

# **City of Waverly Integrated Roadside Vegetation Management Plan**

**April 2017**

RESOLUTION 17-61

A RESOLUTION OF APPROVAL OF A CITY OF WAVERLY INTEGRATED ROADSIDE VEGETATION MANAGEMENT PLAN

WHEREAS, the State of Iowa has an outline of requirements for an Integrated Roadside Management Plan and

WHEREAS, the City of Waverly has completed an Integrated Roadside Management Plan and has adapted it to meet the needs of the City, and

WHEREAS, the plan will use Integrated Pest Management protocols to be more preventative rather than reactionary with vegetation management, and

WHEREAS, the plan will have protocols to improve the ground water, air, and animal life in the community, and

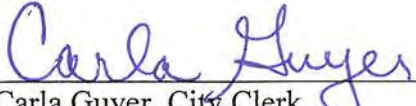
WHEREAS, plan submittal to the State of Iowa by June 1 will make the City of Waverly eligible for a Living Roadway Trust Fund Grant for a project or equipment needs to enhance the vegetation management of the community, and

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Waverly, Iowa, approves the submission of the Integrated Vegetation Management Plan to the Department of Transportation of the State of Iowa.

PASSED AND ADOPTED this 15<sup>th</sup> day of May, 2017.

  
Charles D. Infelt, Mayor

ATTEST:

  
Carla Guyer, City Clerk

## **Preface**

Contributors to the plan-

City of Waverly

Bremer County Roadside Vegetation Management Department

Trees Forever

Wartburg College Biology and Sustainability Departments

Iowa Department of Transportation Living Roadway Trust Fund

ISU Bremer County Extension

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# **Waverly Integrated Roadside Vegetation Management Plan**

## **Executive Summary**

The City of Waverly has experienced growth throughout the years. Each decade the population has increased, a fact that very few communities can say outside of metro areas. With growth, additional infrastructure is necessary to accommodate the needs of the community.

Besides the hardscape, the city has seen its developed turf and undeveloped natural areas grow in area. This growth was the impetus to develop the 4th municipal Integrated Roadside Vegetative Management Plan in Iowa.

An outline is provided by the State on how to put together a IRVM Plan. This was used as the basics of the Waverly Plan but we have proceeded to address the needs of the roadside and non-roadside vegetation management needs of the community. So this plan will include off road natural areas that will be consistent in the maintenance goals of the program.

In the plan are goals of the program, a section on public involvement which is a very important element including education and outreach, a calendar of basic operations, and existing City policies that will be used within the plan.

Implementation of a formal vegetation management plan will enhance the City of Waverly by beautification of the natural areas and roadsides, promote environmentally friendly practices, increase ecological services from natural vegetation and reduce nuisances and hazards.

This plan is a fluid document with minimally, a review after one year of implementation. This is necessary because of the continued community growth and vegetation issues change on a seasonal basis.

## **Executive Program Elements**

1. Goals
  - a. Decrease labor costs by being proactive in turf, tree, prairie, no mow maintenance, and weed control.
  - b. Minimize complaints by being in front of noxious weeds and improving species in no mow areas.
  - c. Develop a work plan: an annual, logical, progression of seasonal tasks.
  - d. Take advantage of biological services- erosion control, pollinators, water quality for natural improvements to grounds.
  - e. Emphasize diversity in plantings and utilize Iowa native plantings if appropriate.
  - f. Provide services for education outreach to explain how vegetation management is working for the public.
  - g. Improve erosion control after native vegetation is established.
  - h. Increase water infiltration due to more extensive plant root systems to minimize stormwater runoff and reduce pollution in streams.
  - i. Improve the habitat for songbirds, game birds, butterflies, and other wildlife.
  - j. Reduce long term maintenance costs due to less fertilizations, mowing, and spraying.
  - k. More aesthetically pleasing roadside/ public area by planting wildflowers for summer color and prairie grasses turning rich colors in the fall.
  - l. Reintroduction of native vegetation that is crucial to conservation of our soil and water resources.
  - m. Implement an Integrated Pest Management (IPM) protocol.
  - n. Determine resource needs for immediate and long-term effectiveness.
2. Decision making process
  - a. Leisure Services Director is the department head and would make the final decision regarding financial and staffing resources. The work plan would be a joint staff process annually reviewed.
3. Area Map- attached
4. Program type- a division of Waverly Leisure Services Department
  - a. Roadside, noxious weed, forestry, prairies, no mow and low maintained areas.

## **Jurisdictional Recognition and Approval**

1. Management- City Council, City Administrator, Director of Leisure Services, Vegetation Manager as the chain of command
2. City Council makes final policy and budgetary decisions

## **Iowa Code and Local Laws**

1. Iowa Code/Waverly City Code for appropriate notations. Examples include but are not limited to:

### City Code

- 36 Leisure Services Commission
- 44 Planning and Zoning Commission
- 57 Tree Ordinance
- 63 Nuisances
- 64 Weeds
- 71 Open Burning
- 104.7 Park Rules, Rail Trail Rules

### State Code

- 314.21 LRTF
- 314.22 IRVM
- 317 Weeds

## **Permits**

1. Prescribed Burn Permit
2. Work in Right of Way Permit
3. Iowa One Call
4. EAB Private Treatment Notice
  - a. Letter or email from property owner informing of their intent.

## **Program Organizational Structure**

1. Staff Chart/ Succession Plan
  - Current-The Leisure Services Department and the Public Services Department share in the vegetation maintenance.
    - a. Leisure Services maintains turf areas, trails, prairies, no mow including wet areas, some retention/detention areas, weed areas, chemical spraying, and administers the tree program by planting trees, and assisting Public Services with removals and cleanup. The Director and Parks Specialist administers Forestry, noxious weeds, and Service Requests.
    - b. Public Services maintains some detention/retention areas, ditches, and has the equipment for tree removals and trimming trees for clearance. This along with their core services of street maintenance and solid waste services.
  - Future-Leisure Services Vegetation Management Staff does Forestry, Weeds, Nuisance calls, Pesticide Spray, and Trail System.
    - a. Parks does maintained turf areas and facilities.
    - b. Public Services does Street Maintenance and Solid Waste.

2. Upon Acceptance of the IRVM Plan, the City will consider allocating funds in a future budget for the Vegetation Management Division of the Leisure Services. Funding will come from seasonal hours being transferred from the current Parks Division and Cemetery Division budgets and Street Division. In addition, there will be a portion of Road Use Tax utilized to fund the Division based upon street right of ways and ditch work.
3. Each year the budget will be developed with goals and objectives to accomplish major projects or to improve methods and processes.

### **Public Involvement**

1. The Steering Committee is the City of Waverly Leisure Services Commission. They are an advisory board appointed by the Mayor and approved by the City council that make recommendations to the City Council on policies and fees.
2. Current members- Leisure Services Commission (attached).
3. Qualifications- An interest and desire to advise on the operations of the Leisure Services Department.
4. Terms- 7 members appointed by the Mayor for staggered 3 year terms.
5. Some partner organizations include Trees Forever, Bremer County Conservation, and Bremer County Roadside Vegetation Management Department.
6. Stakeholders- All Leisure Services Commission and City Council meetings are open to the public and agendas are publicly posted so public input is sought and supported.
7. Education and outreach will include City staff, Wartburg College, Waverly Trees Forever, ISU Bremer County Extension with ISU Extension providing potential hands on training and experiences.
8. Communication protocol will include news articles and press releases through the local media; Waverly Newspapers, KWAY radio, PEG Channels, and Waterloo Courier. Social media with information put on the City Facebook page and web page. Information booths will be staffed to disseminate information at Community wide events. And there will be a Service Club Program utilizing a Power Point presentation explaining the program and what's new for that year.
9. All meetings of the Advisory Board and City Council are open to the public and proceedings are part of the public record.
10. Ideas will be developed for collaboration with Bremer County that could include a seamless exchange of equipment, joint presentations to groups, and cooperative projects that would benefit both the County and City.
11. Tree Specials are sponsored by Trees Forever with the "New Home Program" where the new homeowner receives a \$75 coupon for use at the local nurseries. Also, the Tree Rebate Program where anyone can go to a local nursery and receive a rebate of 50% of the cost of the tree up to \$75 with specific species restrictions.

## **Inventory and analysis**

1. Natural Resources
  - a. Tools to assist
    - i. GIS- County
    - ii. Mapping of inventory of locations
    - iii. Street tree inventory/ public areas inventory
    - iv. Google maps
  - b. Vegetation
    - i. Roadside and medians.
    - ii. Established prairies.
    - iii. Native woodlands.
    - iv. Trails both soft and hard.
    - v. Street trees from tree inventory.
    - vi. Public park trees from tree inventory.
    - vii. Problem areas, private trees
  - c. Water Bodies
    - i. Areas adjacent to the Cedar River
    - ii. Greenbelt of the Dry Run
    - iii. Detention/retention areas
2. Equipment Inventory

Ford Bucket truck\* (2014) Scheduled for replacement  
Deere Loader (2014) with grapple bucket\*(2004),  
Pickup (2006) Scheduled for replacement  
Bobcat Skid loader\*(2016),  
Chevy One ton dump truck\*(2014 or 2016),  
Deere Backhoe\*(2009),  
HD Sprayer\*(2013),  
Bandit Chipper (2000), Scheduled for replacement  
Chipper Box (2004),  
Agco Allis Disc Mower (2007), Poor condition  
Drill Seeder\*(2018), (budgeted to replace one in poor condition)  
Kubota Utility Tractor\* (2012 or 2015),  
Kubota Large Tractor\*(2017)  
Chain saws, Backpack Sprayers  
\*(Shared with other departments.)

## **Program Operations**

1. Annual Calendar of Activities by month
  - a. January

Street tree trimming for clearance, tree removals, grant writing, Turf Grass Conference, New Home Tree Rebate program, High School tree sale program, snow removal



- b. February
    - Street tree trimming for clearance, tree removals, grant writing, Shade Tree Short Course, annual equipment maintenance, snow removal
  - c. March
    - Work on Rail Trail, stump removals, recheck for bad trees, move trees, Weed Commissioners Conference
  - d. April
    - Tree planting event, nonselective herbicide along fence lines and around trees, Tree City USA awards banquet, prairie burn, update tree inventory, reseeding prairie areas, stump removals
  - e. May
    - Fertilize, pre-emergent and spot spray, watering trees, Living Roadway Trust Fund Grant
  - f. June
    - Selective mow detention/retention areas, selective ditch mowing for visibility, nonselective herbicide along fence lines and around trees, watering new trees, trim trees for clearance- mowers and trails, spot spray
  - g. July
    - Spray noxious weeds prior to seeding, trim trees for clearance for the mowers and trails users, watering new trees, selective weed mowing before going to seed, Iowa Prairie Conference
  - h. August
    - Selective ditch mowing, selective detention/retention mowing, reseeding grass areas, spot spraying, watering trees, riverbank vegetation mowing/spray
  - i. September
    - Fall tree planting project, Iowa Living Roadways Project preapplication, Roadside Conference, Tree Rebate Program
  - j. October
    - Broadleaf weed control, fall fertilizer, move trees, Iowa Living Roadways Project application, Tree Rebate Program
  - k. November
    - Budget Prep, tree trimming, check for trees to be removed
  - l. December
    - Budget Prep, Tree City USA application, review maintenance routine, snow removal
2. Non-annual
- a. Prune new trees as defined in Tree Planting policy
  - b. Areas not sprayed every year
  - c. Prescribed burns of prairies

3. Special Projects
  - a. Annual tree planting events (Spring around Arbor/Earth Day, Fall in October)
  - b. Establishment of new public areas as a result of development
4. Work Area Types
  - a. Rural- trail, ditches, natural areas
  - b. Urban- street trees, prairies, medians/planting
5. Vegetation types
  - a. Managed areas- trees/ turf
  - b. Non-managed- Emphasis on native varieties suited for the landscape
6. Vegetation Management
  - a. Tree Planting policy- attached
  - b. Ditch Management- mowing, spraying, clean out, brush, reseeding
  - c. Weed Policy
    - i. By public complaints or staff observation
    - ii. Best practices used for control
  - d. Burn prairies
  - e. Rural Tree Trimming- Rail Trail
    - i. Routine by City. Every 4-5 years by contractor
7. Urban Tree Removal
  - a. By public complaint or staff observation
    - i. Cooperate with Waverly Utilities on joint removals
8. Street tree trimming- clearance
  - a. Annually by City Staff. Usually by quadrants of the City rotating every 4 years. Ordinance requires 16' above the street, 8' above the walk.
9. Continue to keep Tree Inventory updated.

## **Methods**

### Vegetation Establishment

1. Site Preparation
  - a. Inspect the site for hazards and irregularities.
  - b. Spray if weeds dominate the plantings.
  - c. Seedbeds should be friable, firm, and smooth
  - d. Nurse crop if necessary
2. Seed mixes
  - a. Rural mix
  - b. Goat Prairie
  - c. Flower or grasses mix depending on the situation
3. Seeding techniques
  - a. Broadcast seeding
  - b. Drill seeding
  - c. Hand seeding

4. Erosion and sediment control
  - a. Depending on the situation, mulch, matting, silt fences, or rolled wattles could be used.
5. Vegetation Establishment Maintenance
6. Planting evaluation and documentation
  - a. Each project will have a plan and records of seeds, chemicals, and rates applied.
7. Mowing
  - a. New plantings should be mowed to stimulate growth and to establish thatch layers.
  - b. As per Program Operations calendar
8. Chemical control for noxious weeds, other invasive and bare ground
  - a. Appropriate herbicide and rates to spot treat large areas before seeding and before the weeds go to seed.
9. Tree and brush control
  - a. As per the City Tree Program. Hazard Trees are reported either by Service Request or by staff. Trees addresses are inspected and determined the scale of health. If removal is warranted then the Service Request is forwarded to the appropriate Division for scheduling.
10. Prescribed burning
  - a. Usually in the spring and is dependent upon the correct conditions.
  - b. Burn permit must be completed.

### **Ongoing Maintenance**

As per the operations schedule.

### **Material Procurement**

1. Purchasing policy- City- attached
2. Specifications- as per accepted guidelines or best practices.
3. Storage- Parks shop area
4. Tree Sale
  - a. The High School Science Club, as an annual fundraiser, sells trees to the public in January. Staff has input on the type of trees to continue a variety of trees in the community.
5. Tree nursery
  - a. 4 residential flood lots on 7<sup>th</sup> Ave SW between 2<sup>nd</sup> and 3<sup>rd</sup> Street SW. Trees are donated or purchased by Trees Forever from the Tree Sale and placed to be relocated to an appropriate and needed location at a later date.
6. Donations
  - a. Are either credited to Waverly Trees Forever for tree donations/grants or Parks Miscellaneous for other vegetation donations or grants.
7. Potential Exchange of Equipment with Bremer County.

## **Budget**

1. City Budget Process
  - a. Begins in October with input all year long. Presented to the City Council in January and finalized in March. Budget is on a fiscal year from July 1 to June 30.
2. Grants
  - a. Trees Please
  - b. Trees Forever
  - c. Community Foundation
  - d. Trees for Kids
  - e. Living Roadway Trust Fund
  - f. Other

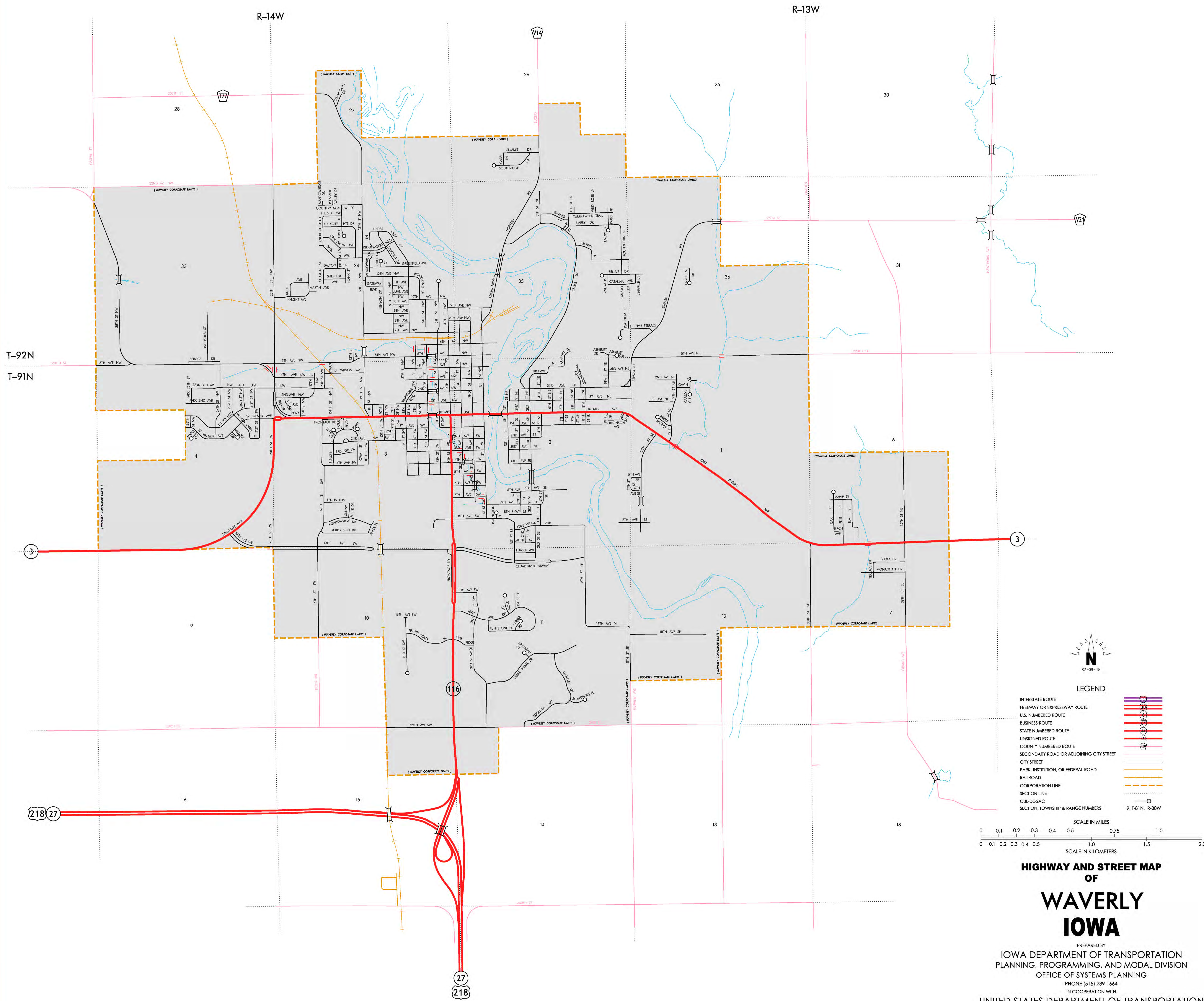
## **Program Evaluation/Annual Report**

City Annual Report is after the end of the fiscal year- June 30. It is usually due around September 15. It reviews the progress towards the budgetary goals from the previous year and has comparative statistics on what is done each year.

## **Appendices**

1. Job description (pesticide applicator)
2. Inventories
3. Maps
4. Equipment
5. Needs- equipment, resources for continuous success
6. Advisory Board (Leisure Services Commission) members
7. Training
  - a. Weed Commissioner Conference
  - b. Tall Grass Prairie Center- UNI
  - c. Roadside Conference
  - d. Turf Grass Conference
  - e. Shade Tree Conference
  - f. Networking
8. Iowa Code/ City Code
9. Purchasing Policy





**LEGEND**

- INTERSTATE ROUTE
- FREEWAY OR EXPRESSWAY ROUTE
- U.S. NUMBERED ROUTE
- BUSINESS ROUTE
- STATE NUMBERED ROUTE
- UNSIGNED ROUTE
- COUNTY NUMBERED ROUTE
- SECONDARY ROAD OR ADJOINING CITY STREET
- CITY STREET
- PARK, INSTITUTION, OR FEDERAL ROAD
- RAILROAD
- CORPORATION LINE
- SECTION LINE
- CUL-DE-SAC
- SECTION, TOWNSHIP & RANGE NUMBERS

SCALE IN MILES  
0 0.1 0.2 0.3 0.4 0.5 0.75 1.0 1.5 2.0

SCALE IN KILOMETERS  
0 0.1 0.2 0.3 0.4 0.5 0.75 1.0 1.5 2.0

9, T-81N, R-30W

**HIGHWAY AND STREET MAP OF WAVERLY IOWA**

PREPARED BY  
IOWA DEPARTMENT OF TRANSPORTATION  
PLANNING, PROGRAMMING, AND MODAL DIVISION  
OFFICE OF SYSTEMS PLANNING  
PHONE (515) 239-1664  
IN COOPERATION WITH  
UNITED STATES DEPARTMENT OF TRANSPORTATION  
FEDERAL HIGHWAY ADMINISTRATION





Green - H  
Red - Cor  
Blue -  
Yellow - S  
Bu



## STAFF CHART

### Current

Leisure Services Parks Division- maintained turf, program areas

Public Services- ditches, detention/retention, wells, lift stations, Street Maintenance/ Solid waste.

Jointly-forestry, right of ways, spray

Leisure Services Director- Forester, Weeds Commissioner, Vegetative Nuisances

### Proposed

Leisure Services Parks Division- maintained turf, program areas

Spray Tech seasonal position under Parks- spray weeds, spray trimming, fertilization

Public Services- ditches, detention/retention, wells, lift stations, Street Maintenance/ Solid waste.

Jointly-forestry, right of ways,

Leisure Services Director- Forester, Weeds Commissioner, Vegetative Nuisances

### Future

Leisure Services Vegetation Management Division- under Leisure Services Director

Vegetation Manager- Forester, Weed Commissioner, Vegetation Nuisances

Forestry/weeds/nuisance, spray, prairies, right of ways, detention/retention work.

Parks- Maintained turf areas, programmed areas

Public Services- Street Maintenance/ Solid waste

**LEISURE SERVICES COMMISSION** (three year term) ~ Regular meetings are the third Thursday of the month.  
Appointed by the Mayor with confirmation of the city council.

NAME	ADDRESS	TELEPHONE	E-MAIL
<b>Randy Neuendorf - John Deere</b>	321 1st Street SE	292-5099w, 415-1785c	<a href="mailto:neuendorfrandy@johndeere.com">neuendorfrandy@johndeere.com</a>
<b>Joel Johnson- Retired Sales</b>	1508 Hickory Heights Dr NW	269-7262h, 269-7261c	<a href="mailto:johnson1508@mediacombb.net">johnson1508@mediacombb.net</a>
<b>Jame Carver- Retired City Planner</b>	809 1st Street NE		<a href="mailto:james.carver50@gmail.com">james.carver50@gmail.com</a>
<b>Brian Pins, Chairperson, Community Health Advocate</b>	403 2nd Avenue NE	483-1361 (work) 563- 580-4639 (cell)	<a href="mailto:Bpins@WaverlyHealthCenter.org">Bpins@WaverlyHealthCenter.org</a>
<b>Kelsey Setzcorn</b>	2104 W Bremer Ave.		<a href="mailto:kesetzkorn@gmail.com">kesetzkorn@gmail.com</a>
<b>Sharon Cashman, Pharmacist</b>	910 Cedar Lane Road	352-0986 (home) 352-4120 (work)	<a href="mailto:scashman@waverlyhealthcenter.org">scashman@waverlyhealthcenter.org</a>
<b>Derek Solheim, College Foundation Director</b>	202 Summit Dr.	352-2011 (home)	<a href="mailto:derek.solheim@wartburg.edu">derek.solheim@wartburg.edu</a>
<b>Dave Reznicek, City Council Liaison</b>	1308 Shepard Avenue		<a href="mailto:dreznicek@ci.waverly.ia.us">dreznicek@ci.waverly.ia.us</a>
<b>Tab Ray, Leisure Services Director Staff Liaison</b>	1412 Round Horn Street	352-6263(work) 239-6239(cell)	<a href="mailto:tab@ci.waverly.ia.us">tab@ci.waverly.ia.us</a>



# Service Request

## Service Requested From:

Name: \_\_\_\_\_

Date/Time Called In: \_\_\_\_\_

Address: \_\_\_\_\_

Location Description: \_\_\_\_\_

City: \_\_\_\_\_

Phone: \_\_\_\_\_

Service Requested: \_\_\_\_\_

Request: \_\_\_\_\_

Response: \_\_\_\_\_

Completed by: \_\_\_\_\_ Date: \_\_\_\_\_

### Routing: Public Services

☐ Garbage ☐ Sidewalk ☐ Animal ☐ Street ☐ Sign/Visibility ☐ Storm Drain ☐ Snow ☐ Other

### Routing: Leisure Services

☐ Tree ☐ Vandalism ☐ Park ☐ Snow ☐ Grass/Weeds ☐ Trail ☐ Other

### Routing: Zoning:

☐ Junk ☐ Structures ☐ Waterways ☐ Signs

City of Waverly  
Open Burning Permit Application  
Prairie Grass or Wild Flower Area

Approval of this application gives permission to the owner of a parcel of property the opportunity to burn **Prairie Grass or a Wild Flower Area** on their property in accordance to the City of Waverly's Open Burning Ordinance. If this application is approved, an Open Burning Permit will be issued and a copy of the Ordinance provided. Please note that this permit is good for a one-time burn of Prairie Grass or a Wild Flower area.

Open Burning Permit Requested By:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone #: \_\_\_\_\_

Days Requested for Burn (16-day time period): \_\_\_\_\_

I hereby agree to follow the City of Waverly's Open Burning Ordinance and acknowledge that failure to abide by the Ordinance may result in the revocation of this and future permits, and may also result in monetary fines.

\_\_\_\_\_  
Signature of Property Owner

\_\_\_\_\_  
Date of Application

-----  
OFFICE USE ONLY

Comments: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Reviewed By:

\_\_\_\_\_  
Leisure Services Director

\_\_\_\_\_  
Date

Rev: 7-7-09

**EXCAVATION APPLICATION / PERMIT****For Work Within Waverly's Right-of-Ways**

Phone: 319-352-9065 Fax: 319-352-5772

**Excavation Permit Fee -- \$10.00**

(Gas, Electric, Cable, &amp; Phone Companies are Exempt from Permit Fee)

Date of Iowa One Call: \_\_\_\_\_ Date of Application: \_\_\_\_\_

Iowa One Call Request Number: \_\_\_\_\_

Contractor: \_\_\_\_\_ Property Owner: \_\_\_\_\_

Address: \_\_\_\_\_ Address: \_\_\_\_\_  
Street or PO Box Excavation Site\_\_\_\_\_  
City / State / Zip

Contractor Phone # : \_\_\_\_\_ Contractor Fax #: \_\_\_\_\_

Utility Work to be Done: ☐ Gas ☐ Telephone ☐ Cable ☐ Electric ☐ Water ☐ SewerPurpose of Excavation: ☐ New ☐ Repair ☐ Abandon ☐ Other: \_\_\_\_\_Will street surface be cut into? ☐ Yes ☐ No Estimated depth of excavation: \_\_\_\_\_

If yes, estimated size of street cut: (W) \_\_\_\_\_ feet x (L) \_\_\_\_\_ feet = \_\_\_\_\_ sf

Type of Pavement: ☐ Seal Coat ☐ Asphalt ☐ Concrete ☐ Gravel ☐ Unknown

Work to Begin: \_\_\_\_\_ Work to End: \_\_\_\_\_

Damaged road surface to be repaired by:

☐ Applicant **or** >> *You will be required to restore the street within a reasonable time period in accordance with the restoration instructions on reverse side.*☐ City of Waverly >> *The City will complete the permanent pavement patch for the following fees. The City will send an invoice directly to the Applicant soon after the excavation is completed.*  
*Pavements equal to or less than 3" in depth charged \$4.00 /sq. ft.*  
*Pavements greater than 3" in depth charged \$4.00 /sq. ft. + \$1.25 /sq. ft. per inch over the initial 3".*

This work is to be done under the provisions of the ordinances of the City of Waverly and the undersigned agrees to comply with all of their requirements.

I, the undersigned applicant, have read and acknowledged the terms and conditions on Pages 1 &amp; 2.

▶ ▶ **Applicant's Signature:** \_\_\_\_\_A permit must be issued prior to commencement of work.  
Please call for inspection of any street work.

All traffic control must be in compliance with the *Manual of Uniform Traffic Control Devices*.

## RESTORATION

Following completion of the excavation, the City must be notified and an INSPECTION performed prior to backfilling. The trench may then be backfilled with suitable material that is mechanically compacted in appropriate layers that minimize the opportunity for settlement. Within a roadway, the final 12 inches must be a modified subbase aggregate allowing for the reopening to traffic until a permanent pavement patch is completed.

All pavement layers including drainage structures must be fully restored. Pavement layers and drainage structures may include the following:

- |                           |                                       |
|---------------------------|---------------------------------------|
| ▪ Geogrids or Geotextiles | ▪ Composite Concrete-Asphalt Pavement |
| ▪ Aggregate Subbase       | ▪ Flexible or Rigid Drain Tile        |
| ▪ Asphaltic Pavement      | ▪ Aggregate Drainage Trench           |
| ▪ Concrete Pavement       | ▪ Concrete Curb & Gutter              |

---

### For Office Use Only

Permission is hereby granted to \_\_\_\_\_  
Contractor

to make certain excavations at \_\_\_\_\_  
Address

Approved By: \_\_\_\_\_ Date: \_\_\_\_\_

### Street Cut(s):

(W) \_\_\_\_\_ ft. x (L) \_\_\_\_\_ ft. = \_\_\_\_\_ sq. ft. Date Measured: \_\_\_\_\_

(W) \_\_\_\_\_ ft. x (L) \_\_\_\_\_ ft. = \_\_\_\_\_ sq. ft. Pavement Depth: \_\_\_\_\_ inches

(W) \_\_\_\_\_ ft. x (L) \_\_\_\_\_ ft. = \_\_\_\_\_ sq. ft.

Notes: \_\_\_\_\_

#### \$10 Permit Fee

- ☐ Paid – Cash or Check# \_\_\_\_\_  
☐ Charge  
☐ No Permit Fee

#### Street Repair

- ☐ Invoice – Date: \_\_\_\_\_  
☐ No Street Repair Required  
☐ Applicant to Repair Street

# Waverly Street Tree Replacement Policy

07/13/16

Waverly is going through a tree crisis due to the Emerald Ash Borer. The City is removing many infested ash trees along with the normal hazard trees. With the removal of ash trees, a plan for future replanting of the Waverly urban forest canopy is warranted.

The City's overall goal is to plant a diversified mixture of trees species to avoid future catastrophic canopy loss due to a specie specific pest.

1. Determine locations based upon the previous year's removals in the community quadrant where the majority of the trees were removed. Pay attention to the utilities and the location of the previously planted tree. All trees will be replaced if possible but if there is not a good place to plant a new tree, then that spot may be skipped.
2. In the summer before planting, send letters to the property owner regarding the plan to plant a new tree, its future care, and approximate location. The City will be getting a variety of trees from that year's tree sale and the City will select one of the 5 deciduous trees for the location.
3. In the case of no appropriate place to plant in public right of way, contact the property owner to see if they are interested in planting a tree on private property, in an appropriate location.
4. In September, order the correct species of trees through the Waverly- Shell Rock Science Club Tree Sale program. The different species of deciduous trees will continue to add variety of types of the trees to the urban canopy.
5. In April/ May coordinate a planting day with the High School or with Wartburg College volunteers. Trees Forever and City Staff will provide demonstrations and guidance to the volunteers on planting, mulching, watering, and staking the trees.
6. News releases will be issued about the program and where the program will be replacing trees in that year.
7. Trees Forever has agreed to fund 50% of the costs of planting the trees.
8. Create a "Tree Care Sheet" for the property owner including the use of refillable Gator Bags. Bags will be returned to the Leisure Services Department after the first year to be reused.
9. Create a schedule to trim and shape the trees in the 2<sup>nd</sup>, 5<sup>th</sup>, and 8th years.
10. Annually repeat with the next quadrant the following years.

If the adjacent property owner desires a larger or a specific specie of tree, then they can purchase a tree at a local nursery and take advantage of the fall rebate program that is around September 1 through November 1 each year. Tree Forever will rebate half the cost of the tree up to \$75. The property owner would be responsible for planting and caring for the tree.

## PURCHASING POLICIES

### 1. PETTY CASH

- A. The following departments are authorized to have petty cash in the listed amounts:
  - 1. Accounting = \$400.00 (includes Police, Administration, Leisure Services, Economic Development, Community Development & Zoning and Public Works Administration.)
  - 2. Public Services = \$100.00
- B. Purchases of less than \$15.00 may be made through petty cash or check request. Local purchases under \$15.00 should not be done with petty cash if there is a monthly standing purchase order for that division at that store.
- C. Petty cash can be used to reimburse for items such as meals, gas and parking. Reimbursement of safety shoes should be done with a check request. Receipts must be provided in all cases.
- D. A "Received of Petty Cash" form must be signed by the person getting petty cash, and by the person giving it out. No one should ever reimburse themselves from petty cash.

### 2. PURCHASE

- A. Non petty cash purchases may be done by charging to the local store or by check request. Budgeted purchases of less than \$3,000 may be approved by department directors.
- B. Purchases from \$3,000 to \$10,000 are to have three documented price quotations whenever possible. This can be documented on the disposition section of the purchase order. This is for new items not repairs and maintenance of existing equipment or land.
- C. Purchases greater than \$10,000 require Council approval and public competitive bidding procedures unless exempted by the council.
- D. Professional service exceeding \$5,000 must have council approval.
- E. Acquisition of any non-budgeted capital items requires council approval.



## Position Description

<b>Position Title:</b> Grounds Maintenance Lead- Vegetation Management	<b>Department:</b> Leisure Services
<b>Reports to:</b> Leisure Services Director	<b>Supervises:</b> Full Time and Seasonal Staff
<b>FLSA Status:</b> Non-exempt	<b>Dates Revised:</b> 3/17

### **Position Summary**

- Lead staff that generally implements the city's Integrated Roadside Vegetation Management (IRVM) program and duties associated with all aspects of vegetation management within city road/street right-of-way (ROW) corridors, trails, trees, detention basins, prairies, and natural areas. Primary work activities are focused on the continued maintenance and development of city natural areas and the application of sound ecological principles to manage desired vegetation types in these areas.

### **Essential Duties and Responsibilities**

- Hires, trains, and assigns/checks work of other employees who perform grounds maintenance and landscaping duties of the parks and public areas; follows policies, procedures, programs and instructs summer crew to do the same.
- Has understanding of the City's IRVM plan, its goals and objectives.
- Performs landscaping and specialized maintenance activities and projects to construct and care for the municipal parks, trails, right of ways, prairies, grounds, and facilities;
- Maintains up-to-date records of chemical applications and equipment repair.
- Performs routine and minor maintenance on motorized equipment.
- Operates and utilizes equipment and tools including tractors, dump trucks, chain and power saws, sprayers, aerators, sod cutters, rotary and power driven mowers, bench and hand tools.
- Calibrates sprayers and applies chemicals to public grounds.
- Attends meetings to update job related knowledge; applies new knowledge to public grounds maintenance.
- Assists in the development of the Division operational budgets.
- Uses equipment log to prepare equipment maintenance record, mowing records; spray log to prepare chemical reports.
- Plans winter maintenance repairs, working on maintenance repair accounts; organizes equipment logs, chemicals records, fuel records, shop and equipment areas.
- Occasionally utilize and supervise volunteer help.
- Performs snow removal activities on public sidewalks, parking lots, and trails.
- Works under light supervision. Assignments and objectives are set jointly with immediate supervisor and employee. Plans and develops maintenance processes to utilize equipment and personnel to its fullest advantage. Follows "standard operating procedures" (SOP) such as a unit policy/procedure manual. Works alone and checks with the supervisor on deviations from SOP. Has some flexibility.
- Organizes City tree program including removals and care of new plantings.
- Perform all duties and responsibilities from service requests regarding weeds, trees, and trail issues.
- Develop a program of public information and education to promote public understanding of IRVM and wise land use practices that support IRVM objectives.
- Will work directly with other City departments/divisions to assist them with routine public land and facility management goals and objectives.
- Assist in other areas as needed.

### **Requirements**

#### *Knowledge, Skills, and Abilities*

- Certified Pesticide Applicator Category 3OT+CAT6. Able to operate a variety of equipment. Able to work on own knowledge of turf and arboricultural processes. Adapt to difficult situations.

### *Experience and Education*

- 2 year Associate Degree in Horticulture, agronomy, natural resource management, or similar. 4 or more years in grounds maintenance. Bachelor's degree with 2 years' experience preferred. 6-12 months OJT to learn/apply department policies, procedures.
- Valid Iowa driver's license. Certification from the Iowa Department of Agriculture to apply pesticides, 3OT&CAT6.

### *Physical, Mental, and Visual Effort*

- On a regular basis is required to: lift, carry, handle, stand, walk, see, hear, touch. Frequently required to: turn, stoop, reach, grasp, speak.
- Occasionally required to: push, pull, climb, kneel, finger, sit. Typical physical exertion job requirements: lift bags of fertilizer weighing 50 pounds; lift garbage can weighing 100 lbs.
- On a regular basis, is required to drive/operate mowers; handle power tools, wrenches. Occasionally required to drive/operate dump truck and tractor.
- Heavy work. Exerts 50-100 pounds of force occasionally, and/or 10-25 pounds frequently, and/or 20 pounds on a regular basis to lift, carry, push, pull or otherwise move objects, including the human body.
- Typically 6 hours of riding/standing.
- Experience stress from deadlines, weather, and public.
- On an occasional basis using word processor generating reports, communication via email, researching best practices.

### **Working Conditions**

- Regular outside environment, with regular exposure to all weather conditions, dust, dirt, noise, toxic fumes. Frequent exposure to wetness, odors, and cold weather.
- Some office exposure
- Some public contact. Communication with supervisor, public, and other departments.
- Experience stress from deadlines, weather, and public.

### **Disclaimer**

The above information is intended to describe the general nature and level of work to be performed by employees in this position. It is not intended to be an exhaustive list of all duties, responsibilities, requirements, and working conditions. The company reserves the right to change or assign other duties to this position as needed and as deemed appropriate. Employees holding this position will be required to perform any other job related duties requested by management. Reasonable accommodations to perform the essential duties and responsibilities will be made as needed. This job description is not an employment contract, implied or otherwise. The employment relationship remains at-will.

### **Employee Acknowledgement**

I have carefully read and understand the contents of this position description. I understand the duties, responsibilities, requirements, and working conditions. I also understand that this is not necessarily an exhaustive list of duties, responsibilities, requirements, and working conditions associated with the position. While this list is intended to be an accurate reflection of the current position, I understand that the employer reserves the right to revise the duties and responsibilities of the position or to require that additional or different tasks be performed.

I understand that I may be required to work overtime, as well as different shifts or hours outside the normally defined workday or workweek. I also understand that this position description does not constitute a contract of employment nor alter my status as an at-will employee. I have the right to terminate my employment at any time and for any reason, and the employer has the same right.

Employee's Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Department Head: \_\_\_\_\_

Date: \_\_\_\_\_



## Iowa State Codes

### Chapter:

18B - Land Use – Smart Planning  
161 A - Soil and Water Conservation  
161 C - WATER PROTECTION PROJECTS AND PRACTICES  
161 E - Flood and Erosion Control  
161 F - Soil Conservation and Flood Control Districts  
306D – Scenic Routes  
314 – Administrative Provisions For Highways  
    314.22 = Integrated Roadside Vegetation Management  
317 – Weeds  
455 E – Groundwater Protection  
455 H – Land Recycling and Remediation Standards  
455 I – Uniform Environmental Covenants Act  
455 J – Environmental Management System  
461 – Natural Resources and Outdoor Recreation  
461 A – Public Lands and Waters  
461 C – Public Use of Private Lands and Waters  
465 A – Open Space Lands  
465 B – Recreation Trails  
465 C – State Preserves  
466 B – Surface Water Protection, Flood Mitigation and Watershed Management  
481 B – Endangered Plants and Wildlife

## CHAPTER 18B

### LAND USE — SMART PLANNING

#### **18B.1 Iowa smart planning principles.**

State agencies, local governments, and other public entities shall consider and may apply the following principles during deliberation of all appropriate planning, zoning, development, and resource management decisions, except that nothing in this section shall be construed to expand the eminent domain authority of a state agency, local government, or other public entity beyond that which is authorized under chapter 6A or 6B:

1. *Collaboration.* Governmental, community, and individual stakeholders, including those outside the jurisdiction of the entity, are encouraged to be involved and provide comment during deliberation of planning, zoning, development, and resource management decisions and during implementation of such decisions. The state agency, local government, or other public entity is encouraged to develop and implement a strategy to facilitate such participation.
2. *Efficiency, transparency, and consistency.* Planning, zoning, development, and resource management should be undertaken to provide efficient, transparent, and consistent outcomes. Individuals, communities, regions, and governmental entities should share in the responsibility to promote the equitable distribution of development benefits and costs.
3. *Clean, renewable, and efficient energy.* Planning, zoning, development, and resource management should be undertaken to promote clean and renewable energy use and increased energy efficiency.
4. *Occupational diversity.* Planning, zoning, development, and resource management should promote increased diversity of employment and business opportunities, promote access to education and training, expand entrepreneurial opportunities, and promote the establishment of businesses in locations near existing housing, infrastructure, and transportation.
5. *Revitalization.* Planning, zoning, development, and resource management should facilitate the revitalization of established town centers and neighborhoods by promoting development that conserves land, protects historic resources, promotes pedestrian accessibility, and integrates different uses of property. Remediation and reuse of existing sites, structures, and infrastructure is preferred over new construction in undeveloped areas.
6. *Housing diversity.* Planning, zoning, development, and resource management should encourage diversity in the types of available housing, support the rehabilitation of existing housing, and promote the location of housing near public transportation and employment centers.
7. *Community character.* Planning, zoning, development, and resource management should promote activities and development that are consistent with the character and architectural style of the community and should respond to local values regarding the physical character of the community.
8. *Natural resources and agricultural protection.* Planning, zoning, development, and resource management should emphasize protection, preservation, and restoration of natural resources, agricultural land, and cultural and historic landscapes, and should increase the availability of open spaces and recreational facilities.
9. *Sustainable design.* Planning, zoning, development, and resource management should promote developments, buildings, and infrastructure that utilize sustainable design and construction standards and conserve natural resources by reducing waste and pollution through efficient use of land, energy, water, air, and materials.
10. *Transportation diversity.* Planning, zoning, development, and resource management should promote expanded transportation options for residents of the community. Consideration should be given to transportation options that maximize mobility, reduce congestion, conserve fuel, and improve air quality.

[2010 Acts, ch 1184, §17](#)

#### **18B.2 Local comprehensive planning and development guidelines.**

1. For the purposes of this chapter, unless the context otherwise requires:
  - a. (1) “*Development*” means any of the following:
    - (a) Construction, reconstruction, renovation, mining, extraction, dredging, filling, excavation, or drilling activity or operation.
    - (b) Man-made changes in the use or appearance of any structure or in the land itself.
    - (c) The division or subdivision of land.
    - (d) Any change in the intensity of use or the use of land.
  - (2) “*Development*” does not include any of the following:
    - (a) Activities on or uses of agricultural land, farm houses, or agricultural buildings or structures, unless such buildings or

structures are located in the flood plain of a river or stream.

(b) Installation, operation, and maintenance of soil and water conservation practices.

(c) The choice of crops or a change in the choice of crops on agricultural land.

b. "*Land development regulations*" means zoning, subdivision, site plan, corridor map, floodplain, or storm water ordinances, rules, or regulations, or other governmental controls that affect the use of property.

c. "*Municipality*" means a city or a county.

2. A municipality shall consider the smart planning principles under section 18B.1 and may include the following information, if applicable, when developing or amending a comprehensive plan under chapter 335 or chapter 414 or when developing or amending other local land development regulations:

a. Information relating to public participation during the creation of the comprehensive plan or land development regulations, including documentation of the public participation process, a compilation of objectives, policies, and goals identified in the public comment received, and identification of the groups or individuals comprising any work groups or committees that were created to assist the planning and zoning commission or other appropriate decision-making body of the municipality.

b. Information relating to the primary characteristics of the municipality and a description of how each of those characteristics impacts future development of the municipality. Such information may include historical information about the municipality, the municipality's geography, natural resources, natural hazards, population, demographics, types of employers and industry, labor force, political and community institutions, housing, transportation, educational resources, and cultural and recreational resources. The comprehensive plan or land development regulations may also identify characteristics and community aesthetics that are important to future development of the municipality.

c. Objectives, information, and programs that identify current land uses within the municipality and that guide the future development and redevelopment of property, consistent with the municipality's characteristics identified under paragraph "b". The comprehensive plan or land development regulations may include information on the amount, type, intensity, and density of existing land use, trends in the market price of land used for specific purposes, and plans for future land use throughout the municipality. The comprehensive plan or land development regulations may identify and include information on property that has the possibility for redevelopment, a map of existing and potential land use and land use conflicts, information and maps relating to the current and future provision of utilities within the municipality, information and maps that identify the current and future boundaries for areas reserved for soil conservation, water supply conservation, flood control, and surface water drainage and removal. Information provided under this paragraph may also include an analysis of the current and potential impacts on local watersheds and air quality.

d. Objectives, policies, and programs to further the vitality and character of established residential neighborhoods and new residential neighborhoods and plans to ensure an adequate housing supply that meets both the existing and forecasted housing demand. The comprehensive plan or land development regulations may include an inventory and analysis of the local housing stock and may include specific information such as age, condition, type, market value, occupancy, and historical characteristics of all the housing within the municipality. The comprehensive plan or land development regulations may identify specific policies and programs that promote the development of new housing and maintenance or rehabilitation of existing housing and that provide a range of housing choices that meet the needs of the residents of the municipality.

e. Objectives, policies, and programs to guide future development of sanitary sewer service, storm water management, water supply, solid waste disposal, wastewater treatment technologies, recycling facilities, and telecommunications facilities. The comprehensive plan or land development regulations may include estimates regarding future demand for such utility services.

f. Objectives, policies, and programs to guide the future development of a safe, convenient, efficient, and economical transportation system. Plans for such a transportation system may be coordinated with state and regional transportation plans and take into consideration the need for diverse modes of transportation, accessibility, improved air quality, and interconnectivity of the various modes of transportation.

g. Objectives, policies, and programs to promote the stabilization, retention, or expansion of economic development and employment opportunities. The comprehensive plan or land development regulations may include an analysis of current industries and economic activity and identify economic growth goals for the municipality. The comprehensive plan or land development regulations may also identify locations for future brownfield or grayfield development.

h. Objectives, policies, and programs addressing preservation and protection of agricultural and natural resources.

i. Objectives, policies, and programs to assist future development of educational facilities, cemeteries, health care facilities, child care facilities, law enforcement and fire protection facilities, libraries, and other governmental facilities that are necessary or desirable to meet the projected needs of the municipality.

j. Objectives, policies, and programs to identify characteristics and qualities that make the municipality unique and that are important to the municipality's heritage and quality of life.

k. Objectives, policies, and programs that identify the natural and other hazards that have the greatest likelihood of impacting the municipality or that pose a risk of catastrophic damage as such hazards relate to land use and development decisions, as well as the steps necessary to mitigate risk after considering the local hazard mitigation plan approved by the federal emergency management agency.

l. Objectives, policies, and programs for joint planning and joint decision making with other municipalities or governmental entities, including school districts and drainage districts, for siting and constructing public facilities and sharing public services. The comprehensive plan or land development regulations may identify existing or potential conflicts between the municipality and other local governments related to future development of the municipality and may include recommendations for resolving such conflicts. The comprehensive plan or land development regulations may also identify opportunities to collaborate and

partner with neighboring jurisdictions and other entities in the region for projects of mutual interest.

