form which shall include provisions for financial disclosure information concerning contributions received and disbursements made during the previous year by the professional commercial fund-raiser applying for registration. Financial disclosure information shall not include an applicant's donor lists.

c. In lieu of filing the financial disclosure information at the time of registration, the professional commercial fund-raiser may file a statement with its permit application where it agrees to provide, without cost, the financial disclosure information required to be disclosed pursuant to this subsection to a person or government entity requesting the information within one day of the request. The statement shall include the telephone number, mailing address, and names of persons to be contacted to obtain the financial disclosure information of the fund-raiser. Failure to provide this information upon request shall be a violation of this chapter.

2. A charitable organization shall provide, upon request and without cost to the requesting party, financial disclosure information concerning contributions received and disbursements for the organization's last complete fiscal year, or, if the organization has not completed a full fiscal year, for its current fiscal year, to the attorney general or a person requesting the information within five days of the request.

3. *a.* If a professional commercial fund-raiser or charitable organization fails to provide financial information as required or requested, the fund-raiser or organization shall file the financial disclosure information with the attorney general within seven days of its failure to have provided the disclosure information and, thereafter, file, if required by the attorney general, annual financial disclosure information with the attorney general.

b. The attorney general may seek an injunction pursuant to section 714.16 prohibiting the professional commercial fund-raiser or charitable organization from soliciting contributions until the required financial information has been disclosed to the attorney general, person, or government entity making the request.

4. The client lists of a professional commercial fund-raiser, if required to be filed as part of the application for registration, shall be confidential and may be used only for law enforcement purposes.

5. The attorney general shall collect a fee of ten dollars for each registration permit issued. A permit shall expire twelve months following the date of issuance.

6. The attorney general may make reasonable rules to enforce the provisions of this chapter.

[S13, §5077-c; C24, §1917; C27, 31, 35, §1921-b2; C39, §**1915.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77,

79, 81, §122.2]
89 Acts, ch 93, §2; 90 Acts, ch 1202, §2
C93, §13C.2

13C.3 Use of another organization's name in solicitation.

A charitable organization shall not solicit contributions for a charitable purpose in this state, where the charitable organization claims that a portion or all of the contributions received will be given to another charitable organization in this state, without permission from the other charitable organization that its name may be referred to as part of the solicitation.

90 Acts, ch 1202, §3
C93, §13C.3

13C.4 through 13C.7 Reserved.

13C.8 Enforcement — penalty.

The attorney general shall enforce the provisions of this chapter.

A violation of this chapter is a violation of section 714.16, subsection 2, paragraph *"a"*. The provisions of section 714.16, including but not limited to provisions relating to investigation, injunctive relief, and penalties, shall apply to this chapter.

[C24, §1918; C27, 31, 35, §1921-b3; C39, §**1915.3;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §122.3]
89 Acts, ch 93, §3; 90 Acts, ch 1202, §4
C91, §122.8
C93, §13C.8

CHAPTER 14

IOWA CODE AND ADMINISTRATIVE CODE

Transferred to chapter 2B

CHAPTER 14A

DEPUTIES OF STATE OFFICERS

14A.1 Deputies.

The secretary, auditor, treasurer of state, and secretary of agriculture may each appoint, in writing, any person, except one holding a state office, as deputy, for whose acts the appointing officer shall be responsible, and from whom the appointing officer shall require bond, which appointment and bond must be approved by the officer having the approval of the principal's bond, and such appointment may be revoked in the same manner. The appointment and revocation shall be filed with and kept by the secretary of state. The state shall pay the reasonable cost of the bonds required by this section.

[C51, §411 – 413, 416; R60, §642 – 644, 647; C73, §766 – 768, 770, 3756 – 3758; C97, §87, 99, 116; S13, §87, 99, 116; C24, 27, 31, 35, 39, §**430;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §27.1]
C93, §14A.1

14A.2 Deputy to qualify.

The deputy shall qualify by taking the oath of the principal, to be endorsed upon and filed with the certificate of appointment, and when so qualified shall, in the absence or disability of the appointing officer, unless otherwise provided, perform all the duties pertaining to the office of the appointing officer.

[C51, §411, 412, 416; R60, §642, 643, 647; C73, §766, 767, 770; C97, §87, 99, 116; S13, §87, 99, 116; C24, 27, 31, 35, 39, §**431;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §27.2]
C93, §14A.2
Deputy may not act on executive council, §7D.1
Oath of principal, §63.10

CHAPTER 14B

INFORMATION TECHNOLOGY DEPARTMENT

Repealed by 2003 Acts, ch 145, §291; see chapter 8A, subchapter II
For transition provisions relating to the department of administrative services created in chapter 8A, including the status of administrative rules in effect on July 1, 2003, see 2003 Acts, ch 145, §287, 288