*m.* A compilation of programs and specific actions necessary to implement any provision of the comprehensive plan, including changes to any applicable land development regulations, official maps, or subdivision ordinances.

3. A municipality's comprehensive plan developed using the guidelines under this section shall address prevention and mitigation of, response to, and recovery from a catastrophic flood.

[2010 Acts, ch 1184, §18](#)

CHAPTER 21  
OFFICIAL MEETINGS OPEN TO PUBLIC  
(OPEN MEETINGS)

**21.1 Intent — declaration of policy.**

This chapter seeks to assure, through a requirement of open meetings of governmental bodies, that the basis and rationale of governmental decisions, as well as those decisions themselves, are easily accessible to the people. Ambiguity in the construction or application of this chapter should be resolved in favor of openness.

[C79, 81, §28A.1]

C85, §21.1

**21.2 Definitions.**

As used in this chapter:

1. “*Governmental body*” means:

- a.* A board, council, commission, or other governing body expressly created by the statutes of this state or by executive order.
- b.* A board, council, commission, or other governing body of a political subdivision or tax-supported district in this state.
- c.* A multimembered body formally and directly created by one or more boards, councils, commissions, or other governing bodies subject to paragraphs “*a*” and “*b*” of this subsection.
- d.* Those multimembered bodies to which the state board of regents or a president of a university has delegated the responsibility for the management and control of the intercollegiate athletic programs at the state universities.
- e.* An advisory board, advisory commission, or task force created by the governor or the general assembly to develop and make recommendations on public policy issues.
- f.* A nonprofit corporation other than a fair conducting a fair event as provided in chapter 174, whose facilities or indebtedness are supported in whole or in part with property tax revenue and which is licensed to conduct pari-mutuel wagering pursuant to chapter 99D or a nonprofit corporation which is a successor to the nonprofit corporation which built the facility.
- g.* A nonprofit corporation licensed to conduct gambling games pursuant to chapter 99F.
- h.* An advisory board, advisory commission, advisory committee, task force, or other body created by statute or executive order of this state or created by an executive order of a political subdivision of this state to develop and make recommendations on public policy issues.
- i.* The governing body of a drainage or levee district as provided in chapter 468, including a board as defined in section 468.3, regardless of how the district is organized.
- j.* An advisory board, advisory commission, advisory committee, task force, or other body created by an entity organized under chapter 28E, or by the administrator or joint board specified in a chapter 28E agreement, to develop and make recommendations on public policy issues.

2. “*Meeting*” means a gathering in person or by electronic means, formal or informal, of a majority of the members of a governmental body where there is deliberation or action upon any matter within the scope of the governmental body’s policy-making duties. Meetings shall not include a gathering of members of a governmental body for purely ministerial or social purposes when there is no discussion of policy or no intent to avoid the purposes of this chapter.

3. “*Open session*” means a meeting to which all members of the public have access.

[C71, 73, 75, 77, §28A.1; C79, 81, §28A.2]

C85, §21.2

[89 Acts, ch 73, §1](#)

;

[90 Acts, ch 1175, §1](#)

;

[90 Acts, ch 1271, §701](#)

;

[91 Acts, ch 258, §26](#)

;

[93 Acts, ch 25, §1](#)  
;  
[2004 Acts, ch 1019, §1](#)  
;  
[2009 Acts, ch 132, §1](#)  
;  
[2009 Acts, ch 179, §31](#)

### **21.3 Meetings of governmental bodies.**

Meetings of governmental bodies shall be preceded by public notice as provided in section 21.4 and shall be held in open session unless closed sessions are expressly permitted by law. Except as provided in section 21.5, all actions and discussions at meetings of governmental bodies, whether formal or informal, shall be conducted and executed in open session.

Each governmental body 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.

[C71, 73, 75, 77, §28A.1, 28A.5; C79, 81, §28A.3]

C85, §21.3

[93 Acts, ch 25, §2](#)

### **21.4 Public notice.**

1. *a.* Except as provided in subsection 3, a governmental body shall give notice of the time, date, and place of each meeting including a reconvened meeting of the governmental body, and the tentative agenda of the meeting, in a manner reasonably calculated to apprise the public of that information. Reasonable notice shall include advising the news media who have filed a request for notice with the governmental body and posting the notice on a bulletin board or other prominent place which is easily accessible to the public and clearly designated for that purpose at the principal office of the body holding the meeting, or if no such office exists, at the building in which the meeting is to be held.

*b.* Each meeting shall be held at a place reasonably accessible to the public and at a time reasonably convenient to the public, unless for good cause such a place or time is impossible or impracticable. Special access to the meeting may be granted to persons with disabilities.

2. *a.* Except as otherwise provided in paragraph “c”, notice conforming with all of the requirements of subsection 1 shall be given at least twenty-four hours prior to the commencement of any meeting of a governmental body unless for good cause such notice is impossible or impractical, in which case as much notice as is reasonably possible shall be given.

*b.* When it is necessary to hold a meeting on less than twenty-four hours’ notice, or at a place that is not reasonably accessible to the public, or at a time that is not reasonably convenient to the public, the nature of the good cause justifying that departure from the normal requirements shall be stated in the minutes.

*c.* If a governmental body is prevented from convening an otherwise properly noticed meeting under the requirements of subsection 1, the governmental body may convene the meeting if the governmental body posts an amended notice of the meeting conforming with all of the requirements of subsection 1.

3. Subsection 1 does not apply to any of the following:

*a.* A meeting reconvened within four hours of the start of its recess, where an announcement of the time, date, and place of the reconvened meeting is made at the original meeting in open session and recorded in the minutes of the meeting and there is no change in the agenda.

*b.* A meeting held by a formally constituted subunit of a parent governmental body during a lawful meeting of the parent governmental body or during a recess in that meeting of up to four hours, or a meeting of that subunit immediately following the meeting of the parent governmental body, if the meeting of that subunit is publicly announced in open session at the parent meeting and the subject of the meeting reasonably coincides with the subjects discussed or acted upon by the parent governmental body.

4. If another section of the Code requires a manner of giving specific notice of a meeting, hearing, or an intent to take action by a governmental body, compliance with that section shall constitute compliance with the notice requirements of this section.

[C71, 73, 75, 77, 79, 81, §28A.4]

[96 Acts, ch 1129, §113](#)  
; [2008 Acts, ch 1032, §201](#)  
; [2011 Acts, ch 106, §4, 17](#)  
; [2016 Acts, ch 1025, §1](#)

Subsections 1 and 2 amended

### **21.5 Closed session.**

1. A governmental body may hold a closed session only by affirmative public vote of either two-thirds of the members of the

body or all of the members present at the meeting. A governmental body may hold a closed session only to the extent a closed session is necessary for any of the following reasons:

- a.* To review or discuss records which are required or authorized by state or federal law to be kept confidential or to be kept confidential as a condition for that governmental body's possession or continued receipt of federal funds.
  - b.* To discuss application for letters patent.
  - c.* To discuss strategy with counsel in matters that are presently in litigation or where litigation is imminent where its disclosure would be likely to prejudice or disadvantage the position of the governmental body in that litigation.
  - d.* To discuss the contents of a licensing examination or whether to initiate licensee disciplinary investigations or proceedings if the governmental body is a licensing or examining board.
  - e.* To discuss whether to conduct a hearing or to conduct hearings to suspend or expel a student, unless an open session is requested by the student or a parent or guardian of the student if the student is a minor.
  - f.* To discuss the decision to be rendered in a contested case conducted according to the provisions of chapter 17A.
  - g.* To avoid disclosure of specific law enforcement matters, such as current or proposed investigations or inspection or auditing techniques or schedules, which if disclosed would enable law violators to avoid detection.
  - h.* To avoid disclosure of specific law enforcement matters, such as allowable tolerances or criteria for the selection, prosecution, or settlement of cases, which if disclosed would facilitate disregard of requirements imposed by law.
  - i.* To evaluate the professional competency of an individual whose appointment, hiring, performance, or discharge is being considered when necessary to prevent needless and irreparable injury to that individual's reputation and that individual requests a closed session.
  - j.* To discuss the purchase or sale of particular real estate only where premature disclosure could be reasonably expected to increase the price the governmental body would have to pay for that property or reduce the price the governmental body would receive for that property. The minutes and the audio recording of a session closed under this paragraph shall be available for public examination when the transaction discussed is completed.
  - k.* To discuss information contained in records in the custody of a governmental body that are confidential records pursuant to section 22.7, subsection 50.
  - l.* To discuss patient care quality and process improvement initiatives in a meeting of a public hospital or to discuss marketing and pricing strategies or similar proprietary information in a meeting of a public hospital, where public disclosure of such information would harm such a hospital's competitive position when no public purpose would be served by public disclosure. The minutes and the audio recording of a closed session under this paragraph shall be available for public inspection when the public disclosure would no longer harm the hospital's competitive position. For purposes of this paragraph, "public hospital" means a hospital licensed pursuant to chapter 135B and governed pursuant to chapter 145A, 226, 347, 347A, or 392. This paragraph does not apply to the information required to be disclosed pursuant to section 347.13, subsection 11, or to any discussions relating to terms or conditions of employment, including but not limited to compensation of an officer or employee or group of officers or employees.
2. The vote of each member on the question of holding the closed session and the reason for holding the closed session by reference to a specific exemption under this section shall be announced publicly at the open session and entered in the minutes. A governmental body shall not discuss any business during a closed session which does not directly relate to the specific reason announced as justification for the closed session.
  3. Final action by any governmental body on any matter shall be taken in an open session unless some other provision of the Code expressly permits such actions to be taken in closed session.
  4. A governmental body shall not exclude a member of the governmental body from attending a closed session, unless the member's attendance at the closed session creates a conflict of interest for the member due to the specific reason announced as justification for holding the closed session.
  5. *a.* A governmental body shall keep detailed minutes of all discussion, persons present, and action occurring at a closed session, and shall also audio record all of the closed session.  
*b.* (1) The detailed minutes and audio recording of a closed session shall be sealed and shall not be public records open to public inspection. However, upon order of the court in an action to enforce this chapter, the detailed minutes and audio recording shall be unsealed and examined by the court in camera. The court shall then determine what part, if any, of the minutes should be disclosed to the party seeking enforcement of this chapter for use in that enforcement proceeding. In determining whether any portion of the minutes or recording shall be disclosed to such a party for this purpose, the court shall weigh the prejudicial effects to the public interest of the disclosure of any portion of the minutes or recording in question, against its probative value as evidence in an enforcement proceeding. After such a determination, the court may permit inspection and use of all or portions of the detailed minutes and audio recording by the party seeking enforcement of this chapter. A governmental body shall keep the detailed minutes and audio recording of any closed session for a period of at least one year from the date of that meeting, except as otherwise required by law.  
(2) This paragraph "b" does not require the office of ombudsman to obtain a court order to examine the detailed minutes and audio recording of a closed session when such examination is relevant to an investigation under chapter 2C and the information sought is not available through other reasonable means. Any portion of the minutes or recording released by a governmental body to the office of ombudsman shall remain confidential pursuant to section 2C.9.
  6. Nothing in this section requires a governmental body to hold a closed session to discuss or act upon any matter.  
[C71, 73, 75, 77, §28A.3; C79, 81, §28A.5]

[2002 Acts, ch 1076, §1](#)  
; [2007 Acts, ch 63, §1, 2](#)  
; [2008 Acts, ch 1191, §33, 99](#)  
; [2009 Acts, ch 110, §1](#)  
; [2011 Acts, ch 106, §5, 6, 17](#)  
; [2013 Acts, ch 138, §114, 127](#)  
; [2015 Acts, ch 67, §1](#)  
; [2016 Acts, ch 1073, §14](#)  
; [2016 Acts, ch 1074, §1](#)

Subsection 1, paragraph g amended  
NEW subsection 4 and former subsections 4 and 5 renumbered as 5 and 6

## **21.6 Enforcement.**

1. The remedies provided by this section against state governmental bodies shall be in addition to those provided by section 17A.19. Any aggrieved person, taxpayer to, or citizen of, the state of Iowa, or the attorney general or county attorney, may seek judicial enforcement of the requirements of this chapter. Suits to enforce this chapter shall be brought in the district court for the county in which the governmental body has its principal place of business.

2. Once a party seeking judicial enforcement of this chapter demonstrates to the court that the body in question is subject to the requirements of this chapter and has held a closed session, the burden of going forward shall be on the body and its members to demonstrate compliance with the requirements of this chapter.

3. Upon a finding by a preponderance of the evidence that a governmental body has violated any provision of this chapter, a court:

a. Shall assess each member of the governmental body who participated in its violation damages in the amount of not more than five hundred dollars and not less than one hundred dollars. However, if a member of a governmental body knowingly participated in such a violation, damages shall be in the amount of not more than two thousand five hundred dollars and not less than one thousand dollars. These damages shall be paid by the court imposing it to the state of Iowa, if the body in question is a state governmental body, or to the local government involved if the body in question is a local governmental body. A member of a governmental body found to have violated this chapter shall not be assessed such damages if that member proves that the member did any of the following:

(1) Voted against the closed session.

(2) Had good reason to believe and in good faith believed facts which, if true, would have indicated compliance with all the requirements of this chapter.

(3) Reasonably relied upon a decision of a court, a formal opinion of the Iowa public information board, the attorney general, or the attorney for the governmental body, given in writing, or as memorialized in the minutes of the meeting at which a formal oral opinion was given, or an advisory opinion of the Iowa public information board, the attorney general, or the attorney for the governmental body, given in writing.

b. Shall order the payment of all costs and reasonable attorney fees in the trial and appellate courts to any party successfully establishing a violation of this chapter. The costs and fees shall be paid by those members of the governmental body who are assessed damages under paragraph "a". If no such members exist because they have a lawful defense under that paragraph to the imposition of such damages, the costs and fees shall be paid to the successful party from the budget of the offending governmental body or its parent.

c. Shall void any action taken in violation of this chapter, if the suit for enforcement of this chapter is brought within six months of the violation and the court finds under the facts of the particular case that the public interest in the enforcement of the policy of this chapter outweighs the public interest in sustaining the validity of the action taken in the closed session. This paragraph shall not apply to an action taken regarding the issuance of bonds or other evidence of indebtedness of a governmental body if a public hearing, election or public sale has been held regarding the bonds or evidence of indebtedness.

d. Shall issue an order removing a member of a governmental body from office if that member has engaged in a prior violation of this chapter for which damages were assessed against the member during the member's term.

e. May issue a mandatory injunction punishable by civil contempt ordering the members of the offending governmental body to refrain for one year from any future violations of this chapter.

4. Ignorance of the legal requirements of this chapter shall be no defense to an enforcement proceeding brought under this section. A governmental body which is in doubt about the legality of closing a particular meeting is authorized to bring suit at the expense of that governmental body in the district court of the county of the governmental body's principal place of business to ascertain the propriety of any such action, or seek a formal opinion of the attorney general or an attorney for the governmental body.

[C71, 73, 75, 77, §28A.7, 28A.8; C79, 81, §28A.6]

[99 Acts, ch 9, §1](#)  
; [2005 Acts, ch 99, §1](#)  
; [2011 Acts, ch 106, §7, 17](#)  
; [2012 Acts, ch 1115, §1, 17](#)



### **21.7 Rules of conduct at meetings.**

The public may use cameras or recording devices at any open session. Nothing in this chapter shall prevent a governmental body from making and enforcing reasonable rules for the conduct of its meetings to assure those meetings are orderly, and free from interference or interruption by spectators.

[C79, 81, §28A.7]

C85, §21.7

### **21.8 Electronic meetings.**

1. A governmental body may conduct a meeting by electronic means only in circumstances where such a meeting in person is impossible or impractical and only if the governmental body complies with all of the following:

- a.* The governmental body provides public access to the conversation of the meeting to the extent reasonably possible.
- b.* The governmental body complies with section 21.4. For the purpose of this paragraph, the place of the meeting is the place from which the communication originates or where public access is provided to the conversation.
- c.* Minutes are kept of the meeting. The minutes shall include a statement explaining why a meeting in person was impossible or impractical.

2. A meeting conducted in compliance with this section shall not be considered in violation of this chapter.

3. A meeting by electronic means may be conducted without complying with paragraph “a” of subsection 1 if conducted in accordance with all of the requirements for a closed session contained in section 21.5.

[C79, 81, §28A.8]

C85, §21.8

[2007 Acts, ch 22, §11](#)

### **21.9 Employment conditions discussed.**

A meeting of a governmental body to discuss strategy in matters relating to employment conditions of employees of the governmental body who are not covered by a collective bargaining agreement under chapter 20 is exempt from this chapter. For the purpose of this section, “*employment conditions*” mean areas included in the scope of negotiations listed in section 20.9.

[

[81 Acts, ch 30, §1](#)

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C83, §28A.9

C85, §21.9

### **21.10 Information to be provided.**

The authority which appoints members of governmental bodies shall provide the members with information about this chapter and chapter 22. The appropriate commissioner of elections shall provide that information to members of elected governmental bodies.

[89 Acts, ch 73, §2](#)

### **21.11 Applicability to nonprofit corporations.**

This chapter applies to nonprofit corporations which are defined as governmental bodies subject to section 21.2, subsection 1, paragraph “f”, only when the meetings conducted by the nonprofit corporations relate to the conduct of pari-mutuel racing and wagering pursuant to chapter 99D.

[90 Acts, ch 1175, §2](#)

## CHAPTER 161A

### SOIL AND WATER CONSERVATION

This chapter not enacted as a part of this title; transferred  
from chapter 467A in Code 1993

#### SUBCHAPTER I

#### GENERAL PROVISIONS — DIVISION OF SOIL CONSERVATION AND WATER QUALITY

##### **161A.1 Short title.**

This chapter may be known and cited as the “*Soil Conservation Districts Law*”.

[C39, §**2603.02**; C46, §160.1; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467A.1]  
C93, §161A.1

##### **161A.2 Declaration of policy.**

It is hereby declared to be the policy of the legislature to integrate the conservation of soil and water resources into the production of agricultural commodities to insure the long-term protection of the soil and water resources of the state of Iowa, and to encourage the development of farm management and agricultural practices that are consistent with the capability of the land to sustain agriculture, and thereby to preserve natural resources, control floods, prevent impairment of dams and reservoirs, assist and maintain the navigability of rivers and harbors, preserve wildlife, protect the tax base, protect public lands and promote the health, safety and public welfare of the people of this state.

[C39, §**2603.03**; C46, §160.2; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467A.2]

[86 Acts, ch 1245, §645](#)

C93, §161A.2

##### **161A.3 Definitions.**

Wherever used or referred to in this chapter, unless a different meaning clearly appears from the context:

1. “*Agency of this state*” includes the government of this state and any subdivision, agency, or instrumentality, corporate or otherwise, of the government of this state.
2. “*Book*”, “*list*”, “*record*”, or “*schedule*” kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.
3. “*Commissioner*” means one of the members of the governing body of a district, elected or appointed in accordance with the provisions of this chapter.
4. “*Committee*” or “*state soil conservation committee*” means the committee established by section 161A.4.
5. “*Department*” means the department of agriculture and land stewardship.
6. “*District*” or “*soil and water conservation district*” means a governmental subdivision of this state, and a public body corporate and politic, organized for the purposes, with the powers, and subject to the restrictions in this chapter set forth.
7. “*Division*” means the division of soil conservation and water quality created within the department pursuant to section 159.5.
8. “*Due notice*” means notice published at least twice, with an interval of at least six days between the two publication dates, in a newspaper or other publication of general circulation within the appropriate area; or, if no such publication of general circulation be available, by posting at a reasonable number of conspicuous places within the appropriate area, such posting to include, where possible, posting at public places where it may be customary to post notices concerning county or municipal

affairs generally. At any hearing held pursuant to such notice, at the time and place designated in such notice, adjournment may be made from time to time without the necessity of renewing such notice for such adjourned dates.

9. “*Government*” or “*governmental*” includes the government of this state, the government of the United States, and any subdivision, agency or instrumentality, corporate or otherwise, or either of them.

10. “*Landowner*” includes any person, firm, or corporation or any federal agency, this state or any of its political subdivisions, who shall hold title to land lying within a proposed district or a district organized under the provisions of this chapter.

11. “*Nominating petition*” means a petition filed under the provisions of section 161A.5 to nominate candidates for the office of commissioner of a soil and water conservation district.

12. “*Petition*” means a petition filed under the provisions of section 161A.5, subsection 1, for the creation of a district.

13. “*State*” means the state of Iowa.

14. “*United States*” or “*agencies of the United States*” includes the United States of America, the United States department of agriculture natural resources conservation service, and any other agency or instrumentality, corporate or otherwise, of the United States.

[C39, §2603.04; C46, §160.3; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467A.3;  
82 Acts, ch 1199, §72, 96

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86 Acts, ch 1238, §61  
; 86 Acts, ch 1245, §646, 647  
; 87 Acts, ch 23, §16  
; 89 Acts, ch 83, §55

95 Acts, ch 216, §25  
; 2000 Acts, ch 1148, §1  
; 2002 Acts, ch 1119, §200, 201  
; 2015 Acts, ch 29, §27  
; 2015 Acts, ch 103, §26

#### **161A.4 Division of soil conservation and water quality — state soil conservation committee.**

1. The division of soil conservation and water quality created within the department pursuant to section 159.5 shall perform the functions conferred upon it in this chapter and chapters 161C, 161E, 161F, 207, and 208. The division shall be administered in accordance with the policies of the state soil conservation committee, which shall advise the division and which shall approve administrative rules proposed by the division for the administration of this chapter and chapters 161C, 161E, 161F, 207, and 208 before the rules are adopted pursuant to section 17A.5. If a difference exists between the committee and secretary regarding the content of a proposed rule, the secretary shall notify the chairperson of the committee of the difference within thirty days from the committee’s action on the rule. The secretary and the committee shall meet to resolve the difference within thirty days after the secretary provides the committee with notice of the difference.

2. In addition to other duties and powers conferred upon the division of soil conservation and water quality, the division has the following duties and powers:

a. To offer assistance as appropriate to the commissioners of soil and water conservation districts in carrying out any of their powers and programs.

b. To take notice of each district’s long-range resource conservation plan established under section 161A.7, in order to keep the commissioners of each of the several districts informed of the activities and experience of all other districts, and to facilitate an interchange of advice and experience between such districts and cooperation between them.

c. To coordinate the programs of the soil and water conservation districts so far as this may be done by advice and consultation.

d. To secure the cooperation and assistance of the United States and any of its agencies, and of agencies of this state, in the work of such districts.

e. To disseminate information throughout the state concerning the activities and program of the soil and water conservation districts.

f. To render financial aid and assistance to soil and water conservation districts for the purpose of carrying out the policy stated in this chapter.

g. To assist each soil and water conservation district in developing a district soil and water resource conservation plan as provided under section 161A.7. The plan shall be developed according to rules adopted by the division to preserve and protect the public interest in the soil and water resources of this state for future generations and for this purpose to encourage, promote, facilitate, and where such public interest requires, to mandate the conservation and proper control of and use of the soil and water resources of this state, by measures including but not limited to the control of floods, the control of erosion by water or by wind, the preservation of the quality of water for its optimum use for agricultural, irrigation, recreational, industrial, and domestic purposes, all of which shall be presumed to be conducive to the public health, convenience, and welfare, both present and future.

h. To file the district soil and water resource conservation plans as part of a state soil and water resource conservation plan. The state plan shall contain on a statewide basis the information required for a district plan under this section.

i. To establish a position of state drainage coordinator for drainage districts and drainage and levee districts which will keep the management of those districts informed of the activities and experience of all other such districts and facilitate an interchange of

advice, experience and cooperation among the districts, coordinate by advice and consultation the programs of the districts, secure the cooperation and assistance of the United States and its agencies and of the agencies of this state and other states in the work of the districts, disseminate information throughout the state concerning the activities and programs of the districts, and provide other appropriate assistance to the districts.

3. The division, in consultation with the commissioners of the soil and water conservation districts, shall conduct a biennial review to survey the availability of private soil and water conservation control contractors in each district. A report containing the results of the review shall be prepared and posted on the department's internet site.

4. A state soil conservation committee is established within the department.

a. The nine voting members of the committee shall be appointed by the governor subject to confirmation by the senate pursuant to section 2.32, and shall include the following:

(1) Six of the members shall be persons engaged in actual farming operations, one of whom shall be a resident of each of six geographic regions in the state, including northwest, southwest, north central, south central, northeast, and southeast Iowa, and no more than one of whom shall be a resident of any one county. The boundaries of the geographic regions shall be established by rule.

(2) The seventh, eighth, and ninth appointive members shall be chosen by the governor from the state at large, with one appointed to be a representative of cities, one appointed to be a representative of the mining industry, and one appointee who is a farmer actively engaged in tree farming.

b. The committee may invite the secretary of agriculture of the United States to appoint one person to serve with the other members, and the president of the Iowa county engineers association may designate a member of the association to serve in the same manner, but these persons have no vote and shall serve in an advisory capacity only.

c. The following shall serve as ex officio nonvoting members of the committee:

(1) The director of the Iowa cooperative extension service in agriculture and home economics, or the director's designee.

(2) The director of the department of natural resources or the director's designee.

5. a. The committee shall designate its chairperson, and may change the designation. The members appointed by the governor shall serve for a period of six years. Members shall be appointed in each odd-numbered year to succeed members whose terms expire as provided by section 69.19. Appointments may be made at other times and for other periods as necessary to fill vacancies on the committee. Members shall not be appointed to serve more than two complete six-year terms. Members designated to represent the director of the department of natural resources and the director of the Iowa cooperative extension service in agriculture and home economics shall serve at the pleasure of the officer making the designation.

b. A majority of the voting members of the committee constitutes a quorum, and the concurrence of a majority of the voting members of the committee in any matter within their duties is required for its determination.

c. Members are entitled to actual expenses necessarily incurred in the discharge of their duties as members of the committee. The expenses paid to the committee members shall be paid from funds appropriated to the department. Each member of the committee may also be eligible to receive compensation as provided in section 7E.6. The committee shall provide for the execution of surety bonds for all employees and officers who are entrusted with funds or property, shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions and orders issued or adopted, and shall provide for an annual audit of the accounts of receipts and disbursements.

6. a. The committee may perform acts, hold public hearings, and propose and approve rules pursuant to chapter 17A as necessary for the execution of its functions.

b. The committee shall recommend to the secretary each year a budget for the division. The secretary, at the earliest opportunity and prior to formulating a budget, shall meet with representatives of the committee to discuss the committee's recommendation.

c. The committee shall recommend three persons to the secretary of agriculture who shall appoint from the persons recommended a director to head the division and serve at the pleasure of the secretary. After reviewing the names submitted, the secretary may request that the soil conservation committee submit additional names for consideration.

7. The committee or division may call upon the attorney general of the state for necessary legal services. The committee may delegate to its chairperson, to one or more of its members, or to one or more agents or employees, powers and duties as it deems proper. Upon request of the committee, for the purpose of carrying out any of the functions assigned the committee or the department by law, the supervising officer of any state agency, or of any state institution of learning shall, insofar as possible under available appropriations, and having due regard to the needs of the agency to which the request is directed, assign or detail the request to the staff or personnel of the agency or institution of learning, and make the special reports, surveys, or studies as the committee requests.

[C39, §2603.05; C46, §160.4; C50, 54, 58, 62, 66, 71, §467A.4; C73, §455A.40(3), 467A.4; C75, 77, 79, 81, §467A.4; 82 Acts, ch 1199, §73, 74, 96

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83 Acts, ch 101, §102

; 85 Acts, ch 163, §13

; 86 Acts, ch 1245, §648 – 650, 668

; 87 Acts, ch 23, §17

; 88 Acts, ch 1198, §1, 2

; 89 Acts, ch 83, §56

; 89 Acts, ch 106, §2

2004 Acts, ch 1143, §1  
; 2007 Acts, ch 22, §43  
; 2009 Acts, ch 41, §59  
; 2015 Acts, ch 103, §27 – 29

## SUBCHAPTER II

### SOIL AND WATER CONSERVATION DISTRICTS

#### **161A.5 Soil and water conservation districts.**

1. The one hundred soil and water conservation districts\* established in the manner which was prescribed by law prior to July 1, 1975 shall continue in existence with the boundaries and the names\* in effect on July 1, 1975. If the existence of a district so established is discontinued pursuant to section 161A.10, a petition for reestablishment of the district or for annexation of the former district's territory to any other abutting district may be submitted to, and shall be acted upon by, the state soil conservation committee in substantially the manner provided by section 467A.5, Code 1975.

2. The governing body of each district shall consist of five commissioners elected on a nonpartisan basis for staggered four-year terms commencing on the first day of January that is not a Sunday or holiday following their election. Any eligible elector residing in the district is eligible to the office of commissioner, except that no more than one commissioner shall at any one time be a resident of any one township. A vacancy is created in the office of any commissioner who changes residence into a township where another commissioner then resides. If a commissioner is absent for sixty or more percent of monthly meetings during any twelve-month period, the other commissioners by their unanimous vote may declare the member's office vacant. A vacancy in the office of commissioner shall be filled by appointment of the state soil conservation committee until the next succeeding general election, at which time the balance of the unexpired term shall be filled as provided by section 69.12.

3. At each general election a successor shall be chosen for each commissioner whose term will expire in the succeeding January.

a. Nomination of candidates for the office of commissioner shall be made by petition in accordance with chapter 45, except that each candidate's nominating petition shall be signed by at least twenty-five eligible electors of the district. The petition form shall be furnished by the county commissioner of elections.

b. Every candidate shall file with the nomination papers an affidavit stating the candidate's name, the candidate's residence, that the person is a candidate and is eligible for the office of commissioner, and that if elected the candidate will qualify for the office. The affidavit shall also state that the candidate is aware that the candidate is disqualified from holding office if the candidate has been convicted of a felony or other infamous crime and the candidate's rights have not been restored by the governor or by the president of the United States.

c. The signed petitions shall be filed with the county commissioner of elections not later than 5:00 p.m. on the sixty-ninth day before the general election.

d. The votes for the office of district commissioner shall be canvassed in the same manner as the votes for county officers, and the returns shall be certified to the commissioners of the district. A plurality is sufficient to elect commissioners, and a primary election for the office shall not be held.

e. If the canvass shows that the two candidates receiving the highest and the second highest number of votes for the office of district commissioner are both residents of the same township, the board shall certify as elected the candidate who received the highest number of votes for the office and the candidate receiving the next highest number of votes for the office who is not a resident of the same township as the candidate receiving the highest number of votes.

[C39, §2603.06; C46, §160.5; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467A.5]

87 Acts, ch 23, §18

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89 Acts, ch 136, §73

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90 Acts, ch 1238, §41

C93, §161A.5

94 Acts, ch 1180, §41

;

96 Acts, ch 1083, §1

;

98 Acts, ch 1052, §5

;

2009 Acts, ch 41, §201

\*Established as "soil conservation districts"

#### **161A.6 Commissioners — general provisions.**

1. The commissioners of each soil and water conservation district shall convene on the first day of January that is not a Sunday or holiday in each odd-numbered year. Those commissioners whose term of office begins on that day shall take the oath of office prescribed by section 63.10. The commissioners shall then organize by election of a chairperson and a vice chairperson.

2. The commissioners of the respective districts shall submit to the department such statements, estimates, budgets, and other information at such times and in such manner as the department may require.

3. A commissioner shall not receive compensation for the commissioner's services. However, to the extent funds are available, a commissioner is entitled to receive actual expenses necessarily incurred in the discharge of the commissioner's duties, including reimbursement for mileage at the rate provided under section 70A.9 for state business use.

4. The commissioners may call upon the attorney general of the state for such legal services as they may require. The commissioners may delegate to their chairperson, to one or more commissioners or to one or more agents, or employees, such powers and duties as they may deem proper. The commissioners shall furnish to the division, upon request, copies of such ordinances, rules, regulations, orders, contracts, forms, and other documents as they shall adopt or employ, and such other information concerning their activities as it may require in the performance of its duties under this chapter.

5. The commissioners shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted; and shall regularly report to the division a summary of financial information regarding moneys controlled by the commissioners, which are not audited by the state, according to rules adopted by the division.

6. The commissioners may invite the legislative body of any municipality or county located near the territory comprised within the district to designate a representative to advise and consult with the commissioners of the district on all questions of program and policy which may affect the property, water supply, or other interests of such municipality or county.

[C39, §2603.08; C46, §160.6; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467A.6]

87 Acts, ch 23, §19

93 Acts, ch 176, §33

; 96 Acts, ch 1083, §2

; 2015 Acts, ch 103, §30

; 2016 Acts, ch 1011, §121

Code editor directive applied

#### **161A.7 Powers of districts and commissioners.**

1. A soil and water conservation district organized under this chapter has the following powers, in addition to others granted in other sections of this chapter:

*a.* To conduct surveys, investigations, and research relating to the character of soil erosion and erosion, floodwater, and sediment damages, and the preventive and control measures needed, to publish the results of such surveys, investigations or research, and to disseminate information concerning such preventive and control measures; provided, however, that in order to avoid duplication of research activities, no district shall initiate any research program except in cooperation with the Iowa agricultural experiment station located at Ames, Iowa, and pursuant to a cooperative agreement entered into between the Iowa agricultural experiment station and such district.

*b.* To conduct demonstrational projects within the district on lands owned or controlled by this state or any of its agencies, with the consent and cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the owner or occupier of such lands or the necessary rights or interests in such lands, in order to demonstrate by example the means, methods, and measures by which soil and soil resources may be conserved, and soil erosion in the form of soil blowing and soil washing may be prevented and controlled; provided, however, that in order to avoid duplication of agricultural extension activities, no district shall initiate any demonstrational projects, except in cooperation with the Iowa agricultural extension service whose offices are located at Ames, Iowa, and pursuant to a cooperative agreement entered into between the Iowa agricultural extension service and such district.

*c.* To carry out preventive and control measures within the district, including but not limited to crop rotations, engineering operations, methods of cultivation, the growing of vegetation, changes in use of land, and the measures listed in section 161A.2, on lands owned or controlled by this state or any of its agencies, with the consent and cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district, upon obtaining the consent of the owner or occupier of such lands or the necessary rights or interests in such lands. Any approval or permits from the council required under other provisions of law shall be obtained by the district prior to initiation of any construction activity.

*d.* To cooperate, or enter into agreements with, and within the limits of appropriations duly made available to it by law, to furnish financial or other aid to any agency, governmental or otherwise, or any owner or occupier of lands within the district, in the carrying on of erosion-control and watershed protection and flood prevention operations within the district, subject to such conditions as the commissioners may deem necessary to advance the purposes of this chapter.

*e.* To obtain options upon and to acquire, by purchase, exchange, lease, gift, grant, bequest, devise or otherwise, any property, real or personal, or rights or interests therein; to maintain, administer, and improve any properties acquired, to receive income from such properties and to expend such income in carrying out the purposes and provisions of this chapter; and to sell, lease or otherwise dispose of any of its property or interests therein in furtherance of the purposes and provisions of this chapter.

*f.* To make available on such terms as it shall prescribe, to landowners or occupiers within the district, agricultural and

engineering machinery and equipment, fertilizer, lime, and such other material or equipment as will assist such landowners or occupiers to carry on operations upon their lands for the conservation of soil resources and for the prevention and control of soil erosion and for the prevention of erosion, floodwater, and sediment damages.

g. To construct, improve, and maintain such structures as may be necessary or convenient for the performance of any of the operations authorized in this chapter. Any approval or permits from the council required under other provisions of law shall be obtained by the district prior to initiation of any construction activity.

h. To develop comprehensive plans for the conservation of soil resources and for the control and prevention of soil erosion and for the prevention of erosion, floodwater, and sediment damages within the district, which plans shall specify in such detail as may be possible, the acts, procedures, performances, and avoidances which are necessary or desirable for the effectuation of such plans, including the specification of engineering operations, methods of cultivation, the growing of vegetation, cropping programs, tillage practices, and changes in use of land; and to publish such plans and information and bring them to the attention of owners and occupiers of lands within the district.

i. To sue and be sued in the name of the district; to have a seal, which seal shall be judicially noticed; to have perpetual succession unless terminated as hereinafter provided; to make and execute contracts and other instruments, necessary or convenient to the exercise of its powers; to make, and from time to time amend and repeal, rules not inconsistent with this chapter, to carry into effect its purposes and powers.

j. To accept donations, gifts, and contributions in money, services, materials, or otherwise, from the United States or any of its agencies, or from this state or any of its agencies, and to use or expend such moneys, services, materials, or other contributions in carrying on its operations.

k. Subject to the approval of the state soil conservation committee, to change the name of the soil and water conservation district.

l. To provide for the restoration of permanent soil and water conservation practices which are damaged or destroyed because of a disaster emergency as provided in section 161A.75.

m. To encourage local school districts to provide instruction in the importance of and in some of the basic methods of soil conservation, as a part of course work relating to conservation of natural resources and environmental awareness required in rules adopted by the state board of education pursuant to section 256.11, subsections 3 and 4, and to offer technical assistance to schools in developing such instructional programs.

n. To develop a soil and water resource conservation plan for the district.

(1) The district plan shall contain a comprehensive long-range assessment of soil and surface water resources in the district consistent with rules approved by the committee under section 161A.4. In developing the plan the district may receive technical support from the United States department of agriculture natural resources conservation service and the county board of supervisors in the county where the district is located. The division and the Iowa cooperative extension service in agriculture and home economics may provide technical support to the district. The support may include but is not limited to the following:

(a) Assessing the condition of soil and surface water in the district, including an evaluation of the type, amount, and quality of soil and water, the threat of soil erosion and erosion, floodwater, and sediment damages, and necessary preventative and control measures.

(b) Developing methods to maintain or improve soil and water condition.

(c) Cooperating with other state and federal agencies to carry out this support.

(2) The title page of the district plan and a notification stating where the plan may be reviewed shall be recorded with the recorder in the county in which the district is located, and updated as necessary, after the committee approves and the director of the division signs the district plan. The commissioners shall provide notice of the recording and may provide a copy of the approved district plan to the county board of supervisors in the county where the district is located. The district plan shall be filed with the division as part of the state soil and water resource conservation plan provided in section 161A.4.

o. To enter into agreements pursuant to chapter 161C with the owner or occupier of land within the district or cooperating districts, or any other private entity or public agency, in carrying out water protection practices, including district and multidistrict projects to protect this state's groundwater and surface water from point and nonpoint sources of contamination, including but not limited to agricultural drainage wells, sinkholes, sedimentation, and chemical pollutants.

2. As a condition to the extending of any benefits under this chapter to, or the performance of work upon, any lands not owned or controlled by this state or any of its agencies, the commissioners may require contributions in money, services, materials, or otherwise to any operations conferring such benefits, and may require landowners or occupiers to enter into and perform such agreements or covenants as to the permanent use of such lands as will tend to prevent or control erosion thereon.

3. The commissioners, as a condition for the receipt of any state cost-sharing funds for permanent soil conservation practices, shall require the owner of the land on which the practices are to be established to covenant and file, in the office of the soil and water conservation district of the county in which the land is located, an agreement identifying the particular lands upon which the practices for which state cost-sharing funds are to be received will be established, and providing that the project will not be removed, altered, or modified so as to lessen its effectiveness without the consent of the commissioners, obtained in advance and based on guidelines drawn up by the state soil conservation committee, for a period not to exceed twenty years after the date of receiving payment. The commissioners shall assist the division in the enforcement of this subsection. The agreement does not create a lien on the land, but is a charge personally against the owner of the land at the time of removal, alteration, or modification if an administrative order is made under section 161A.61, subsection 3.

4. No provisions with respect to the acquisition, operation, or disposition of property by other public bodies shall be applicable to a district organized hereunder unless the general assembly shall specifically so state.



5. After the formation of any district under the provisions of this chapter, all participation hereunder shall be purely voluntary, except as specifically stated herein.

[C39, §2603.09; C46, §160.7; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467A.7;  
82 Acts, ch 1083, §1

,  
ch 1220, §1

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86 Acts, ch 1238, §61  
; 86 Acts, ch 1245, §651  
; 87 Acts, ch 23, §20  
; 88 Acts, ch 1189, §1  
; 88 Acts, ch 1198, §3  
; 88 Acts, ch 1262, §9  
; 89 Acts, ch 83, §57  
; 92 Acts, ch 1108, §1  
; 92 Acts, ch 1239, §49

93 Acts, ch 109, §1  
; 95 Acts, ch 216, §25  
; 97 Acts, ch 59, §1  
; 2009 Acts, ch 41, §60  
; 2012 Acts, ch 1095, §9  
; 2015 Acts, ch 103, §31

Review of road construction projects, §306.50 – 306.54

#### **161A.8 Cooperation between districts.**

The commissioners of any two or more districts organized under the provisions of this chapter may cooperate with one another in the exercise of any or all powers conferred in this chapter.

[C39, §2603.10; C46, §160.8; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467A.8]  
C93, §161A.8

#### **161A.9 State agencies to cooperate.**

Agencies of this state which shall have jurisdiction over, or be charged with the administration of, any state-owned lands, and of any county, or other governmental subdivision of the state, which shall have jurisdiction over, or be charged with the administration of, any county-owned or other publicly owned lands, lying within the boundaries of any district organized hereunder, may cooperate to the fullest extent with the commissioners of such districts in the effectuation of programs and operations undertaken by the commissioners under the provisions of this chapter.

[C39, §2603.11; C46, §160.9; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467A.9]  
C93, §161A.9

#### **161A.10 Discontinuance of districts.**

1. At any time after five years after the organization of a district under this chapter, any twenty-five owners of land lying within the boundaries of the district, but in no case less than twenty percent of the owners of land lying within the district, may file a petition with the committee asking that the operations of the district be terminated and the existence of the district discontinued. The committee may conduct public meetings and public hearings upon the petition as necessary to assist in the consideration of the petition. Within sixty days after a petition has been received by the committee, the division shall give due notice of the holding of a referendum, shall supervise the referendum, and shall issue appropriate rules governing the conduct of the referendum. The question is to be submitted by ballots upon which the words “For terminating the existence of the ..... (name of the soil and water conservation district to be here inserted)” and “Against terminating the existence of the ..... (name of the soil and water conservation district to be here inserted)” shall be printed, with a square before each proposition and a direction to insert an X mark in the square before one or the other of the propositions as the voter favors or opposes discontinuance of the district. All owners of lands lying within the boundaries of the district are eligible to vote in the referendum. No informalities in the conduct of the referendum or in any matters relating to the referendum invalidate the referendum or the result of the referendum if notice was given substantially as provided in this section and if the referendum was fairly conducted.

2. When sixty-five percent of the landowners vote to terminate the existence of the district, the committee shall advise the commissioners to terminate the affairs of the district. The commissioners shall dispose of all property belonging to the district at public auction and shall pay over the proceeds of the sale to be deposited into the state treasury. The commissioners shall then file an application, duly verified, with the secretary of state for the discontinuance of the district, and shall transmit with the



application the certificate of the committee setting forth the determination of the committee that the continued operation of the district is not administratively practicable and feasible. The application shall recite that the property of the district has been disposed of and the proceeds paid over as provided in this section, and shall set forth a full accounting of the properties and proceeds of the sale. The secretary of state shall issue to the commissioners a certificate of dissolution and shall record the certificate in an appropriate book of record in the secretary of state's office.

3. Upon issuance of a certificate of dissolution under this section, all ordinances and regulations previously adopted and in force within the districts are of no further force and effect. All contracts previously entered into, to which the district or commissioners are parties, remain in force and effect for the period provided in the contracts. The committee is substituted for the district or commissioners as party to the contracts. The committee is entitled to all benefits and subject to all liabilities under the contracts and has the same right and liability to perform, to require performance, to sue and be sued, and to modify or terminate the contracts by mutual consent or otherwise, as the commissioners of the district would have had.

4. The committee shall not entertain petitions for the discontinuance of any district nor conduct referenda upon discontinuance petitions nor make determinations pursuant to the petitions in accordance with this chapter, more often than once in five years.

[C39, §2603.12; C46, §160.10; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467A.10]

86 Acts, ch 1245, §652

;

87 Acts, ch 23, §21

;

89 Acts, ch 106, §3

C93, §161A.10

2016 Acts, ch 1011, §121

Code editor directive applied

**161A.11 Report to governor.** Repealed by 2003 Acts, ch 74, §2; 2003 Acts, ch 128, §2.

**161A.12 Statement to department of management.**

On or before October 1 next preceding each annual legislative session, the department shall submit to the department of management, on official estimate blanks furnished for those purposes, statements and estimates of the expenditure requirements for each fiscal year, and a statement of the balance of funds, if any, available to the division, and the estimates of the division as to the sums needed for the administrative and other expenses of the division for the purposes of this chapter.

[C46, §160.12; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467A.12]

86 Acts, ch 1245, §654

96 Acts, ch 1034, §6

; 2012 Acts, ch 1095, §10

## SUBCHAPTER III

### SUBDISTRICTS

**161A.13 Purpose of subdistricts.**

Subdistricts of a soil and water conservation district may be formed as provided in this chapter for the purposes of carrying out watershed protection and flood prevention programs within the subdistrict but shall not be formed solely for the purpose of establishing or taking over the operation of an existing drainage district.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §467A.13]

86 Acts, ch 1238, §61

;

87 Acts, ch 23, §22

;

89 Acts, ch 83, §58

C93, §161A.13

**161A.14 Petition to form.**

When the landowners in a proposed subdistrict desire that a subdistrict be organized, they shall file a petition with the commissioners of the soil and water conservation district. The area must be contiguous and in the same watershed but it shall not include any area located within the boundaries of an incorporated city. The petition shall set forth an intelligible description by congressional subdivision, or otherwise, of the land suggested for inclusion in the subdistrict and shall state whether the special annual tax or special benefit assessments will be used, or whether the use of both is contemplated. The petition shall contain a

brief statement giving the reasons for organization, and requesting that the proposed area be organized as a subdistrict, and must be signed by sixty-five percent of the landowners in the proposed subdistrict. Land already in one subdistrict cannot be included in another. The soil and water conservation district commissioners shall review the petition and if it is found adequate shall arrange for a hearing on it.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §467A.14]

[87 Acts, ch 23, §23](#)

C93, §161A.14

#### **161A.15 Notice and hearing.**

Within thirty days after a petition has been filed with the soil and water conservation district commissioners, they shall fix a date, hour, and place for a hearing and direct the secretary to cause notice to be given to the owners of each tract of land, or lot, within the proposed subdistrict as shown by the transfer books of the auditor's office, and to each lienholder, or encumbrancer, of any such lands as shown by the county records, and to all other persons whom it may concern, and without naming individuals all actual occupants of land in the proposed subdistrict, of the pendency and purpose of the petition and that all objections to establishment of the subdistrict for any reason must be made in writing and filed with the secretary of the soil and water conservation district at, or before, the time set for hearing. The soil and water conservation district commissioners shall consider and determine whether the operation of the subdistrict within the defined boundaries as proposed is desirable, practicable, feasible, and of necessity in the interest of health, safety, and public welfare. All interested parties may attend the hearing and be heard. The soil and water conservation district commissioners may for good cause adjourn the hearing to a day certain which shall be announced at the time of adjournment and made a matter of record. If the soil and water conservation district commissioners determine that the petition meets the requirements set forth in this section and in section 161A.5, they shall declare that the subdistrict is duly organized and shall record such action in their official minutes together with an appropriate official name or designation for the subdistrict.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §467A.15]

[87 Acts, ch 23, §24](#)

C93, §161A.15

[2001 Acts, ch 24, §32](#)

#### **161A.16 Publication of notice.**

The notice of hearing on the formation of a subdistrict shall be by publication once each week for two consecutive weeks in some newspaper of general circulation published in the county or district, the last of which shall be not less than ten days prior to the day set for the hearing on the petition. Proof of such service shall be made by affidavit of the publisher, and be on file with the secretary of the district at the time the hearing begins.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §467A.16]

[87 Acts, ch 115, §61](#)

C93, §161A.16

#### **161A.17 Subdistrict in more than one district.**

If the proposed subdistrict lies in more than one soil and water conservation district, the petition may be presented to the commissioners of any one of such districts, and the commissioners of all such districts shall act jointly as a board of commissioners with respect to all matters concerning the subdistrict, including its formation. They shall organize as a single board for such purposes and shall designate its chairperson, vice chairperson, and secretary-treasurer to serve for terms of one year. Such a subdistrict shall be formed in the same manner and has the same powers and duties as a subdistrict formed in one soil and water conservation district.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §467A.17]

[87 Acts, ch 23, §25](#)

C93, §161A.17

#### **161A.18 Certification.**

Following the entry in the official minutes of the soil and water conservation district commissioners of the creation of the subdistrict, the commissioners shall certify this fact on a separate form, authentic copies of which shall be recorded with the county recorder of each county in which any portion of the subdistrict lies, and with the division.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §467A.18]

[87 Acts, ch 23, §26](#)

[2001 Acts, ch 24, §33](#)

; [2015 Acts, ch 103, §32](#)

**161A.19 Governing body.**

The commissioners of a soil and water conservation district in which the subdistrict is formed are the governing body of the subdistrict. When a subdistrict lies in more than one soil and water conservation district, the combined board of commissioners is the governing body. The governing body of the subdistrict shall appoint three trustees living within the subdistrict to assist with the administration of the subdistrict.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §467A.19]

[87 Acts, ch 23, §27](#)

C93, §161A.19

**161A.20 Special annual tax.**

1. After obtaining agreements to carry out recommended soil conservation measures and proper farm plans from owners of not less than fifty percent of the lands situated in the subdistrict, a subdistrict shall have the authority to impose a special annual tax, the proceeds of which shall be used for the repayment of actual and necessary expenses incurred to organize the subdistrict, to acquire land or rights or interests therein by purchase or condemnation, repair, alteration, maintenance and operation of the present and future works of improvement within its boundaries.

2. On or before January 10 of each year its governing body shall make an estimate of the amount it deems necessary to be raised by such special tax for the ensuing year and transmit said estimate in dollars to the board of supervisors of the county in which the subdistrict lies.

3. If portions of the subdistrict are in more than one county, then the governing body, as hereinbefore designated in such event, after arriving at the estimate in dollars deemed necessary for the entire subdistrict shall ratably apportion such amount between the counties and transmit and certify the prorated portion to the respective boards of supervisors of each of the counties.

4. The board or boards of supervisors shall upon receipt of certification from the governing body of the district make the necessary levy on the assessed valuation of all real estate within the boundaries of the subdistrict lying within their respective county to raise said amounts, but in no event to exceed one dollar and eight cents per thousand dollars of assessed value.

5. The special tax levied under this section shall be collected in the same manner as other taxes with a penalty for delinquency. The moneys collected from the special tax and any delinquency penalty shall be deposited in a fund established by the governing body as provided by a resolution adopted by the governing body and delivered for filing with each appropriate county treasurer. Moneys earned as income from moneys in the fund, including as interest, shall remain in the fund until expended by the governing body according to procedures specified in the resolution. If the governing body does not adopt a resolution or deliver the resolution to the county treasurer, the moneys shall be deposited into a separate account in the county's general fund by that county treasurer. The account shall be identified by the official name of the subdistrict and expenditures from the account shall be made on requisition of the chairperson and secretary of the governing body of the subdistrict.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §467A.20]

[2005 Acts, ch 116, §1](#)

; [2016 Acts, ch 1011, §121](#)

Code editor directive applied

**161A.21 Condemnation by subdistrict.**

A subdistrict of a soil and water conservation district may condemn land or rights or interests in the subdistrict to carry out the authorized purposes of the subdistrict.

[C62, 66, 71, 73, 75, 77, 79, 81, §467A.21]

[87 Acts, ch 23, §28](#)

C93, §161A.21

**161A.22 General powers applicable — warrants or bonds.**

A subdistrict organized under this chapter has all of the powers of a soil and water conservation district in addition to other powers granted to the subdistrict in other sections of this chapter.

The governing body of the subdistrict, upon determination that benefits from works of improvement as set forth in the watershed work plan to be installed will exceed costs thereof, and that funds needed for purposes of the subdistrict require levy of a special benefit assessment as provided in section 161A.23, in lieu of the special annual tax as provided in section 161A.20, shall record its decision to use its taxing authority and, upon majority vote of the governing body and with the approval of the state soil conservation committee, may issue warrants or bonds payable in not more than forty semiannual installments in connection with the special benefit assessment, and pledge and assign the proceeds of the special benefit assessment and other revenues of the subdistrict as security for the warrants or bonds. The warrants and bonds of indebtedness are general obligations of the subdistrict, exempt from all taxes, state and local, and are not indebtedness of the soil and water conservation district or the state of Iowa.

[C62, 66, 71, 73, 75, 77, 79, 81, §467A.22]

#### SUBCHAPTER IV

#### ALTERNATIVE METHOD OF TAXATION FOR WATERSHED PROTECTION AND FLOOD PREVENTION

##### **161A.23 Agreement by fifty percent of landowners.**

1. After obtaining agreements to carry out recommended soil conservation measures and proper farm plans from owners of not less than fifty percent of the lands situated in the subdistrict, the governing body of the subdistrict shall have the authority to establish a special tax for the purpose of organization, construction, repair, alteration, enlargement, extension, and operation of present and future works of improvement within the boundaries of said subdistrict.

2. The governing body shall appoint three appraisers to assess benefits and classify the land affected by such improvements. One of such appraisers shall be a competent licensed professional engineer and two of them shall be resident landowners of the county or counties in which the subdistrict is located but not living within nor owning or operating any lands included in said subdistrict.

3. The appraisers shall take and subscribe an oath of their qualifications and to perform the duties of classification of said lands, fix the percentages, benefits and apportion and assess the costs and expenses of construction of the said improvement according to law and their best judgment, skill, and ability. If said appraisers or any of them fail or neglect to act or perform the duties in the time and as required of them by law, the governing body of the subdistrict shall appoint others with like qualifications to take their places and perform said duties.

[C62, 66, 71, 73, 75, 77, 79, 81, §467A.23]

C93, §161A.23

2007 Acts, ch 126, §38

##### **161A.24 Assessment for improvements.**

At the time of appointing said appraisers, the governing body shall fix the time within which said assessment, classification, and apportionment shall be made, which may be extended for good cause shown. Within twenty days after their appointment, they shall begin to inspect and classify all the lands within said district, or any change, extension, enlargement, or relocation thereof in tracts of forty acres or less according to the legal or recognized subdivisions, in a graduated scale of benefits to be numbered according to the benefit to be received by each of such tracts from such improvement, and pursue said work continuously until completed and, when completed, shall make a full, accurate, and detailed report thereof and file the same with the governing body. The lands receiving the greatest benefit shall be marked on a scale of one hundred, and those benefited in a less degree with such percentage of one hundred as the benefits received bear in proportion thereto.

The amount of benefit appraised to each forty acres of land within the subdistrict shall be determined by the improvements within said subdistrict based upon the work plan as agreed upon by the subdistrict.

[C62, 66, 71, 73, 75, 77, 79, 81, §467A.24]

C93, §161A.24

##### **161A.25 Report of appraisers.**

In the report of the appraisers so appointed they shall specify each tract of land by proper description, and the ownership thereof, as the same appears on the transfer books in the auditor's office.

[C62, 66, 71, 73, 75, 77, 79, 81, §467A.25]

C93, §161A.25

##### **161A.26 Hearing.**

The governing body shall fix a time for a hearing within sixty days upon receiving the report of the appraisers, and the governing body shall cause notice to be served upon each person not less than ten days before said hearing whose name appears as owner, naming that person, and also upon the person or persons in actual occupancy of any tract of land without naming them of the day and hour of such hearing, which notice shall be for the same time and served in the same manner as is provided for the establishment of a subdistrict, and shall state the amount of assessment of costs and expenses of organizing and construction apportioned to each owner upon each forty-acre tract or less, and that all objections thereto must be in writing and filed with the governing body at or before the time set for such hearing.

[C62, 66, 71, 73, 75, 77, 79, 81, §467A.26]

C93, §161A.26

**161A.27 Determination by board.**

At the time fixed or at an adjourned hearing, the governing body shall hear and determine all objections filed to said report and shall fully consider the said report, and may affirm, increase, or diminish the percentage of benefits or the apportionment of costs and expenses made in said report against any body or tract of land in said subdistrict as may appear to the board to be just and equitable.

[C62, 66, 71, 73, 75, 77, 79, 81, §467A.27]

C93, §161A.27

**161A.28 Appeal.**

Any person aggrieved may appeal from any final action of the governing body in relation to any matter involving the person's rights, to the district court of the county in which the proceeding was held.

[C62, 66, 71, 73, 75, 77, 79, 81, §467A.28]

C93, §161A.28

**161A.29 Intercounty subdistricts.**

In subdistricts extending into two or more counties, appeals from final orders resulting from the joint action of the several governing bodies of such subdistrict may be taken to the district court of any county into which the district extends.

[C62, 66, 71, 73, 75, 77, 79, 81, §467A.29]

C93, §161A.29

**161A.30 Notice of appeal.**

All appeals shall be taken within twenty days after the date of final action or order of the governing body from which such appeal is taken by filing with the auditor a notice of appeal, designating the court to which the appeal is taken, the order or action appealed from, and stating that the appeal will come on for hearing thirty days following perfection of the appeal with allowances of additional time for good cause shown. This notice shall be accompanied by an appeal bond with sureties to be approved by the auditor conditioned to pay all costs adjudged against the appellant and to abide the orders of the court.

[C62, 66, 71, 73, 75, 77, 79, 81, §467A.30]

C93, §161A.30

**161A.31 Petition filed.**

Within twenty days after perfection of notice, the appellant shall file a petition setting forth the order or final action of the governing body appealed from and the grounds of the appellant's objections and the appellant's complaint, with a copy of the appellant's claim for damages or objections filed by the appellant with the auditor. The appellant shall pay to the clerk the filing fee as provided by law in other cases. A failure to pay the filing fee or to file such petition shall be deemed a waiver of the appeal and in such case the court shall dismiss the same.

[C62, 66, 71, 73, 75, 77, 79, 81, §467A.31]

C93, §161A.31

**161A.32 Assessment certified.**

When the board or boards of supervisors shall receive a certification from the governing body of the district to make the necessary assessment on the real estate within the boundaries of the subdistrict lying within their respective county, this shall be construed as final action by the governing body.

[C62, 66, 71, 73, 75, 77, 79, 81, §467A.32]

C93, §161A.32

**161A.33 Assessments transmitted.**

1. The governing body upon receiving the reports from three appointed appraisers and after holding the hearings shall transmit and certify the amounts of assessments to the respective boards of supervisors which, upon receipt of certification from the governing body of the district, make the necessary levy of such assessments as fixed by the governing body upon the land within such subdistrict. The assessments shall be levied at that time as a tax and shall bear interest at a rate not exceeding that permitted by chapter 74A from that date payable annually except as hereafter provided as to cash payments therefor within a specified time.

2. The assessment levied under this section together with any accrued interest or delinquency penalty as provided in this chapter shall be deposited in a fund established by the governing body as provided by a resolution adopted by the governing body and delivered for filing with each appropriate county treasurer. Moneys earned as income from moneys in the fund, including as interest, shall remain in the fund until expended by the governing body according to procedures specified in the resolution. If the

governing body does not adopt a resolution or deliver the resolution to the county treasurer, the moneys shall be deposited into a separate account in the county's general fund by that county treasurer. The account shall be identified by the official name of the subdistrict and expenditures from the account shall be made on requisition of the chairperson and secretary of the governing body of the subdistrict.

3. At no time shall an assessment be made where the benefits accrued to the subdistrict do not exceed the cost of the improvements within the subdistrict.

[C62, 66, 71, 73, 75, 77, 79, 81, §467A.33]

C93, §161A.33

[2005 Acts, ch 116, §2](#)

#### **161A.34 Payment to county treasurer.**

1. All assessments for benefits shall be levied at one time against the property benefited and when levied and certified by the board or boards of supervisors shall be paid at the office of the county treasurer. Each person shall have the right within twenty days after the levy of assessments to pay the person's assessment in full without interest. The county treasurer shall pay the collected moneys into a fund established by the governing body or an account of the county's general fund as provided in section 161A.33.

2. If any levy of assessments is not sufficient to meet the cost and expenses of organizing and construction apportioned to each owner upon each forty-acre tract or less, additional assessments may be made on the same classification as the previous ones.

[C62, 66, 71, 73, 75, 77, 79, 81, §467A.34]

C93, §161A.34

[2005 Acts, ch 116, §3](#)

#### **161A.35 Installments.**

If the owner of any premises against which a levy exceeding five hundred dollars has been made and certified shall, within thirty days from the date of such levy, agree in writing in a separate agreement, that in consideration of having a right to pay the owner's assessment in installments, the owner will not make any objection as to the legality of the assessment for benefit, or the levy of the taxes against the owner's property, then such owner shall have the following options:

1. To pay one half of the amount of such assessment at the time of filing such agreement and the remaining one half shall become due and payable one year from the date of filing such agreement. All such installments shall be without interest if paid at said times, otherwise said assessments shall bear interest from the date of the levy at a rate fixed by the governing body of the subdistrict, but not exceeding that permitted by chapter 74A, payable annually, and be collected as other taxes on real estate, with like penalty for delinquency.

2. To pay such assessments in not less than ten nor more than forty equal installments, the number to be fixed by the governing body of the subdistrict and interest at the rate fixed by the governing body of the subdistrict, not exceeding that permitted by chapter 74A. The first installment of each assessment shall become due and payable at the September semiannual tax paying date after the date of filing such agreement, unless the agreement is filed with the county treasurer less than ninety days prior to such September semiannual tax paying date, in that event, the first installment shall become due and payable at the next succeeding September semiannual tax paying date. The second and each subsequent installment shall become due and payable at the September semiannual tax paying date each year thereafter. All such installments shall be collected with interest accrued on the unpaid balance to the September semiannual tax paying date and as other taxes on real estate, with like penalty for delinquency.

[C62, 66, 71, 73, 75, 77, 79, 81, §467A.35]

[98 Acts, ch 1107, §1](#)

[; 99 Acts, ch 83, §1](#)

[; 2012 Acts, ch 1138, §94](#)

#### **161A.36 Option by appellant.**

When an owner takes an appeal from the assessment against any of the owner's land, the option to pay in installments whatever assessment is finally established against such land in said appeal shall continue, if within twenty days after the final determination of said appeal the owner shall file in the office of the auditor the owner's written election to pay in installments, and within said period pay such installments as would have matured prior to that time if no appeal had been taken, together with all accrued interest on said assessment to the last preceding interest-paying date.

[C62, 66, 71, 73, 75, 77, 79, 81, §467A.36]

C93, §161A.36

#### **161A.37 Status of classification.**

A classification of land for watershed purposes, when finally adopted, shall remain the basis of all future assessments for the purpose of said subdistrict, except as provided in section 161A.38.

[C62, 66, 71, 73, 75, 77, 79, 81, §467A.37]

C93, §161A.37

**161A.38 New classification.**

After a subdistrict has been established and the improvements thereof constructed and put in operation, if the governing body shall find that the original assessments are not equitable as a basis for the expenses of any enlargement or extension thereof which may have become necessary, they shall order a new classification of all lands in said subdistrict by resolution, and appoint three appraisers, which shall meet the same requirements as set forth in section 161A.23.

Upon the completion of the reclassification, those affected by such reclassification shall have the right to appeal as hereinabove set forth.

[C62, 66, 71, 73, 75, 77, 79, 81, §467A.38]

C93, §161A.38

**161A.39 Benefit of whole subdistrict.**

Assessments for repair, alteration, enlargement, extension, and operation of works of improvement within the watershed district shall be a benefit to the entire subdistrict and levied as such.

[C62, 66, 71, 73, 75, 77, 79, 81, §467A.39]

C93, §161A.39

**161A.40 Compensation of appraisers.**

Persons appointed to appraise and make classifications of lands shall receive such compensation as the governing body may fix and in addition thereto, the necessary expenses of transportation of said persons while engaged in their work; such compensation and expenses shall be construed as part of the cost of the subdistrict which shall be included when considering classifications of lands within a subdistrict.

[C62, 66, 71, 73, 75, 77, 79, 81, §467A.40]

C93, §161A.40

**161A.41 Election of taxing methods.**

Subdistricts organized under the provisions of this chapter shall designate in the petition which of the taxing methods will be used or may stipulate that both methods are contemplated for use. Should the governing body of the subdistrict find it desirable to change from a special annual tax to special benefit assessments it may elect to do so and shall institute proceedings described in sections 161A.23 through 161A.40 and may divert any moneys already collected under section 161A.20, for the purposes authorized in this chapter.

[C62, 66, 71, 73, 75, 77, 79, 81, §467A.41]

C93, §161A.41

SUBCHAPTER V

SOIL AND WATER CONSERVATION PRACTICES

PART 1

DUTIES AND OBLIGATIONS

**161A.42 Definitions.**

In addition to the definitions established by section 161A.3, as used in this subchapter, unless the context otherwise requires:

1. “*Agricultural land*” has the meaning assigned that term by section 9H.1.
2. “*Conservation agreement*” means a commitment by the owner or operator of a farm unit to implement a farm unit soil conservation plan or, with the approval of the commissioners of the soil and water conservation district within which the farm unit is located, a portion of a farm unit soil conservation plan. The commitment shall be conditioned on the furnishing by the soil and water conservation district of technical or planning assistance in the establishment of, and cost sharing or other financial assistance for establishment and maintenance of the soil and water conservation practices necessary to implement the plan, or a portion of the plan.
3. “*Cost-share*” or “*cost-sharing*” means a contribution of money made by the state in order to pay a percentage of the costs related to the establishment of voluntary or mandatory practices as provided under this chapter, including but not limited to soil and water conservation practices and erosion control practices.

4. “*Erosion control practices*” means:

a. The construction or installation, and maintenance, of such structures or devices as are necessary to carry to a suitable outlet from the site of any building housing four or more residential units, any commercial or industrial development or any publicly or privately owned recreational or service facility of any kind, not served by a central storm sewer system, any water which:

(1) Would otherwise cause erosion in excess of the applicable soil loss limit; and

(2) Does not carry nor constitute sewage, industrial waste, or other waste as defined by section 455B.171.

b. The employment of temporary devices or structures, temporary seeding, fibre mats, plastic, straw, or other measures adequate to prevent erosion in excess of the applicable soil loss limits from the site of, or land directly affected by, the construction of any public or private street, road or highway, any residential, commercial, or industrial building or development, or any publicly or privately owned recreational or service facility of any kind, at all times prior to completion of such construction.

c. The establishment and maintenance of vegetation upon the right-of-way of any completed portion of any public street, road, or highway, or the construction or installation thereon of structures or devices, or other measures adequate to prevent erosion from the right-of-way in excess of the applicable soil loss limits.

5. “*Farm unit*” means a single contiguous tract of agricultural land, or two or more adjacent tracts of agricultural land, located within a single soil and water conservation district, upon which farming operations are being conducted by a person who owns or is purchasing or renting all of the land, or by that person’s tenant or tenants. If a landowner has multiple farm tenants, the land on which farming operations are being conducted by each tenant is a separate farm unit. This definition does not prohibit land which is within a single soil and water conservation district and is owned or being purchased by the same person, or is being rented by the same tenant, from being treated as two or more farm units if the commissioners of the soil and water conservation district deem it preferable to do so.

6. “*Farm unit soil conservation plan*” means a plan jointly developed by the owner and, if appropriate, the operator of a farm unit and the commissioners of the soil and water conservation district within which that farm unit is located, identifying those permanent soil and water conservation practices and temporary soil and water conservation practices the use of which may be expected to prevent soil loss by erosion from that farm unit in excess of the applicable soil loss limit or limits. The plan shall if practicable identify alternative practices by which this objective may be attained.

7. “*Forest*” means stands of native or introduced trees containing at least two hundred trees per acre and located on privately owned land. However, a stand of fruit trees is not a forest.

8. “*Professional forester*” means a forestry graduate of an institution of higher learning, who has a minimum of two years of forest management experience.

9. “*Soil and water conservation practices*” means any of the practices designated in or pursuant to this subsection which serve to prevent erosion of soil by wind or water, in excess of applicable soil loss limits, from land used for agricultural or horticultural purposes only.

a. “*Permanent soil and water conservation practices*” means planting of perennial grasses, legumes, shrubs, or trees, the establishment of grassed waterways, and the construction of terraces, or other permanent soil and water practices approved by the committee.

b. “*Temporary soil and water conservation practices*” means planting of annual or biennial crops, use of strip-cropping, contour planting, or minimum or mulch tillage, and any other cultural practices approved by the committee.

10. “*Soil loss limit*” means the maximum amount of soil loss due to erosion by water or wind, expressed in terms of tons per acre per year, which the commissioners of the respective soil and water conservation districts determine is acceptable in order to meet the objectives expressed in section 161A.2.

11. “*State forester*” means a person employed by the department of natural resources as required by section 456A.13.

[C73, 75, 77, 79, 81, §467A.42]

86 Acts, ch 1238, §40  
; 86 Acts, ch 1245, §655, 656  
; 87 Acts, ch 23, §30  
; 88 Acts, ch 1134, §88  
; 89 Acts, ch 106, §4  
; 92 Acts, ch 1184, §2, 3

94 Acts, ch 1107, §8  
; 2012 Acts, ch 1095, §11, 12  
; 2016 Acts, ch 1011, §121

Code editor directive applied

#### **161A.43 Duty of property owners — liability.**

To conserve the fertility, general usefulness, and value of the soil and soil resources of this state, and to prevent the injurious effects of soil erosion, it is hereby made the duty of the owners of real property in this state to establish and maintain soil and water conservation practices or erosion control practices, as required by the regulations of the commissioners of the respective soil and water conservation districts. As used in this section, “*owners of real property in this state*” includes each state government agency, each political subdivision of the state and each agency of such a political subdivision which has under its



control publicly owned land, including but not limited to agricultural land, forests, parks, the grounds of state educational, penal and human service institutions, public highways, roads and streets, and other public rights-of-way.

A landowner shall not be liable for a claim based upon or arising out of a claim of negligent design or specification, negligent adoption of design or specification, or negligent installation, construction, or reconstruction of a soil and water conservation practice or an erosion control practice that was installed, constructed, or reconstructed in accordance with generally recognized engineering or safety standards, criteria, or design theory in existence at the time of the installation, construction, or reconstruction. A soil and water conservation practice or an erosion control practice installed, constructed, or reconstructed in compliance with rules adopted by the division and currently in effect shall be deemed to be installed, constructed, or reconstructed according to generally recognized engineering or safety standards, criteria, or design theory in existence at the time of the installation, construction, or reconstruction. A claim shall not be allowed for failure to upgrade, improve, or alter any aspect of an existing soil and water conservation practice or erosion control practice to a new, changed, or altered design standard. This paragraph does not apply to a claim based on a failure of a landowner to upgrade, improve, or alter a soil and water conservation practice or erosion control practice in violation of law. This paragraph does not apply to claims based upon gross negligence.

[C73, 75, 77, 79, 81, §467A.43]

[92 Acts, ch 1184, §4](#)

;

[92 Acts, ch 1239, §50](#)

C93, §161A.43

[94 Acts, ch 1023, §16](#)

#### **161A.44 Rules by commissioners — scope.**

The commissioners of each soil and water conservation district shall, with approval of and within time limits set by administrative order of the state soil conservation committee, adopt reasonable regulations as are deemed necessary to establish a soil loss limit or limits for the district and provide for the implementation of the limit or limits, and may subsequently amend or repeal their regulations as they deem necessary. The committee shall review the soil loss limit regulations adopted by the soil and water conservation districts at least once every five years, and shall recommend changes in the regulations of a soil and water conservation district which the committee deems necessary to assure that the district's soil loss limits are reasonable and attainable. The commissioners may:

1. Classify land in the district on the basis of topography, soil characteristics, current use, and other factors affecting propensity to soil erosion.

2. Establish different soil loss limits for different classes of land in the district if in their judgment and that of the state soil conservation committee a lower soil loss limit should be applied to some land than can reasonably be applied to other land in the district, it being the intent of the general assembly that no land in the state be assigned a soil loss limit that cannot reasonably be applied to such land.

3. Require the owners of real property in the district to employ either soil and water conservation practices or erosion control practices, and:

- a. May not specify the particular practices to be employed so long as such owners voluntarily comply with the applicable soil loss limits established for the district.

- b. May specify two or more approved soil and water conservation practices or erosion control practices, one of which shall be employed by the landowner to bring erosion from land under the landowner's control within the applicable soil loss limit of the district when an administrative order is issued to the landowner.

- c. In no case may the commissioners require:

- (1) The employment of erosion control practices as defined in section 161A.42, subsection 4, on land used in good faith for agricultural or horticultural purposes only.

- (2) The employment of soil and water conservation practices or erosion control practices on that portion of any public street, road or highway completed or under construction within the corporate limits of any city, which is or will become the traveled or surfaced portion of such street, road, or highway.

- (3) That any owner or operator of agricultural land refrain from fall plowing of land on which the owner or operator intends to raise a crop during the next succeeding growing season, however on those lands which are prone to excessive wind erosion the commissioners may require that reasonable temporary measures be taken to minimize the likelihood of wind erosion so long as such measures do not unduly increase the cost of operation of the farm on which the land is located. However, fall plowing of soil which is commonly known as gumbo shall always be permitted.

- d. May require that a person under an order to employ soil and water conservation practices or erosion control practices submit up to three bids to the commissioners for the work and provide an explanation to the commissioners if a bid other than the lowest bid has been selected by that person.

[C73, 75, 77, 79, 81, §467A.44]

[83 Acts, ch 45, §1](#)

;

[86 Acts, ch 1245, §657](#)

;

[87 Acts, ch 23, §31](#)

;  
89 Acts, ch 106, §5  
C93, §161A.44

**161A.45 Submission of regulations to committee — hearing.**

Regulations which the commissioners propose to adopt, amend, or repeal shall be submitted to the committee, in a form prescribed by the committee, for its approval. The committee may approve the regulations as submitted, or with amendments as it deems necessary. The commissioners shall, after approval, publish notice of hearing on the proposed regulations, as approved, in a newspaper of general circulation in the district, setting a date and time not less than ten nor more than thirty days after the publication when a hearing on the proposed regulations will be held at a specified place. The notice shall include the full text of the proposed regulations or shall state that the proposed regulations are on file and available for review at the office of the affected soil and water conservation district.

[C73, 75, 77, 79, 81, §467A.45]

86 Acts, ch 1245, §658

;  
87 Acts, ch 23, §32

;  
89 Acts, ch 106, §6  
C93, §161A.45

**161A.46 Conduct of hearing.**

At the hearing, the commissioners or their designees shall explain, in reasonable detail, the reasons why adoption, amendment, or repeal of the regulations is deemed necessary or advisable. Any landowner, or any occupant of land who would be affected by the regulations, shall be afforded an opportunity to be heard for or against the proposed regulations. At the conclusion of the hearing, the commissioners shall announce and enter of record their decision whether to adopt or modify the proposed regulations. Any modification must be approved by the committee, which may at its discretion order the commissioners to republish the regulations and hold another hearing in the manner prescribed by this chapter.

[C73, 75, 77, 79, 81, §467A.46]

86 Acts, ch 1245, §659

;  
89 Acts, ch 106, §7  
C93, §161A.46

**161A.47 Inspection of land on complaint.**

1. The commissioners shall inspect or cause to be inspected any land within the district to determine if land is being damaged by sediment, from soil erosion occurring on neighboring land in excess of the limits established by the district's soil erosion control regulations. If the land is privately owned, the commissioners shall make or cause to be made the inspection, upon receiving a written complaint signed by an owner or occupant of land claiming that the owner's or occupant's land is being damaged by sediment. If the land is subject to a public interest, the commissioners shall make or cause to be made the inspection upon a majority vote of commissioners at an open meeting held pursuant to chapter 21. Land is subject to a public interest if the land is publicly held, subject to an easement held by the public, or the subject of an improvement made at public expense.

2. If, after the inspection, the commissioners find that sediment damages are occurring to land which is owned or occupied by the person filing the complaint or subject to a public interest, and that excess soil erosion is occurring on neighboring land, the commissioners shall issue an administrative order to the landowner or landowners of record, and to the occupant of the land if known to the commissioners. The order shall describe the land and state as nearly as possible the extent to which soil erosion on the land exceeds the limits established by the district's regulations.

3. The order shall be delivered either by personal service or by restricted certified mail to each of the persons to whom it is directed, and shall:

*a.* In the case of erosion occurring on the site of any construction project or similar undertaking involving the removal of all or a major portion of the vegetation or other cover, exposing bare soil directly to water or wind, state a time not more than five days after service or mailing of the notice of the order when work necessary to establish or maintain erosion control practices must be commenced, and a time not more than thirty days after service or mailing of the notice of the order when the work is to be satisfactorily completed.

*b.* In all other cases, state a time not more than six months after service or mailing of the notice of the order, by which work needed to establish or maintain the necessary soil and water conservation practices or erosion control measures must be commenced, and a time not more than one year after the service or mailing of the notice of the order when the work is to be satisfactorily completed, unless the requirements of the order are superseded by the provisions of section 161A.48.

[C73, 75, 77, 79, 81, §467A.47]

87 Acts, ch 23, §33

;  
92 Acts, ch 1057, §1  
C93, §161A.47  
2009 Acts, ch 41, §202

**161A.48 Mandatory establishment of soil and water conservation practices.**

1. An owner or occupant of agricultural land in this state is not required to establish any new permanent or temporary soil and water conservation practice unless cost-share or other public moneys have been specifically approved for that land and made available to the owner or occupant pursuant to section 161A.74.

2. Evidence that an application for cost-share or other public moneys, from a source or sources having authority to pay a portion of the cost of work needed to comply with an administrative order issued pursuant to section 161A.47, has been submitted to the proper officer or agency constitutes commencement of the work within the meaning of sections 161A.43 through 161A.53.

3. Upon receiving evidence of the submission of an application, the commissioners shall forward to the officer or agency to which the application was made a written request to receive notification of the disposition of the application. When notified of the approval of the application, the commissioners shall issue to the same parties who received the original administrative order, or their successors in interest, a supplementary order, to be delivered in the same manner as provided by sections 161A.43 to 161A.53 for delivery of original administrative orders. The supplementary order shall state a time, not more than six months after approval of the application for public cost-sharing funds, by which the work needed to comply with the original administrative order shall actually be commenced, and a time thereafter when the work is to be satisfactorily completed. If feasible, that time shall be within one year after the date of the supplementary order, but the owner of land on which a soil and water conservation practice is being established under this section is not required to incur a cost for the practice in any one calendar year which exceeds ten dollars per acre for each acre of land belonging to that owner and located in the county containing the land on which the required practice is being established or in counties contiguous to that county.

[C73, 75, 77, 79, 81, §467A.48]

84 Acts, ch 1192, §1  
;  
86 Acts, ch 1245, §660  
;  
87 Acts, ch 23, §34  
;  
89 Acts, ch 106, §8  
;  
90 Acts, ch 1255, §35  
;  
90 Acts, ch 1260, §29  
;  
91 Acts, ch 268, §238  
;  
92 Acts, ch 1184, §5  
C93, §161A.48  
96 Acts, ch 1083, §3

**161A.49 Petition for court order.**

The commissioners shall petition the district court for a court order requiring immediate compliance with an administrative order previously issued by the commissioners as provided in section 161A.47, if:

1. The work necessary to comply with the administrative order is not commenced on or before the date specified in such order, or in any supplementary order subsequently issued as provided in section 161A.48, unless in the judgment of the commissioners the failure to commence or complete the work as required by the administrative order is due to factors beyond the control of the person or persons to whom such order is directed and the person or persons can be relied upon to commence and complete the necessary work at the earliest possible time.

2. Such work is not being performed with due diligence, or is not satisfactorily completed by the date specified in the administrative order, or when completed does not reduce soil erosion from such land below the limits established by the soil and water conservation district's regulations.

3. The person or persons to whom the administrative order is directed advise the commissioners that they do not intend to commence or complete such work.

[C73, 75, 77, 79, 81, §467A.49]

C93, §161A.49

**161A.50 Burden — court order.**

In any action brought under section 161A.49, the burden of proof shall be upon the commissioners to show that soil erosion is in fact occurring in excess of the applicable soil loss limits and that the defendant has not established or maintained soil and water conservation practices or erosion control practices in compliance with the soil and water conservation district's regulations. With respect to construction, repair, or maintenance of any public street, road, or highway, evidence that soil erosion control standards equivalent to or in excess of those currently imposed by the United States government on the project or like projects involving use of federal funds shall create a presumption of compliance with the applicable soil loss limit. Upon receiving satisfactory proof, the court shall issue an order directing the landowner or landowners to comply with the administrative order previously issued by the commissioners. The court may modify such administrative order if deemed necessary. Notice of the court order shall be given either by personal service or by restricted certified mail to each of the persons to whom the order is directed, who may within thirty days from the date of the court order appeal to the supreme court. Any person who fails to comply with a court order issued pursuant to this section within the time specified in such order, unless the order has been stayed pending an appeal, shall be deemed in contempt of court and may be punished accordingly.

[C73, 75, 77, 79, 81, §467A.50]

C93, §161A.50

**161A.51 Entering on land.**

The commissioners and their authorized agents or employees may enter upon any private or public property, except private dwellings, at any reasonable time to classify land by soil sampling or other appropriate methods or to determine whether soil erosion is occurring on the property in violation of the district's regulations.

1. If the owner or occupant of any property refuses admittance, or if prior to such refusal the commissioners demonstrate the need for a warrant, the commissioners may make an application under oath or affirmation to the district court of the county in which the property is located for the issuance of a search warrant.

2. In the application the commissioners shall state that entry on the premises is mandated by the laws of this state or that entry is needed to conduct soil sampling necessary to classify soil in the district as specified in section 161A.44, subsection 1, or to determine whether soil erosion is occurring on the property in violation of the district's regulations. The application shall describe the area or premises, give the date of the last known investigation or sampling, give the date and time of the proposed inspection, declare the need for such inspection, recite that notice of desire to make an inspection has been given to affected persons and that admission was refused if that be the fact, and state that the inspection has no purpose other than to carry out the purpose of the statute, ordinance or regulation pursuant to which the inspection is to be made.

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

4. In soil sampling and making investigations pursuant to a warrant, the commissioners must execute the warrant in a reasonable manner within the time period specified in the warrant.

[C73, 75, 77, 79, 81, §467A.51]

**161A.52 Reserved.****161A.53 Cooperation with other agencies.**

Soil and water conservation districts may enter into agreements with the federal government or an agency of the federal government, as provided by state law, or with the state of Iowa or an agency of the state, any other soil and water conservation district, or any other political subdivision of this state, for cooperation in preventing, controlling, or attempting to prevent or control soil erosion. Soil and water conservation districts may accept, as provided by state law, money disbursed for soil erosion control purposes by the federal government or an agency of the federal government, and expend the money for the purposes for which it was received.

[C73, 75, 77, 79, 81, §467A.53]

86 Acts, ch 1238, §61

;

87 Acts, ch 23, §35

;

89 Acts, ch 83, §59

C93, §161A.53

**161A.54 State agency conservation plans — exemptions.**

Each state agency shall enter into an agreement with the soil and water conservation district in which the state agency has public land under its control in cultivation. The agreement shall contain a plan of the state agency to prevent soil erosion in excess of soil loss limits by the use of soil and water conservation practices and erosion control practices. This section applies to all public land which is used for horticultural or agricultural purposes. State soil conservation cost-sharing funds shall not be used on these public lands. Conservation plans required by this section shall be completed by July 1, 1986, and implementation shall occur

consistent with the schedule contained in the conservation plan. Application for exemption from this section may be submitted to the appropriate soil and water conservation district. The exemption shall be granted for land upon which soil management research for the purposes of the study, evaluation, understanding and control of erosion, sedimentation and run-off water is conducted by or in conjunction with institutions governed by the board of regents.

85 Acts, ch 133, §1

CS85, §467A.54

87 Acts, ch 23, §36

C93, §161A.54

**161A.55 through 161A.60**Reserved.

**161A.61 Discretionary inspection by commissioners — actions upon certain findings.**

1. In addition to the authority granted by section 161A.47, the commissioners of a soil and water conservation district may inspect or cause to be inspected any land within the district on which they have reasonable grounds to believe that soil erosion is occurring in excess of the limits established by the district's soil erosion control regulations. If the commissioners find from an inspection conducted under authority of either section 161A.47 or this section that soil erosion is occurring on that land in excess of the applicable soil loss limits established by the district's soil erosion control regulations, they shall send notice of that finding to the landowner or landowners of record, and to the occupant of the land if known to the commissioners. The notice shall describe the land affected and shall state as nearly as possible the extent to which soil erosion from that land exceeds the applicable soil loss limits.

*a.* If the commissioners find that the excessive erosion described in the notice is not causing sediment damage to property owned or occupied by any person other than the owner or occupant of the land on which the excessive soil erosion is occurring, and that the rate of the excessive erosion is less than twice the applicable soil loss limit, the notice required by this subsection shall include or be accompanied by information regarding financial or other assistance which the commissioners are able to make available to the owner or occupant of the land to aid in achieving compliance with the applicable soil loss limits.

*b.* If the commissioners find that the excessive soil erosion described in the notice is not causing sediment damage to property owned or occupied by any person other than the owner or occupant of the land on which it is occurring, but that the erosion is occurring at a rate equal to or greater than twice the applicable soil loss limit, the notice shall so state, shall include or be accompanied by the information required by paragraph "a" of this subsection, and shall be delivered by personal service or by restricted certified mail to each of the persons to whom the notice is directed. A notice given under this paragraph shall also include or be accompanied by information explaining the provisions of subsection 2.

2. The commissioners of the soil and water conservation district in which a farm unit is located may petition the district court for an appropriate order with respect to that farm unit if its owner or occupant has been sent a notice by the commissioners under subsection 1, paragraph "b", for three or more consecutive years. The commissioners' petition shall seek a court order which states a time not more than six months after the date of the order when the owner or occupant must commence, and a time when the owner or occupant must complete the steps necessary to comply with the order. The time allowed to complete the establishment of a temporary soil and water conservation practice employed to comply or advance toward compliance with the court's order shall be not more than one year after the date of that order, and the time allowed to complete the establishment of a permanent soil and water conservation practice employed to comply with the court's order shall be not more than five years after the date of that order. Section 161A.48 applies to a court order issued under this subsection. The steps required of the farm unit owner or operator by the court order are those which are necessary to do one of the following:

*a.* Bring the farm unit which is the subject of the order into compliance with its farm unit soil conservation plan, if such a plan had been agreed upon prior to the time the commissioners petitioned for the order.

*b.* Bring the farm unit which is the subject of the order into compliance with a plan developed for that farm unit by the commissioners, in accordance with guidelines established by the division, and presented to the court as a part of the commissioners' petition, if a farm unit soil conservation plan has not previously been agreed upon for that farm unit. A plan presented to the court by the commissioners under this paragraph shall specify as many alternative approved soil and water conservation practices as feasible, among which the owner or occupant of the farm unit may choose in taking the steps necessary to comply with the court's order.

*c.* Bring the farm unit which is the subject of the order into compliance with a soil conservation plan developed by the owner or occupant of that farm unit as an alternative to the proposed soil conservation plan developed by the commissioners, if the owner or occupant so petitions the court and the court finds that the owner or occupant's plan will bring the farm unit into conformity with the applicable soil loss limits of the district.

3. The commissioners may also cause an inspection of land within the district on which they have reasonable grounds to believe that a permanent soil and water conservation practice established with public cost-sharing funds is not being properly maintained or is being altered in violation of section 161A.7, subsection 3. If the commissioners find that the practices are not being maintained or have been altered in violation of section 161A.7, subsection 3, the commissioners shall issue an administrative order to the landowner who made the unauthorized removal, alteration or modification to maintain, repair, or reconstruct the permanent soil and water conservation practices. The requirement for maintenance and repair is for the length of life as defined in section 161A.7, subsection 3. Public cost-sharing funds are not available for the work under this order. If the landowner fails to comply with the administrative order, the commissioners may petition the district court for an order compelling compliance with the order. Upon receiving satisfactory proof, the court shall issue an order directing compliance with the administrative order and

may modify the administrative order. The provisions of section 161A.50 relating to notice, appeals, and contempt of court shall apply to proceedings under this subsection.

[C81, §467A.61;  
82 Acts, ch 1220, §2  
]  
87 Acts, ch 23, §37, 38

2009 Acts, ch 41, §61  
; 2012 Acts, ch 1095, §13  
; 2013 Acts, ch 90, §32  
; 2015 Acts, ch 103, §33

**161A.62 Duties of commissioners and of owners and occupants of agricultural land — restrictions on use of cost-sharing funds.**

The commissioners of each soil and water conservation district shall seek to implement or to assist in implementing the following requirements:

1. The commissioners of each soil and water conservation district shall complete preparation of a farm unit soil conservation plan for each farm unit within the district as soon as adequate funding is available to permit compliance with this requirement.

a. Technical assistance in the development of the farm unit soil conservation plan may be provided by the United States department of agriculture natural resources conservation service through the memorandum of understanding with the district or by the department. The commissioners shall make every reasonable effort to consult with the owner and, if appropriate, with the operator of that farm unit, and to prepare the plan in a form which is acceptable to that person or those persons.

b. The farm unit soil conservation plan shall be drawn up and completed without expense to the owner or operator of the farm unit, except that the owner or operator shall not be reimbursed for the value of the owner's or occupant's own time devoted to participation in the preparation of the plan.

c. If the commissioners' farm unit soil conservation plan is unacceptable to the owner or operator of the farm unit, that person or those persons may prepare an alternative farm unit soil conservation plan identifying permanent or temporary soil and water conservation practices which may be expected to achieve compliance with the soil loss limit or limits applicable to that farm unit, and submit that plan to the soil and water conservation district commissioners for their review.

2. Within one year after completion of a farm unit soil conservation plan for a particular farm unit which is acceptable both to the commissioners of the soil and water conservation district within which the farm unit is located and to the owner and, if appropriate, to the operator of that farm unit, the commissioners shall offer to enter into a soil conservation agreement with the owner, and also with the operator if appropriate, based on the mutually acceptable farm unit soil conservation plan.

[C81, §467A.62;  
81 Acts, ch 153, §1  
]  
86 Acts, ch 1238, §22  
; 87 Acts, ch 17, §10  
; 87 Acts, ch 23, §39

95 Acts, ch 216, §25  
; 2012 Acts, ch 1095, §14, 15

**161A.63 Right of purchaser of agricultural land to obtain information.**

A prospective purchaser of an interest in agricultural land located in this state is entitled to obtain from the seller, or from the office of the soil and water conservation district in which the land is located, a copy of the most recently updated farm unit soil conservation plan, developed pursuant to section 161A.62, subsection 1, which is applicable to the agricultural land proposed to be purchased. A prospective purchaser of an interest in agricultural land located in this state is entitled to obtain additional copies of the document referred to in this section from the office of the soil and water conservation district in which the land is located, promptly upon request, at a fee not to exceed the cost of reproducing them. All persons who identify themselves to the commissioners or staff of a soil and water conservation district as prospective purchasers of agricultural land in the district shall be given information, prepared in accordance with rules of the department, which clearly explains the provisions of section 161A.76.

[C81, §467A.63]  
87 Acts, ch 23, §40

2012 Acts, ch 1095, §16  
; 2012 Acts, ch 1138, §55

**161A.64 Erosion control plans required for certain projects.**

1. If a political subdivision has adopted a sediment control ordinance which the commissioners and the political subdivision



jointly agree is at least as equally effective as the commissioners' rules in preventing erosion from exceeding the established soil loss limits, the commissioners and the political subdivision shall execute an agreement under chapter 28E allowing an agency authorized by the political subdivision to receive and file an affidavit from a person, prior to initiating a land disturbing activity in that subdivision, stating that the proposed activity will not exceed the established soil loss limits. A copy of the affidavit shall be mailed to the district as a part of the terms of the agreement. The affidavit shall be in a form prescribed by the department and made available by the district.

2. Prior to initiating a land disturbing activity in a political subdivision which has not adopted sediment control ordinances as described in subsection 1, a person engaged in the land disturbing activity shall file a signed affidavit with the soil and water conservation district that the project will not exceed the soil loss limits. The affidavit shall be in a form prescribed by the department and made available by the district.

3. For the purposes of this section, "*land disturbing activity*" means a land change such as the tilling, clearing, grading, excavating, transporting or filling of land which may result in soil erosion from water or wind and the movement of sediment and sediment related pollutants into the waters of the state or onto lands in the state but does not include the following:

- a. Tilling, planting or harvesting of agricultural, horticultural or forest crops.
  - b. Preparation for single-family residences separately built unless in conjunction with multiple construction in subdivision development.
  - c. Minor activities such as home gardens, landscaping, repairs and maintenance work.
  - d. Surface or deep mining.
  - e. Installation of public utility lines and connections, fence posts, sign posts, telephone poles, electric poles and other kinds of posts or poles.
  - f. Septic tanks and drainage fields unless they are to serve a building whose construction is a land disturbing activity.
  - g. Construction and repair of the tracks, right-of-way, bridges, communication facilities and other related structures of a railroad.
  - h. Emergency work to protect life or property.
  - i. Disturbed land areas of less than twenty-five thousand square feet unless a political subdivision by ordinance establishes a smaller exception or establishes conditions for this exception.
  - j. The construction, relocation, alteration or maintenance of public roads by a public body.
4. If the agency authorized under subsection 1 determines that a land disturbing activity is not being conducted in compliance with the soil loss limits, it shall file a written and signed complaint with the soil and water conservation district commissioners. The complaint shall have the same effect and validity as a complaint filed by an owner or occupant of land being damaged by sediment pursuant to section 161A.47. If the affidavit is filed with the district or the political subdivision, the commissioners may proceed on their own complaint. The soil and water conservation district commissioners may issue an administrative order as provided in that section to the person conducting the land disturbing activity.

[C81, §467A.64;

81 Acts, ch 154, §1, 2

]

87 Acts, ch 23, §41

C93, §161A.64

**161A.65** Reserved.

**161A.66 Procedure when commissioner is complainant.**

A soil and water conservation district commissioner who is an owner or occupant of land being damaged by sediment has the same right as any other person in like circumstances to file a complaint under section 161A.47; however, a commissioner who is the complainant shall not vote on the question whether, on the basis of the inspection made pursuant to the complaint, the commissioners shall issue an administrative order under section 161A.47.

[C81, §467A.66]

87 Acts, ch 23, §43

C93, §161A.66

**161A.67 through 161A.69**Reserved.

## PART 2 FINANCIAL INCENTIVES

**161A.70 Establishment and purpose.**

Financial incentive programs are established within the division in order to protect the long-term productivity of the soil and water resources of the state from erosion and sediment damage, and to encourage the adoption of farm management and

agricultural practices which are consistent with the capability of the land to sustain agriculture and preserve this state's natural resources.

[92 Acts, ch 1184, §6](#)

#### **161A.71 Conservation practices revolving loan fund.**

1. The division may establish a conservation practices revolving loan fund composed of any money appropriated by the general assembly for that purpose, and of any other moneys available to and obtained or accepted by the committee from the federal government or private sources for placement in that fund. Except as otherwise provided by subsection 3, the assets of the conservation practices revolving loan fund shall be used only to make loans directly to owners of land in this state for the purpose of establishing on that land any new permanent soil and water conservation practice which the commissioners of the soil and water conservation district in which the land is located have found is necessary or advisable to meet the soil loss limits established for that land. A loan shall not be made for establishing a permanent soil and water conservation practice on land that is subject to the restriction on state cost-sharing funds of section 161A.76. Revolving loan funds and public cost-sharing funds may be used in combination for funding a particular soil and water conservation practice. Each loan made under this section shall be for a period not to exceed ten years, shall bear no interest, and shall be repayable to the conservation practices revolving loan fund in equal yearly installments due March 1 of each year the loan is in effect. The interest rate upon loans for which payment is delinquent shall accelerate immediately to the current legal usury limit. Applicants are eligible for no more than twenty thousand dollars in loans outstanding at any time under this program. "*Permanent soil and water conservation practices*" has the same meaning as defined in section 161A.42 and those established under this program are subject to the requirements of section 161A.7, subsection 3. Loans made under this program shall come due for payment upon sale of the land on which those practices are established.

2. The general assembly finds and declares the following:

a. The erosion of topsoil on agricultural land by wind and water is a serious problem within the state and one which threatens to destroy the natural resource most responsible for Iowa's prosperity.

b. It is necessary to the preservation of the economy and well-being of the state to encourage soil conservation practices by providing loans for permanent soil and water conservation practices on agricultural land within the state.

c. The use of state funds for the conservation practices revolving loan fund established under subsection 1 is in the public interest, and the purposes of this section are public purposes and uses for which public moneys may be borrowed, expended, advanced, loaned, or granted.

3. The division may:

a. Contract, sue and be sued, and promulgate administrative rules necessary to carry out the provisions of this section, but the committee shall not in any manner directly or indirectly pledge the credit of the state of Iowa.

b. Authorize payment from the conservation practices revolving loan fund and from fees for costs, commissions, attorney fees and other reasonable expenses related to and necessary for making and protecting direct loans under this section, and for the recovery of moneys loaned or the management of property acquired in connection with such loans.

4. This section does not negate the provisions of section 161A.48 that an owner or occupant of land in this state shall not be required to establish any new soil and water conservation practice unless public cost-sharing funds have been approved and are available for the land affected. However, the owner of land with respect to which an administrative order to establish soil and water conservation practices has been issued under section 161A.47 but not complied with for lack of public cost-sharing funds, may waive the right to await availability of such funds and instead apply for a loan under this section to establish any permanent soil and water conservation practices necessary to comply with the order. If a landowner does so, that loan application shall be given reasonable preference by the state soil conservation committee if there are applications for more loans under this section than can be made from the money available in the conservation practices revolving loan fund. If it is found necessary to deny an application for a soil and water conservation practices loan to a landowner who has waived the right to availability of public cost-sharing funds before complying with an administrative order issued under section 161A.47, the landowner's waiver is void.

[83 Acts, ch 207, §53, 93](#)

[85 Acts, ch 67, §46](#)

[; 85 Acts, ch 170, §1](#)

[; 86 Acts, ch 1244, §58](#)

[; 86 Acts, ch 1245, §661](#)

[; 87 Acts, ch 23, §44](#)

[; 91 Acts, ch 260, §1234](#)

[2013 Acts, ch 15, §1](#)

#### **161A.72 Administration.**

1. Financial incentives provided under this chapter shall be administered by the division. The incentives shall be supported with funds appropriated by the general assembly, and moneys available to or obtained by the division or the committee from public or private sources, including but not limited to the United States, other states, or private organizations. The division shall adopt all rules consistent with chapter 17A necessary to carry out the purpose of this subchapter as provided in section 161A.70.

2. The commissioners of a district shall, to the extent funding is available, contract with a person who is an owner or occupant



of land within the district applying to establish soil and water conservation practices as provided in this chapter. Under the agreement, the person shall receive financial incentives to establish permanent soil and water conservation practices and management practices, in consideration for promising to maintain the practices according to rules adopted by the division. If the land subject to an agreement is converted to a nonagricultural use that does not require a permanent soil and water conservation practice which has been established with financial incentives, the permanent soil and water conservation practice shall not be removed until the owner pays an amount to the district, which shall be deposited into a fund established by the district for use in providing financial incentives under this chapter. The amount shall be a prorated share of the amount paid in financial incentives to establish the practice, as provided in rules adopted by the division.

92 Acts, ch 1184, §7

; 96 Acts, ch 1083, §4

; 2016 Acts, ch 1011, §38

Subsection 1 amended

#### **161A.73 Voluntary establishment of soil and water conservation practices.**

1. The division shall establish voluntary financial incentive programs which shall provide for the following:

*a.* The allocation of cost-share moneys as financial incentives provided for the purpose of establishing permanent soil and water conservation practices, including but not limited to terraces, diversions, grade stabilization structures, grassed waterways, and critical area planting. The financial incentives shall not exceed fifty percent of the estimated cost of establishing the practices, or fifty percent of the actual cost, whichever is less.

*b.* The allocation of moneys as financial incentives provided for the purpose of establishing management practices to control soil erosion on land that is row cropped, including but not limited to no-till planting, ridge-till planting, contouring, and contour strip-cropping. The division shall by rule establish limits on the amount of incentives which shall be authorized for payment to landowners upon establishment of the practice.

*c.* The allocation of cost-share moneys as financial incentives provided to establish practices to protect watersheds above publicly owned lakes of the state from soil erosion and sediment. The financial incentives shall be awarded to watersheds which are of the highest importance based on soil loss as established by the natural resource commission pursuant to section 456A.33A. The financial incentives shall not exceed seventy-five percent of the estimated cost of establishing the practices as determined by the commissioners or seventy-five percent of the actual cost of establishing the practices, whichever is less.

*d.* The allocation of cost-share moneys as financial incentives to establish permanent grass and buffer zones, including an erosion control structure or an erosion control practice to mitigate the effects of concentrated runoff on surface water quality. The financial incentives shall not exceed one hundred percent of the estimated cost of establishing a zone, as determined by the commissioners, or one hundred percent of the actual cost of establishing the zone, whichever is less.

*e.* The allocation of cost-share moneys as financial incentives for the same purposes that are supported from the soil and water enhancement account of the resources enhancement and protection fund as provided in section 455A.19, or by the water protection practices account of the water protection fund established pursuant to section 161C.4. The financial incentives shall not exceed fifty percent of the estimated cost of establishing the practices, or fifty percent of the actual cost, whichever is less.

2. The commissioners of a district may establish voluntary financial incentive programs which shall provide for the following:

*a.* The allocation of cost-share moneys as financial incentives under a special agreement with owners of land in the district who promise to adopt a watershed conservation plan as provided by rules which shall be adopted by the division. The watershed conservation plan shall be in conjunction with the owners' respective farm unit soil conservation plans. The funding agreement must provide for the funding of a project which includes five or more contiguous farm units which have at least five hundred acres of agricultural land and which constitutes at least seventy-five percent of the agricultural land located within a watershed or subwatershed. The financial incentives shall not exceed sixty percent of the estimated cost of the project as determined by the commissioners or sixty percent of the actual cost, whichever is less.

*b.* The allocation of cost-share moneys as financial incentives to encourage summer construction of permanent soil and water conservation practices. The practices must be constructed on or after June 15 but not later than October 15. The commissioners may also provide for the payment of moneys on a prorated basis to compensate persons for the production loss on an area disturbed by construction, according to rules which shall be adopted by the division.

3. *a.* The division may reimburse private landowners for a portion of the cost of fencing materials and installation for permanent fence used to protect forest land from domestic livestock grazing, if the division determines that the grazing has caused excessive soil loss. For purposes of this subsection, forests shall be considered as agricultural land eligible for cost-share moneys. The total expenditure of reimbursement moneys shall not exceed fifty percent of the total landowner expenditures. Expenditures for boundary and road fence construction and for repair and replacement of existing fences are not eligible for reimbursement unless the complete fence is replaced.

*b.* A landowner shall sign an agreement with the division as a condition for receiving cost-share moneys. The agreement shall provide that the landowner shall maintain the fence for a minimum of ten years and shall follow written professional forester recommendations relating to land protected by fencing. The recommendations must be approved by the state forester or the forester's designee.

*c.* A landowner who violates the maintenance agreement shall maintain, repair, or reconstruct the damaged fence, or shall pay the division an amount equal to the amount of cost-share moneys reimbursed.

*d.* The division shall adopt rules to administer this subsection, including rules relating to procedures required to receive reimbursement, and eligibility requirements such as the minimum forest acreage required, and the maximum reimbursement

amount allowed.

[92 Acts, ch 1184, §8](#)  
; [92 Acts, ch 1239, §51, 52](#)  
; [96 Acts, ch 1083, §5](#)  
; [98 Acts, ch 1040, §1](#)  
; [2012 Acts, ch 1095, §17](#)

**161A.74 Mandatory establishment of soil and water conservation practices — allocations.**

1. The commissioners shall allocate cost-share moneys to establish mandatory soil and water conservation practices, as provided in sections 161A.43 through 161A.53, according to the following requirements:

a. The financial incentives shall not exceed more than fifty percent of the estimated cost of establishing the practices as determined by the commissioners, or fifty percent of the actual cost of establishing the practices, whichever is less. However, the commissioners may allocate an amount determined by the committee for management of soil and water conservation practices, except as otherwise provided regarding land classified as agricultural land under conservation cover.

b. The commissioners shall establish the estimated cost of the permanent soil and water conservation practices in the district based upon one and two-tenths of the average cost of the practices installed in the district during the previous year. The average costs shall be reviewed and approved by the commissioners each year.

2. The committee shall review requirements of this section once each year. The committee may authorize commissioners in districts to condition the establishment of a mandatory soil and water conservation practice in a specific case on a higher proportion of public cost-sharing than is required by this section. The commissioners shall determine the amount of cost-sharing moneys allocated to establish a specific soil and water conservation practice in accordance with an administrative order issued pursuant to section 161A.47 by considering the extent to which the practice will contribute benefits to the individual owner or occupant of the land on which the practice is to be established.

[92 Acts, ch 1184, §9](#)

;  
[92 Acts, ch 1239, §53, 54](#)

**161A.75 Use of moneys for emergency repairs.**

1. The commissioners of a district may allocate moneys otherwise available for voluntary financial incentive programs as provided in section 161A.73 to provide for the restoration of permanent soil and water conservation practices which are damaged or destroyed because of a disaster emergency. In providing for the restoration, the commissioners may allocate moneys under this section for construction, reconstruction, installation, or repair projects. For each project the commissioners must determine that the allocation is necessary in order to restore permanent soil and water conservation practices in order to prevent erosion in excess of the applicable soil loss limits caused by the disaster emergency.

2. In order to allocate moneys under this section, the disaster emergency must have occurred in an area subject to a state of disaster emergency pursuant to a proclamation made by the governor as provided in section 29C.6. The commissioners shall use the moneys only to the extent that moneys from other sources, including any moneys provided by the state or federal government in response to the disaster emergency, are not adequate. The commissioners are not required to allocate the moneys on a cost-share basis.

3. Following the disaster emergency, the commissioners shall submit a report to the committee providing information regarding restoration projects and moneys allocated under this section for the projects.

[97 Acts, ch 59, §2](#)

**161A.76 Cost sharing for certain lands restricted.**

1. It is the intent of this chapter that each tract of agricultural land which has not been plowed or used for growing row crops at any time within the prior fifteen years shall for purposes of this section be considered classified as agricultural land under conservation cover. If a tract of land so classified is thereafter plowed or used for growing row crops, the commissioners of the soil and water conservation district in which the land is located shall not approve use of state cost-sharing funds for establishing permanent or temporary soil and water conservation practices on that tract of land in an amount greater than one-half the amount of cost-sharing funds which would be available for that land if it were not considered classified as agricultural land under conservation cover. The restriction imposed by this section applies even if an administrative order or court order has been issued requiring establishment of soil and water conservation practices on that land. The commissioners may waive the restriction imposed by this section if they determine in advance that the purpose of plowing or row cropping land classified as land under conservation cover is to revitalize permanent pasture and that the land will revert to permanent pasture within two years after it is plowed.

2. When receiving an application for state cost-sharing funds to pay a part of the cost of establishing a permanent or temporary soil and water conservation practice, the commissioners of the soil and water conservation district to which the application is submitted shall require the applicant to state in writing whether, to the best of the applicant's knowledge, the land on which the proposed practice will be established is land considered to be classified as agricultural land under conservation cover, as defined in subsection 1. An applicant who knowingly makes a false statement of material facts or who falsely denies knowledge of

material facts in completing the written statement required by this subsection commits a simple misdemeanor and, in addition to the penalty prescribed therefor by law, shall be required to repay to the department any cost-sharing funds made available to the applicant in reliance on the false statement or false denial.

[C81, §467A.65]

[87 Acts, ch 23, §42](#)

[2012 Acts, ch 1095, §18](#)

**161A.77 through 161A.79**Reserved.

## SUBCHAPTER VI

### BLUFFLANDS PROTECTION

#### **161A.80 Blufflands protection program and revolving fund.**

Repealed by its own terms;

[98 Acts, ch 1219, §17](#)

;

[2005 Acts, ch 178, §17](#)

. See §161A.80A.

#### **161A.80A Blufflands protection program and revolving fund.**

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

*a.* For purposes of this section only, “*bluffland*” means a cliff, headland, or hill with a broad, steep face along the channel or floodplain of the Missouri or Mississippi river and their tributaries.

*b.* “*Conservation organization*” means a nonprofit corporation incorporated in Iowa or an entity organized and operated primarily to enhance and protect natural resources in this state.

2. A blufflands protection revolving fund is created in the state treasury. All proceeds shall be divided into two equal accounts. One account shall be used for the purchase of blufflands along the Mississippi river and its tributaries and the other account shall be used for the purchase of blufflands along the Missouri river and its tributaries. The proceeds of the revolving fund are appropriated to make loans to conservation organizations which agree to purchase bluffland properties adjacent to state public lands. The department of agriculture and land stewardship, in conjunction with the department of natural resources, shall adopt rules pursuant to chapter 17A to administer the disbursement of funds. Notwithstanding section 12C.7, interest or earnings on investments made pursuant to this section or as provided in section 12B.10 shall be credited to the blufflands protection revolving fund. Notwithstanding section 8.33, unobligated or unencumbered funds credited to the blufflands protection revolving fund shall not revert at the close of a fiscal year. However, the maximum balance in the blufflands protection revolving fund shall not exceed two million five hundred thousand dollars. Any funds in excess of two million five hundred thousand dollars shall be credited to the rebuild Iowa infrastructure fund. No loan shall be made under this section on or after July 1, 2025.

3. This section is repealed on July 1, 2030.

[2015 Acts, ch 132, §45](#)

#### **161A.80B Outstanding bluffland protection loans.**

1. The principal and interest from any loan made pursuant to section 161A.80A, as enacted in

[2015 Iowa Acts, ch 132, §45](#)

, remaining outstanding on July 1, 2025, that would have been payable to the blufflands protection revolving fund created in section 161A.80A, shall instead be paid to the division on or after July 1, 2025, pursuant to the terms of the loan agreement. The moneys paid to the division shall be credited to the rebuild Iowa infrastructure fund created in section 8.57.

2. This section is repealed on July 1, 2030.

[2015 Acts, ch 132, §46](#)

## CHAPTER 161C

### WATER PROTECTION PROJECTS AND PRACTICES

This chapter not enacted as a part of this title;  
transferred from chapter 467F in Code 1993

#### **161C.1 Definitions.**

As used or referred to in this chapter, unless a different meaning clearly appears from the context:

1. “*Committee*” or “*state soil conservation committee*” means the committee established by section 161A.4.
2. “*Department*” means the department of agriculture and land stewardship.
3. “*District*” means a soil and water conservation district established in chapter 161A.
4. “*Division*” means the division of soil conservation and water quality created within the department pursuant to section 159.5.
5. “*Landowner*” includes any person, including a federal agency, this state or any of its political subdivisions, who holds title to land lying within a proposed district.
6. “*United States*” or “*agencies of the United States*” includes the United States of America, the United States department of agriculture natural resources conservation service, and any other agency or instrumentality, corporate or otherwise, of the United States.

[88 Acts, ch 1189, §2](#)

[95 Acts, ch 216, §25](#)  
; [2015 Acts, ch 103, §35](#)

#### **161C.2 Water protection projects and practices.**

1. *a.* Each soil and water conservation district, alone and whenever practical in conjunction with other districts, shall carry out district-wide and multiple-district projects to support water protection practices in the district or districts, including projects to protect this state’s groundwater and surface water from point and nonpoint sources of contamination, including but not limited to contamination by agricultural drainage wells, sinkholes, sedimentation, or chemical pollutants.
- b.* Any work project with an estimated cost in excess of the competitive bid threshold in section 26.3, or as established in section 314.1B, shall be undertaken as a public contract as provided in chapters 73A and 573. The local contracting organization shall designate a contracting officer and shall establish procedures to manage the contract, approve bills for payment, and review proposed change orders or amendments to the contract.
2. An owner of or occupant of land within a district may establish a water protection practice under this chapter by entering into an agreement with the district in which the owner or occupant receives financial assistance to establish water protection practices in consideration for promising to maintain the practices according to rules adopted by the division. The financial assistance may be in the form of grants, loans, or cost-sharing arrangements. An agreement shall not be binding until the assistance is specifically approved for that land and made available to the owner or occupant.
3. The division shall approve an award of financial assistance based on an application submitted by the owner or occupant of the land. The division may require a copy of the application with an evaluation of the application by the district. Each application for financial assistance shall be considered under a priority system adopted by the district for disbursement of unallocated funds. The district, under the supervision of a district technician, shall design proposed clean water practices for which financial assistance has been obligated. The district shall determine compliance with applicable design standards and specifications. The landowner shall construct and is liable for the performance of the water protection practices on the land.
4. The division shall adopt rules necessary for the administration of this chapter, including rules relating to the approval of programs and projects, designing a project or water protection practices, the estimation of costs of a project or program, and the inspection of projects or practices being placed or maintained on the land.

[88 Acts, ch 1189, §3](#)

C89, §467F.2

C93, §161C.2  
2000 Acts, ch 1068, §8  
;  
2006 Acts, ch 1017, §22, 42, 43

**161C.3 Cooperation with other agencies.**

Soil and water conservation districts may enter into agreements with the United States, as provided by state law, or with the state of Iowa or any agency of the state, any other soil and water conservation district, or other political subdivision of this state, for cooperation in preventing, controlling, or attempting to prevent or control contamination of groundwater or surface water by point and nonpoint sources of pollution. Soil and water conservation districts may accept, as provided by state law, any money disbursed for water quality preservation purposes by the federal government or any agency of the federal government, and expend the money for the purposes for which it was received.

88 Acts, ch 1189, §4

C89, §467F.3

C93, §161C.3

**161C.4 Water protection fund.**

1. A water protection fund is created within the division. The fund is composed of money appropriated by the general assembly for that purpose, and moneys available to and obtained or accepted by the state soil conservation committee from the United States or private sources for placement in the fund. The fund shall be a revolving fund from which moneys may be used for loans, grants, administrative costs, and cost-sharing.

2. The fund shall be divided into two accounts, the water quality protection projects account and the water protection practices account. The first account shall be used to carry out water quality protection projects to protect the state's surface and groundwater from point and nonpoint sources of contamination. The second account shall be used to establish water protection practices with individual landowners including but not limited to woodland establishment and protection, establishment of native grasses and forbs, sinkhole management, agricultural drainage well management, streambank stabilization, grass waterway establishment, stream buffer strip establishment, and erosion control structure construction. Twenty-five percent of funds appropriated to the water protection practices account shall be used for woodland establishment and protection, and establishment of native grasses and forbs. Soil and water conservation district commissioners shall give priority to applications for practices that implement their soil and water resource conservation plan.

3. In administering the fund the division may:

a. Contract, sue and be sued, and adopt rules necessary to carry out the provisions of this section, but the division or committee shall not in any manner directly or indirectly pledge the credit of this state.

b. Authorize payment from the water protection fund and from fees for costs, commissions, and other reasonable expenses.

88 Acts, ch 1189, §5

C89, §467F.4

89 Acts, ch 236, §16

;

91 Acts, ch 260, §1235

C93, §161C.4

95 Acts, ch 216, §36

;

2009 Acts, ch 41, §62

**161C.5 Organic nutrient management fund.** Repealed by

2011 Acts, ch 46, §1

.

**161C.6 Organic nutrient management program.** Repealed by

2011 Acts, ch 46, §1

.

**161C.7 Watershed protection.**

1. The department of agriculture and land stewardship shall implement and administer a watershed protection program. The department of agriculture and land stewardship, in consultation with the department of natural resources, shall annually establish a prioritized list of watersheds that are of the highest importance to the state's water quality. The watershed protection program shall, to the extent practical, target for assistance those watersheds on the prioritized list. A soil and water conservation district, in cooperation with state agencies, local units of government, and private organizations, may submit an application for assistance to

the department which provides a strategy for protecting soil, water quality, and other natural resources, and improving flood control in the watershed. Upon approval of an application, the department may provide a grant to the soil and water conservation district for purposes of carrying out the strategy provided in the application.

2. A watershed protection account is created within the water protection fund created in section 161C.4. Moneys credited to the account shall be distributed under the watershed protection program.

3. Administrative rules used for water quality protection projects under the water protection fund shall be used to administer the watershed protection program.

[99 Acts, ch 204, §27](#)

;

[2003 Acts, ch 179, §157](#)

;

[2004 Acts, ch 1101, §26](#)

## CHAPTER 161E

### FLOOD AND EROSION CONTROL

This chapter not enacted as a part of this title;  
transferred from chapter 467B in Code 1995

#### **161E.1 Authority of board.**

If a county, soil and water conservation district, subdistrict of a soil and water conservation district, political subdivision of the state, or other local agency engages or participates in a project for flood or erosion control, flood prevention, or the conservation, development, utilization, and disposal of water, in cooperation with the federal government, or a department or agency of the federal government, the counties in which the project is carried on may, through the board of supervisors, construct, operate, and maintain the project on lands under the control or jurisdiction of the county dedicated to county use, or furnish financial and other assistance in connection with the projects. Flood, soil erosion control, and watershed improvement projects are presumed to be for the protection of the tax base of the county, for the protection of public roads and lands, and for the protection of the public health, sanitation, safety, and general welfare.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467B.1]

[86 Acts, ch 1238, §61](#)

;

[87 Acts, ch 23, §45](#)

;

[89 Acts, ch 83, §60](#)

C95, §161E.1

#### **161E.2 Federal aid.**

A county may, in accordance with this chapter, accept federal funds for aid in a project for flood or soil erosion control, flood prevention, or the conservation, development, utilization, and disposal of water, and may cooperate with the federal government or a department or agency of the federal government, a soil and water conservation district, subdistrict of a soil and water conservation district, political subdivision of the state, or other local agency, and the county may assume a proportion of the cost of the project as deemed appropriate, and may assume the maintenance cost of the project on lands under the control or jurisdiction of the county which will not be discharged by federal aid or grant.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467B.2]

[86 Acts, ch 1238, §61](#)

;

[87 Acts, ch 23, §46](#)

;

[89 Acts, ch 83, §61](#)

C95, §161E.2

See also §161E.12

#### **161E.3 Cooperation.**

The counties, soil and water conservation districts, and subdistricts of soil and water conservation districts concerned, shall advise and consult with each other, upon the request of any of them or any affected landowners, and may cooperate with each other or with other state subdivisions or instrumentalities, and affected landowners, as well as with the federal government or a department or agency of the federal government, to construct, operate, and maintain suitable projects for flood or soil erosion control, flood prevention, or the conservation, development, utilization, and disposal of water on public roads or other public lands or other land granted county use.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467B.3]

[86 Acts, ch 1238, §61](#)

;

[87 Acts, ch 23, §47](#)

;

[89 Acts, ch 83, §62](#)

C95, §161E.3

#### **161E.4 Structures or levees.**

When structures or levees necessary for flood or soil erosion control, flood prevention, or the conservation, development, utilization, and disposal of water, are constructed on county roads, the cost in total or in part shall be considered a part of the cost of road construction.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467B.4]

C95, §161E.4

#### **161E.5 Maintenance cost.**

If construction of projects has been completed by the soil and water conservation district, subdistricts of soil and water conservation districts, political subdivisions of the state, or other local agencies, or the federal government, or a department or agency of the federal government, on private lands under the easement granted to the county, only the cost of maintenance may be assumed by the county.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467B.5]

[86 Acts, ch 1238, §61](#)

;

[87 Acts, ch 23, §48](#)

;

[89 Acts, ch 83, §63](#)

C95, §161E.5

#### **161E.6 Estimate.**

In the proceedings to establish such a project the government engineer shall set forth in the engineer's report separately from other items, the amount of the cost of construction on county property and on private lands, and the engineer's estimate of the cost of the maintenance of the same.

If the plan is approved by all cooperating agencies and the project established as a flood or erosion control project the board of supervisors shall make a written record of any such cooperative arrangement and may use such part of the funds of the county now authorized by law and by this chapter as may be necessary to pay the amount agreed upon toward the construction, maintenance and cost of such project.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467B.6]

C95, §161E.6

#### **161E.7 Projects on private land.**

Any flood or soil erosion control, flood prevention, or the conservation, development, utilization, and disposal of water, projects built on private land with federal or other funds when dedicated to the county use, shall be maintained in the same manner as its own county-owned or controlled property.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467B.7]

C95, §161E.7

#### **161E.8 Conservation commissioners.**

In counties where soil and water conservation districts exist the commissioners in said county shall be responsible for the inspection of all flood and erosion control structures built on private land under easement to the county, shall furnish such technical assistance as they may have available in making estimates of needed repairs without cost to the county, and shall report any needed repair and the nature thereof to the county board of supervisors.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467B.8]

C95, §161E.8

#### **161E.9 Tax levy.**

The county board of supervisors may annually levy a tax not to exceed six and three-fourths cents per thousand dollars of assessed value of all agricultural lands in the county, to be used for flood and erosion control, including acquisition of land or interests in land, and repair, alteration, maintenance, and operation of works of improvement on lands under the control or jurisdiction of the county as provided in this chapter.

[83 Acts, ch 123, §188, 209](#)



CS83, §467B.9  
C95, §161E.9

**161E.10 Assumption of obligations.**

This chapter contemplates that actual direction of the project, or projects, and the actual work done in connection with them, will be assumed by the soil and water conservation district, a subdistrict of a soil and water conservation district, or the federal government, and that the county or other state subdivisions or instrumentalities jointly will meet the obligation required for federal cooperation and may make proper commitment for the care and maintenance of the project after its completion for the general welfare of the public and residents of the respective counties.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467B.10]

[86 Acts, ch 1238, §61](#)

;

[87 Acts, ch 23, §49](#)

;

[89 Acts, ch 83, §64](#)

C95, §161E.10

**161E.11 Highway law applicable.**

The counties in maintaining the structures or improvements made under such a project shall do so in a like manner and under like procedure as that used in the maintenance of its highways. Any cooperative agreements with other state subdivisions or instrumentalities shall conform with such an agreement as to the proportion of maintenance cost.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467B.11]

C95, §161E.11

**161E.12 Payments from federal government.**

Whenever there shall be payable by the federal government to counties or school districts of the state any sums of money because of the fact that such school districts or counties are entitled to a share of the receipts from the operation of the federal government of flood control projects within any county of the state, such payments shall be payable to the county treasurer of any county in which such payments become due.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467B.12]

C95, §161E.12

See also §161E.2

**161E.13 Allocation to secondary road funds.**

Upon receipt of any such payments or payment by the county treasurer twenty-five percent of such amount shall be credited to the secondary road funds of the counties which are principally affected by the construction of such federal flood control projects, and the board of supervisors shall determine which roads of the county are deemed to be principally affected and the amounts which shall be expended from these funds derived from the federal government on such roads.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467B.13]

C95, §161E.13

**161E.14 Allocation.**

Sixty-five percent of any such payments or payment received from the federal government shall be distributed to the general fund of the school districts of the county after the county auditor has determined the districts which are principally affected by the federal flood control project involved in an amount deemed to be the equitable share of each such district and the amount allocated to each school district shall be paid over to the treasurer of such school district.

The county auditor shall certify to the executive council of the state the amounts allocated to each school district in the previous year, on January 2 of each year. The remaining ten percent of a payment received by the county treasurer from the federal government, or as much thereof as is deemed necessary by the board of supervisors, shall be allocated to the local fire departments of the unincorporated villages, townships, and cities of the county which are principally affected by the federal flood control project involved, to be paid and prorated among them as determined by the board of supervisors. If the funds prorated to local fire departments in a county are less than ten percent of the total county share of such federal payments for a year, the amount which exceeds the proration shall revert back to and be divided equally between the secondary road fund and the local school district fund.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467B.14]

[88 Acts, ch 1134, §89](#)

C95, §161E.14

**161E.15 Taxes canceled.**

The treasurer of any county wherein is situated any land acquired by the federal government for flood control projects is hereby authorized to cancel any taxes or tax assessments against any such land so acquired where the tax has been extended but has not become a lien thereon at the time of the acquisition thereof.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §467B.15]

C95, §161E.15

## CHAPTER 161F

### SOIL CONSERVATION AND FLOOD CONTROL DISTRICTS

This chapter not enacted as a part of this title;  
transferred from chapter 467C in Code 1995

#### **161F.1 Presumption of benefit.**

The conservation of the soil resources of the state of Iowa, the proper control of water resources of the state and the prevention of damage to property and lands through the control of floods, the drainage of surface waters or the protection of lands from overflow shall be presumed to be a public benefit and conducive to the public health, convenience and welfare and essential to the economic well-being of the state.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467C.1]  
C95, §161F.1

#### **161F.2 Board of supervisors to establish districts — strip coal mining.**

The board of supervisors of any county shall have jurisdiction, power and authority at any regular, special or adjourned session to establish, subject to the provisions of this chapter, districts having for their purpose soil conservation and the control of flood waters and to cause to be constructed as hereinafter provided, such improvements and facilities as shall be deemed essential for the accomplishment of the purpose of soil conservation and flood control. Such board shall also have jurisdiction, power and authority at any regular, special or adjourned session to establish, in the same manner that the districts hereinabove referred to are established, districts having for their purpose soil conservation in mining areas within the county, and provide that anyone engaged in removing the surface soil over any bed or strata of coal in such district for the purpose of obtaining such coal shall replace the surface soil as nearly as practicable to its original position, and provide that, upon abandonment of such removal operation, all surface soil shall be so replaced. This section shall apply only to surface soil so removed after July 4, 1949, and then only if it is essential for the accomplishment of the purpose of soil conservation and flood control within the purview of this chapter.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467C.2]  
C95, §161F.2

#### **161F.3 Combination of functions.**

Such districts shall have the power to combine in their functions activities affecting soil conservation, flood control and drainage, or any of these objects, singly or in combination with another.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467C.3]  
C95, §161F.3

#### **161F.4 Old districts combined.**

If any levee or drainage district or improvement established either by legal proceedings or by private parties shall desire to include in the activities of such district soil conservation or flood control projects, the board upon petition, as for the establishment of an original levee or drainage district, shall establish a new district covering and including such old district and improvement together with any additional lands deemed necessary. All outstanding indebtedness of the old levee or drainage district shall be assessed only against the lands included therein.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467C.4]  
C95, §161F.4

#### **161F.5 Approval of commissioners.**

A district shall not be established by a board of supervisors under this chapter unless the organization of the district is approved

by the commissioners of a soil and water conservation district established under chapter 161A and which is included all or in part within the district, nor shall a district be established without the approval of the department of natural resources.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467C.5;

82 Acts, ch 1199, §75, 96

]

87 Acts, ch 23, §50

C95, §161F.5

**161F.6 Chapters made applicable — definitions.**

1. In the organization, operation, and financing of districts established under this chapter, the provisions of chapter 468 shall apply and any procedure provided under chapter 468 in connection with the organization, financing, and operation of any drainage district shall apply to the organization, financing, and operation of districts organized under this chapter.

2. As used in this chapter or chapter 468:

*a. "Drainage"* shall be deemed to include in its meaning soil erosion and flood control or any combination of drainage, flood control, and soil erosion control.

*b. "Drainage certificates"* or "*drainage bonds*" shall be deemed to include certificates or bonds issued in behalf of any district organized under the provisions of this chapter.

*c. "Drainage district"* shall be considered to include districts having as their purpose soil conservancy or flood control or any combination thereof.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467C.6]

C95, §161F.6

2009 Acts, ch 133, §69

## CHAPTER 276

### COMMUNITY EDUCATION

#### **276.1 Title.**

Sections 276.1 to 276.11 of this chapter shall be known and may be cited as the “*Iowa Community Education Act*”.  
[C79, 81, §276.1]

#### **276.2 Purpose.**

It is the purpose of this chapter to provide educational, recreational, cultural, and other community services and programs through the establishment of the concept of community education with the community school serving as the center for such activity. In cooperation with other community agencies and groups, it is the purpose of the community education Act to mobilize community resources to solve identified community concerns and to promote a more efficient and expanded use of existing school buildings and equipment, to provide leadership in working with other entities, to mobilize the human and financial resources of a community, and to provide a wide range of opportunities for all socioeconomic, ethnic, and age groups. A related purpose of this chapter is to develop a sense of community in which the citizenry cooperates with the school and community agencies and groups to resolve their school and community concerns and to recognize that the schools belong to the people, and that as the entity located in every neighborhood, the schools are available for use by the community day and night, year-round or any time when the programming will not interfere with the elementary and secondary program.

[C79, 81, §276.2]

#### **276.3 Definitions.**

As used in sections 276.1 to 276.11 unless the context otherwise requires:

1. “*Board*” means the local board of directors of school districts.
2. “*Community*” means the area located within the boundaries of the local school district.
3. “*Community education*” means a lifelong education process concerning itself with every facet that affects the well-being of all citizens within a given community and serves all of the following purposes:
  - a. To extend the role of the school from one of teaching children through an elementary and secondary program to one of providing for citizen participation in identifying the wants, needs, and concerns of the neighborhood community and coordinating all educational, recreational, and cultural opportunities within the community with community education being the catalyst for providing for citizen participation in the development and implementation of programs toward the goal of improving the entire community.
  - b. To energize people to strive for the achievement of determined goals and stimulate capable persons to assume leadership responsibilities.
  - c. To welcome and work with all groups without drawing any lines.
  - d. To serve as the one institution in the entire community that has the opportunity to reach all people and groups and to gain their cooperation.
4. “*Community school*” means any elementary or secondary school.
5. “*Department*” means the department of education.
6. “*Director*” means the local community school director who assumes responsibility for making the process function effectively.
7. “*District-wide advisory council*” means a broadly representative group of persons selected from the entire school district with at least one representative from each of the local advisory councils after they are formed. At least one member of the council shall be a representative from the local public recreation department or agency, if one exists.
8. “*Local advisory council*” means a broadly representative group of persons living within the attendance boundaries of an individual neighborhood school.
9. “*State consultant*” means the state community education consultant.

[C79, 81, §276.3]

[86 Acts, ch 1245, §1466](#)  
; [2010 Acts, ch 1069, §77](#)

**276.4 State consultant.**

The state consultant of community education shall serve district and local advisory councils in accordance with rules promulgated by the director of the department of education and in compliance with Pub. L. No. 93-380.

[C79, 81, §276.4]

[85 Acts, ch 212, §21](#)

**276.5 Local director.**

The local community education director shall:

1. Serve as staff person to district-wide and local advisory councils.
2. Promote, publicize, and interpret the community education programs to the schools and community.
3. Facilitate community needs and resources after adequate assessment.
4. Seek ideas, promote people involvement in the process, and open lines of communication and coordination.
5. Stimulate planning to meet needs.
6. Schedule community-use hours available in school-plant facilities and related equipment and coordinate such use with building principals or designated representatives.
7. Prepare the community education budget in concert and with approval of the district-wide advisory council, and administer the budget after final approval by the board of directors.

[C79, 81, §276.5]

**276.6 and 276.7** Repealed by 86 Acts, ch 1245, §1499A.

**276.8 Duties of district-wide advisory council.**

The district-wide advisory council shall:

1. Provide guidance to local advisory councils, training and orientation for community persons, evaluation and assessment of needs and delivery systems for school districts.
2. Develop a “sense of total community” and promote democratic thinking and action.
3. Promote meaningful involvement of total community in the identifying, prioritizing, and resolving of school-community concerns.
4. Serve as an advocate of community education and foster community cooperation.
5. Provide an annual budget recommendation and annual report to the local board of education.
6. Mobilize available human and financial resources of the community to meet needs, interests, and concerns of people in the total community.
7. Make school facilities and resources available to all age groups from the total community, day and night, year round.
8. Facilitate the assessment of community-wide needs with the understanding that local advisory councils will manage their own assessments of needs.
9. Provide support and act as a resource group for local advisory councils and the community education director.
10. Help plan and recommend a community education budget for approval by the local board of education.
11. Recommend to the board, regulations, guidelines, and fees, if any, for facility usage.
12. Define short and long-range community education goals and objectives.
13. Communicate through inquiring, informing, suggesting, recommending and evaluating community education for the community.
14. Cooperate with other agencies and organizations including the community colleges and institutions under the control of the state board of regents toward common goals.
15. Perform the functions of the local advisory council in the event that the board determines that the size of the district does not warrant the establishment of a local advisory council.

[C79, 81, §276.8]

**276.9 Duties of local advisory council.**

The local advisory council shall:

1. Determine needs and priorities and provide programs to serve the needs of the community located within the attendance boundaries of an individual school.
2. Provide programming which is available to any community resident.
3. Promote meaningful involvement of the total neighborhood community in its identification and resolution of school and community concerns.
4. Mobilize available human and financial resources of the community to meet the wants and needs in that neighborhood community.
5. Use existing programs and community resources for delivery of services whenever feasible.
6. Use funds as allocated by district-wide advisory council after budget approval by board.
7. Evaluate the success of programs in meeting needs, interests, and concerns and in resolving responsible needs and concerns.

[C79, 81, §276.9]

**276.10 Establishment of program.**

1. The board of directors of a local school district may establish a community education program for schools in the district and provide for the general supervision of the program. Financial support for the program shall be provided from funds raised pursuant to chapter 300 and from any private funds and any federal funds made available for the purpose of implementing this chapter. The program which recognizes that the schools belong to the people and which shall be centered in the schools may include but shall not be limited to the use of the school facilities day and night, year round including weekends and regular school vacation periods for educational, recreational, cultural, and other community services and programs for all age, ethnic, and socioeconomic groups residing in the community.

2. If a community education program is established, the board shall appoint a community education director who shall have professional training in the field of community education, recreation, or comparable experience.

3. Upon establishment of a community education program, the board shall provide for the selection of a district-wide advisory council which shall be responsible to the board and shall cooperate with and assist the board and the local community education director. The board shall also provide for the selection of local advisory councils.

4. The board shall receive an annual report and budget recommendation from the district-wide advisory council and may request supplementary reports as needed.

5. The school districts may cooperate with community colleges, institutions under the control of the state board of regents, and area education agencies in providing community education programs.

6. The board may use opportunities available under Pub. L. No. 93-380.

7. The board may approve cooperation and pooling of funds with other school districts.

[C79, 81, §276.10]

[90 Acts, ch 1253, §121](#)

;

[2006 Acts, ch 1010, §81](#)

**276.11 Funding of community education concept.**

Residents of the affected school district shall determine if community education will function in their community by providing for funding pursuant to chapter 300.

[C79, 81, §276.11]

**276.12 Use of special tax levy.**

If the voters of a school district have approved the levying of a tax pursuant to section 300.2 prior to July 7, 1978, moneys collected pursuant to the voted tax levy after said date may be used for community education programs.

[C79, 81, §276.12]

## CHAPTER 306

### ESTABLISHMENT, ALTERATION, AND VACATION OF HIGHWAYS

#### JURISDICTION AND CONTROL

**306.1** Repealed by 98 Acts, ch 1075, §17. See §306.3, 313.2.

#### **306.2 Definitions.**

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

1. “Agency” means any governmental body which exercises jurisdiction over any road as provided in section 306.4.
2. “Book”, “list”, “record”, or “schedule” kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.
3. “Department” means the state department of transportation.

[C75, 77, 79, 81, §306.2]

[2000 Acts, ch 1148, §1](#)

;

[2002 Acts, ch 1119, §200, 201](#)

#### **306.3 Definition throughout Code.**

As used in this chapter or in any chapter of the Code relating to highways, except as otherwise specified:

1. “Area service” or “area service system” means those secondary roads that are not part of the farm-to-market road system.
2. “County conservation parkways” or “county conservation parkway system” means those parkways located wholly within the boundaries of county lands operated as parks, forests, or public access areas.
3. “Farm-to-market roads” or “farm-to-market road system” means those county jurisdiction intracounty and intercounty roads which serve principal traffic generating areas and connect such areas to other farm-to-market roads and primary roads. The farm-to-market road system includes those county jurisdiction roads providing service for short-distance intracounty and intercounty traffic or providing connections between farm-to-market roads and area service roads, and includes those secondary roads which are federal aid eligible. The farm-to-market road system shall not exceed thirty-five thousand miles.
4. “Interstate roads” or “interstate road system” means those roads and streets of the primary road system that are designated by the secretary of the United States department of transportation as the national system of interstate and defense highways in Iowa.
5. “Municipal street system” means those streets within municipalities that are not primary roads or secondary roads.
6. “Primary roads” or “primary road system” means those roads and streets both inside and outside the boundaries of municipalities which are under department jurisdiction.
7. “Public road right-of-way” means an area of land, the right to possession of which is secured or reserved by the state or a governmental subdivision for roadway purposes. The right-of-way for all secondary roads is sixty-six feet in width, unless otherwise specified by the county board of supervisors of the respective counties.
8. “Road” or “street” means the entire width between property lines through private property or the designated width through public property of every way or place of whatever nature if any part of such way or place is open to the use of the public, as a matter of right, for purposes of vehicular traffic.
9. “Secondary roads” or “secondary road system” means those roads under county jurisdiction.
10. “State park, state institution, and other state land road system” consists of those roads and streets wholly within the boundaries of state lands operated as parks, or on which institutions or other state governmental agencies are located.

[C24, 27, §4636; C31, 35, §4644-c2; C39, §**4644.02**; C46, 50, §309.2; C54, 58, 62, 66, §306.2; C71, 73, 75, 77, 79, 81, §306.3]

[92 Acts, ch 1153, §1](#)

; [98 Acts, ch 1075, §1](#)

; [2003 Acts, ch 144, §1](#)

; [2014 Acts, ch 1123, §1](#)



### **306.4 Jurisdiction of systems.**

The jurisdiction and control over the roads and streets of the state are vested as follows:

1. Jurisdiction and control over the primary roads shall be vested in the department.
2. Jurisdiction and control over the secondary roads shall be vested in the county board of supervisors of the respective counties.
3. *a.* Effective July 1, 2004, jurisdiction and control over a farm-to-market extension or road transferred pursuant to section 306.8A within a city with a population of less than five hundred shall be vested in the county board of supervisors of the respective county.  
*b.* If the population of a city drops below five hundred after July 1, 2004, as determined by the latest available federal census or special census, jurisdiction and control over a farm-to-market extension located within the city shall be vested in the county board of supervisors of the respective county effective July 1 following census certification by the secretary of state.  
*c.* If the population of a city from which jurisdiction and control over a road has been transferred pursuant to paragraph “a” or “b” exceeds seven hundred fifty, as determined by the latest available federal census or special census, such jurisdiction and control shall be transferred back to the city effective July 1 following census certification by the secretary of state.
4. *a.* Jurisdiction and control over the municipal street system shall be vested in the governing bodies of each municipality; except that the department and the municipal governing body shall exercise concurrent jurisdiction over the municipal extensions of primary roads in all municipalities. When concurrent jurisdiction is exercised, the department shall consult with the municipal governing body as to the kind and type of construction, reconstruction, repair, and maintenance and the two parties shall enter into agreements with each other as to the division of costs thereof.  
*b.* When the two parties cannot initially come to agreement as to the division of costs under this subsection, they shall contract with an organization in this state to provide mediation services. The costs of the mediation services shall be equally allocated between the two parties. If after submitting to mediation the parties still cannot come to agreement as to the division of costs, the mediator shall sign a statement that the parties did not reach an agreement, and the parties shall then submit the matter for binding arbitration to a mutually agreed-upon third party. If the parties cannot agree upon a third-party arbitrator, they shall submit the matter to an arbitrator selected under the rules of the American arbitration association.
5. Jurisdiction and control over the roads and streets in any state park, state institution or other state land shall be vested in the board, commission, or agency in control of such park, institution, or other state land; except that:  
*a.* The department and the controlling agency shall have concurrent jurisdiction over any road which is an extension of a primary road and which both enters and exits from the state land at separate points. The department may expend the moneys available for such roads in the same manner as the department expends such funds on other roads over which the department exercises jurisdiction and control. The parties exercising concurrent jurisdiction may enter into agreements with each other as to the kind and type of construction, reconstruction, repair and maintenance and the division of costs thereof. In the absence of such agreement the jurisdiction and control of such road shall remain in the department.  
*b.* The board of supervisors of any county and the controlling state agency shall have concurrent jurisdiction over any road which is an extension of a secondary road and which both enters and exits from the state land at separate points. The board of supervisors of any county may expend the moneys available for such roads in the same manner as the board expends such funds on other roads over which the board exercises jurisdiction and control. The parties exercising concurrent jurisdiction may enter into agreements with each other as to the kind and type of construction, reconstruction, repair and maintenance and the division of costs thereof. In the absence of such agreement, the jurisdiction and control of such road shall remain in the board of supervisors of the county.
6. Jurisdiction and control over parkways within county parks and conservation areas shall be vested in the county conservation boards within their respective counties; except that:  
*a.* The department and the county conservation board shall have concurrent jurisdiction over an extension of a primary road which both enters and exits from a county park or other county conservation area at separate points. The department may expend moneys available for such roads in the same manner as the department expends such funds on other roads over which the department exercises jurisdiction and control. The parties exercising concurrent jurisdiction may enter into agreements with each other as to the kind and type of construction, reconstruction, repair and maintenance and the division of costs thereof. In the absence of such agreement, the jurisdiction and control of such roads shall remain in the department.  
*b.* The board of supervisors of any county and the county conservation board shall have concurrent jurisdiction over an extension of a secondary road which both enters and exits from a county park or other county conservation area at separate points. The board of supervisors of any county may expend moneys available for such roads in the same manner as the board expends such funds on other roads over which the board exercises jurisdiction and control. The parties exercising concurrent jurisdiction may enter into agreements with each other as to the kind and type of construction, reconstruction, repair and maintenance and the division of costs thereof. In the absence of such agreement, the jurisdiction and control of such roads shall remain in the board of supervisors of the county.

[C51, §514; R60, §819; C73, §920; C97, §1482; C24, 27, §4560, 4635 – 4677, 4780 – 4812; C31, 35, §4560, 4644-c1; C39, §4560, 4644.01; C46, 50, §309.1; C54, 58, 62, 66, §306.3; C71, 73, 75, 77, 79, 81, §306.4]

[89 Acts, ch 134, §1](#)

; [2003 Acts, ch 144, §2](#)

; [2010 Acts, ch 1061, §180](#)

### **306.5 Continuity of farm-to-market road system in municipalities, parks, and institutions.**

The farm-to-market road system shall be a continuous interconnected system and provision shall be made for continuity by the designation of extensions within municipalities, state parks, state institutions, other state lands, and county parks and conservation areas. The mileage of such extensions of the system shall be included in the total mileage of the farm-to-market road system.

[C71, 73, 75, 77, 79, 81, §306.5]

[98 Acts, ch 1075, §2](#)

### **306.6 Farm-to-market review board.**

A farm-to-market review board is created. Members shall be appointed by the Iowa county engineers association. This board shall select a chairperson from among its members by majority vote of the total membership.

The farm-to-market review board shall review any and all farm-to-market system modification proposals. The farm-to-market review board shall make final administrative determinations based on sound farm-to-market road system designation principles for all modifications relative to the farm-to-market road system.

[C71, 73, 75, 77, 79, 81, §306.6;

[81 Acts, ch 97, §1](#)

]

[86 Acts, ch 1245, §2034](#)

;

[87 Acts, ch 43, §6](#)

;

[90 Acts, ch 1223, §25](#)

;

[95 Acts, ch 3, §1](#)

;

[98 Acts, ch 1075, §3](#)

### **306.6A Farm-to-market road system modifications.**

1. Modifications to the existing farm-to-market road system and designation of farm-to-market routes on new alignment shall be accomplished in accordance with procedural rules adopted by the farm-to-market review board, subject to the following procedures:

a. Counties shall initiate system modifications by submitting a resolution from the board of supervisors to the department.

b. The department shall submit the resolution to the farm-to-market review board and provide additional material as requested by the board.

c. Upon receipt of a county's resolution requesting a farm-to-market system modification, the farm-to-market review board shall review the proposed system modification and shall consider, but not be limited to consideration of, the following factors:

(1) Intracounty and intercounty continuity of systems.

(2) Properly integrated systems.

(3) Existing and potential traffic.

(4) Land use.

(5) Location.

(6) Equitable distribution of farm-to-market mileage among the counties.

2. Upon completion of the review process, the farm-to-market review board may do any of the following:

a. Approve the requested modifications to the farm-to-market road system and submit the modifications to the department for processing.

b. Deny the requested modifications.

c. Request additional information for further review.

[98 Acts, ch 1075, §4](#)

**306.7** Repealed by 98 Acts, ch 1075, §17.

### **306.8 Transfer of jurisdiction.**

Prior to a change in jurisdiction of a road or street, the unit of government having jurisdiction shall either place the road or street and any structures on the road or street in good repair or provide for the transfer of money to the appropriate jurisdiction in an amount sufficient for the repairs to the road or street and any structures on the road or street.

Transfers of the jurisdiction and control of roads and streets may take place if agreements are entered into between the jurisdictions of government involved in the transfer of such roads and streets.

[C71, §306.8; C73, 75, 77, §306.8, 313.2; C79, 81, §306.8]

[98 Acts, ch 1075, §5](#)

**306.8A Transfer of roads identified in report.**

1. The department shall maintain on file the transfer of jurisdiction report compiled by the ad hoc road use tax fund committee. Such report identifies primary roads for transfer to local jurisdictions.

2. The jurisdiction and control of only those primary roads identified in the transfer of jurisdiction report that are also classified by the department as local service roads shall be transferred from the state to the appropriate county or city effective July 1, 2003. Such transfers are not subject to the terms and conditions provided in section 306.8.

[2003 Acts, ch 144, §3](#)

**306.9 Diagonal roads — restoring and improving existing roads.**

It is the policy of the state of Iowa that relocation of primary highways through cultivated land shall be avoided to the maximum extent possible. When the volume of traffic for which the road is designed or other conditions, including designation as part of the network of commercial and industrial highways, require relocation, diagonal routes shall be avoided if feasible and prudent alternatives consistent with efficient movement of traffic exist.

The improvement of two-lane roads shall utilize the existing right-of-way unless alignment or other conditions, including designation as part of the network of commercial and industrial highways, make changes imperative, and when a two-lane road is expanded to a four-lane road, the normal procedure shall be that the additional right-of-way be contiguous to the existing right-of-way unless relocated for compelling reasons, including the need to provide efficient movement of traffic on the network of commercial and industrial highways. This policy does not apply to a highway project for which the corridor has been approved by the state department of transportation and the corridor has been finalized by September 1, 1977.

It is the policy of the state of Iowa that in constructing primary highways designed with four-lane divided roadways, access controls shall be limited to the minimum level necessary, as determined by the department, to ensure the safe and efficient movement of traffic or to comply with federal aid requirements.

Unless otherwise required by the federal law or regulation, it is also the policy of this state that road use tax fund moneys shall be used to rehabilitate or reconstruct existing roads, streets, and bridges using substantially existing right-of-way. This paragraph does not apply where additional right-of-way is needed for the construction or completion of designated interstate or city routes and highway bypasses or highways designated as part of the network of commercial and industrial highways.

[C79, 81, §306.9;

[81 Acts 2d Ex, ch 2, §1](#)

]

[83 Acts, ch 198, §14](#)

;

[89 Acts, ch 134, §2](#)

;

[98 Acts, ch 1075, §6](#)

**306.10 Power to establish, alter, or vacate.**

In the construction, improvement, operation or maintenance of any highway, or highway system, the agency which has control and jurisdiction over such highway or highway system, shall have power, on its own motion, to alter or vacate and close any such highway or railroad crossing thereon, and to establish new highways or railroad crossing thereon which are or are intended to become a part of the highway system over which said agency has jurisdiction and control.

[C73, §937, 954; C97, §1496, 1509; S13, §1509; C24, §4577, 4593, 4732; C27, 31, §4577, 4593, 4755-b27, 4755-d2; C35, §4577, 4593, 4631-e1, 4755-b27, 4755-d2; C39, §4577, 4593, 4631.1, 4755.23, 4755.37; C46, 50, §306.18, 306.34, 308.2, 313.25, 313.46; C54, 58, 62, 66, §306.4; C71, 73, 75, 77, 79, 81, §306.10]

**306.11 Hearing — place — date.**

In proceeding to the vacation and closing of a road, part thereof, or railroad crossing, the agency in control of the road, or road system, shall fix a date for a hearing on the vacation and closing in the county where the road, or part thereof, or crossing, is located, and if located in more than one county, then in a county in which any part of the road or crossing is located. If the road to be vacated or changed is a secondary road located in more than one county, the boards of supervisors of the counties, acting jointly, shall fix a date for a hearing on the vacation or change in either or any of the counties where the road, or part thereof, is located. If the proposed vacation is of part of a road right-of-way held by easement and will not change the existing traveled portion of the road or deny access to the road by adjoining landowners, a hearing is not required.

[C31, 35, §4755-d2, 4755-d3; C39, §4755.37, 4755.38; C46, 50, §313.46, 313.47; C54, 58, 62, 66, §306.5; C71, 73, 75, 77, 79, 81, §306.11]

[2000 Acts, ch 1074, §1](#)

;

[2000 Acts, ch 1232, §65](#)

**306.12 Notice — service.**

Notice of the hearing under section 306.11 shall be published in a newspaper of general circulation in the county or counties where the road is located, not less than four nor more than twenty days prior to the date of hearing. The agency which is holding the hearing shall notify all adjoining property owners, all utility companies whose facilities adjoin the road right-of-way or are on the road right-of-way, and the department, boards of supervisors, or agency in control of affected state lands, of the time and place of the hearing, by certified mail.

[SS15, §1527-r7; C24, 27, §4621; C31, 35, §4621, 4755-d4; C39, §**4621, 4755.39**; C46, 50, §306.62, 313.48; C54, 58, 62, 66, §306.6; C71, 73, 75, 77, 79, 81, §306.12]

[92 Acts, ch 1049, §1](#)

;

[94 Acts, ch 1013, §1](#)

;

[95 Acts, ch 54, §1](#)

;

[2000 Acts, ch 1074, §2](#)

**306.13 Notice — requirements.**

Said notice shall state the time and place of such hearing, the location of the particular road, or part thereof, or crossing, the vacation and closing of which is to be considered, and such other data as may be deemed pertinent.

[C31, 35, §4755-d5; C39, §**4755.40**; C46, 50, §313.49; C54, 58, 62, 66, §306.7; C71, 73, 75, 77, 79, 81, §306.13]

**306.14 Objections — claims for damages.**

The department, the board of supervisors, or the agency in control of affected state lands and any interested person, may appear and be heard at the hearing. Any person owning land abutting on a road proposed to be vacated and closed, shall have the right to file, in writing, a claim for damages at any time on or before the date fixed for hearing. However, for purposes of this chapter, if an occupied homestead is not located on the abutting land and if the vacating and closing of the road will not landlock the abutting land, a person shall not have a right to claim damages.

[C31, 35, §4755-d6; C39, §**4755.41**; C46, 50, §313.50; C54, 58, 62, 66, §306.8; C71, 73, 75, 77, 79, 81, §306.14]

[94 Acts, ch 1013, §2](#)

**306.15 Purchase and sale of property.**

If as to any one or more properties affected by the proposed vacation and closing of a secondary road, it appears to the board of supervisors to be in the interest of economy or public welfare, the board may purchase or condemn, by proceeding as this chapter provides, the entire properties, and make payment for them. After the road has been vacated and closed the board shall sell the properties at the best attainable price.

[C31, 35, §4755-d7; C39, §**4755.42**; C46, 50, §313.51; C54, 58, 62, 66, §306.9; C71, 73, 75, 77, 79, 81, §306.15]

[83 Acts, ch 123, §107, 209](#)

**306.16 Final order.**

After the hearing, the agency which instituted the proceedings and conducted the hearing shall enter an order either dismissing the proceedings, or vacating and closing the road, part thereof, or crossing, in which event it shall determine and state in the order the amount of the damages allowed to each claimant. The order thus entered shall be final except as to the amount of the damages unless the order is rescinded as provided in section 306.17. A copy of the order shall be filed with the county auditor of the county or counties in which the road, part thereof, or crossing, is located and with the department and the agency in control of any affected state land.

[C31, 35, §4755-d7; C39, §**4755.42**; C46, 50, §313.51; C54, 58, 62, 66, §306.10; C71, 73, 75, 77, 79, 81, §306.16]

**306.17 Appeal.**

Notwithstanding the terms of the Iowa administrative procedure Act, chapter 17A, any claimant for damages may, by serving, within twenty days after the order has been issued, a written notice upon the agency which instituted and conducted the proceedings, appeal as to the amount of damages, to the district court of the county in which the land is located, in the manner and form prescribed in chapter 6B with reference to appeals from condemnation, and the proceedings shall thereafter conform to the applicable provisions of that chapter. If, in the opinion of the agency, the damages as finally determined on appeal are excessive, the agency may rescind its order vacating and closing the road, part thereof, or crossing, and the right-of-way shall

remain under the jurisdiction of the agency. If the order is rescinded at any time after an appeal is taken, the agency shall pay reasonable attorney fees incurred by the claimant as taxed by the court.

[R60, §873; C73, §959; C97, §1513; C24, 27, §4597; C31, 35, §4597, 4755-d8; C39, §4597, 4755.43; C46, 50, §306.38, 313.52; C54, 58, 62, 66, §306.11; C71, 73, 75, 77, 79, 81, §306.17]

[2003 Acts, ch 44, §114](#)

### **306.18 Establishment.**

In the establishment of any road, the agency in control of such road or road system need not cause a hearing to be held thereon or notice to be published thereof, but may do so.

[C51, §535, 536; R60, §840, 841; C73, §934; C97, §1493; C24, 27, 31, 35, 39, §4573; C46, 50, §306.14; C54, 58, 62, 66, §306.12; C71, 73, 75, 77, 79, 81, §306.18]

### **306.19 Right-of-way — access — notice.**

1. In the maintenance, relocation, establishment, or improvement of any road, including the extension of such road within cities, the agency having jurisdiction and control of such road shall have authority to purchase or to institute and maintain proceedings for the condemnation of the necessary right-of-way therefor. Such agency shall likewise have power to purchase or institute and maintain proceedings for the condemnation of land necessary for highway drainage, or land containing gravel or other suitable material for the improvement or maintenance of highways, together with the necessary road access or right of access thereto.

2. Whenever the agency condemns or purchases property access rights or alters by lengthening any existing driveway to a road from abutting property, except during the time required for construction and maintenance of the road or highway, the agency shall:

*a.* Compensate the owner for any diminution in the market value of the property by the denial or alteration by lengthening the driveway. In computing the diminution in value, no consideration shall be given to the additional maintenance expense for maintaining the additional length of driveway, but in lieu thereof, both in condemnation proceedings or negotiated purchases, the agency shall pay to the owner the sum of twenty dollars for every lineal foot of additional length of driveway located on the owner's property. This payment shall represent just compensation to the property owner for the additional driveway maintenance caused by reason of the highway or road project.

*b.* If in the opinion of the agency it would be more economical to purchase the entire tract of the property owner than to provide and pay the maintenance expense required under the provisions of this section, proceed with the acquisition of the entire tract of land; or

*c.* If mutually agreeable, move buildings from an existing location to a location requiring an equal or lesser length of driveway and provide an adequate driveway to a public road.

3. None of the foregoing requirements shall prohibit the property owner and the agency from entering into a mutually acceptable agreement for the replacement, relocation, construction, or maintenance of any alternate driveway on the owner's property. Compensation for any property rights taken in the establishment of any alternative temporary or permanent access shall be paid as in any other purchase or condemnation of property.

4. Proceedings for the condemnation of land for any highway shall be under the provisions of chapter 6A and chapter 6B. Provided that, in the condemnation of right-of-way for secondary roads that is contiguous to existing road right-of-way for the maintenance, safety improvement, or upgrade of the existing secondary road, the board of supervisors may proceed as provided in sections 306.28 to 306.37.

5. *a.* The department may notify a city or county that a road under the jurisdiction or control of the department will be established, improved, relocated, or maintained and that the department may need to acquire additional right-of-way or property rights within an area described by the department. The notice shall include a depiction of the area on a map provided by the city, county, or the department. This notice shall be valid for a period of three years from the date of notification to the city or county and may be refiled by the department every three years. Within seven days of filing the notice, the department shall publish in a newspaper of public record a description and map of the area and a description of the potential restrictions applied to the city or county with respect to the granting of building permits, approving of subdivision plats, or zoning changes within the area.

*b.* The city or county shall notify the department of an application for a building permit for construction valued at twenty-five thousand dollars or more, of the submission of a subdivision plat, or of a proposed zoning change within the area at least thirty days prior to granting the proposed building permit, approving the subdivision plat, or changing the zoning.

*c.* If the department, within the thirty-day period, notifies the city or county that the department is proceeding to acquire all or part of the property or property rights affecting the area, the city or county shall not issue the building permit, approve the subdivision plat, or change the zoning. The department may apply to the city or county for an extension of the thirty-day period. After a public hearing on the matter, the city or county may grant an additional sixty-day extension of the period.

*d.* The department shall begin the process of acquiring property or property rights from affected persons within ten days of the department's written notification of intent to the city or county.

6. If the agency determines that it is necessary to relocate a utility facility, the agency shall have the authority to institute and maintain proceedings on behalf of the owner of the utility facility for the condemnation of replacement property rights. The replacement property rights shall be equal in substance to the existing rights of the owner of the utility facility, except that the

replacement property rights shall be for a width and location deemed appropriate and necessary for the needs of the owner of the utility facility, as determined by the agency and the owner of the facility. The replacement property rights of the owner of the utility facility shall be subordinate to the rights of the agency only to the extent necessary for the construction and maintenance of the designated road. Within a reasonable time after completion of the relocation, all previously owned property rights of the owner of the utility facility no longer required for operation and maintenance of the utility facility shall be released or conveyed to the appropriate parties. The authority of the agency under this subsection may only be exercised upon execution of a relocation agreement between the agency and the owner of the utility facility. For purposes of this subsection, “utility facility” means an electric, gas, water, steam power, or materials transmission or distribution system; a transportation system; a communications system, including cable television; and fixtures, equipment, or other property associated with the operation, maintenance, or repair of the system. A utility facility may be publicly, privately, or cooperatively owned.

7. For the purposes of this section, the term “driveway” shall mean a way of ingress and egress located entirely on private property, consisting of a lane or passageway leading from a residence to a public roadway or highway.

[C24, §4732; C27, 31, 35, §4755-b27; C39, §4658, 4683.23, 4755.23; C46, 50, §309.64, 310.23, 313.25; C54, 58, 62, 66, §306.13; C71, 73, 75, 77, 79, 81, §306.19]

[91 Acts, ch 114, §1](#)

;

[94 Acts, ch 1030, §1](#)

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[95 Acts, ch 135, §2](#)

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[96 Acts, ch 1126, §1](#)

;

[99 Acts, ch 171, §26, 27, 42](#)

;

[2001 Acts, ch 32, §1](#)

### **306.20 Cemeteries.**

No road shall be established through any cemetery or burying ground without the consent of all the parties affected by the same.

[C51, §525; R60, §830; C73, §925; C97, §1487; SS15, §1527-r4; C24, §4566, 4732; C27, 31, 35, §4566, 4755-b27; C39, §4566, 4755.23; C46, 50, §306.7, 313.25; C54, 58, 62, 66, §306.14; C71, 73, 75, 77, 79, 81, §306.20]

### **306.21 Plans, plats and field notes filed.**

All road plans, plats and field notes and true and accurate diagrams of water, sewage and electric power lines for rural subdivisions shall be filed with and approved by the board of supervisors and the county engineer before the subdivision is laid out or recorded. Such plans shall be clearly designated as “completed”, “partially completed” or “proposed” with a statement of the portion completed and the expected date of full completion. If such road plans are not approved as provided in this section such roads shall not become the part of any road system as defined in this chapter.

[C51, §533, 550; R60, §838, 855; C73, §933, 949; C97, §1492, 1504; C24, 27, §4571, 4589; C31, 35, §4571, 4589, 4755-c1; C39, §4571, 4589, 4619, 4686.24, 4755.24; C46, 50, §306.12, 306.30, 306.60, 310.24, 313.26; C54, 58, 62, 66, §306.15; C71, 73, 75, 77, 79, 81, §306.21]

[90 Acts, ch 1236, §43](#)

### **306.22 Sale of unused right-of-way.**

1. When title to any tract of land has been or may be acquired for the construction or improvement of any highway, and when in the judgment of the agency in control of the highway, the tract will not be used in connection with or for the improvement, maintenance, or use of the highway, the agency in control of the highway may sell the tract for cash.

2. The department may contract for the sale of any tract of land subject to the following terms and conditions:

a. The discounted present market value of the contract offer, including the cash down payment, shall exceed one hundred ten percent of the highest cash offer submitted for the tract if a cash offer is received. The discount rate shall be the rate of interest stated in the contract.

b. The cash down payment shall be equal to or in excess of five percent of the total purchase price.

c. The term of the contract shall not exceed ten years.

d. The rate of interest stated in the contract shall not be less than the prevailing rate of interest charged on contract land sales by sellers in the county or general area in which the tract of land is located.

e. The department shall advertise for cash bids and contract offers before accepting a contract offer.

f. The appraised value of property sold under a land contract sale shall be at least five thousand dollars.

g. Any tract of land sold on contract shall be listed on the tax rolls by and taxed to the contract purchaser, as provided in chapters 428 and 443; assessed and valued as provided in chapter 441; taxes levied as provided in chapter 444; collected as provided in chapter 445; and subject to tax sale, redemption, and apportionment of taxes as provided in chapters 446 to 449. The contract purchaser shall discharge and pay all taxes.



3. If any tract of land is sold, the sale shall be subject to the right of a utility association, company, or corporation to continue in possession of a right-of-way in use at the time of the sale.

[C35, §4755-f1; C39, §**4755.44**; C46, 50, §313.53; C54, 58, 62, 66, §306.16; C71, 73, 75, 77, 79, 81, §306.22]

[86 Acts, ch 1245, §1987](#)

; [92 Acts, ch 1163, §71](#)

; [2010 Acts, ch 1061, §180](#)

### **306.23 Notice — preference of sale.**

1. The agency in control of a tract, parcel, or piece of land, or part thereof, which is unused right-of-way shall send by certified mail to the last known address of the present owner of adjacent land from which the tract, parcel, piece of land, or part thereof, was originally purchased or condemned for highway purposes, and to the person who owned the land at the time it was purchased or condemned for highway purposes, notice of the agency's intent to sell the land, the name and address of any other person to whom a notice was sent, and the fair market value of the real property based upon an appraisal by an independent appraiser.

2. The notice shall give an opportunity to the present owner of adjacent property and to the person who owned the land at the time it was purchased or condemned for highway purposes to be heard and make offers within sixty days of the date the notice is mailed for the tract, parcel, or piece of land to be sold. An offer which equals or exceeds in amount any other offer received and which equals or exceeds the fair market value of the property shall be given preference by the agency in control of the land. If no offers are received within sixty days or if no offer equals or exceeds the fair market value of the land, the agency shall transfer the land for a public purpose or proceed with the sale of the property.

3. For the purposes of this section, "*public purpose*" means the transfer to a state agency or a city, county, or other political subdivision for a public purpose.

[C35, §4755-f2; C39, §**4755.45**; C46, 50, §313.54; C54, 58, 62, 66, §306.17; C71, 73, 75, 77, 79, 81, §306.23;

[81 Acts, ch 98, §1](#)

;

[82 Acts, ch 1104, §7](#)

]

[87 Acts, ch 35, §1](#)

;

[97 Acts, ch 149, §2, 3](#)

### **306.24 Conditions.**

Any sale of land as herein authorized shall be upon the conditions that the tract, parcel, or piece of land so sold shall not be used in any manner so as to interfere with the use of the highway by the public, or to endanger public safety in the use of the highway, or to the material damage of the adjacent owner.

[C35, §4755-f3; C39, §**4755.46**; C46, 50, §313.55; C54, 58, 62, 66, §306.18; C71, 73, 75, 77, 79, 81, §306.24]

### **306.25 Execution of conveyance.**

If a sale of land in connection with a primary road, state park road, or institutional road has been authorized as provided in this chapter, written conveyances containing the conditions as prescribed by the controlling state agency shall be made in the name of the state and signed by the governor and secretary of state, with the great seal of the state of Iowa attached. If a sale of land in connection with a secondary road has been authorized by the board of supervisors as provided in this chapter, written conveyances containing the provisions prescribed by the board of supervisors shall be made in the name of the county and signed by the chairperson of the board of supervisors and the county auditor.

[C35, §4755-f4; C39, §**4755.47**; C46, 50, §313.56; C54, 58, 62, 66, §306.19; C71, 73, 75, 77, 79, 81, §306.25]

[92 Acts, ch 1163, §72](#)

### **306.26 Payment of damages and right-of-way cost — proceeds of sale.**

Damages allowed on account of the vacation of any highway and costs incident thereto, right-of-way or land purchased or condemned for or on account of any highway and costs incident thereto, and the funds received from the sale or rental of any highway right-of-way or land, shall be paid from or credited to, as the case may be, the road fund or funds applicable to said highway or highway system.

[C51, §546; R60, §851; C73, §946; C97, §1501; C24, 27, §4586; C31, 35, §4586, 4755-d8, -f5; C39, §**4586, 4755.43, 4755.48**; C46, 50, §306.27, 313.52, 313.57; C54, 58, 62, 66, §306.20; C71, 73, 75, 77, 79, 81, §306.26]

## **CHANGES IN ROADS, STREAMS, OR DRY RUNS**

### **306.27 Changes for safety, economy, and utility.**

The state department of transportation as to primary roads and the boards of supervisors as to secondary roads on their own

motion may change the course of any part of any road or stream, watercourse, or dry run and may pond water in order to avoid the construction and maintenance of bridges, or to avoid grades, or railroad crossings, or to straighten a road, or to cut off dangerous corners, turns or intersections on the highway, or to widen a road above statutory width, or for the purpose of preventing the encroachment of a stream, watercourse, or dry run upon the highway. The department and the board of supervisors shall conduct their proceedings in the manner and form prescribed in chapter 6B, except that the board of supervisors may use the form prescribed in sections 306.28 to 306.37 for the condemnation of right-of-way that is contiguous to existing road right-of-way and necessary for the maintenance, safety improvement, or upgrade of the existing secondary road. Changes are subject to chapter 455B and chapter 459, subchapters II and III.

[C97, §427; SS15, §1527-r1; C24, 27, 31, 35, 39, §**4607**; C46, 50, §306.48; C54, 58, 62, 66, §306.21; C71, 73, 75, 77, 79, 81, §306.27]

[83 Acts, ch 101, §66](#)

;

[87 Acts, ch 61, §1](#)

;

[99 Acts, ch 171, §28, 42](#)

### **306.28 Appraisers.**

If the board is unable, by agreement with the owner, to acquire the necessary right-of-way to effect such change, a compensation commission shall be selected pursuant to section 6B.4, to appraise the damages consequent on the taking of the right-of-way.

[SS15, §1527-r1, -r2; C24, 27, 31, 35, 39, §**4610**; C46, 50, §306.51; C54, 58, 62, 66, §306.22; C71, 73, 75, 77, 79, 81, §306.28]

[99 Acts, ch 171, §29, 42](#)

### **306.29 Notice.**

The county auditor shall cause the following notice to be served on the individual owner of each tract or parcel of land to be taken for such right-of-way, as shown by the transfer books in the office of such county auditor, and upon each person owning or holding a mortgage, or lease, upon such land as shown by the county records, and upon the actual occupant of such land if other than the owner thereof:

To whom it may concern: Notice is given that the board of supervisors of ..... county, Iowa, propose to condemn for road purposes the following described real estate in said county: (Here describe the right-of-way, and the tract or tracts from which such right-of-way will be taken.) The damages caused by said condemnation will be assessed by a compensation commission appointed as provided by law for the purpose of appraising the damages. All parties interested are further notified that the compensation commission will, when duly appointed, proceed to appraise the damages, will report the appraisement to the board of supervisors and that the board will pass thereon as provided by law, and that at all such times and places you may be present. You are further notified that at the hearing before the supervisors you may file objections to the use of the land for road purposes and that all such objections not so made will be deemed waived.

.....

County Auditor.

[SS15, §1527-r2, -r3, -r6; C24, 27, 31, 35, 39, §**4611**; C46, 50, §306.52; C54, 58, 62, 66, §306.23; C71, 73, 75, 77, 79, 81, §306.29]

[99 Acts, ch 171, §30, 42](#)

### **306.30 Service of notice.**

Owners, occupants, and mortgagees of record who are residents of the county shall be personally served in the manner in which and for the time original notices in the district court are required to be served.

Owners and mortgagees of record who do not reside in the county and owners and mortgagees of record who do reside in the county when the officer returns that they cannot be found in the county, shall be served by publishing the notice as provided in section 331.305 and also by mailing by certified mail a copy of the notice to the owner and mortgagee of record addressed to the owner's and mortgagee of record's last known address, and the county auditor shall furnish to the board of supervisors the county auditor's affidavit that the notice has been sent, which affidavit shall be conclusive evidence of the mailing of the notice.

Personal service outside the county but within the state shall take the place of service by publication.

No service need be had on one who has exercised the right to select an appraiser.

[SS15, §1527-r2, -r3; C24, 27, 31, 35, 39, §**4612**; C46, 50, §306.53; C54, 58, 62, 66, §306.24; C71, 73, 75, 77, 79, 81,



§306.30]

[87 Acts, ch 43, §7](#)

Time and manner of service, R.C.P. 1.302 – 1.315

### **306.31 Assessment.**

The appraisers shall forthwith proceed to the assessment of damages and shall make written report of the damages to the board of supervisors.

[SS15, §1527-r2; C24, 27, 31, 35, 39, §**4613**; C46, 50, §306.54; C54, 58, 62, 66, §306.25; C71, 73, 75, 77, 79, 81, §306.31]  
[99 Acts, ch 171, §31, 42](#)

### **306.32 Hearing — adjournment.**

The board shall proceed to a hearing on the objections or assessment of damages of any owner, mortgagee of record, and the actual occupant of such land if any of whom it has acquired jurisdiction, or if there be owners, mortgagee of record, and the actual occupant of such land if any over whom jurisdiction has not been acquired, the board may adjourn such hearing until a date when jurisdiction will be complete as to all owners.

[SS15, §1527-r3; C24, 27, 31, 35, 39, §**4614**; C46, 50, §306.55; C54, 58, 62, 66, §306.26; C71, 73, 75, 77, 79, 81, §306.32]

### **306.33 Hearing on objections.**

The board shall, at the final hearing, first pass on the objections to the proposed change. If objections be sustained the proceedings shall be dismissed unless the board finds that the objections may be avoided by a change of plans, and to this end an adjournment may be ordered, if necessary, in order to secure service on additional parties.

[SS15, §1527-r3; C24, 27, 31, 35, 39, §**4615**; C46, 50, §306.56; C54, 58, 62, 66, §306.27; C71, 73, 75, 77, 79, 81, §306.33]

### **306.34 Hearing on claims for damages.**

When objections to the proposed change are overruled, the board shall proceed to determine the damages to be awarded to each claimant. If the damages finally awarded are, in the opinion of the board, excessive, the proceedings shall be dismissed; if not excessive, the board may, by proper order, establish such proposed change.

[SS15, §1527-r3; C24, 27, 31, 35, 39, §**4616**; C46, 50, §306.57; C54, 58, 62, 66, §306.28; C71, 73, 75, 77, 79, 81, §306.34]

### **306.35 Appeals.**

Claimants for damages may appeal to the district court from the award of damages in the manner and time for taking appeals from the orders establishing highways generally.

[C97, §428; SS15, §1527-r3; C24, 27, 31, 35, 39, §**4617**; C46, 50, §306.58; C54, 58, 62, 66, §306.29; C71, 73, 75, 77, 79, 81, §306.35]

### **306.36 Damages on appeal — rescission of order.**

If the damages as finally determined on appeal be, in the opinion of the board, excessive, the board may rescind its order establishing such change.

[SS15, §1527-r3; C24, 27, 31, 35, 39, §**4618**; C46, 50, §306.59; C54, 58, 62, 66, §306.30; C71, 73, 75, 77, 79, 81, §306.36]

### **306.37 Tender of damages.**

No appeal from an award of damages shall delay the prosecution of the work when the amount of the award is tendered in writing to the claimant and such tender is kept good. An order to the auditor to issue warrants to claimants for damages shall constitute a valid tender, if funds are available to promptly meet such warrants. Acceptance of the amount of such tender bars an appeal. Should possession of the condemned premises be taken pending appeal and the final award be not paid, the county shall be liable for all damages caused during such possession.

[SS15, §1527-r3; C24, 27, 31, 35, 39, §**4620**; C46, 50, §306.61; C54, 58, 62, 66, §306.31; C71, 73, 75, 77, 79, 81, §306.37]

## **GENERAL PROVISIONS**

### **306.38 Rental of acquired property pending use.**

In the event that land acquired for improvement of any highway is not immediately needed for such improvement, the agency in control of said highway may rent such land or buildings thereon to responsible persons for a cash rental consistent with the fair

market value of similar property. The said agency may employ a local real estate firm for management and collection of rentals or may do so directly through its own personnel. The commission or service charge of such real estate company shall be paid out of such rentals.

[C62, 66, §306.32; C71, 73, 75, 77, 79, 81, §306.38]

#### **306.39 Flooding highways — federal water resources projects.**

The agency which has control and jurisdiction over any highway or highway system which may be affected by a federal water resources project may grant, sell, exchange, or convey to the United States of America, the perpetual right, power, privilege and easement to overflow, flood, and submerge all of the portion of easements for highway purposes under the control and jurisdiction of such agency.

[C66, §306.33; C71, 73, 75, 77, 79, 81, §306.39]

#### **306.40 Easements conveyed.**

If an easement authorized under section 306.39 is conveyed in connection with a primary road, state park road, or institutional road, written conveyances containing the conditions as prescribed by the controlling state agency shall be made in the name of the state and signed by the governor and secretary of state, with the seal of the state of Iowa attached. If the easement is conveyed in connection with a secondary road, written conveyances containing the provisions prescribed by the board of supervisors shall be made in the name of the county and signed by the chairperson of the board and the county auditor.

[C66, §306.34; C71, 73, 75, 77, 79, 81, §306.40]

[92 Acts, ch 1163, §73](#)

#### **306.41 Temporary closing for construction.**

The agency having jurisdiction and control over any highway in the state, or the chief engineer of said agency when delegated by such agency, may temporarily close sections of a highway by formal resolution entered upon the minutes of such agency when reasonably necessary because of construction, reconstruction, maintenance or natural disaster and shall cause to be erected "road closed" signs and partial or total barricades in the roadway at each end of the closed highway section and on the closed highway where that highway is intersected by other highways if such intersection remains open. Any numbered road closed for over forty-eight hours shall have a designated detour route. The agency having jurisdiction over a section of highway closed in accordance with the provisions of this section, or the persons or contractors employed to carry out the construction, reconstruction, or maintenance of the closed section of highway, shall not be liable for any damages to any vehicle that enters the closed section of highway or the contents of such vehicle or for any injuries to any person that enters the closed section of highway, unless the damages are caused by gross negligence of the agency or contractor.

Nothing herein shall be construed to prohibit or deny any person from gaining lawful access to the person's property or residence, nor shall it change or limit liability to such persons.

[C71, 73, 75, 77, 79, 81, §306.41]

#### **306.42 Transfer of rights-of-way.**

1. This section is intended to vest all documents of title in road right-of-way in the jurisdiction responsible for the road. This section establishes a simple method to transfer road rights-of-way by quitclaim deed and to authorize the use of available descriptions, plats, maps or engineering drawings to effect such transfers and to provide an orderly method by which such transfers may be filed, indexed and recorded.

2. The department shall transfer by quitclaim deed to the county or to the city having jurisdiction over a road, all of the state's legal or equitable title and interest in right-of-way for the road or street and may transfer any adjacent unused right-of-way or land in excess of that needed as right-of-way. The deed shall be executed by the director of the department. However, if the department owns any adjacent unused right-of-way in excess of that needed as right-of-way which is located outside the incorporated limits of a city and is suitable for purposes specified in section 350.4, subsection 2, the department may, at the request of the county and the county conservation board, transfer the property by quitclaim deed to the county for the use and benefit of the county conservation board.

3. The county or the city shall transfer by quitclaim deed to the state department of transportation when having jurisdiction over a road, all of the county's or the city's legal or equitable title and interest in rights-of-way for the road and may transfer any adjacent unused right-of-way or land in excess of that needed as right-of-way. The deed shall be executed by the chairperson of the board of supervisors by order of the board for county roads and by the mayor or city manager by order of the city council for city streets.

4. Transfers under this section shall be subject to the right of a utility, association, company or corporation to continue in possession of a right-of-way in use at the time of the transfer. Transfers shall be subject to rights of ingress and egress whether excepted, reserved or granted by the transferring authority to land or to owners of land adjacent to the right-of-way. Transfers shall include an index of parcels transferred by the character of the instrument or proceeding, the grantor and grantee, and date of the last instrument or proceeding acquiring rights to each parcel. Transfers shall locate the right-of-way by quarter-quarter

section, township and range or if so acquired, by lot, block and subdivision. The transferring jurisdiction shall transmit to the receiving jurisdiction all available original documents of title or a certified true copy if the right-of-way was acquired by condemnation or the original deed is lost. Transfers shall be recorded and indexed in the county in which the land is located.

5. Notwithstanding chapter 542B and sections 6A.20, 306.22, 354.13, 354.15, and 364.7, legal descriptions, plats, maps, or engineering drawings used to describe transfers of right-of-way shall, where available, be descriptions, plats, maps, or engineering drawings of record and shall be incorporated by reference to the title instrument or proceedings. If a part but not all of the land acquired by a single conveyance or condemnation is being transferred, the description of that part to be transferred shall be abstracted from the present legal description, plat, map, or engineering drawing of record.

6. Notwithstanding any other provision of the Code, for transfers of roads and streets made after May 1, 1987, neither the transferring jurisdiction or the receiving jurisdiction shall be held liable for any claim or damage for any act or omission relating to the design, construction, or maintenance of the road or street that occurred prior to the effective date of the transfer. This paragraph shall apply to all transfers pursuant to this chapter or section 313.2.

[C79, 81, S81, §306.42;

[81 Acts, ch 99, §1](#)

,  
[ch 117, §1044](#)

]  
[86 Acts, ch 1245, §1902](#)

;  
[87 Acts, ch 232, §18](#)

;  
[90 Acts, ch 1236, §44](#)

**306.43** Repealed by 98 Acts, ch 1075, §17.

**306.44 Study of road systems.**

Transfers not executed as of April 1, 1981, shall be void unless mutually agreed upon by the parties involved. The department shall conduct a study to determine the size of the primary road systems, and the department in conjunction with the county boards of supervisors or the supervisors' designee shall conduct a study to determine the size of the secondary road systems and provide the general assembly with alternative primary and secondary road systems prior to February 1, 1982, for its review. The general assembly may approve a method for classifying the primary and secondary road systems.

[  
[81 Acts, ch 96, §1](#)  
]

**306.45 Easements on highway rights-of-way.**

The department may grant easements across land under its jurisdiction if the department determines that the easement will not adversely affect the construction and maintenance of the highway system. Written conveyances containing any easement conditions prescribed by the department shall be made in the name of the state and signed by the governor and the secretary of state, with the seal of the state of Iowa affixed.

[98 Acts, ch 1075, §18](#)

**306.46 Public utility facilities — public road rights-of-way.**

1. A public utility may construct, operate, repair, or maintain its utility facilities within a public road right-of-way. The location of new utility facilities shall comply with section 318.9. A utility facility shall not be constructed or installed in a manner that causes interference with public use of the road.

2. For purposes of this section, "*public utility*" means a public utility as defined in section 476.1, and shall also include waterworks, municipally owned waterworks, joint water utilities, rural water districts incorporated under chapter 357A or chapter 504, cooperative water associations, and electric transmission owners as defined in section 476.27 primarily providing service to public utilities as defined in section 476.1. For the purposes of this section, "*utility facilities*" means any cables, conduits, wire, pipe, casing pipe, supporting poles, guys, and other material and equipment utilized for the furnishing of electric, gas, communications, water, or sewer service.

3. This section shall not impair or interfere with a city's authority to grant, amend, extend, or renew a franchise as provided in section 364.2, and shall not impair or interfere with a city's existing general police powers to control the use of its right-of-way.

[2004 Acts, ch 1014, §1, 2](#)  
; [2004 Acts, ch 1049, §191](#)  
; [2004 Acts, ch 1175, §332, 346](#)  
; [2005 Acts, ch 3, §61](#)  
; [2006 Acts, ch 1097, §14](#)  
; [2016 Acts, ch 1006, §1](#)

**306.47 Utility facilities relocation policy.**

1. It is the policy of the general assembly that a proactive, cooperative coordination between the department, local governments, private and public utility companies, and other affected parties is the most effective way to minimize costs, eliminate the need for utilities to relocate facilities, limit disruption of utility services related to federal, state, or local highway construction projects, and limit the potential need for relocation of utility facilities.

2. All potentially affected parties shall be invited to participate in development meetings at the design phase of a highway construction project to review plans, understand goals and objectives of the proposed project, and discuss options that would limit the impact of the construction on utility facilities and thereby minimize or even eliminate costs associated with utility facility relocation. All jurisdictions and other interested parties shall cooperate to discuss strategies and policies to utilize the Iowa one call system in the development of a highway construction project. Failure of the affected parties to respond or participate during the design phase shall not in any way affect the ability of the federal, state, or local agency to proceed with design and construction.

[2008 Acts, ch 1124, §1](#)

Iowa one call system, see chapter 480

**306.48 and 306.49**Reserved.

SOIL AND WATER CONSERVATION IMPACT

**306.50 Construction program notice.**

The appropriate highway authority shall provide copies of its annual construction program to the soil and water conservation district commissioners' office in each county. The soil and water conservation district commissioners' office shall review the construction program submitted by each highway authority to determine those projects which may impact upon soil erosion and water diversion or retention.

[85 Acts, ch 106, §2](#)

;

[87 Acts, ch 23, §7](#)

**306.51 Soil erosion impact.**

The soil and water conservation district commissioners shall, within thirty days after receipt of the construction program, notify the appropriate highway authority of the projects which will impact upon soil erosion and water drainage and request that the appropriate highway authority notify them of the date, time, and place for holding the design hearing on preliminary plans.

[85 Acts, ch 106, §3](#)

;

[87 Acts, ch 23, §8](#)

**306.52 Review of plans.**

Upon examining the preliminary plans on a road project, the soil and water conservation district commissioners may review each road project for which a drainage structure is required. The soil and water conservation commissioners shall ascertain whether or not the proposed erosion control or runoff control structure is suitable to reduce the velocity of runoff, reduce gully erosion, or provide for sedimentation or other improvement that would enhance soil conservation. The soil and water conservation commissioners shall also ascertain whether any other aspect of the road construction will affect soil and water conservation.

[85 Acts, ch 106, §4](#)

;

[87 Acts, ch 23, §9](#)

**306.53 Submission of recommendations — contribution to cost.**

The soil and water conservation district commissioners shall submit their findings and recommendations to the appropriate highway authority not later than twenty days following examination of the construction plans.

The appropriate highway authority shall respond to the soil and water conservation district commissioners and indicate its agreement to the suggested installation or its rejection of the proposal.

Where feasible and cost-sharing funds are available, the soil and water conservation district may contribute in part or in its entirety to any additional cost for the erosion control structure.

[85 Acts, ch 106, §5](#)

;  
[87 Acts, ch 23, §10](#)

**306.54 Reporting.**

If the proposal is rejected, the appropriate highway authority shall provide a written report documenting the reason for the rejection to the soil and water conservation district commissioners and the state department of transportation. The state department of transportation shall submit a written report to the general assembly not later than March 1 of each year. The report shall contain only a list of those highway projects where a disagreement exists between the department and the soil and water conservation district commissioners and the reasons for rejecting the recommendations of the soil and water conservation district commissioners. The report shall be filed with the secretary of the senate and the chief clerk of the house of representatives.

[85 Acts, ch 106, §6](#)

;  
[87 Acts, ch 23, §11](#)

## CHAPTER 306D

### SCENIC ROUTES

#### **306D.1 Statement of purpose — intent.**

1. The general assembly finds that:

*a.* The state offers numerous regions through which people can drive for the pleasure of viewing unusually scenic and interesting landscapes; however, routes to and through these areas have not been adequately identified for Iowans and state visitors.

*b.* Among those things that attract motorists to the state's landscape are agricultural lands, forests, river basins, distinctive landforms, interesting architecture, metropolitan areas, small rural towns, and historic sites.

*c.* The landscape qualities of unusually scenic routes throughout the state have not been protected from visual and resource deterioration particularly along routes which pass near the state's nationally significant areas such as the bluffs of the Mississippi and Missouri rivers, the Amana colonies, the Herbert Hoover national historic site, federal reservoirs, communities surrounding the state's natural lakes, the Des Moines river greenbelt, the great river road, and many others.

*d.* A principal goal of economic development in this state is to increase the influence which travel and tourism have on the state's economic expansion.

*e.* Iowans and visitors should be encouraged to travel to and through unusually scenic areas of the state.

*f.* A program should be established, following a statewide plan, to identify and promote highways and secondary routes which pass through unusually scenic landscapes and to protect and enhance the scenic qualities of the landscape through which these routes pass.

2. In addition to other goals for the program, it is the intention of the general assembly that the scenic highways program be coordinated with the state's open space program under chapter 465A.

[87 Acts, ch 175, §1](#)

; [2014 Acts, ch 1092, §64](#)

#### **306D.2 Statewide scenic highways program — objectives and agency duties.**

1. The state department of transportation shall prepare a statewide, long-range plan for the protection, enhancement, and identification of highways and secondary roads which pass through unusually scenic areas of the state as identified in section 306D.1. The department of natural resources, department of economic development, and department of cultural affairs, private organizations, county conservation boards, city park and recreation departments, and the federal agencies having jurisdiction over land in the state shall be encouraged to assist in preparing the plan. The plan shall be coordinated with the state's open space plan if a state open space plan has been approved by the general assembly. The plan shall include, but is not limited to, the following elements:

*a.* Preparation of a statewide inventory of scenic routes and ranking of relative uniqueness for each route. The degree to which these routes suffer from negative visual intrusions shall be documented.

*b.* Recommended techniques for preserving and enhancing the scenic qualities associated with each route.

*c.* Forecasts of significant changes in traffic volumes and environmental, social, and economic impacts if scenic routes are publicly identified and promoted as tourism attractions.

*d.* Recommended techniques for incorporating scenic highway routes in state and local tourism development and marketing programs.

*e.* Landscape management needs including maintenance, rehabilitation, and improvements to scenic areas.

*f.* Funding levels needed to accomplish the statewide scenic highway program.

*g.* Recommendations of how federal and state transportation programs can be modified or developed to assist the state's scenic highway program.

2. The preparation of the plan is subject to an appropriation by the general assembly for that purpose. The plan shall be submitted to the general assembly by January 15, 1988. Prior to submission of the plan to the general assembly, the department shall request comments on the proposed plan from state agencies, federal agencies, and private organizations with interests in scenic highways. The comments shall be submitted to the general assembly.

[87 Acts, ch 175, §2](#)

; [2011 Acts, ch 118, §§5, 89](#)

; [2012 Acts, ch 1021, §64](#)

Duties of former department of economic development were assumed by economic development authority beginning July 1, 2011, pursuant to 2011 Acts, ch 118

**306D.3 Plan recommendations and pilot projects.**

1. The department's recommendations to the general assembly shall include proposed legislation for the state to acquire and protect scenic landscapes along public roads and highways.

2. Before January 1, 1989, the department shall identify four pilot scenic highway routes across two or more counties each for trial promotion in the state's tourism marketing program.

[87 Acts, ch 175, §3](#)

**306D.4 Scenic highway advertising.**

1. The department of transportation shall have the authority to adopt rules to control the erection of new advertising devices on a highway designated as a scenic highway or scenic byway in order to comply with federal requirements concerning the implementation of a scenic byways program.

2. Notwithstanding subsection 1, if an advertising device was lawfully erected along an interstate highway within the corporate limits of a city prior to designation of the highway as a scenic byway and, after such designation occurs, the advertising device is displaced due to the reconstruction, improvement, or relocation of the highway, the advertising device may be relocated to a location determined by the department to be substantially the same location, subject to approval by the federal highway administration, and shall not be considered an erection of a new advertising device, if all of the following apply:

*a.* The location conforms to the requirements of chapters 306B and 306C.

*b.* The materials, number and type of supports, lighting, face size, and height of the advertising device remain the same.

[95 Acts, ch 135, §4](#)

; [2013 Acts, ch 140, §22](#)

## CHAPTER 314

### ADMINISTRATIVE PROVISIONS FOR HIGHWAYS

#### **314.1 Bidding procedures — basis for awarding contracts.**

1. The agency having charge of the receipt of bids and the award of contracts for the construction, reconstruction, improvement, or repair or maintenance of a highway, bridge, or culvert may require, for any highway, bridge, or culvert contract letting, that each bidder file with the agency a statement showing the bidder's financial standing, equipment, and experience in the execution of like or similar work. The statements shall be on standard forms prepared by the department and shall be filed with the agency prior to the letting at which the bidder expects to bid. The agency may, in advance of the letting, notify the bidder as to the amount and the nature of the work for which the bidder is deemed qualified to bid. A bidder who is prequalified under this subsection by the department shall be deemed qualified for a highway, bridge, or culvert contract letting by any other agency and shall submit proof of the prequalification in a manner determined by the department if required to do so by the agency.

2. Notwithstanding any other provision of law to the contrary, a public improvement that involves the construction, reconstruction, or improvement of a highway, bridge, or culvert and that has a cost in excess of the applicable threshold in section 73A.18, 262.34, 297.7, 309.40, 310.14, or 313.10, as modified by the bid threshold subcommittee pursuant to section 314.1B, shall be advertised and let for bid, except such public improvements that involve emergency work pursuant to section 309.40A, 313.10, or 384.103, subsection 2. For a city having a population of fifty thousand or less, a public improvement that involves the construction, reconstruction, or improvement of a highway, bridge, or culvert that has a cost in excess of twenty-five thousand dollars, as modified by the bid threshold subcommittee pursuant to section 314.1B, shall be advertised and let for bid, excluding emergency work. However, a public improvement that has an estimated total cost to a city in excess of a threshold of fifty thousand dollars, as modified by the bid threshold subcommittee pursuant to section 314.1B, and that involves the construction, reconstruction, or improvement of a highway, bridge, or culvert that is under the jurisdiction of a city with a population of more than fifty thousand, shall be advertised and let for bid. Cities required to competitively bid highway, bridge, or culvert work shall do so in compliance with the contract letting procedures of sections 26.3 through 26.13.

3. *a.* In the award of contracts for the construction, reconstruction, improvement, or repair or maintenance of a highway, bridge, or culvert, the agency having charge of awarding such contracts shall give due consideration not only to the prices bid but also to the mechanical or other equipment and the financial responsibility and experience in the performance of like or similar contracts. The agency may reject any or all bids. The agency may readvertise and relet the project without conducting an additional public hearing if no substantial changes are made to the project's plans or specifications. The agency may let by private contract or build by day labor, at a cost not in excess of the lowest bid received.

*b.* Upon the completion of any contract or project on either the farm-to-market or secondary road system, the county engineer shall file with the county auditor a statement showing the total cost thereof with certificate that the work has been done in accordance with the plans and specifications. Upon completion of a contract or project on the municipal street system, the city public works department or city engineer shall file with the city clerk a statement showing the total cost of the contract or project with a certificate that the work has been done in accordance with the plans and specifications. All contracts shall be in writing and shall be secured by a bond for the faithful performance thereof as provided by law.

[S13, §1527-s18; C24, §4651, 4700; C27, 31, 35, §4644-c41, 4651, 4755-b11; C39, §**4644.39, 4651, 4686.15, 4755.11**; C46, §309.57, 310.15, 313.11; C50, §308A.10, 309.39; C54, §309.39, 314.1; C58, 62, 66, 71, 73, 75, 77, 79, 81, §314.1]

2001 Acts, ch 32, §7, 14

; 2006 Acts, ch 1017, §27, 42, 43

; 2006 Acts, ch 1185, §80

; 2010 Acts, ch 1061, §106

#### **314.1A Detailed cost accountings by cities and counties — rules.**

1. The department shall adopt rules prescribing the manner by which cities and counties shall provide a detailed cost accounting under section 309.93 or 312.14, of all instances of the use of day labor or public or private contracts for construction, reconstruction, or improvement projects of a highway, bridge, or culvert within their jurisdiction.

2. The department shall adopt rules prescribing the manner by which governmental entities, as defined in section 26.2, shall administer section 26.14 concerning public improvement quotations.

3. The rules shall include definitions concerning types of projects and uniform requirements and definitions that cities and



counties under subsection 1 and governmental entities under subsection 2 shall use in determining costs for such projects. The department shall establish horizontal and vertical infrastructure advisory committees composed of representatives of public sector agencies, private sector vertical and horizontal contractor organizations, and certified public employee collective bargaining organizations to make recommendations for such rules.

[2001 Acts, ch 32, §8](#)

;

[2006 Acts, ch 1017, §28, 42, 43](#)

### **314.1B Bid threshold subcommittees — adjustments — notice.**

#### **1. *Horizontal infrastructure.***

a. The director of the department shall appoint, from the members of the appropriate advisory committee established under section 314.1A, a horizontal infrastructure bid threshold subcommittee for highway, bridge, or culvert projects. The subcommittee shall consist of seven members, three of whom shall be representatives of cities and counties, three of whom shall be representatives of private sector contractor organizations, and with the remaining member being the director or the director's designee, who shall serve as chairperson of the subcommittee. A vacancy in the membership of the subcommittee shall be filled by the director.

b. The subcommittee shall review the competitive bid thresholds applicable to city and county highway, bridge, and culvert projects. The subcommittee shall review price adjustments for all types of city and county highway, bridge, and culvert construction, reconstruction, and improvement projects, based on changes in the construction price index from the preceding year. Upon completion of the review the subcommittee may make adjustments in the applicable bid thresholds for types of work based on the price adjustments.

c. A bid threshold, under this subsection, shall not be adjusted to an amount that is less than the bid threshold applicable to a city or county on July 1, 2006, as provided in section 73A.18, 309.40, 310.14, or 314.1. An adjusted bid threshold shall take effect as provided in subsection 3, and shall remain in effect until a new adjusted bid threshold is established and becomes effective as provided in this section.

#### **2. *Vertical infrastructure.***

a. The director of the department shall appoint, from the members of the appropriate advisory committee established under section 314.1A, a vertical infrastructure bid threshold subcommittee for public improvements as defined in section 26.2. The subcommittee shall consist of seven members, three of whom shall be representatives of governmental entities as defined in section 26.2, three of whom shall be representatives of private sector vertical infrastructure contractor organizations, and with the remaining member being the director or the director's designee, who shall serve as chairperson of the subcommittee. A vacancy in the membership of the subcommittee shall be filled by the director.

b. The subcommittee appointed under this subsection shall review the competitive bid thresholds applicable to governmental entities under chapter 26. The subcommittee shall review price adjustments for all types of construction, reconstruction, and public improvement projects based on the changes in the construction price index, building cost index, and material cost index from the preceding adjustment. Upon completion of the review the subcommittee may make adjustments in the applicable bid thresholds for types of work based on the price adjustments.

c. The subcommittee shall not make an initial adjustment to the competitive bid threshold in section 26.3 to be effective prior to January 1, 2012. Thereafter, the subcommittee shall adjust the bid threshold amount in accordance with subsection 3 but shall not adjust the bid threshold to an amount less than the bid threshold applicable to a governmental entity on January 1, 2007.

d. Beginning July 1, 2006, the subcommittee shall make adjustments to the competitive quotation threshold amounts in section 26.14 for vertical infrastructure in accordance with the methodology of paragraph "b".

e. After 2012, the subcommittee shall adjust the competitive quotation threshold amounts in section 26.14 at the same time and by the same percentage as adjustments are made to the competitive bid threshold.

3. *Review — publication.* Each subcommittee shall meet to conduct the review and make the adjustments described in this section on or before August 1 of every other year, or of every year if determined necessary by the subcommittee. By September 1 of each year in which a subcommittee makes adjustments in the bid or quotation thresholds, the director shall cause an advisory notice to be published in the Iowa administrative bulletin and in a newspaper of general circulation in this state, stating the adjusted bid and quotation thresholds to be in effect on January 1 of the following year, as established by the subcommittees under this section.

[2001 Acts, ch 32, §9, 14](#)

;

[2006 Acts, ch 1017, §29, 42, 43](#)

;

[2007 Acts, ch 144, §11, 12](#)

### **314.2 Interest in contract prohibited.**

No state or county official or employee, elective or appointive, shall be directly or indirectly interested in any contract for the construction, reconstruction, improvement, or maintenance of any highway, bridge, or culvert, or the furnishing of materials therefor. The letting of a contract in violation of this section shall invalidate the contract and such violation shall be a complete

defense to any action to recover any consideration due or earned under the contract at the time of its termination.

[S13, §1527-s15; C24, §4685, 4700; C27, 31, 35, §4685, 4755-b10; C39, §**4685, 4686.14, 4755.10**; C46, §309.92, 310.14, 313.10; C50, §308A.11; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §314.2]  
[2009 Acts, ch 133, §115](#)

#### **314.3 Claims — approval and payment.**

All claims for construction, reconstruction, improvement, repair, or maintenance on any highway shall be itemized on voucher forms prepared for that purpose, certified to by the claimants and by the engineer in charge, and then forwarded to the agency in control of that highway for final audit and approval. Claims payable from the farm-to-market road fund shall be approved by both the board of supervisors and the department. Upon approval by the department of vouchers which are payable from the farm-to-market road fund, or from the primary road fund, as the case may be, such vouchers shall be forwarded to the director of the department of administrative services, who shall draw warrants therefor and said warrants shall be paid by the treasurer of the state from the farm-to-market road fund or from the primary road fund, as the case may be.

If the engineer makes such certificate or a member of the agency approves such claim when said work has not been done in accordance with the plans and specifications, and said work be not promptly made good without additional cost, the engineer or member shall be liable on the person's bond for the amount of such claim.

[SS15, §1527-s10; C24, §4653, 4702; C27, 31, 35, §4653, 4755-b15; C39, §**4653, 4686.17, 4755.15**; C46, §309.59, 310.17, 313.15; C50, §308A.12; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §314.3]  
[2003 Acts, ch 145, §286](#)

#### **314.4 Partial payments.**

Partial payments may be made on highway contract work during the progress thereof, but no such partial payment shall be deemed final acceptance of the work nor a waiver of any defect therein. The approval of any claim by the agency in control of the work, or highway on which the work is located, may be evidenced by the signature of the chairperson of said agency, or of a majority of the members of said agency, on the individual claims or on the abstract of a number of claims with the individual claims attached to said abstract.

[SS15, §1527-s10; C24, §4654, 4702; C27, 31, 35, §4654, 4755-b16; C39, §**4654, 4755.16**; C46, §309.60, 313.16; C50, §308A.13; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §314.4]

#### **314.5 Extensions in certain cities.**

The agency in control of a secondary road, subject to approval of the council, may eliminate danger at railroad crossings and construct, reconstruct, improve, repair, and maintain any road or street which is an extension of the secondary road within a city. However, this authority does not apply to the extensions of secondary roads located in cities over twenty-five hundred population, where the houses or business houses average less than two hundred feet apart.

The phrase "*subject to the approval of the council*" as it appears in this section, shall be construed as authorizing the council to consider said proposed improvement only in its relationship to municipal improvements such as sewers, water lines, establishing grades, change of established street grades, sidewalks and other public improvements. The locations of such road extensions shall be determined by the agency in control of such road or road system.

[C31, 35, §4644-c47; C39, §**4644.45, 4686.21**; C46, §309.45, 310.21; C50, §308A.14; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §314.5]  
[89 Acts, ch 134, §8](#)

#### **314.6 Highways along city limits.**

Whenever any public highway located along the corporate line of any city is an extension of a farm-to-market road, or of a primary road, it may be included in the farm-to-market road system or the primary road system, as the case may be, and may be constructed, reconstructed, improved, repaired, and maintained as a part of said road system.

[C24, §4735; C27, 31, 35, §4755-b28; C39, §**4686.25, 4755.26**; C46, §310.25, 313.35; C50, §308A.15; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §314.6]

#### **314.7 Trees — ingress or egress — drainage.**

Officers, employees, and contractors in charge of improvement or maintenance work on any highway shall not cut down or injure any tree growing by the wayside which does not materially obstruct the highway, or tile drains, or interfere with the improvement or maintenance of the road, and which stands in front of any city lot, farmyard orchard or feed lot, or any ground reserved for any public use. Nor shall they destroy or injure reasonable ingress or egress to any property, or turn the natural drainage of the surface water to the injury of adjoining owners. It shall be their duty to use strict diligence in draining the surface water from the public road in its natural channel. To this end they may enter upon the adjoining lands for the purpose of removing from such natural channel obstructions that impede the flow of such water.

[C24, 27, §4791; C31, 35, §4644-c46; C39, §**4644.44**; C46, §309.44; C50, §308A.16; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §314.7]

#### **314.8 Government markers preserved.**

1. If it is necessary in grading a highway to make a cut that will disturb, or fill that will cover up, a government or other established corner or land monument, the engineer in charge of the project shall establish permanent witness corners or monuments, and make a record of the same, that show the distance and direction the witness corner is from the corner disturbed or covered up. When the construction work is completed the engineer shall permanently reestablish the corner or monument.

2. If the duties in subsection 1 are not performed, the agency in control of the highway on which a project described in subsection 1 has been or is being completed shall pay the costs of restoring the original position of the established corner or land monument.

[S13, §1527-s7; C24, 27, 31, 35, 39, §**4656**; C46, §309.62; C50, §308A.17; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §314.8]  
[2002 Acts, ch 1063, §14](#)

#### **314.9 Entering private property.**

The agency in control of a highway may after thirty days' written notice by restricted certified mail addressed to the owner and also to the occupant, enter upon private property for the purpose of making surveys, soundings, drillings, appraisals, and examinations as the agency deems appropriate or necessary to determine the advisability or practicability of locating and constructing a highway on the property or for the purpose of determining whether gravel or other material exists on the property of suitable quality and in sufficient quantity to warrant the purchase or condemnation of the property. The entry shall not be deemed a trespass, and the agency may be aided by injunction to insure peaceful entry. The agency shall pay actual damages caused by the entry, surveys, soundings, drillings, appraisals, or examinations.

Any damage caused by the entry, surveys, soundings, drillings, appraisals, or examinations shall be determined by agreement or in the manner provided for the award of damages in condemnation of the property for highway purposes. Soundings or drillings shall not be done within one hundred fifty feet of the dwelling house or within fifty feet of other buildings without written consent of the owner.

[C27, 31, 35, §4658-a1; C39, §**4658.1**; C46, §309.65; C50, §308A.18; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §314.9]  
[96 Acts, ch 1126, §3](#)

#### **314.10 State-line highways.**

The agency in control of any highway or bridge bordering on or crossing a state line is authorized to confer and agree with the agency or official of such border state, or subdivision of such state, having control of such highway or bridge relative to the interstate connection, the plans for the improvement, and maintenance, the division of work and the apportionment of cost of such highway or bridge.

[S13, §1570-a; SS15, §1527-s3; C24, 27, 31, 35, 39, §**4663**; C46, §309.72; C50, §308A.19; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §314.10]

#### **314.11 Use of bridges by utility companies.**

Telephone, telegraph, electric transmission and pipe lines may be permitted to use any highway bridge on or across a state line on such terms and conditions as the agency or officials jointly constructing, maintaining or operating such bridge may jointly determine. No discrimination shall be made in the use of such bridge as between such utilities. Joint use of telephone, telegraph, electric transmission or pipe lines may not be required. No grant to any public utility to use such bridge shall in any way interfere with the use of such bridge by the public for highway purposes.

[S13, §424-e; C24, 27, 31, 35, 39, §**4683**; C46, §309.90; C50, §308A.20; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §314.11]

#### **314.12 Borrow pits — topsoil preserved.**

In the award of contracts for the construction, reconstruction, improvement, repair or maintenance of any highway, the agency having charge of awarding such contracts shall require that when fill dirt, soil or other materials are to be removed from borrow pits acquired by title or easement, whether by agreement or condemnation, for use in the project, adequate provision shall be made for the restoration of the borrow pit area, either by removal and replacement of a minimum of eight inches of topsoil, or by fertilizing, mulching, reseeding or other appropriate measures to provide vegetative cover or prevent erosion, except where a lake or subwater table conditions are designed, or where the area is zoned for commercial, industrial, or residential use, or where the borrow is in locations of white oak, sand, loess or undrainable clays. When the borrow pit is acquired by easement, the restoration method shall be determined by agreement with the landowner.

[C71, 73, 75, 77, 79, 81, §314.12]

### **314.12A Preservation of topsoil in highway construction.**

In the award of contracts for the construction, reconstruction, improvement, and repair, except for minor maintenance, of a highway, the state department of transportation shall require that when fill dirt, soil, or other materials are to be removed from an area acquired by title or easement, whether by agreement or condemnation, for use in the project, adequate provision shall be made for the salvage of topsoil from the area for use in the restoration of the specified critical areas of the project by replacement of salvaged topsoil, by fertilizing and mulching if necessary, or by other appropriate measures to provide vegetative cover to prevent erosion, including filling or covering the area with compost, except where a lake or subwater table conditions exist, where deep loess is present, or where outside ditch bottoms and backslopes are present in rock cut areas. This section shall not apply to borrow pits covered by section 314.12.

[2002 Acts, ch 1103, §1](#)

### **314.13 Definitions.**

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

1. “Agency” means any governmental body which exercises jurisdiction over any road as provided by law.
2. “Committee” means the integrated roadside vegetation management technical advisory committee created in section 314.22.
3. “Coordinator” means the integrated roadside vegetation management coordinator.
4. “Department” means the state department of transportation.
5. “Disadvantaged business enterprise” means a small business which meets both of the following:
  - a. The business is at least fifty-one percent owned by one or more socially and economically disadvantaged individuals.
  - b. The management and daily business operations of the business are controlled by one or more of the socially and economically disadvantaged individuals who own the business.
6. “Highway” or “street” means the entire width between property lines of every way or place of whatever nature when any part thereof is open to the use of the public, as a matter of right, for purposes of vehicular traffic.
7. “Prequalified” means that a small business has been approved by the department as a small business, is a recognized contractor engaged in the class of work provided for in the plans and specifications, possesses sufficient resources to complete the work, and is able to furnish a performance bond for one hundred percent of the contract.
8. “Small business” means any enterprise, which is operated for profit and under a single management, and which has either fewer than twenty employees or an annual gross income of less than four million dollars computed as the average of the three preceding fiscal years. This definition does not apply to any program or activity for which a definition for small business is provided for the program or activity by federal law or regulation or other state law.
9. “Socially and economically disadvantaged individual” means an individual who is a citizen of the United States or who is a lawfully admitted permanent resident of the United States and who is a woman, Black American, Hispanic American, Native American, Asian-Pacific American, Asian-Indian American, or any other minority person or individual found to be disadvantaged by the United States small business administration. However, the department may also determine, on a case-by-case basis, that an individual who is not a member of one of the enumerated groups is a socially and economically disadvantaged individual. A rebuttable presumption exists that individuals in the following groups are socially and economically disadvantaged:
  - a. “Asian-Indian Americans”, which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal, or Sri Lanka.
  - b. “Asian-Pacific Americans”, which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia, Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the United States trust territories of the Pacific Islands, and the Northern Marianas, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Micronesia, or Hong Kong.
  - c. “Black Americans”, which includes persons having origins in any of the black racial groups of Africa.
  - d. “Hispanic Americans”, which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race.
  - e. “Native Americans”, which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians.

[C75, 77, 79, 81, §314.13]

[89 Acts, ch 246, §3](#)

; [2001 Acts, ch 32, §10](#)

; [2010 Acts, ch 1098, §1](#)

### **314.13A Contract assessment — socially and economically disadvantaged individuals.**

1. The department shall annually assess the impact of federal and nonfederal awarded contracts on socially and economically disadvantaged individuals, including women and persons with a disability, as defined in section 15.102, in the state.
2. The assessment shall include the following:
  - a. Any disproportionate or unique impact the contract may have on socially and economically disadvantaged individuals in the state.
  - b. A rationale for the contract having an impact on socially and economically disadvantaged individuals in the state.
  - c. Consultation with representatives of socially and economically disadvantaged individuals in cases where the contract has an identifiable impact on socially and economically disadvantaged individuals in the state.
3. This section shall be carried out to the extent consistent with federal law.

4. The assessment shall be used for informational purposes.

[2010 Acts, ch 1098, §2](#)

#### **314.14 Contracts set aside for small businesses.**

Notwithstanding section 314.1, there may be set aside contracts for bidding by prequalified small businesses a percentage of the total annual dollar amount of public contracts let by the department. The annual dollar amount set aside for bidding by prequalified small businesses shall not exceed ten percent of the total dollar amount of highway construction contracts let by the department and transit dollars administered by the department. The director may estimate the set-aside amount at the beginning of each fiscal year and a suit shall not be brought by any party as a result of this estimate. Set-aside contracts will be awarded to the lowest responsible prequalified small business. This section shall not be construed as limiting the department's right to refuse any or all small business bids.

[84 Acts, ch 1229, §1](#)  
; [2009 Acts, ch 41, §111, 112](#)  
; [2010 Acts, ch 1098, §3](#)

Disadvantaged business enterprise funding reauthorized in section 1101(b) of the federal Moving Ahead for Progress in the 21st Century Act (MAP-21), approved July 6, 2012, Pub.L. No. 112-141; see also  
[49 C.F.R. pt 26](#)

#### **314.15 Disadvantaged business enterprises — rules.**

The department of transportation shall promulgate rules establishing affirmative action requirements to encourage and increase participation of disadvantaged individuals in business enterprises in all federal aid projects made available by and through the department.

[90 Acts, ch 1161, §4](#)

#### **314.16 Interstate 80 — route designation.**

The interstate which runs from Council Bluffs on the western border through Des Moines to Davenport on the eastern border shall be known as interstate 80. The state transportation commission shall be prohibited from changing the route of interstate 80 as designated on January 1, 1992.

[92 Acts, ch 1010, §1](#)

#### **314.17 Mowing on interstates, primary highways, and secondary roads.**

Mowing roadside vegetation on the rights-of-way or medians on any primary highway, interstate highway, or secondary road prior to July 15 is prohibited, except as follows:

1. Within two hundred yards of an inhabited dwelling.
2. On rights-of-way within one mile of the corporate limits of a city.
3. To promote native species of vegetation or other long-lived and adaptable vegetation.
4. To establish control of damaging insect populations, noxious weeds, and invasive plant species.
5. For visibility and safety reasons.
6. Within rest areas, weigh stations, and wayside parks.
7. Within fifty feet of a drainage tile or tile intake.
8. For access to a mailbox or for other accessibility purposes.
9. On rights-of-way adjacent to agricultural demonstration or research plots.

[98 Acts, ch 1212, §7](#)  
; [2010 Acts, ch 1164, §1](#)  
; [2010 Acts, ch 1193, §121](#)

#### **314.18 Responsibility for bridge inspection.**

The department, counties, cities, and other public entities shall be responsible for the safety inspection and evaluation of all highway bridges under their jurisdiction which are located on public roads, in accordance with the national bridge inspection standards. These responsibilities include inspection policies and procedures, inspections, reports, load ratings, quality control and quality assurance, maintaining a bridge inventory, and other requirements of the national bridge inspection standards.

[2006 Acts, ch 1068, §4](#)

#### **314.19 Reseeding open ditches.**

The department shall have the topsoil of each open ditch along the side of a highway reseeded with prairie grass seed and the seed of other adapted grass and legumes including native grass species after the construction, reconstruction, improvement, repair, or maintenance of a highway whenever feasible.

[84 Acts, ch 1114, §1](#)

### **314.20 Utility easements on highway right-of-way.**

The department shall develop an accommodation plan for the longitudinal utility use of freeway right-of-way, in consultation with the utilities board. The plan shall be consistent with the rules of the federal highway administration of the United States department of transportation and shall be submitted to the federal highway administration for its approval by January 1, 1989. In developing the plan, the department shall provide for extended payment and lease agreements to provide continuous funding for the living roadway trust fund. The plan shall provide for charges for the use of the right-of-way and all moneys collected shall be credited to the living roadway trust fund established under section 314.21.

[88 Acts, ch 1019, §9](#)

;

[89 Acts, ch 246, §4](#)

### **314.21 Living roadway trust fund.**

1. *a.* The living roadway trust fund is created in the office of the treasurer of state. The moneys in this fund shall be used exclusively for the development and implementation of integrated roadside vegetation plans. Except as provided in subsections 2 and 3, the moneys shall only be expended for areas on or adjacent to road, street, and highway right-of-ways. The state department of transportation in consultation with the department of natural resources shall establish standards relating to the type of projects available for assistance. For the fiscal period beginning July 1, 1988, and ending March 31, 1990, the moneys in the fund shall be expended as follows: fifty-six percent on state department of transportation projects; thirty percent on county projects; and fourteen percent on city projects.

*b.* A city or county which has a project which qualifies for the use of these funds shall submit a request for the funds to the state department of transportation. A city or county may, at its option, apply moneys allocated for use on city or county projects under this subsection toward qualifying projects on the primary system. The state department of transportation in consultation with the department of natural resources shall determine which projects qualify for the funds and which projects shall be funded if the requests for the funds exceed the availability of the funds. In ranking applications for funds, the department shall consider the proportion of political subdivision matching funds to be provided, if any, and the proportion of private contributions to be provided, if any. In considering the proportion of political subdivision matching funds provided, the department shall consider only those moneys which are in addition to those which the political subdivision has historically provided toward such projects. Funds allocated to the cities, the counties, and the department which are not programmed by the end of each fiscal year shall be available for redistribution to any eligible applicant regardless of the original allocation of funds. Such funds shall be awarded for eligible projects based upon their merit in meeting the program objectives established by the department under section 314.22. The department shall submit a report of all projects funded in the previous fiscal year to the governor and to the general assembly on January 15 of each year.

*c.* Beginning April 1, 1990, the moneys in the living roadway trust fund shall be allocated between the state, counties, and cities in the same proportion that the road use tax funds are allocated under section 312.2, subsection 1, paragraphs “a”, “b”, “c”, and “d”. However, after April 1, 1990, a city or county shall not be eligible to receive moneys from the living roadway trust fund unless the city or county has an integrated roadside vegetation management plan in place consistent with the objectives in section 314.22.

2. *a.* The department may authorize projects which provide grants or loans to local governments and organizations which are developing community entryway enhancement and other planting demonstration projects. Planning, public education, installation, and initial maintenance planning and development may be determined by the department to be eligible activities for funding under this paragraph. Projects approved under this paragraph require a local match or contribution toward the overall project cost.

*b.* The department may authorize projects which provide grants or loans to local governments for the purchase of specialized equipment and special staff training for the establishment of alternative forms of roadside vegetation. Projects approved under this paragraph require a local match or contribution toward the overall project cost.

*c.* The department, in order to create greater visual effect, shall investigate alternatives for concentrating plantings at strategic locations to gain a greater visual impact and appeal as well as stronger scenic value. Equal attention shall be given to providing safe and effective habitats for wildlife which can coexist with highways.

*d.* The department may authorize projects which provide grants or loans to local jurisdictions for increased protection through the use of easements, fee title acquisition, covenants, zoning ordinances, or other provisions for protection of vegetation and desirable environment adjacent to the right-of-way. Off-right-of-way projects shall emphasize vegetation protection or enhancement, scenic and wildlife values, erosion control and enhancement of vegetation management projects within the right-of-ways.

3. *a.* Moneys allocated to the state under subsection 1 shall be expended as follows:

(1) Fifty thousand dollars annually to the department for the services of the integrated roadside vegetation management coordinator and support.

(2) One hundred thousand dollars annually for education programs, research and demonstration projects, and vegetation inventories and strategies, under section 314.22, subsections 5, 6, and 8.

(3) All remaining moneys for the gateways program under section 314.22, subsection 7.

*b.* Moneys allocated to the counties under subsection 1 shall be expended as follows:

(1) For the fiscal year beginning July 1, 1995, and ending June 30, 1996, and each subsequent fiscal year, seventy-five thousand



dollars to the university of northern Iowa to maintain the position of the state roadside specialist and to continue its integrated roadside vegetation management program providing research, education, training, and technical assistance.

(2) All remaining money for grants or loans under subsection 2, paragraph “a”.

c. Moneys allocated to the cities shall be expended for grants or loans under subsection 2, paragraph “a”.

[88 Acts, ch 1019, §5](#)

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[89 Acts, ch 246, §5](#)

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[89 Acts, ch 317, §28](#)

;

[91 Acts, ch 268, §516](#)

;

[93 Acts, ch 169, §16](#)

;

[95 Acts, ch 220, §26](#)

;

[2009 Acts, ch 133, §238](#)

### **314.22 Integrated roadside vegetation management.**

1. *Objectives.* It is declared to be in the general public welfare of Iowa and a highway purpose for the vegetation of Iowa’s roadsides to be preserved, planted, and maintained to be safe, visually interesting, ecologically integrated, and useful for many purposes. The state department of transportation shall provide an integrated roadside vegetation management plan and program which shall be designed to accomplish all of the following:

a. Maintain a safe travel environment.

b. Serve a variety of public purposes including erosion control, wildlife habitat, climate control, scenic qualities, weed control, utility easements, recreation uses, and sustenance of water quality.

c. Be based on a systematic assessment of conditions existing in roadsides, preservation of valuable vegetation and habitats in the area, and the adoption of a comprehensive plan and strategies for cost-effective maintenance and vegetation planting.

d. Emphasize the establishment of adaptable and long-lived vegetation, often native species, matched to the unique environment found in and adjacent to the roadside.

e. Incorporate integrated management practices for the long-term control of damaging insect populations, weeds, and invader plant species.

f. Build upon a public education program allowing input from adjacent landowners and the general public.

g. Accelerate efforts toward increasing and expanding the effectiveness of plantings to reduce wind-induced and water-induced soil erosion and to increase deposition of snow in desired locations.

h. Incorporate integrated roadside vegetation management with other state agency planning and program activities including the recreation trails program, scenic highways, open space, and tourism development efforts. Agencies should annually report their progress in this area to the general assembly.

2. *Counties may adopt plans.* A county may adopt an integrated roadside vegetation management plan consistent with the integrated roadside vegetation management plan adopted by the department under subsection 1.

3. *Integrated roadside vegetation management technical advisory committee.*

a. The director of the department shall appoint members to an integrated roadside vegetation management technical advisory committee which is created to provide advice on the development and implementation of a statewide integrated roadside vegetation management plan and program and related projects. The department shall report annually in January to the general assembly regarding its activities and those of the committee. Activities of the committee may include, but are not limited to, providing advice and assistance in the following areas:

(1) Research efforts.

(2) Demonstration projects.

(3) Education and orientation efforts for property owners, public officials, and the general public.

(4) Activities of the integrated roadside vegetation management coordinator for integrated roadside vegetation management.

(5) Reviewing applications for funding assistance.

(6) Securing funding for research and demonstrations.

(7) Determining needs for revising the state weed law and other applicable Code sections.

(8) Liaison with the Iowa state association of counties, the Iowa league of cities, and other organizations for integrated roadside vegetation management purposes.

b. The director may appoint any number of persons to the committee but, at a minimum, the committee shall consist of all of the following:

(1) One member representing the utility industry.

(2) One member from the Iowa academy of sciences.

(3) One member representing county government.

(4) One member representing city government.

(5) Two members representing the private sector including community interest groups.

- (6) One member representing soil conservation interests.
- (7) One member representing the department of natural resources.
- (8) One member representing county conservation boards.

c. Members of the committee shall serve without compensation, but may be reimbursed for allowable expenses from the living roadway trust fund created under section 314.21. No more than a simple majority of the members of the committee shall be of the same gender as provided in section 69.16A. The director of the department shall appoint the chair of the committee and shall establish a minimum schedule of meetings for the committee.

4. *Integrated roadside vegetation management coordinator.* The integrated roadside vegetation management coordinator shall administer the department's integrated roadside vegetation management plan and program. The department may create the position of integrated roadside vegetation management coordinator within the department or may contract for the services of the coordinator. The duties of the coordinator include, but are not limited to, the following:

- a. Conducting education and awareness programs.
- b. Providing technical advice to the department and the department of natural resources, counties, and cities.
- c. Conducting demonstration projects.
- d. Coordinating inventory and implementation activities.
- e. Providing assistance to local community-based groups for undertaking community entryway projects.
- f. Being a clearinghouse for information from Iowa projects as well as from other states.
- g. Periodically distributing information related to integrated roadside vegetation management.
- h. General coordination of research efforts.
- i. Other duties assigned by the director of transportation.

5. *Education programs.* The department shall develop educational programs and provide educational materials for the general public, landowners, governmental employees, and board members as part of its program for integrated roadside vegetation management. The educational program shall provide all of the following:

a. The development of public service announcements and television programs about the importance of roadside vegetation in Iowa.

b. The expansion of existing training sessions and educational curriculum materials for county weed commissioners, government contract sprayers, maintenance staff, and others to include coverage of integrated roadside management topics such as basic plant species identification, vegetation preservation, vegetation inventory techniques, vegetation management and planning procedures, planting techniques, maintenance, communication, and public relations. County and municipal engineers, public works staffs, planning and zoning representatives, parks and habitat managers, and others should be encouraged to participate.

c. The conducting of statewide and regional conferences and seminars about integrated roadside vegetation management, community entryways, scenic values of land adjoining roadsides, and other topics relating to roadside vegetation.

d. The preparation, display, and distribution of a variety of public relations material, in order to better inform and educate the traveling public on roadside vegetation management activities. The public relations material shall inform motorists of a variety of roadside vegetation issues including all of the following:

- (1) Benefits of various types of roadside vegetation.
- (2) Long-term results expected from planting and maintenance practices.
- (3) Purposes for short-term disturbances in the roadside landscapes.
- (4) Interesting aspects of the Iowa landscape and individual landscape regions.
- (5) Other aspects relating to wildlife and soil erosion.

e. Preparation and distribution of educational material designed to inform adjoining property owners, farm operators, and others of the importance of roadside vegetation and their responsibilities of proper stewardship of that vegetation resource.

6. *Research and demonstration projects.* The department, as part of its plan to provide integrated roadside vegetation management, shall conduct research and feasibility studies including demonstration projects of different kinds at a variety of locations around the state. The research and feasibility studies may be conducted in, but are not limited to, any of the following areas:

a. Cost effectiveness or comparison of planting, establishing and maintaining alternative or warm-season, native grass and forb roadside vegetation and traditional cool-season nonnative vegetation.

b. Identification of the relationship that roadsides and roadside vegetation have to maintaining water quality, through drainage wells, sediment and pollutant collection and filtration, and other means.

c. Impacts of burning as an alternative vegetation management tool on all categories of roads.

d. Techniques for more quickly establishing erosion control and permanent vegetative cover on recently disturbed ground as well as interplanting native species in existing vegetative cover.

e. Effectiveness of techniques for reduced or selected use of herbicides to control weeds.

f. Identification of cross section and slope steepness design standards which provide for motorist safety as well as for improved establishment, maintenance, and replacement of different types of vegetation.

g. Identification of a uniform inventory and assessment technique which could be used by many counties in establishing integrated roadside management programs.

h. Equipment innovations for seeding and harvesting grasses in difficult terrain settings, roadway ditches, and fore-slopes and back-slopes.

i. Identification of the perceptions of motorists and landowners to various types of roadside vegetation and configuration of



plantings.

- j. Market or economic feasibility studies for native seed, forb, and woody plant production and propagation.
- k. Impacts of vegetation modifications on increasing or decreasing wildlife populations in rural and urban areas.
- l. Effects of vegetation on the number and location of wildlife road-kills in rural and urban areas.
- m. Costs to the public for improper off-site resource management adjacent to roadsides.
- n. Advantages, disadvantages, and techniques of establishing pedestrian access adjacent to highways and their impacts on vegetation management.
- o. Identification of alternative techniques for snow catchment on farmland adjacent to roadsides.

7. *Gateways program.* The department shall develop a gateways program to provide meaningful visual impacts including major new plantings at the important highway entry points to the state and its communities. Substantial and distinctive plantings shall also be designed and installed at these points. Creative and artistic design solutions shall be sought for these improvements. Communications about these projects shall be provided to local groups in order to build community involvement, support, and understanding of their importance. Consideration shall be given to a requirement that gateways projects produce a local match or contribution toward the overall project cost.

8. *Vegetation inventories and strategies.*

a. The department shall coordinate and compile integrated roadside vegetation inventories, classification systems, plans, and implementation strategies for roadsides. Areas of increased program and project emphasis may include, but are not limited to, all of the following:

- (1) Additional development and funding of state gateways projects.
- (2) Accelerated replacement of dead and unhealthy plants with native and hardy trees and shrubs.
- (3) Special interest plantings at selected highly visible locations along primary and interstate highways.
- (4) Pilot and demonstration projects.
- (5) Additional snow and erosion control plantings.
- (6) Welcome center and rest area plantings with native and aesthetically interesting species to create mini-arboretums around the state.

b. The department shall coordinate and compile a reconnaissance of lands to develop an inventory of sites having the potential of being harvested for native grass, forb, and woody plant material seed and growing stock. Highway right-of-ways, parks and recreation areas, converted railroad right-of-ways, state board of regents' property, lands owned by counties, and other types of public property shall be surveyed and documented for seed source potential. Sites volunteered by private organizations may also be included in the inventory. Inventory information shall be made available to state agencies' staffs, county engineers, county conservation board directors, and others.

[89 Acts, ch 246, §6](#)

; [95 Acts, ch 3, §2](#)

; [2010 Acts, ch 1061, §107](#)

### **314.23 Environmental protection.**

It is declared to be in the general public welfare of Iowa and a highway purpose that highway maintenance, construction, reconstruction, and repair shall protect and preserve, by not causing unnecessary destruction, the natural or historic heritage of the state. In order to provide for the protection and preservation, the following shall be accomplished in the design, construction, reconstruction, relocation, repair, or maintenance of roads, streets, and highways:

1. *Woodlands.* Woodland removed shall be replaced by plantings as close as possible to the initial site, or by acquisition of an equal amount of woodland in the general vicinity for public ownership and preservation, or by other mitigation deemed to be comparable to the woodland removed, including, but not limited to, the improvement, development, or preservation of woodland under public ownership.

2. *Wetlands.* Wetland removed shall be replaced by acquisition of wetland, in the same general vicinity if possible, for public ownership and preservation, or by other mitigation deemed to be comparable to the wetland removed, including, but not limited to, the improvement, development, or preservation of wetland under public ownership.

3. *Public parks.* Highways, streets, and roads constructed on or through publicly owned lands comprising parks, preserves, or recreation areas, shall be located and designed, in consultation with the public entity owning the land, so as to blend aesthetically with the areas and to minimize noise. When land is taken from the areas for highway construction and if, in consultation with the public entity owning the land, mitigation is deemed necessary, the land shall be replaced by an equal or greater amount for public use, or by other mitigation, undertaken in consultation with the public entity owning the land, and deemed to be appropriate to the amount of land taken, including, but not limited to, the improvement, development, or preservation of the areas.

4. *Prime agricultural lands.* Topsoil removed may be utilized for landscaping and other necessary construction. Excess topsoil shall be made available to the former landowner or other landowners whose land was purchased for the construction or others, and if not acquired by one of these parties, it may be disposed.

[89 Acts, ch 311, §26](#)

### **314.24 Natural and historic preservation.**

Cities, counties, and the department shall to the extent practicable preserve and protect the natural and historic heritage of the

state in the design, construction, reconstruction, relocation, repair, or maintenance of roads, streets, or highways. Destruction or damage to natural areas, including but not limited to prime agricultural land, parks, preserves, woodlands, wetlands, recreation areas, greenbelts, historical sites, or archaeological sites shall be avoided, if reasonable alternatives are available for the location of roads, streets, or highways at no significantly greater cost. In implementing this section, cities, counties, and the department shall make a diligent effort to identify and examine the comparative cost of utilizing alternative locations for roads, streets, or highways.

[89 Acts, ch 317, §30](#)

#### **314.25 Green space provided.**

The department shall use the property owned by it in the city of Council Bluffs which is bounded by Broadway, Seventh street, Kanesville boulevard, and Sixth street, exclusively for green space, and, if sold by the department, the department shall sell the property with the restricted covenant that the property shall be used exclusively for green space or else revert to the department.

[89 Acts, ch 317, §29](#)

#### **314.26 Schwengel Bridge.**

The interstate 80 bridge crossing the Mississippi river between the states of Iowa and Illinois shall be known as the “Schwengel Bridge” in honor of Fred Schwengel, who served for five terms as a member of the general assembly of the state of Iowa and was elected to the Congress of the United States in 1954, 1956, 1958, 1960, 1962, 1966, 1968, and 1970.

[93 Acts, ch 133, §1](#)

#### **314.27 Refreshments at rest areas on certain holidays.**

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

*a. “Free refreshments”* means water, coffee, cookies, any nonintoxicating, noncarbonated beverage which is not already bottled or canned, doughnuts, or baked dessert goods dispensed by a nonprofit organization, provided that the refreshments are furnished to motorists by a nonprofit organization without charge.

*b. “Holiday periods”* means the Memorial Day and Labor Day weekends, commencing at noon on the preceding Friday and ending at midnight between the Monday and Tuesday of the holiday weekend, and the period surrounding Independence Day, commencing at noon on July 1 and ending at midnight between July 6 and July 7.

2. Nonprofit organizations shall be allowed to provide free refreshments to motorists and to accept, without active solicitation, voluntary donations from motorists during holiday periods at rest areas, as defined in section 306C.10, subject to approval by the department. The department shall approve or disapprove applications by nonprofit organizations, and notify those nonprofit organizations, at least sixty days prior to the holiday period.

3. The department shall adopt rules governing the provision of refreshments at rest areas in accordance with this section.

[95 Acts, ch 18, §1](#)

#### **314.28 Keep Iowa beautiful fund.**

1. A keep Iowa beautiful fund is created in the office of the treasurer of state. The fund is composed of moneys appropriated or available to and obtained or accepted by the treasurer of state for deposit in the fund. All interest earned on moneys in the fund shall be credited to and remain in the fund. Section 8.33 does not apply to moneys in the fund.

2. Moneys in the fund that are authorized by the department for expenditure are appropriated, and shall be used, to educate and encourage Iowans to take greater responsibility for improving their community environment and enhancing the beauty of the state through litter prevention, improving waste management and recycling efforts, and beautification projects.

3. The department may authorize payment of moneys from the fund upon approval of an application from a private or public organization. The applicant shall submit a plan for litter prevention, improving waste management and recycling efforts, or a beautification project along with its application. The department shall establish standards relating to the type of projects available for assistance.

[2001 Acts, ch 160, §1](#)

[; 2004 Acts, ch 1175, §435](#)

[; 2004 Acts, ch 1177, §3](#)

[; 2006 Acts, ch 1182, §60](#)

[; 2011 Acts, ch 34, §78](#)

#### **314.29 Dick Drake Way.**

The highway currently known as the industrial connector in Muscatine shall be renamed “Dick Drake Way” in honor of Richard Drake, who served for thirty-six years as a member of the general assembly of the state of Iowa.

[2008 Acts, ch 1124, §3](#)

## CHAPTER 317

### WEEDS

#### **317.1 Definitions.**

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

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

2. “*Commissioner*” means the county weed commissioner or the commissioner’s deputy within each county.

[2000 Acts, ch 1148, §1](#)

; [2010 Acts, ch 1069, §86](#)

; [2010 Acts, ch 1193, §49](#)

#### **317.1A Noxious weeds.**

1. The following weeds are hereby declared to be noxious and shall be divided into two classes, as follows:

a. Primary noxious weeds, which shall include:

- (1) Quack grass (*Elymus repens*).
- (2) Perennial sow thistle (*Sonchus arvensis*).
- (3) Canada thistle (*Cirsium arvense*).
- (4) Bull thistle (*Cirsium vulgare*).
- (5) European morning glory or field bindweed (*Convolvulus arvensis*).
- (6) Horse nettle (*Solanum carolinense*).
- (7) Leafy spurge (*Euphorbia esula*).
- (8) Perennial pepper-grass (*Cardaria draba*).
- (9) Russian knapweed (*Acroptilon repens*).
- (10) Buckthorn (*Rhamnus* spp., not to include *Frangula alnus*, syn. *Rhamnus frangula*).
- (11) All other species of thistles belonging in the genera of *Cirsium* and *Carduus*.

b. Secondary noxious weeds, which shall include:

- (1) Butterprint (*Abutilon theophrasti*) annual.
- (2) Cocklebur (*Xanthium strumarium*) annual.
- (3) Wild mustard (*Sinapis arvensis*) annual.
- (4) Wild carrot (*Daucus carota*) biennial.
- (5) Buckhorn (*Plantago lanceolata*) perennial.
- (6) Sheep sorrel (*Rumex acetosella*) perennial.
- (7) Sour dock (*Rumex crispus*) perennial.
- (8) Smooth dock (*Rumex altissimus*) perennial.
- (9) Poison hemlock (*Conium maculatum*).
- (10) Multiflora rose (*Rosa multiflora*).
- (11) Wild sunflower (wild strain of *Helianthus annuus* L.) annual.
- (12) Puncture vine (*Tribulus terrestris*) annual.
- (13) Teasel (*Dipsacus* spp.) biennial.
- (14) Shattercane (*Sorghum bicolor*) annual.

2. a. The multiflora rose (*Rosa multiflora*) shall not be considered a secondary noxious weed when cultivated for or used as understock for cultivated roses or as ornamental shrubs in gardens, or in any county whose board of supervisors has by resolution declared it not to be a noxious weed.

b. Shattercane (*Sorghum bicolor*) shall not be considered a secondary noxious weed when cultivated or in any county whose board of supervisors has by resolution declared it not to be a noxious weed.

[S13, §1565-b; C24, 27, 31, 35, §4818; C39, §4829.01; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §317.1]

[85 Acts, ch 171, §1](#)

;

[2000 Acts, ch 1154, §20](#)

C2001, §317.1A

[2010 Acts, ch 1061, §108](#)

; [2011 Acts, ch 34, §79](#)

See also §199.1

### **317.2 State botanist.**

The secretary of agriculture shall appoint as state botanist the head of the botany and plant pathology section of the Iowa agricultural experiment station whose duty shall be to cooperate in developing a constructive weed eradication program.

[C39, §4829.02; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §317.2]

### **317.3 Weed commissioner — standards for noxious weed control.**

The board of supervisors of each county may annually appoint a county weed commissioner who may be a person otherwise employed by the county and who passes minimum standards established by the department of agriculture and land stewardship for noxious weed identification and the recognized methods for noxious weed control and elimination. The county weed commissioner's appointment shall be effective as of March 1 and shall continue for a term at the discretion of the board of supervisors unless the commissioner is removed from office as provided for by law. The county weed commissioner may, with the approval of the board of supervisors, require that commercial applicators and their appropriate employees pass the same standards for noxious weed identification as established by the department of agriculture and land stewardship. The name and address of the person appointed as county weed commissioner shall be certified to the county auditor and to the secretary of agriculture within ten days of the appointment. The board of supervisors shall fix the compensation of the county weed commissioner and deputies. In addition to compensation, the commissioner and deputies shall be paid their necessary travel expenses. At the discretion of the board of supervisors, the weed commissioner shall attend a seminar or school conducted or approved by the department of agriculture and land stewardship relating to the identification, control, and elimination of noxious weeds.

The board of supervisors shall prescribe the time of year the weed commissioner shall perform the powers and duties of county weed commissioner under this chapter which may be during that time of year when noxious weeds can effectively be killed. Compensation shall be for the period of actual work only although a weed commissioner assigned other duties not related to weed eradication may receive an annual salary. The board of supervisors shall likewise determine whether employment shall be by hour, day or month and the rate of pay for the employment time.

[S13, §1565-c, -d, -f; C24, 27, §4817; C31, 35, §4817, 4817-d1; C39, §4829.03; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §317.3]

[83 Acts, ch 123, §119, 209](#)

;

[85 Acts, ch 160, §1](#)

;

[94 Acts, ch 1173, §14](#)

### **317.4 Direction and control.**

Each commissioner, subject to direction and control by the county board of supervisors, shall supervise the control and destruction of all noxious weeds in the county, including those growing within the limits of cities, within the confines of abandoned cemeteries, and along streets and highways unless otherwise provided. A commissioner shall notify the department of public safety of the location of marijuana plants found growing on public or private property. A commissioner may enter upon any land in the county at any time for the performance of the commissioner's duties, and shall hire the labor and equipment necessary subject to the approval of the board of supervisors.

[S13, §1565-c, -d, -f; C24, 27, 31, 35, §4817; C39, §4829.04; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §317.4;

[81 Acts, ch 117, §1047](#)

]

[83 Acts, ch 123, §120, 209](#)

; [90 Acts, ch 1179, §2](#)

; [2010 Acts, ch 1069, §87](#)

### **317.5 Weeds in abandoned cemeteries.**

The commissioner shall control the weeds growing in abandoned cemeteries in the county as needed. Spraying for control of weeds shall be limited to those circumstances when it is not practical to mow or otherwise control the weeds.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §317.5]

[89 Acts, ch 246, §7](#)

### **317.6 Entering land to destroy weeds — notice.**

1. If there is a substantial failure by the owner or person in possession or control of any land to comply with any order of destruction pursuant to the provisions of this chapter, the county weed commissioner, including the weed commissioner's deputies, or employees acting under the weed commissioner's direction may enter upon any land within the commissioner's county for the purpose of destroying noxious weeds.

2. The entry may be made without the consent of the landowner or person in possession or control of the land. However, the actual work of destruction shall not be commenced until five days after the landowner and the person in possession or control of the land have been notified.

3. The notice shall state the facts relating to failure of compliance with the county program of weed destruction order or orders made by the board of supervisors. The notice shall be delivered by personal service on the owner and persons in possession and control of the land. The personal service may be served by the weed commissioner or any person designated in writing by the weed commissioner. However, in lieu of personal service, the weed commissioner may provide that the notice be delivered by certified mail. A copy of the notice shall be filed in the office of the county auditor. The last known address of the owner or person in possession or control of the land may be ascertained, if necessary, from the last tax list in the county treasurer's office. Where any person owning land within the county has filed a written instrument in the office of the county auditor designating the name and address of its agent, the notice may be delivered to that agent. In computing time for notice, it shall be from the date of service as evidenced on the return of service. If delivery is made by certified mail, it shall be from the date of mailing.

[S13, §1565-c, -d, -f; C24, §4817; C27, 31, 35, §4817, 4823-b1; C39, §4829.05, 4829.06; C46, §317.5, 317.6; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §317.6]

[2005 Acts, ch 39, §1](#)

; [2010 Acts, ch 1061, §109](#)

### **317.7 Report to board.**

Each weed commissioner shall for the territory under the commissioner's jurisdiction on or before the first day of November of each year make a written report to the board of supervisors. Said report shall state:

1. The name and location of all primary noxious weeds, and any new weed which appears to be a serious pest.
2. A detailed statement of the treatment used, and future plans, for eradication of weeds on each infested tract on which the commissioner has attempted to exterminate weeds, together with the costs and results obtained.
3. A summary of the weed situation within the jurisdiction, together with suggestions and recommendations which may be proper and useful, a copy of which shall be forwarded to the state secretary of agriculture.

[S13, §1565-c, -d, -f; C24, 27, 31, 35, §4817; C39, §4829.07; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §317.7]

### **317.8 Duty of secretary of agriculture or secretary's designee.**

The secretary of agriculture or the secretary's designee is vested with the following duties, powers and responsibilities:

1. The secretary or the secretary's designee shall serve as state weed commissioner, and shall cooperate with all boards of supervisors and weed commissioners, and shall furnish blank forms for reports made by the supervisors and commissioners.
2. The secretary or the secretary's designee may, upon recommendation of the state botanist, temporarily declare noxious any new weed appearing in the state which possesses the characteristics of a serious pest.
3. The secretary or the secretary's designee shall aid the supervisors in the interpretation of the weed law, and make suggestions to promote extermination of noxious weeds.
4. The secretary or the secretary's designee shall aid the supervisors in enforcement of the weed law as it applies to all state lands, state parks and primary roads, and may impose a maximum penalty of a ten dollar fine for each day, up to ten days, that the state agency in control of land fails to comply with an order for destruction of weeds made pursuant to this chapter.

[S13, §1565-c, -d, -f; C24, 27, 31, 35, §4817; C39, §4829.08; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §317.8]

[85 Acts, ch 171, §2](#)

;

[87 Acts, ch 115, §48](#)

### **317.9 Duty of board to enforce.**

The responsibility for the enforcement of the provisions of this chapter shall be vested in the board of supervisors as to all farm lands, railroad lands, abandoned cemeteries, state lands and state parks, primary and secondary roads; roads, streets and other lands within cities unless otherwise provided.

[S13, §1565-c, -d, -f; C24, 27, 31, 35, §4817; C39, §4829.09; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §317.9]

### **317.10 Duty of owner or tenant.**

Each owner and each person in the possession or control of any lands shall cut, burn, or otherwise destroy, in whatever manner may be prescribed by the board of supervisors, all noxious weeds thereon as defined in this chapter at such times in each year and in such manner as shall be prescribed in the program of weed destruction order or orders made by the board of supervisors, and shall keep said lands free from such growth of any other weeds, as shall render the streets or highways adjoining said land unsafe for public travel.

[SS15, §1565-a; C24, 27, 31, 35, §4819; C39, §4829.10; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §317.10]

### **317.11 Weeds on roads — harvesting of grass.**

1. The county boards of supervisors and the state department of transportation shall control noxious weeds growing on the

roads under their jurisdiction. Spraying for control of noxious weeds shall be limited to those circumstances when it is not practical to mow or otherwise control the noxious weeds.

2. Nothing under this chapter shall prevent the landowner from harvesting, in proper season on or after July 15, the grass grown on the road along the landowner's land except for vegetation maintained for highway purposes as part of an integrated roadside vegetation management plan which is consistent with the objectives in section 314.22.

[S13, §1565-c, -d, -f; SS15, §1565-a; C24, 27, 31, 35, §4817, 4819; C39, §4829.11; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §317.11]

[89 Acts, ch 246, §8](#)

; [2010 Acts, ch 1164, §2](#)

### **317.12 Weeds on railroad or public lands and gravel pits.**

All noxious weeds on railroad lands, public lands and within incorporated cities shall be treated in such manner, approved by the board of supervisors, as shall prevent seed production and either destroy or prevent the spread of noxious weeds to adjoining lands. Gravel pits infested with noxious weeds shall not be used as sources of gravel for public highways without previous treatment approved by board of supervisors.

[S13, §1565-c, -d, -f; SS15, §1565-a; C24, 27, 31, 35, §4817, 4819; C39, §4829.12; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §317.12]

### **317.13 Program of control.**

The board of supervisors of each county may each year, upon recommendation of the county weed commissioner by resolution prescribe and order a program of weed control for purposes of complying with all sections of this chapter. The county board of supervisors of each county may also by adopting an integrated roadside vegetation management plan prescribe and order a program of weed control for purposes of complying with all sections of this chapter. The program for weed control ordered or adopted by the county board of supervisors shall provide that spraying for control of weeds shall be limited to those circumstances when it is not practical to mow or otherwise control the weeds.

The program of weed control shall include a program of permits for the burning, mowing, or spraying of roadsides by private individuals. The county board of supervisors shall allow only that burning, mowing, or spraying of roadsides by private individuals that is consistent with the adopted integrated roadside vegetation management plan. This paragraph applies only to those roadside areas of a county which are included in an integrated roadside vegetation management plan.

[S13, §1565-c, -d; C24, 27, 31, 35, §4821; C39, §4829.13; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §317.13]

[85 Acts, ch 171, §3](#)

;

[89 Acts, ch 246, §9](#)

;

[90 Acts, ch 1267, §36](#)

### **317.14 Notice of program.**

1. Notice of any order made pursuant to section 317.13 shall be given by one publication in the official newspapers of the county and shall be directed to all property owners.

2. The notice shall state:

a. The time for destruction.

b. The manner of destruction, if other than cutting above the surface of the ground.

c. That, unless the order is complied with, the weed commissioner shall cause the weeds to be destroyed and the cost of destroying the weeds will be taxed against the real estate on which the noxious weeds are destroyed.

[S13, §1565-c, -d; C24, 27, 31, 35, §4822; C39, §4829.14; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §317.14]

[2010 Acts, ch 1061, §110](#)

### **317.15 Loss or damage to crops.**

The loss or damage to crops or property incurred by reason of such destruction shall be borne by the titleholder of said real estate, unless said real estate shall be sold under contract whereby possession has been delivered to the purchaser, in which event such purchaser shall bear such loss or damage, excepting where a contract has been entered into providing a different adjustment for such loss or damage.

[S13, §1565-c, -d; C24, 27, 31, 35, §4822; C39, §4829.15; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §317.15]

### **317.16 Failure to comply.**

1. In case of a substantial failure to comply by the date prescribed in any order of destruction of weeds made pursuant to this chapter, the weed commissioner may do any of the following:

a. Enter upon the land as provided in section 317.6 and provide for the destruction of the weeds as provided in section 317.6.

b. Impose a maximum penalty of a ten dollar fine for each day, up to ten days, that the owner or person in possession or control of the land fails to comply. If a penalty is imposed and the owner or person in possession or control of the land fails to comply, the weed commissioner shall cause the weeds to be destroyed.

2. If the weed commissioner enters the land and causes the weeds to be destroyed, the actual cost and expense of cutting, burning, or otherwise destroying the weeds, along with the cost of providing notice and special meetings or proceedings, if any, shall be paid by the county and, together with the additional assessment to apply toward costs of supervision and administration, be recovered by an assessment against the tract of real estate on which the weeds were growing, as provided in section 317.21. Any fine imposed under this section shall be recovered by a similar assessment.

[S13, §1565-c, -d; C24, 27, 31, 35, §4823; C39, §**4829.16**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §317.16]

[83 Acts, ch 123, §121, 209](#)

;

[85 Acts, ch 171, §4](#)

;

[2005 Acts, ch 39, §2](#)

### **317.17 Additional noxious weeds.**

The board of supervisors shall order the weed commissioner, or commissioners, to destroy or cause to be destroyed any new weeds declared to be noxious by the secretary of agriculture, the cost of which shall be borne by the county.

[C39, §**4829.17**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §317.17]

### **317.18 Order for weed control on roads.**

The board of supervisors may order all noxious weeds, within the right-of-way of all roads under county jurisdiction to be cut, burned, or otherwise controlled to prevent seed production, either upon its own motion or upon receipt of written notice requesting the action from any residents of the township in which the roads are located, or any person regularly using the roads. The order shall be consistent with the county integrated roadside vegetation management plan, if the county has adopted such a plan, and the order shall define the roads along which noxious weeds are required to be cut, burned, or otherwise controlled and shall require the weeds to be cut, burned, or otherwise controlled within fifteen days after the publication of the order in the official newspapers of the county or as prescribed in the county's integrated roadside vegetation management plan. The order shall provide that spraying for control of noxious weeds shall be limited to those circumstances when it is not practical to mow or otherwise control the weeds.

[C39, §**4829.18**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §317.18]

[83 Acts, ch 123, §122, 209](#)

;

[85 Acts, ch 171, §5](#)

;

[89 Acts, ch 246, §10](#)

;

[98 Acts, ch 1075, §14](#)

### **317.19 Road clearing appropriation.**

1. The board of supervisors may appropriate moneys to be used for the purposes of cutting, burning, or otherwise controlling weeds or brush within the right-of-way of roads under county jurisdiction in a manner consistent with the county's roadside vegetation management plan, if the county has adopted such a plan, or in time to prevent reseeding, except as provided in section 314.17. The moneys appropriated shall not be spent on spraying for control of weeds except in those circumstances when it is not practical to mow or otherwise control the weeds.

2. The board of supervisors may purchase or hire necessary equipment or contract with the adjoining landowner to carry out this section.

[83 Acts, ch 123, §123, 209](#)

;[84 Acts, ch 1219, §20](#)

;[85 Acts, ch 171, §6](#)

;[89 Acts, ch 246, §11](#)

;[98 Acts, ch 1075, §15](#)

;[2010 Acts, ch 1164, §3](#)

### **317.20 Equipment and materials — use on private property.**

The board of supervisors may appropriate moneys for the purpose of purchasing weed eradicating equipment and materials to carry out the duties of the commissioner for use on all lands in the county, public or private, and for the payment of the necessary expenses and compensation of the commissioner, and the commissioner's deputies, if any. When equipment or materials so purchased are used on private property within the corporate limits of cities by the commissioner, the cost of materials used and an



amount to be fixed by the board of supervisors for the use of the equipment shall be returned by the county treasurer upon the collection of the special assessment taxed against the property. In the certification to the county treasurer by the county auditor this apportionment shall be designated along with the special tax assessed under section 317.21. The equipment and its use are subject to the authorization and direction of the county board of supervisors.

[83 Acts, ch 123, §124, 209](#)

### **317.21 Cost of weed destruction.**

When the commissioner destroys any weeds under the authority of section 317.16, after failure of the landowner responsible to destroy such weeds pursuant to the order of the board of supervisors, the cost of the destruction shall be assessed against the land and collected from the landowner responsible in the following manner:

1. Annually, after the weed commissioner has completed the program of destruction of weeds by reason of noncompliance by persons responsible for the destruction, the board of supervisors shall determine as to each tract of real estate the actual cost of labor and materials used by the commissioner in cutting, burning, or otherwise destroying the weeds, the cost of serving notice, and of special meetings or proceedings, if any. To the total of all sums expended, the board shall add an amount equal to twenty-five percent of that total to compensate for the cost of supervision and administration and assess the resulting sum against the tract of real estate by a special tax, which shall be certified to the county auditor and county treasurer by the clerk of the board of supervisors, and shall be placed upon the tax books, and collected, with interest after delinquent, in the same manner as other unpaid taxes. The tax shall be due on March 1 after assessment, and shall be delinquent from April 1 after due. However, when the last day of March is a Saturday or Sunday, such amount shall be delinquent from the second business day of April. When collected, the moneys shall be paid into the fund from which the costs were originally paid.

2. Before making any such assessment, the board of supervisors shall prepare a plat or schedule showing the several lots, tracts of land or parcels of ground to be assessed which shall be in accord with the assessor's records and the amount proposed to be assessed against each of the same for destroying or controlling weeds during the fiscal year.

3. Such board shall thereupon fix a time for the hearing on such proposed assessments, which time shall not be later than December 15 of the year, and at least twenty days prior to the time thus fixed for such hearing shall give notice thereof to all concerned that such plat or schedule is on file, and that the amounts as shown therein will be assessed against the several lots, tracts of land or parcels of ground described in said plat or schedule at the time fixed for such hearing, unless objection is made thereto. Notice of such hearing shall be given by one publication in official county newspapers in the county in which the property to be assessed is situated; or by posting a copy of such notice on the premises affected and by mailing a copy by certified mail to the last known address of the person owning or controlling said premises. At such time and place the owner of said premises or anyone liable to pay such assessment, may appear with the same rights given by law before boards of review, in reference to assessments for general taxation.

[S13, §1565-c, -d; C24, 27, §4824, 4825; C31, 35, §4824, 4825, 4825-c1, -c2; C39, §**4829.19**; C46, §317.20; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §317.21]

[85 Acts, ch 171, §7](#)

;

[92 Acts, ch 1016, §4](#)

;

[98 Acts, ch 1107, §7](#)

;

[2005 Acts, ch 34, §2, 26](#)

### **317.22 Duty of highway maintenance personnel.**

All officers directly responsible for the care of public highways shall make a complaint to the weed commissioners or board of supervisors, if it appears that the provisions of this chapter may not be complied with in time to prevent the blooming and maturity of noxious weeds or the unlawful growth of weeds or marijuana, whether in the streets or highways for which they are responsible or upon lands adjacent to the same.

[S13, §1565-c, -e; C24, 27, 31, 35, §4826; C39, §**4829.20**; C46, §317.21; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §317.22]

[90 Acts, ch 1179, §3](#)

### **317.23 Duty of county attorney.**

It shall be the duty of the county attorney upon complaint of any citizen that any officer charged with the enforcement of the provisions of this chapter has neglected or failed to perform the officer's duty, to enforce the performance of such duty.

[C24, 27, 31, 35, §4828; C39, §**4829.21**; C46, §317.22; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §317.23]

### **317.24 Punishment of officer.**

Any officer referred to in this chapter who neglects or fails to perform the duties incumbent upon the officer under the provisions of this chapter shall be guilty of a simple misdemeanor.



[S13, §1565-i; C24, 27, 31, 35, §4829; C39, §**4829.22**; C46, §317.23; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §317.24]

**317.25 Invasive plants prohibited — exception — penalty.**

1. *a.* A person shall not import, sell, offer for sale, or distribute in this state in any form, including the seeds, any of the following plants:

- (1) Teasel (*Dipsacus*) biennial.
- (2) Multiflora rose (*Rosa multiflora*).
- (3) Purple loosestrife (*Lythrum salicaria*).
- (4) Purple loosestrife (*Lythrum virgatum*).
- (5) Garlic mustard (*Alliaria petiolata*).
- (6) Oriental bittersweet (*Celastrus orbiculatus*).
- (7) Japanese knotweed (*Fallopia japonica*).
- (8) Japanese hop (*Humulus japonicus*).

*b.* However, paragraph “*a*” does not prohibit the sale, offer for sale, or distribution of the multiflora rose (*Rosa multiflora*) used for understock for either cultivated roses or ornamental shrubs in gardens.

2. Any person violating subsection 1 is subject to a fine not to exceed one hundred dollars.

[C75, 77, 79, 81, §317.25]

[89 Acts, ch 193, §1](#)  
; [90 Acts, ch 1111, §1](#)  
; [91 Acts, ch 5, §1](#)  
; [91 Acts, ch 258, §46](#)  
; [2001 Acts, ch 91, §1](#)  
; [2002 Acts, ch 1050, §31](#)  
; [2013 Acts, ch 74, §1](#)  
; [2014 Acts, ch 1092, §72](#)

**317.26 Alternative remediation practices.**

The director of the department of natural resources, in cooperation with the secretary of agriculture and county conservation boards or the board of supervisors, shall develop and implement projects which utilize alternative practices in the remediation of noxious weeds and other vegetation within highway rights-of-way.

[87 Acts, ch 225, §231](#)

## CHAPTER 455E

### GROUNDWATER PROTECTION

#### **455E.1 Title.**

This chapter shall be known and may be cited as the “*Groundwater Protection Act*”.  
[87 Acts, ch 225, §101](#)

#### **455E.2 Definitions.**

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

1. “*Active cleanup*” means removal, treatment, or isolation of a contaminant from groundwater through the directed efforts of humans.
2. “*Commission*” means the environmental protection commission created under section 455A.6.
3. “*Contaminant*” means any chemical, ion, radionuclide, synthetic organic compound, microorganism, waste, or other substance which does not occur naturally in groundwater or which naturally occurs at a lower concentration.
4. “*Contamination*” means the direct or indirect introduction into groundwater of any contaminant caused in whole or in part by human activities.
5. “*Department*” means the department of natural resources created under section 455A.2.
6. “*Director*” means the director of the department.
7. “*Groundwater*” means any water of the state, as defined in section 455B.171, which occurs beneath the surface of the earth in a saturated geological formation of rock or soil.
8. “*Passive cleanup*” means the removal or treatment of a contaminant in groundwater through management practices or the construction of barriers, trenches, and other similar facilities for prevention of contamination, as well as the use of natural processes such as groundwater recharge, natural decay, and chemical or biological decomposition.

[87 Acts, ch 225, §102](#)

#### **455E.3 Findings.**

The general assembly finds that:

1. Groundwater is a precious and vulnerable natural resource. The vast majority of persons in the state depend on groundwater as a drinking water source. Agriculture, commerce, and industry also depend heavily on groundwater. Historically, the majority of Iowa’s groundwater has been usable for these purposes without treatment. Protection of groundwater is essential to the health, welfare, and economic prosperity of all citizens of the state.
2. Many activities of humans, including the manufacturing, storing, handling, and application to land of pesticides and fertilizers; the disposal of solid and hazardous wastes; the storing and handling of hazardous substances; and the improper construction and the abandonment of wells and septic systems have resulted in groundwater contamination throughout the state.
3. Knowledge of the health effects of contaminants varies greatly. The long-term detriment to human health from synthetic organic compounds in particular is largely unknown but is of concern.
4. Any detectable quantity of a synthetic organic compound in groundwater is unnatural and undesirable.
5. The movement of groundwater, and the movement of contaminants in groundwater, are often difficult to ascertain or control. Decontamination is difficult and expensive to accomplish. Therefore, preventing contamination of groundwater is of paramount importance.

[87 Acts, ch 225, §103](#)

#### **455E.4 Groundwater protection goal.**

The intent of the state is to prevent contamination of groundwater from point and nonpoint sources of contamination to the maximum extent practical, and if necessary to restore the groundwater to a potable state, regardless of present condition, use, or characteristics.

[87 Acts, ch 225, §104](#)

#### **455E.5 Groundwater protection policies.**

1. It is the policy of the state to prevent further contamination of groundwater from any source to the maximum extent practical.
2. The discovery of any groundwater contamination shall require appropriate actions to prevent further contamination. These actions may consist of investigation and evaluation or enforcement actions if necessary to stop further contamination as required under chapter 455B.
3. All persons in the state have the right to have their lawful use of groundwater unimpaired by the activities of any person which render the water unsafe or unpotable.
4. All persons in the state have the duty to conduct their activities so as to prevent the release of contaminants into groundwater.
5. Documentation of any contaminant which presents a significant risk to human health, the environment, or the quality of life shall result in either passive or active cleanup. In both cases, the best technology available or best management practices shall be utilized. The department shall adopt rules which specify the general guidelines for determining the cleanup actions necessary to meet the goals of the state and the general procedures for determining the parties responsible by July 1, 1989. Until the rules are adopted, the absence of rules shall not be raised as a defense to an order to clean up a source of contamination.
6. Adopting health-related groundwater standards may be of benefit in the overall groundwater protection or other regulatory efforts of the state. However, the existence of such standards, or lack of them, shall not be construed or utilized in derogation of the groundwater protection goal and protection policies of the state.
7. The department shall take actions necessary to promote and assure public confidence and public awareness. In pursuing this goal, the department shall make public the results of groundwater investigations.
8. Education of the people of the state is necessary to preserve and restore groundwater quality. The content of this groundwater protection education must assign obligations, call for sacrifice, and change some current values. Educational efforts should strive to establish a conservation ethic among Iowans and should encourage each Iowan to go beyond enlightened self-interest in the protection of groundwater quality.

[87 Acts, ch 225, §105](#)

#### **455E.6 Legal effects — liability.**

This chapter supplements other legal authority and shall not enlarge, restrict, or abrogate any remedy which any person or class of persons may have under other statutory or common law and which serves the purpose of groundwater protection. An activity that does not violate chapter 455B or 459, subchapters II and III, does not violate this chapter. In the event of a conflict between this section and another provision of this chapter, it is the intent of the general assembly that this section prevails.

Liability shall not be imposed upon an agricultural producer for the costs of active cleanup, or for any damages associated with or resulting from the detection in the groundwater of any quantity of nitrates provided that application has been in compliance with soil test results and that the applicator has properly complied with label instructions for application of the fertilizer. Compliance with the above provisions may be raised as an affirmative defense by an agricultural producer.

Liability shall not be imposed upon an agricultural producer for costs of active cleanup, or for any damages associated with or resulting from the detection in the groundwater of pesticide provided that the applicator has properly complied with label instructions for application of the pesticide and that the applicator has a valid appropriate applicator's license. Compliance with the above provisions may be raised as an affirmative defense by an agricultural producer.

[87 Acts, ch 225, §106](#)

#### **455E.7 Primary administrative agency.**

The department is designated as the agency to coordinate and administer groundwater protection programs for the state.

[87 Acts, ch 225, §107](#)

#### **455E.8 Powers and duties of the director.**

In addition to other groundwater protection duties, the director, in cooperation with soil and water conservation district commissioners and with other state and local agencies, shall:

1. Develop and administer a comprehensive groundwater monitoring network, including point of use, point of contamination, and problem assessment monitoring sites across the state, and the assessment of ambient groundwater quality.
2. Complete groundwater hazard mapping of the state and make the results available to state and local planning organizations by July 1, 1991.
3. Establish a system or systems within the department for collecting, evaluating, and disseminating groundwater quality data and information.
4. Develop and maintain a natural resource geographic information system and comprehensive water resource data system. The system shall be accessible to the public.
5. Develop and adopt by administrative rule, criteria for evaluating groundwater protection programs by July 1, 1988.
6. Take any action authorized by law, including the investigatory and enforcement actions authorized by chapters 455B and 459, subchapters I, II, III, IV, and VI, to implement the provisions of this chapter and the rules adopted pursuant to this chapter.
7. Disseminate data and information, relative to this chapter, to the public to the greatest extent practical.
8. Develop a program, in consultation with the department of education and the department of environmental education of the

university of northern Iowa, regarding water quality issues which shall be included in the minimum program required in grades seven and eight pursuant to rules adopted by the state board of education under section 256.11, subsection 4.

[87 Acts, ch 225, §108](#)  
; [88 Acts, ch 1262, §8](#)  
; [2013 Acts, ch 12, §25](#)

#### **455E.9 Powers and duties of the commission.**

1. The commission shall adopt rules to implement this chapter.
2. When groundwater standards are proposed by the commission, all available information to develop the standards shall be considered, including federal regulations and all relevant information gathered from other sources. A public hearing shall be held in each congressional district prior to the submittal of a report on standards to the general assembly. This report on how groundwater standards may be a part of a groundwater protection program shall be submitted by the department to the general assembly for its consideration by January 1, 1989.

[87 Acts, ch 225, §109](#)

#### **455E.10 Joint duties — local authority.**

1. All state agencies shall consider groundwater protection policies in the administration of their programs. Local agencies shall consider groundwater protection policies in their programs. All agencies shall cooperate with the department in disseminating public information and education materials concerning the use and protection of groundwater, in collecting groundwater management data, and in conducting research on technologies to prevent or remedy contamination of groundwater.
2. Political subdivisions are authorized and encouraged to implement groundwater protection policies within their respective jurisdictions, provided that implementation is at least as stringent but consistent with the rules of the department.

[87 Acts, ch 225, §110](#)

#### **455E.11 Groundwater protection fund established — appropriations.**

1. *a.* A groundwater protection fund is created in the state treasury. Moneys received from sources designated for purposes related to groundwater monitoring and groundwater quality standards shall be deposited in the fund. Notwithstanding section 8.33, any unexpended balances in the groundwater protection fund and in any of the accounts within the groundwater protection fund at the end of each fiscal year shall be retained in the fund and the respective accounts within the fund. Notwithstanding section 12C.7, subsection 2, interest or earnings on investments or time deposits of the moneys in the groundwater protection fund or in any of the accounts within the groundwater protection fund shall be credited to the groundwater protection fund or the respective accounts within the groundwater protection fund. The fund may be used for the purposes established for each account within the fund.

*b.* The director shall include in the departmental budget prepared pursuant to section 455A.4, subsection 1, paragraph “c”, a proposal for the use of groundwater protection fund moneys, and a report of the uses of the groundwater protection fund moneys appropriated in the previous fiscal year.

*c.* The secretary of agriculture shall submit the report on a biennial basis to the governor in the same manner as provided in section 7A.3. The report shall include a proposal for the use of groundwater protection fund moneys, and uses of the groundwater protection fund moneys appropriated in the two previous fiscal years.

2. The following accounts are created within the groundwater protection fund:

*a.* A solid waste account. Moneys received from the tonnage fee imposed under section 455B.310 and from other sources designated for environmental protection purposes in relation to sanitary disposal projects shall be deposited in the solid waste account. Moneys shall be allocated as follows:

(1) After the one dollar and fifty-five cents is allocated pursuant to subparagraph (2), the remaining moneys from the tonnage fee shall be used for funding alternatives to landfills and shall be allocated as follows:

(a) (i) Each fiscal year for the fiscal period beginning July 1, 2010, and ending June 30, 2014, not more than two hundred thousand dollars to the department for purposes of awarding a beautification grant each year to one organization that does all of the following:

- (A) Assists communities and organizations in cleanup and beautification projects.
- (B) Conducts research to assist in the understanding of reasons for littering and illegal dumping.
- (C) Administers antilittering and beautification education programs.
- (D) Increases public awareness of the costs of littering.

(ii) The grant recipient shall do all of the following:

(A) Expend not more than fifty percent of the moneys for a public education and awareness initiative designed to reduce litter and illegal dumping.

(B) Expend not more than fifty percent of the moneys for a community partnership program designed to support community beautification projects.

(iii) As a condition of the grant award each year, the department shall require the grant recipient to submit a written report to the department by the end of the fiscal year for which the grant is awarded. In addition to any other information required by the

department, the report shall include information detailing the expenditure of all moneys received by the organization and the results achieved through the expenditure of the money.

(b) Fifty thousand dollars to the department to implement the special waste authorization program.

(c) One hundred sixty-five thousand dollars to the department to be used for the by-products and waste search service at the university of northern Iowa.

(d) Up to thirty percent of the fees remitted shall be used for grants to environmental management systems as provided in section 455J.7.

(e) Not more than four hundred thousand dollars to the department for purposes of providing funding assistance to eligible communities to address abandoned buildings by promoting waste abatement, diversion, selective dismantlement of building components, and recycling. Eligible communities include a city with a population of five thousand or fewer. Eligible costs for program assistance include but are not limited to asbestos and other hazardous material abatement and removal, the recovery processing of recyclable or reusable material through the selective dismantlement of abandoned buildings, and reimbursement for purchased recycled content materials used in the renovation of buildings. For projects that support community beautification, the department may elect to administer funding to eligible communities in collaboration with the organization awarded the beautification grant in accordance with subparagraph division (a), subparagraph subdivision (i).

(f) The balance of the remaining funds shall be used by the department to develop and implement demonstration projects for landfill alternatives to solid waste disposal including recycling programs. These funds may also be used to assist planning areas which have not been designated as environmental management systems in meeting the designation requirements of section 455J.3.

(2) One dollar and fifty-five cents shall be used as follows:

(a) Forty-eight percent to the department to be used for the following purposes:

(i) Eight thousand dollars shall be transferred to the Iowa department of public health for departmental duties required under section 135.11, subsections 18 and 19, and section 139A.21.

(ii) The administration and enforcement of a groundwater monitoring program and other required programs relating to solid waste management.

(iii) The development of guidelines for groundwater monitoring at sanitary disposal projects as defined in section 455B.301.

(iv) The waste management assistance program of the department.

(b) Sixteen percent to the university of northern Iowa to develop and maintain the Iowa waste reduction center for the safe and economic management of solid waste and hazardous substances.

(c) Six and one-half percent for the department to establish a program to provide competitive grants to regional coordinating councils for projects in regional economic development centers related to a by-products and waste exchange system. Grantees under this program shall coordinate activities with other available state or multistate waste exchanges, including but not limited to the by-products and waste search service at the university of northern Iowa. The department shall consult with the economic development authority and the waste reduction center at the university of northern Iowa in establishing criteria for and the awarding of grants under this program. The department shall expend not more than thirty thousand dollars of the moneys appropriated under this subparagraph division to contract with the by-products and waste search service at the university of northern Iowa to provide training and other technical services to grantees under the program. If regional economic development centers cease to exist, the department shall transfer existing contracts to one or more community colleges or councils of governments and shall revise the criteria and rules for this program to allow community colleges or councils of governments to be applicants for competitive grants.

(d) Three percent to the department to establish permanent household hazardous materials collection sites so that both urban and rural populations are served and so that collection services are available to the public on a regular basis. Beginning July 1, 2008, any moneys collected pursuant to this subparagraph division that remain unexpended at the end of a fiscal year for establishment of permanent household hazardous materials collection sites shall be used for purposes of subparagraph division (e).

(e) Nine and one-half percent to the department for payment of collection and disposal costs related to household hazardous materials collection programs.

(f) Eight and one-half percent to the department to support special events for household hazardous materials collection or other efforts of the department to support the household hazardous materials program, permanent household hazardous material collection systems, and for the natural resource geographic information system required under section 455E.8, subsection 4.

(g) Three percent for the economic development authority to establish, in cooperation with the department of natural resources, a marketing initiative to assist Iowa businesses producing recycling or reclamation equipment or services, recyclable products, or products from recycled materials to expand into national markets. Efforts shall include the reuse and recycling of sawdust.

(h) Five and one-half percent to the department for the provision of assistance to public and private entities in developing and implementing waste reduction and minimization programs for Iowa industries.

b. An agriculture management account. Moneys collected from the groundwater protection fee levied pursuant to section 200.8, subsection 4, the portion of the fees collected pursuant to section 206.8, subsection 2, and section 206.12, subsection 3, and other moneys designated for the purpose of agriculture management shall be deposited in the agriculture management account. The agriculture management account shall be used for the following purposes:

(1) Nine thousand dollars of the account is appropriated to the Iowa department of public health for carrying out the departmental duties under section 135.11, subsections 18 and 19, and section 139A.21.

(2) Two hundred thousand dollars of the moneys deposited in the agriculture management account is appropriated to the

department of agriculture and land stewardship for the fiscal year beginning July 1, 1987, and ending June 30, 1988, for the demonstration projects regarding agriculture drainage wells and sinkholes. Any remaining balance of the appropriation made for the purpose of funding such demonstration projects for the fiscal year beginning July 1, 1987, and ending June 30, 1988, shall not revert to the account, notwithstanding section 8.33, but shall remain available for the purpose of funding such demonstration projects during the fiscal period beginning July 1, 1988, and ending June 30, 1990.

(3) Of the remaining moneys in the account:

(a) Thirty-five percent is appropriated annually for the Leopold center for sustainable agriculture at Iowa state university of science and technology.

(b) Two percent is appropriated annually to the department and, except for administrative expenses, is transferred to the Iowa department of public health for the purpose of administering grants to counties and conducting oversight of county-based programs for the testing of private rural water supply wells, private rural water supply well sealing, and the proper closure of private rural abandoned wells and cisterns. Not more than thirty-five percent of the moneys is appropriated annually for grants to counties for the purpose of conducting programs of private rural water supply testing, private rural water supply well sealing, the proper closure of private rural abandoned wells and cisterns, or any combination thereof. An amount agreed to by the department of natural resources and the Iowa department of public health shall be retained by the department of natural resources for administrative expenses.

(i) A county applying for grants under this subparagraph division shall submit only one application. To be eligible for a grant, a county must have adopted standards for private water supply and private disposal facilities at least as stringent as the standards adopted by the commission. During each fiscal year, the amount granted each eligible applicant shall be the total funds available divided by the number of eligible counties applying. Upon receipt of the grant, the county may apply the funds to any one or more of the county-based programs for the testing of private rural water supply wells, private rural water supply well sealing, and the proper closure of private rural abandoned wells and cisterns.

(ii) Not more than six percent of the moneys is appropriated annually to the state hygienic laboratory to assist in well testing.

(iii) For purposes of this subparagraph division, "*cistern*" means an artificial reservoir constructed underground for the purpose of storing rainwater.

(c) The department shall allocate a sum not to exceed seventy-nine thousand dollars of the moneys appropriated for the fiscal year beginning July 1, 1987, and ending June 30, 1988, for the preparation of a detailed report and plan for the establishment on July 1, 1988, of the center for health effects of environmental contamination. The plan for establishing the center shall be presented to the general assembly on or before January 15, 1988. The report shall include the assemblage of all existing data relating to Iowa drinking water supplies, including characteristics of source, treatment, presence of contaminants, precise location, and usage patterns to facilitate data retrieval and use in research; and detailed organizational plans, research objectives, and budget projections for the anticipated functions of the center in subsequent years. The department may allocate annually a sum not to exceed nine percent of the moneys of the account to the center, beginning July 1, 1988.

(d) Thirteen percent of the moneys is appropriated annually to the department of agriculture and land stewardship for financial incentive programs related to agricultural drainage wells and sinkholes, for studies and administrative costs relating to sinkholes and agricultural drainage wells programs. Of the moneys allocated for financial incentive programs, the department may reimburse landowners for engineering costs associated with voluntarily closing agricultural drainage wells. The financial incentives allocated for voluntary closing of agricultural drainage wells shall be provided on a cost-share basis which shall not exceed fifty percent of the estimated cost or fifty percent of the actual cost, whichever is less. Engineering costs do not include construction costs, including costs associated with earth moving.

c. A household hazardous waste account.

(1) The moneys collected pursuant to section 455F.7 and moneys collected pursuant to section 29C.8A which are designated for deposit shall be deposited in the household hazardous waste account. Two thousand dollars is appropriated annually to the Iowa department of public health to carry out departmental duties under section 135.11, subsections 18 and 19, and section 139A.21. The remainder of the account shall be used to fund the efforts of the department to support a collection system for household hazardous materials, including public education programs, training, and consultation of local governments in the establishment and operation of permanent collection systems, and the management of collection sites, education programs, and other activities pursuant to chapter 455F, including the administration of the household hazardous materials retailer permit program by the department of revenue.

(2) The department shall submit to the general assembly, annually on or before January 1, an itemized report which includes but is not limited to the total amount of moneys collected and the sources of the moneys collected, the amount of moneys expended for administration of the programs funded within the account, results of the efforts of the department to support a collection system for household hazardous materials pursuant to chapter 455F, and an itemization of any other expenditures made within the previous fiscal year.

d. A storage tank management account. All fees collected pursuant to section 455B.473, subsection 5, and section 455B.479, shall be deposited in the storage tank management account. Moneys deposited in the account shall be expended for the following purposes:

(1) One thousand dollars is appropriated annually to the Iowa department of public health to carry out departmental duties under section 135.11, subsections 18 and 19, and section 139A.21.

(2) The moneys remaining in the account after the appropriation in subparagraph (1) are appropriated from the storage tank management account to the department of natural resources for the administration of a state storage tank program pursuant to chapter 455B, division IV, part 8, and for programs which reduce the potential for harm to the environment and the public health

from storage tanks.

(3) Each fiscal year, the department of natural resources shall enter into an agreement with the Iowa comprehensive petroleum underground storage tank fund board for the completion of administrative tasks during the fiscal year directly related to the evaluation and modification of risk based corrective action rules as necessary and processes that affect the administration in subparagraph (2).

[87 Acts, ch 225, §111](#)  
; [88 Acts, ch 1169, §9 – 13](#)  
; [88 Acts, ch 1188, §2, 3](#)  
; [88 Acts, ch 1190, §3](#)  
; [89 Acts, ch 131, §41](#)  
; [89 Acts, ch 272, §38](#)  
; [89 Acts, ch 311, §28](#)  
; [90 Acts, ch 1255, §30, 31](#)  
; [90 Acts, ch 1260, §27, 28](#)  
; [91 Acts, ch 257, §6](#)  
; [91 Acts, ch 268, §237](#)  
; [92 Acts, ch 1215, §18](#)  
; [92 Acts, ch 1239, §21](#)  
; [93 Acts, ch 176, §46](#)  
; [94 Acts, ch 1023, §112](#)  
; [94 Acts, ch 1173, §36](#)  
; [94 Acts, ch 1177, §5](#)  
; [95 Acts, ch 80, §3](#)  
; [95 Acts, ch 97, §1](#)  
; [95 Acts, ch 216, §35](#)  
; [98 Acts, ch 1220, §22](#)  
; [2000 Acts, ch 1066, §46 – 49](#)  
; [2000 Acts, ch 1086, §1](#)  
; [2001 Acts, ch 7, §13, 14](#)  
; [2001 Acts, ch 24, §54](#)  
; [2001 Acts, ch 124, §3 – 6](#)  
; [2001 Acts, ch 129, §6](#)  
; [2002 Acts, ch 1119, §176](#)  
; [2002 Acts, ch 1162, §60 – 62](#)  
; [2003 Acts, ch 145, §286](#)  
; [2004 Acts, ch 1082, §5](#)  
; [2004 Acts, ch 1101, §64](#)  
; [2005 Acts, ch 33, §2, 3](#)  
; [2006 Acts, ch 1178, §28](#)  
; [2008 Acts, ch 1109, §3](#)  
; [2008 Acts, ch 1126, §17, 33](#)  
; [2009 Acts, ch 41, §136, 263](#)  
; [2010 Acts, ch 1191, §24](#)  
; [2010 Acts, ch 1193, §176](#)  
; [2011 Acts, ch 25, §53, 110, 143](#)  
; [2011 Acts, ch 118, §85, 89](#)  
; [2011 Acts, ch 128, §23, 24, 60](#)  
; [2014 Acts, ch 1026, §100, 143](#)  
; [2015 Acts, ch 30, §137](#)  
; [2016 Acts, ch 1010, §1, 2](#)

See Iowa Acts for special provisions relating to appropriations in a given year  
Moneys appropriated from fund for three-year data collection of in-field practices project by Iowa state university of science and technology with final report due March 1, 2018; 2015 Acts, ch 132, §18

Subsection 2, paragraph a, subparagraph (2), subparagraph divisions (d), (e), and (f) amended  
Subsection 2, paragraph c, subparagraphs (1) and (2) amended

## CHAPTER 455H

### LAND RECYCLING AND REMEDIATION STANDARDS

#### SUBCHAPTER 1

#### GENERAL PROVISIONS

##### **455H.101 Short title.**

This chapter shall be known and may be cited as the “*Iowa Land Recycling and Environmental Remediation Standards Act*”.  
[97 Acts, ch 127, §1](#)

##### **455H.102 Scope.**

The environmental remediation standards established under this chapter shall be used for any response action or other site assessment or remediation that is conducted at a site enrolled pursuant to this chapter notwithstanding provisions regarding water quality in chapter 455B, division III; hazardous conditions in chapter 455B, division IV, part 4; hazardous waste and substance management in chapter 455B, division IV, part 5; underground storage tanks, other than petroleum underground storage tanks, in chapter 455B, division IV, part 8; and groundwater protection in chapter 455E.

[97 Acts, ch 127, §2](#)  
; [2011 Acts, ch 9, §7](#)

##### **455H.103 Definitions.**

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

1. “*Affected area*” means any real property affected, suspected of being affected, or modeled to be likely affected by a release occurring at an enrolled site.
2. “*Affiliate*” means a corporate parent, subsidiary, or predecessor of a participant, a co-owner or cooperator of a participant, a spouse, parent, or child of a participant, an affiliated corporation or enterprise of a participant, or any other person substantially involved in the legal affairs or management of a participant, as defined by the department.
3. “*Background levels*” means concentrations of hazardous substances naturally occurring and generally present in the environment in the vicinity of an enrolled site or an affected area and not the result of releases.
4. “*Commission*” means the environmental protection commission created under section 455A.6.
5. “*Department*” means the department of natural resources created under section 455A.2.
6. “*Director*” means the director of the department of natural resources appointed under section 455A.3.
7. “*Enrolled site*” means any property which has been or is suspected to be the site of or affected by a release and which has been enrolled pursuant to this chapter by a participant.
8. “*Environmental covenant*” means a servitude arising under an environmental response project that imposes activity and use limitations as defined in section 455I.2.
9. “*Hazardous substance*” has the same meaning as defined in section 455B.381.
10. “*Noncancer health risk*” means the potential for adverse systemic or toxic effects caused by exposure to noncarcinogenic hazardous substances expressed as the hazard quotient for a hazardous substance. A hazard quotient is the ratio of the level of exposure of a hazardous substance over a specified time period to a reference dose for a similar exposure period.
11. “*Participant*” means any person who enrolls property pursuant to this chapter. A participant is a participant only to the extent the participant complies with the requirements of this chapter.
12. “*Protected groundwater source*” means a saturated bed, formation, or group of formations which has a hydraulic conductivity of at least forty-four-hundredths meters per day and a total dissolved solids concentration of less than two thousand five hundred milligrams per liter.
13. “*Protected party*” means any of the following:
  - a. A participant, including, but not limited to, a development authority or fiduciary.
  - b. A person who develops or otherwise occupies an enrolled site after the issuance of a no further action letter.
  - c. A successor or assignee of a protected party, as to an enrolled site of a protected party.



d. A lender which practices commercial lending including, but not limited to, providing financial services, holding of security interests, workout practices, and foreclosure or the recovery of funds from the sale of an enrolled site.

e. A parent corporation or subsidiary of a participant.

f. A co-owner or cooperator, either by joint tenancy or a tenancy in common, or any other party sharing a legal relationship with the participant.

g. A holder of a beneficial interest of a land trust or inter vivos trust, whether revocable or irrevocable, as to any interests in an enrolled site.

h. A mortgagee or trustee of a deed of trust existing as to an enrolled site as of the date of issuance of a no further action letter.

i. A transferee of the participant whether the transfer is by purchase, eminent domain, assignment, bankruptcy proceeding, partition, dissolution of marriage, settlement or adjudication of any civil action, charitable gift, or bequest, in conjunction with the acquisition of title to the enrolled site.

j. An heir or devisee of a participant.

k. A government agency or political subdivision which acquires an enrolled site through voluntary or involuntary means, including, but not limited to, abandonment, tax foreclosure, eminent domain, or escheat.

14. "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment of a hazardous substance, including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance, but excludes all of the following:

a. Any release which results in exposure to persons solely within a workplace, with respect to a claim which such persons may assert against the employer of such persons.

b. Emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine.

c. The release of source, by-product, or special nuclear material from a nuclear incident, as those terms are defined in the federal Atomic Energy Act of 1954, if such release is subject to requirements with respect to financial protection established by the nuclear regulatory commission under 42 U.S.C. §2210 or, for the purposes of 42 U.S.C. §9604 or any other response action, any release of source, by-product, or special nuclear material from any processing site designated under 42 U.S.C. §7912(a)(1) or 7942(a).

d. The use of pesticides in accordance with the product label.

15. "Response action" means an action taken to reduce, minimize, eliminate, clean up, control, assess, or monitor a release to protect the public health and safety or the environment. "Response action" includes, but is not limited to, investigation, excavation, removal, disposal, cleansing of groundwaters or surface waters, natural biodegradation, institutional controls, technological controls, or site management practices.

[97 Acts, ch 127, §3](#)

;

[99 Acts, ch 114, §39](#)

;

[2005 Acts, ch 102, §3](#)

#### **455H.104 Declaration of policy.**

The general assembly finds and declares all of the following:

1. Some real property in Iowa is not put to its highest productive use because it is contaminated or it is perceived to be contaminated as a result of past activity on the property. The reuse of these sites is an important component of a sound land-use policy that will prevent the needless development of prime farmland and open-space and natural areas, and reduce public expenditures for installing new infrastructure.

2. Incentives should be put in place to encourage capable persons to voluntarily develop and implement cleanup plans.

3. The safe reuse of property should be encouraged through the adoption of environmental remediation standards developed through an open process which take into account the risks associated with any release at the site. Any remediation standards adopted by this state must provide for the protection of the public health and safety and the environment.

[97 Acts, ch 127, §4](#)

#### **455H.105 Duties of the commission.**

The commission shall do all of the following:

1. Adopt rules pertaining to the assessment, evaluation, and cleanup of the presence of hazardous substances which allow participants to carry out response actions using background standards, statewide standards, or site-specific cleanup standards pursuant to this chapter.

2. Adopt rules establishing statewide standards and criteria for determination of background standards and site-specific cleanup standards.

3. Adopt rules establishing a program intended to encourage and enhance assessment, evaluation, and cleanup of sites which may have been the site of or affected by a release.

4. Adopt rules establishing a program to administer the land recycling fund established in section 455H.401.

5. Adopt rules establishing requirements for the submission, performance, and verification of site assessments, cleanup plans, and certifications of completion. The rules shall provide that all site assessments, cleanup plans, and certifications of completion

submitted by a participant shall be prepared by or under the supervision of an appropriately trained professional, including a groundwater professional certified pursuant to section 455B.474.

6. Adopt rules for public notice of the proposed verification of a certificate of completion by the department where the certificate of completion is conditioned on the use of an institutional or technological control.

[97 Acts, ch 127, §5](#)

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[2007 Acts, ch 171, §9](#)

#### **455H.106 Duties of the department.**

The department shall do all of the following:

1. Enter into agreements or issue orders in connection with the enrollment of property into a program established pursuant to this chapter.

2. Issue no further action letters upon the demonstration of compliance with applicable standards for an affected area by a participant.

3. Enter into agreements or issue orders providing for institutional and technological controls to assure compliance with applicable standards pursuant to this chapter.

4. Take actions necessary, including the revocation, suspension, or modification of permits or agreements, the issuance of orders, and the initiation of administrative or judicial proceedings, to enforce the provisions of this chapter and any agreements, covenants, easements, or orders issued pursuant to this chapter.

[97 Acts, ch 127, §6](#)

#### **455H.107 Land recycling program.**

1. A person may enroll property in the land recycling program pursuant to this chapter to carry out a response action in accordance with rules adopted by the commission which outline the eligibility for enrollment. The eligibility rules shall reasonably encourage the enrollment of all sites potentially eligible to participate under this chapter and shall not take into account any amounts the department may be reimbursed under this chapter.

2. All participants shall enter into an agreement with the department to reimburse the department for actual costs incurred by the department in reviewing documents submitted as a part of the enrollment of the site. This fee shall not exceed seven thousand five hundred dollars per enrolled site. An agreement entered into under this subsection must allow the department access to the enrolled site and must require a demonstration of the participant's ability to carry out a response action reasonably associated with the enrolled site.

3. All of the following shall not be enrolled in the land recycling program:

*a.* Property for which corrective action is needed or has been taken for petroleum underground storage tanks under chapter 455B, division IV, part 8. However, such property may be enrolled to address hazardous substances other than petroleum from underground storage tanks.

*b.* Property which has been placed or is proposed to be included on the national priorities list established pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 et seq.

*c.* An animal feeding operation structure as defined in section 459.102.

4. If the site cleanup assessment demonstrates that the release on the enrolled site has affected additional property, all property which is shown to be affected by the release on the enrolled site shall be enrolled in addition to the enrolled site.

5. Following enrollment of the property in the land recycling program, the participant shall proceed on a timely basis to carry out response actions in accordance with the rules implementing this chapter.

6. Once the participant has demonstrated the affected area is in compliance with the standards described in subchapter 2, the department shall proceed on a timely basis and issue a no further action letter pursuant to section 455H.301.

7. The participant may withdraw the enrolled site from further participation in the land recycling program at any time upon written notice to the department. Any participant who withdraws an enrolled site from further participation in the program shall not be entitled to any refund or credit for the enrollment fee paid pursuant to this section and shall, subject to the limitation on fees in subsection 2, be liable for any costs actually incurred by the department. The department or court may determine that a participant who withdraws prior to completion of all response actions identified for the enrolled site forfeits all benefits and immunities provided by this chapter as to the enrolled site. If it is deemed necessary and appropriate by the department, a participant who withdraws shall stabilize the enrolled site in accordance with a plan approved by the department.

[97 Acts, ch 127, §7](#)

## **SUBCHAPTER 2**

## RESPONSE ACTION STANDARDS

### AND REVIEW PROCEDURES

#### **455H.201 Cleanup standards.**

1. *a.* A participant carrying out a response action shall take such response actions as necessary to assure that conditions in the affected area comply with any of the following, as applicable:

- (1) Background standards established pursuant to section 455H.202.
- (2) Statewide standards established pursuant to section 455H.203.
- (3) Site-specific cleanup standards established pursuant to section 455H.204.

*b.* Any remediation standard which is applied must provide for the protection of the public health and safety and the environment.

2. A participant may use a combination of these standards to implement a site remediation plan and may propose to use the site-specific cleanup standards whether or not efforts have been made to comply with the background or statewide standards.

3. Until rules setting out requirements for background standards, statewide standards, or site-specific cleanup standards are finally adopted by the commission and effective, participants may utilize site-specific cleanup standards for any hazardous substance utilizing the procedures set out in the department's rules implementing risk-based corrective action for underground storage tanks and, where relevant, the United States environmental protection agency's guidance regarding risk assessment for superfund sites.

4. The standards may be complied with through a combination of response actions that may include, but are not limited to, treatment, removal, technological or institutional controls, and natural attenuation and other natural mechanisms, and can include the use of innovative or other demonstrated measures.

[97 Acts, ch 127, §8](#)

; [2011 Acts, ch 25, §143](#)

#### **455H.202 Background standards.**

1. Methods to identify background standards shall be adopted by the commission after consideration of the joint recommendations of the department and the technical advisory committee.

2. The demonstration that the affected area meets the background standard shall be documented by the participant in the following manner:

*a.* Compliance with the background standard shall be demonstrated by collection and analysis of representative samples from environmental media of concern.

*b.* A final report that documents compliance with the background standard shall be submitted to the department and shall include, as appropriate, all of the following:

(1) A description of procedures and conclusions of the site investigation to characterize the nature, extent, direction, volume, and composition of hazardous substances.

(2) The basis for selecting environmental media of concern, descriptions of removal or decontamination procedures performed in remediation, and summaries of sampling methodology and analytical results which demonstrate that the background standard has been complied with.

(3) The basis for determining the background levels.

[97 Acts, ch 127, §9](#)

#### **455H.203 Statewide standards.**

1. Statewide standards shall be adopted by the commission after consideration of the joint recommendations of the department and the technical advisory committee. The standards must provide for the protection of the public health and safety and the environment.

2. In establishing these standards, all of the following shall be considered:

*a.* Separate standards shall be established for hazardous substances in soil, in groundwater which is a protected groundwater source, and in groundwater which is not a protected groundwater source.

*b.* In groundwater which is a protected groundwater source, the standards shall be the maximum contaminant levels established pursuant to the department's drinking water standards or, for contaminants that do not have established drinking water standards, the standards shall be derived in a manner comparable to that used for establishment of drinking water standards. An affected area shall not be required to be cleaned up to concentration levels below or more restrictive than background levels.

*c.* In groundwater which is not a protected groundwater source, the standards shall be no more protective than a standard reflecting an increased cancer risk of one in ten thousand from exposure to contaminants that are known or probable human carcinogens; a standard reflecting a noncancer health risk of one-tenth from exposure to contaminants that are possible human carcinogens; or a standard reflecting a noncancer health risk of one from exposure to contaminants that are not known, probable, or possible human carcinogens. An affected area shall not be required to be cleaned up to levels below or more restrictive than

background levels.

*d.* In soil, the standards shall be no more protective than a standard reflecting an increased cancer risk of five in one million from exposure to contaminants that are known or probable human carcinogens; a standard reflecting a noncancer health risk of one-tenth from exposure to contaminants that are possible human carcinogens; or a standard reflecting a noncancer health risk of one from exposure to contaminants that are not known, probable, or possible human carcinogens. An affected area shall not be required to be cleaned up to concentration levels below or more restrictive than background levels.

*e.* Statewide standards specified in paragraphs “*b*”, “*c*”, and “*d*” assume exposure to individual contaminants in groundwater or soil. If more than one contaminant exists in a medium or exposure to contaminants can occur from more than one medium, standards shall be adjusted to reflect a cumulative increased cancer risk that is no less protective than one in ten thousand and a cumulative noncancer health risk to the same target human organ that is no less protective than one. Risks associated with background levels of contaminants shall not be included in the cumulative risk determination.

3. The demonstration that the affected area meets the statewide standard shall be documented by the participant, as appropriate, in the following manner:

*a.* Compliance with cleanup levels shall be demonstrated by collection and analysis of representative samples from the environmental medium of concern.

*b.* A final report that documents compliance with the statewide standard shall be submitted to the department which includes, as appropriate, the descriptions of procedures and conclusions of the site investigation to characterize the nature, extent, direction, rate of movement at the site and cumulative effects, if any, volume, composition, and concentration of hazardous substances in environmental media, the basis for selecting environmental media of concern, documentation supporting the selection of residential or nonresidential exposure factors, descriptions of removal or treatment procedures performed in remediation, and summaries of sampling methodology and analytical results which demonstrate that hazardous substances have been removed or treated to applicable levels.

[97 Acts, ch 127, §10](#)

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[2002 Acts, ch 1091, §1](#)

#### **455H.204 Site-specific cleanup standards.**

1. Procedures to establish site-specific cleanup standards shall be adopted by the commission after consideration of the joint recommendations of the department and the technical advisory committee. Site-specific cleanup standards must provide for the protection of the public health and safety and the environment.

2. Site-specific cleanup standards and appropriate response actions shall take into account all of the following provided, however, that an affected area shall not be required to be cleaned up to levels below or more restrictive than background levels, and in groundwater which is not a protected groundwater source, to a concentration level which presents an increased cancer risk of less than one in ten thousand:

*a.* The most appropriate exposure scenarios based on current or probable future residential, commercial, industrial, or other industry-accepted scenarios.

*b.* Exposure pathway characterizations including contaminant sources, transport mechanisms, and exposure pathways.

*c.* Affected human or environmental receptors and exposure scenarios based on current or probable projected use scenarios.

*d.* Risk-based corrective action assessment principles which identify risks presented to the public health and safety or the environment by each released hazardous substance in a manner that will protect the public health and safety or the environment using a tiered procedure consistent with the ASTM (American society for testing and materials) international standards applied to nonpetroleum and petroleum hazardous substances.

*e.* Other relevant site-specific risk-related factors such as the feasibility of available technologies, existing background levels, current and planned future uses, ecological, aesthetic, and other relevant criteria, and the applicability and availability of technological and institutional controls.

*f.* Cleanup shall not be required in an affected area that does not present any of the following:

(1) An increased cancer risk from a single contaminant at the point of exposure of five in one million for residential areas or one in ten thousand for nonresidential areas.

(2) An increased cancer risk from multiple contaminants or multiple routes of exposure greater than one in ten thousand.

(3) An increased noncancer health risk from a single contaminant at the point of exposure of greater than one, or greater than one-tenth for possible carcinogens.

(4) An increased noncancer risk to the same target human organ from multiple contaminants or multiple routes of exposure greater than one.

3. The concentration of a hazardous substance in an environmental medium of concern at an affected area where the site-specific standard has been selected shall not be required to meet the site-specific standard if the site-specific standard is numerically less than the background level. In such cases, the background level shall apply.

4. Any participant electing to comply with site-specific standards established by this section shall submit, as appropriate, all of the following reports and evaluations for review and approval by the department:

*a.* (1) A site-specific risk assessment report and a cleanup plan. The site-specific risk assessment report must include, as appropriate, all of the following:

(a) Documentation and descriptions of procedures and conclusions from the site investigation to characterize the nature, extent,

direction, rate of movement, volume, and composition of hazardous substances.

(b) The concentration of hazardous substances in environmental media of concern, including summaries of sampling methodology and analytical results.

(c) A fate and transport analysis to demonstrate that no exposure pathways exist.

(2) If no exposure pathways exist, a risk assessment report and a cleanup plan are not required and no remedy is required to be proposed or completed.

b. A final report demonstrating compliance with site-specific cleanup standards has been completed in accordance with the cleanup plan.

c. This section does not preclude a participant from submitting a site-specific risk assessment report and cleanup plan at one time to the department for review.

5. Upon submission of either a site-specific risk assessment report or a cleanup plan to the department, the department shall notify the participant of any deficiencies in the report or plan in a timely manner.

6. Owners and operators of underground storage tanks other than petroleum underground storage tanks, aboveground storage tanks, and pipelines which contain or have contained petroleum shall comply with the corrective action rules issued pursuant to chapter 455B, division IV, part 8, to satisfy the requirements of this section.

[97 Acts, ch 127, §11](#)

[; 2002 Acts, ch 1091, §2](#)

[; 2004 Acts, ch 1086, §76](#)

[; 2011 Acts, ch 25, §143](#)

#### **455H.205 Variances.**

1. A participant may apply to the department for a variance from any applicable provision of this chapter.

2. The department may issue a variance from applicable standards only if the participant demonstrates all of the following:

a. The participant demonstrates either of the following:

(1) It is technically infeasible to comply with the applicable standards.

(2) The cost of complying with the applicable standards exceeds the benefits.

b. The proposed alternative standard or set of standards in the terms and conditions set forth in the application will result in an improvement of environmental conditions in the affected area and ensure that the public health and safety will be protected.

c. The establishment of and compliance with the alternative standard or set of standards in the terms and conditions is necessary to promote, protect, preserve, or enhance employment opportunities or the reuse of the enrolled site.

3. If requested by a participant, the department may issue a variance from any other provision of this chapter if the department determines that the variance would be consistent with the declaration of policy of this chapter and is reasonable under the circumstances.

[97 Acts, ch 127, §12](#)

#### **455H.206 Institutional and technological controls.**

1. In achieving compliance with the cleanup standards under this chapter, a participant may use an institutional or technological control. The director may require reasonable proof of financial assurance where necessary to assure a technological control remains effective.

2. An institutional or technological control includes any of the following:

a. A state or federal law or regulation.

b. An ordinance of any political subdivision of the state.

c. A contractual obligation recorded and executed in a manner satisfying chapter 558.

d. A control which the participant can demonstrate reduces or manages the risk from a release through the period necessary to comply with the applicable standards.

e. An environmental protection easement filed prior to July 1, 2005.

f. An environmental covenant created in accordance with chapter 455I.

3. If the department's determination of compliance with applicable standards pursuant to subchapter 3 is conditioned on a restriction in the use of any real estate in the affected area, the participant must utilize an institutional control. If the restriction in use is to limit the use to nonresidential use, the participant must use an environmental covenant as the institutional control. Environmental covenants may also be used to implement other institutional or technological controls. An environmental covenant must comply with the requirements of chapter 455I.

4. If the use of an institutional or technological control is confirmed in a no further action letter issued pursuant to section 455H.301, the institutional or technological control may be enforced in district court by the department, a political subdivision of this state, the participant, or any successor in interest to the participant.

5. An institutional or technological control, except for an environmental covenant, may be removed, discontinued, modified, or terminated by the participant or a successor in interest to the participant upon a demonstration that the control no longer is required to assure compliance with the applicable standard. Upon review and approval by the department, the department shall issue an amendment to its no further action letter approving the removal, discontinuance, modification, or termination of an institutional or technological control which is no longer needed.

6. An environmental covenant created pursuant to subsection 3 may be terminated or amended only in accordance with chapter 455I. The department may determine that any person who intentionally violates an environmental covenant or other technological or institutional control contained in a no further action letter loses any of the benefits provided by this chapter as to the affected area. In the event the technological or institutional controls fail to achieve compliance with the applicable standards, the participant shall undertake an additional response action sufficient to demonstrate to the department compliance with applicable standards. Failure to proceed in a timely manner in performing the additional response action may result in termination of the participant's enrollment in the land recycling program.

[97 Acts, ch 127, §13](#)

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[2005 Acts, ch 102, §4](#)

#### **455H.207 Response action — permitting requirements.**

1. A participant who would be otherwise required to obtain a permit, license, plan approval, or other approval from the department under any provision of the Code may obtain a consolidated standards permit for the activities in connection with the response action for which the permit, license, plan approval, or other approval is required. The consolidated standards permit shall encompass all the substantive requirements applicable to those activities under any applicable federal or state statute, rule, or regulation and any agreements the director had entered into with the United States environmental protection agency under those statutes, rules, or regulations.

2. In addition to any other notice or hearing requirements of relevant chapters, at least ten days prior to issuing a permit under this section, the director shall publish a notice of the proposed permit which contains a general description of the activities to be conducted in the affected area under the permit. The notice shall be published in the official newspaper, as designated by the county board of supervisors pursuant to section 349.1, of the county in which the site is located. A person may submit written or oral comments on or objections to the permit. After considering the comments and objections, the director shall approve or deny the application for the consolidated standards permit.

3. A participant issued a consolidated standards permit under this section in connection with a particular activity is not required to obtain a permit, license, plan approval, or other approval from the department in connection with any activity under the applicable provisions of the Code or rules. A participant who obtains a consolidated standards permit for a particular activity is deemed to be in compliance with the requirement to obtain from the department a permit, license, plan approval, or other approval in connection with the activity under the applicable provisions of the Code or rules. A violation of the conditions of the consolidated standards permit shall be deemed to be a violation of the applicable statute, rule, or regulation under which approval of activities in connection with a response action would have been required and is subject to enforcement in the same manner and to the same extent as a violation of the applicable statute, rule, or regulation would have been.

[97 Acts, ch 127, §14](#)

#### **455H.208 Public participation.**

Public participation shall be a required component of the process for participants for all sites enrolled in the land recycling program. The required level of public participation shall vary depending on the conditions existing at a site. At a minimum, the department shall notify all adjacent property owners, occupants of adjacent property, and the city or county in which the property is located of a site's enrollment in the land recycling program and of the scope of work described in the participation agreement, and give the notified parties the opportunity to obtain updates regarding the status of activities relating to the enrolled site in the land recycling program. The notification shall not be required before the participant has had the opportunity to collect basic information characterizing the nature and extent of the contamination, but the notification shall be required in a timely manner allowing appropriate parties to have input in the formulation of the response action. If contaminants from the enrolled site have migrated off the enrolled site or are likely to migrate off the enrolled site, as determined by the department, the department shall notify by direct mailing all potentially affected parties, including the city or county in which the potentially affected property is located, and officials in charge of any potentially impacted public water supply and the notified parties shall be given opportunity to comment on proposed response actions. The department may require the participant of an enrolled site to publish public notice in a local newspaper if widespread interest in the site exists or is likely to exist as determined by the department. The department shall consider reasonable comments from potentially affected parties in determining whether to approve or disapprove a proposed response action or site closure.

[2002 Acts, ch 1091, §3](#)

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[2003 Acts, ch 108, §78](#)



## EFFECTS OF PARTICIPATION

### **455H.301 No further action letters.**

1. Once a participant demonstrates that an affected area meets applicable standards and the department has certified that the participant has met all requirements for completion, the department shall promptly issue a no further action letter to the participant.

2. *a.* A no further action letter shall state that the participant and any protected party are not required to take any further action at the site related to any hazardous substance for which compliance with applicable standards is demonstrated by the participant in accordance with applicable standards, except for continuing requirements specified in the no further action letter. If the participant was a person having control over a hazardous substance, as that phrase is defined in section 455B.381, at the time of the release, a no further action letter may provide that a further response action may be required, where appropriate, to protect against an imminent and substantial threat to public health, safety, and welfare. A protected party who was a person having control over a hazardous substance, as that phrase is defined in section 455B.381, at the time of the release, may be required by the department to conduct a further response action, where appropriate, to protect against an imminent and substantial threat to public health, safety, and welfare.

*b.* If a person transfers property to an affiliate in order for that person or the affiliate to obtain a benefit to which the transferor would not otherwise be eligible under this chapter or to avoid an obligation under this chapter, the affiliate shall be subject to the same obligations and obtain the same level of benefits as those available to the transferor under this chapter.

*c.* A no further action letter shall be void if the department demonstrates by clear, satisfactory, and convincing evidence that any approval under this chapter was obtained by fraud or material misrepresentation, knowing failure to disclose material information, or false certification to the department.

3. The department shall provide, upon request, a no further action letter as to the affected area to each protected party.

4. The department shall condition the no further action letter upon compliance with any institutional or technological controls relied upon by the participant to demonstrate compliance with the applicable standards.

5. A no further action letter shall be in a form recordable in county real estate records as provided in chapter 558.

[97 Acts, ch 127, §15](#)  
[; 2011 Acts, ch 25, §143](#)

### **455H.302 Covenants not to sue.**

Upon issuance of a no further action letter pursuant to section 455H.301, a covenant not to sue arises by operation of law. The covenant releases the participant and each protected party from liability to the state, in the state's capacity as a regulator administering environmental programs, to perform additional environmental assessment, remedial activity, or response action with regard to the release of a hazardous substance for which the participant and each protected party has complied with the requirements of this chapter.

[97 Acts, ch 127, §16](#)

### **455H.303 Cessation of statutory liability.**

Upon issuance of a no further action letter pursuant to section 455H.301, except as provided in that section, the participant and each protected party shall no longer have liability under chapter 455A, under chapter 455B other than liability for petroleum underground storage tanks, or under chapters 455D and 455E to the state or to any other person as to any condition at the affected area with regard to hazardous substances for which compliance with applicable standards was demonstrated by the participant in accordance with this chapter and for which the department has provided a certificate of completion.

[97 Acts, ch 127, §17](#)

### **455H.304 Limitation of liability.**

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

*a.* “*Environmental claim*” means a civil action for damages for environmental harm and includes a civil action under this chapter for recovery of the costs of conducting a response action, but does not include a civil action for damages for a breach of contract or another agreement between persons or for a breach of a warranty that exists pursuant to the Code or common law of this state.

*b.* “*Environmental harm*” means injury, death, loss, or threatened loss to a person or property caused by exposure to or the release of a hazardous substance.

2. Except as may be required in accordance with obligations incurred pursuant to participation in the land recycling program established in this chapter, all of the following, or any officer or employee thereof, are relieved of any further liability for any environmental claim resulting from the presence of hazardous substances at, or the release of hazardous substances from, an enrolled site where a response action is being or has been conducted under this chapter, unless an action or omission of the person, state agency, political subdivision, or public utility, or an officer or employee thereof, constitutes willful or wanton

misconduct or intentionally tortious conduct:

- a. A contractor working for another person in conducting any response action under this chapter.
  - b. A state agency or political subdivision that is conducting a voluntary response action or a maintenance activity on lands, easements, or rights-of-way owned, leased, or otherwise held by the state agency or political subdivision.
  - c. A state agency when an officer or employee of the state agency provides technical assistance to a participant undertaking a response action under this chapter or rules adopted pursuant to this chapter, or to a contractor, officer, or employee of the agency, in connection with the response action.
  - d. A public utility, as defined in section 476.1, which is performing work in any of the following:
    - (1) An easement or right-of-way of a public utility across an affected area where a response action is being or has been conducted and where the public utility is constructing or has main or distribution lines above or below the surface of the ground for purposes of maintaining the easement or right-of-way for construction, repair, or replacement of any of the following:
      - (a) Main or distribution lines above or below the surface of the ground.
      - (b) Poles, towers, foundations, or other structures supporting or sustaining any such lines.
      - (c) Appurtenances to poles, towers, foundations, or other structures supporting or sustaining any such lines.
    - (2) An affected area where a response action is being conducted that is necessary to establish or maintain utility service to the property, including, without limitation, the construction, repair, or replacement of any of the following:
      - (a) Main or distribution lines above or below the surface of the ground.
      - (b) Poles, towers, foundations, or other structures supporting or sustaining any such lines.
      - (c) Appurtenances to poles, towers, foundations, or other structures supporting or sustaining any such lines.
3. This section does not create, and shall not be construed to create, a new cause of action against or substantive legal right against a person, state agency, political subdivision, or public utility, or an officer or employee thereof.
4. This section does not affect, and shall not be construed as affecting, any immunities from civil liability or defenses established by another section of the Code or available at common law, to which a person, state agency, political subdivision, or public utility, or officer or employee thereof, may be entitled under circumstances not covered by this section.

[97 Acts, ch 127, §18](#)

#### **455H.305 Participation not deemed an admission of liability.**

1. Enrolling a site pursuant to this chapter or participating in a response action does not constitute an admission of liability under the statutes of this state, the rules adopted pursuant to the statutes, or the ordinances and resolutions of a political subdivision, or an admission of civil liability under the Code or common law of this state.
2. The fact that a person has become a participant in a response action under this chapter is not admissible in any civil, criminal, or administrative proceeding initiated or brought under any law of this state other than to enforce this chapter.
3. All information, documents, reports, data produced, and any sample collected as a result of enrolling any property under this chapter are not admissible against the person undertaking the response action, and are not discoverable in any civil or administrative proceeding against the participant undertaking the response action except in a judicial or administrative proceeding initiated to enforce this chapter in connection with an alleged violation thereof. This prohibition against admissibility does not apply to any person whose covenant not to sue has been revoked under this chapter.
4. Enrolling a site pursuant to this chapter or participating in a response action shall not be construed to be an acknowledgment that the conditions at the affected area identified and addressed by the response action constitute a threat or danger to public health or safety or the environment.

[97 Acts, ch 127, §19](#)

#### **455H.306 Liability protections.**

The protections from liability afforded under this chapter shall be in addition to the exclusions to any liability protections afforded participants under any other provision of the Code.

[97 Acts, ch 127, §20](#)

#### **455H.307 Liability — new release — condition outside affected area.**

Protections afforded in this chapter shall not relieve a person from liability for a release of a hazardous substance occurring at the enrolled site after the issuance of a no further action letter or from liability for any condition outside the affected area addressed in the cleanup plan and no further action letter.

[97 Acts, ch 127, §21](#)

#### **455H.308 Relationship to federal law.**

The liability protection and immunities afforded under this chapter extend only to liability or potential liability arising under state law. It is not intended to provide any relief as to liability or potential liability arising under federal law. This section shall not be construed as precluding any agreement with a federal agency by which it agrees to provide liability protection based on participation and completion of a cleanup plan under this chapter.



[97 Acts, ch 127, §22](#)

**455H.309 Incremental property taxes.**

To encourage economic development and the recycling of contaminated land to promote the purposes of this chapter, cities and counties may provide by ordinance that the costs of carrying out response actions under this chapter are to be reimbursed, in whole or in part, by incremental property taxes over a six-year period. A city or county which implements the option provided for under this section shall provide that taxes levied on property enrolled in the land recycling program under this chapter each year by or for the benefit of the state, city, county, school district, or other taxing district shall be divided as provided in section 403.19, subsections 1 and 2, in the same manner as if the enrolled property was taxable property in an urban renewal project. Incremental property taxes collected under this section shall be placed in a special fund of the city or county. A participant shall be reimbursed with moneys from the special fund for costs associated with carrying out a response action in accordance with rules adopted by the commission. Beginning in the fourth of the six years of collecting incremental property taxes, the city or county shall begin decreasing by twenty-five percent each year the amount of incremental property taxes computed under this section.

[97 Acts, ch 127, §23](#)

SUBCHAPTER 4

LAND RECYCLING FUND

**455H.401 Land recycling fund.**

1. A land recycling fund is created within the state treasury under the control of the commission. Moneys received from fees, general revenue, federal funds, gifts, bequests, donations, or other moneys so designated shall be deposited in the fund. Any unexpended balance in the land recycling fund at the end of each fiscal year shall be retained in the fund, notwithstanding section 8.33.

2. The commission may use the land recycling fund to provide for all of the following:

- a. Financial assistance to political subdivisions of the state for activities related to an enrolled site.
- b. Financial assistance and incentives for qualifying enrolled sites.
- c. Funding for any other purpose consistent with this chapter and deemed appropriate by the commission.

[97 Acts, ch 127, §24](#)

SUBCHAPTER 5

MISCELLANEOUS PROVISIONS

**455H.501 and 455H.502** Repealed by 99 Acts, ch 114, §54.

**455H.503 Recordkeeping requirements.**

The director shall maintain a record of the affected areas or portion of affected areas for which no further action letters were issued under section 455H.301 and which involve institutional or technological controls that restrict the use of any of the enrolled sites to comply with applicable standards. The records pertaining to those sites shall indicate the applicable use restrictions.

[97 Acts, ch 127, §27](#)

**455H.504 Transferability of participation benefits.**

A no further action letter, a covenant not to sue, and any agreement authorized to be entered into and entered into under this chapter and the rules adopted pursuant to this chapter may be transferred by the participant or a later recipient to any other person by assignment or in conjunction with the acquisition of title to the enrolled site to which the document applies.

[97 Acts, ch 127, §28](#)

**455H.505 Emergency response.**

The provisions of this chapter shall not prevent or impede the immediate response of the department or a participant to an emergency which involves an imminent or actual release of a hazardous substance which threatens public health and safety or the environment. The emergency response action taken by the participant shall comply with the provisions of this chapter and the participant shall not be prejudiced by the mitigation measures undertaken to that point.

[97 Acts, ch 127, §29](#)

**455H.506 Interim response.**

The provisions of this chapter shall not prevent or impede a participant from undertaking mitigation measures to prevent significant impacts on human health or the environment. A response action for the site shall not be prejudiced by the mitigation measures undertaken prior to enrolling a property in the land recycling program. The effects of any interim mitigation measure shall be taken into account in the department's evaluation of the participant's compliance with applicable standards.

[97 Acts, ch 127, §30](#)

**455H.507 Transition from existing programs.**

Except for any enrolled site which is the subject of an enforcement action by an agency of the state or the federal government prior to July 1, 1997, for any property where actions similar to a response action have commenced pursuant to any provision of chapter 455B prior to July 1, 1997, the person carrying out the action shall elect within ninety days following the final adoption of rules implementing this chapter to either continue to proceed in accordance with the laws and rules in effect prior to July 1, 1997, or to proceed pursuant to this chapter.

[97 Acts, ch 127, §31](#)

**455H.508 Participant protection.**

A participant shall not be subject to either a civil enforcement action by an agency of this state or a political subdivision of this state, or an action filed pursuant to section 455B.112 regarding any release, response action, or condition which is the subject of the response action. This protection is contingent on the participant proceeding on a due and timely basis to carry out the response action.

[97 Acts, ch 127, §32](#)

**455H.509 Removal of a site from the registry listing.**

An enrolled site listed on the registry of confirmed hazardous waste or hazardous substance disposal sites, established pursuant to section 455B.426, which has completed a response action as to the conditions which led to its original listing on the registry, shall be removed from the registry listing, once a letter of no further action has been issued pursuant to section 455H.301.

[97 Acts, ch 127, §33](#)

**455H.510 Relationship to federal programs.**

The provisions of this chapter shall not prevent the department from enforcing both specific numerical cleanup standards and monitoring of compliance requirements specifically required to be enforced by the federal government as a condition of the receipt of program authorization, delegation, primacy, or federal funds.

[97 Acts, ch 127, §34](#)

**455H.511 Federal stringency.**

Any rules or standards established pursuant to this chapter shall be no more stringent than those required under any comparable federal law or regulation.

[97 Acts, ch 127, §35](#)

## CHAPTER 455I

### UNIFORM ENVIRONMENTAL COVENANTS ACT

#### **455I.1 Title.**

This chapter shall be known and cited as the “*Uniform Environmental Covenants Act*”.

[2005 Acts, ch 102, §5](#)

#### **455I.2 Definitions.**

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

1. “*Activity and use limitations*” means restrictions or obligations created under this chapter with respect to real property. “*Activity and use limitations*” may include, but is not limited to, restrictions on installation of water wells and other exposure receptors, construction of surface and subsurface structures, disturbance of and maintenance of soil caps and technological controls, and land use classifications such as residential, nonresidential, or industrial.
2. “*Agency*” means the department of natural resources created by section 455A.2 or any other state department or federal agency that determines or approves the environmental response project pursuant to which an environmental covenant is created.
3. “*Common interest community*” means a condominium, cooperative, or other real property with respect to which a person, by virtue of the person’s ownership of a parcel of real property, is obligated to pay property taxes or insurance premiums for, or for maintenance or improvement of, other real property described in a recorded covenant that creates the common interest community.
4. “*Environmental covenant*” means a servitude arising under an environmental response project that imposes activity and use limitations or the written document creating such servitude.
5. “*Environmental response project*” means a plan or work performed for environmental remediation or flood control affecting real property and conducted under or by one of the following:
  - a. A federal or state program that is subject to the jurisdiction of an agency, including but not limited to programs established by chapters 455B and 455G, corrective or response actions pursuant to 42 U.S.C. §6901 et seq., and remedial actions under 42 U.S.C. §9601 et seq.
  - b. A federal or state program for the replacement or protection of ecological features including wetlands.
  - c. A state voluntary cleanup program authorized in chapter 455H.
  - d. An incident to a closure conducted with approval of an agency of a solid or hazardous waste management unit, a sanitary disposal project, or an underground storage tank.
6. “*Grantor*” means any person with sufficient fee title or other property ownership interests necessary to create a valid environmental covenant under Iowa law.
7. “*Holder*” means the grantee of an environmental covenant as specified in section 455I.3, subsection 1.
8. “*Person*” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.
9. “*Record*”, used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

[2005 Acts, ch 102, §6](#)  
; [2012 Acts, ch 1018, §5, 7](#)

Validity and enforceability under this chapter of certain instruments entered into on or after July 1, 1992, and before July 1, 2012, and declared as environmental covenants by July 1, 2013;  
[2012 Acts, ch 1018, §7](#)

#### **455I.3 Nature of rights — subordination of interests.**

1. Any person, including a person that owns an interest in the real property, an agency, or a municipality or other unit of local government, may be a holder. An environmental covenant may identify more than one holder. The interest of a holder is an interest in real property.
2. A right of an agency under this chapter or under an environmental covenant, other than a right as a holder, is not an interest in real property.
3. An agency is bound by any obligation it assumes in an environmental covenant, but an agency does not assume obligations

merely by signing an environmental covenant. Any other person that signs an environmental covenant is bound by the obligations the person assumes in the environmental covenant, but signing the environmental covenant does not change obligations, rights, or protections granted or imposed under law or administrative action other than this chapter except as provided in the environmental covenant.

4. The following rules apply to interests in real property in existence at the time an environmental covenant is created or amended:

*a.* An interest that has priority under other law is not affected by an environmental covenant unless the person that owns the interest subordinates that interest to the environmental covenant.

*b.* This chapter does not require a person that owns a prior interest to subordinate that interest to an environmental covenant or to agree to be bound by the environmental covenant.

*c.* A subordination agreement may be contained in an environmental covenant covering real property or in a separate record. If the environmental covenant covers commonly owned property in a common interest community, the covenant or record may be signed by any person authorized by the governing board of the owners' association.

*d.* An agreement by a person to subordinate a prior interest to an environmental covenant affects the priority of that person's interest but does not by itself impose any affirmative obligation on the person with respect to the environmental covenant.

[2005 Acts, ch 102, §7](#)

#### **455I.4 Contents of environmental covenant.**

1. An environmental covenant shall contain all of the following:

*a.* A statement that the instrument is an environmental covenant executed pursuant to this chapter.

*b.* A legally sufficient description of the real property subject to the environmental covenant.

*c.* A description of the activity and use limitations on the real property.

*d.* The identity of every holder and grantor.

*e.* A signature by the grantor, the agency, every holder, and, unless waived by the agency, every owner in fee simple of the real property subject to the environmental covenant.

*f.* Identification of the name and location of any final agency action decision documents for the environmental response project reflected in the environmental covenant.

*g.* The rights of access to the real property granted in connection with implementation or enforcement of the environmental covenant.

2. In addition to the information required in this section, an environmental covenant may contain other information, restrictions, and requirements agreed to by the persons who sign the environmental covenant, including any of the following:

*a.* Requirements for periodic reporting describing compliance with the environmental covenant.

*b.* Requirements for notice to an agency following transfer of a specified interest in, or concerning proposed changes in use of, applications for building permits for, or proposals for any site work affecting the contamination on, the real property subject to the environmental covenant.

*c.* A brief narrative description of the contamination and remedy, including the contaminants of concern, the pathways of exposure, limits on exposure, and the location and extent of the contamination.

*d.* Limitations on amendment or termination of the environmental covenant in addition to those contained in sections 455I.9 and 455I.10.

*e.* Rights of the holder in addition to the holder's right to enforce the environmental covenant pursuant to section 455I.11.

3. In addition to other conditions for its approval of an environmental covenant authorized by law, an agency may require those persons specified by the agency who have interests in the real property to sign the environmental covenant.

[2005 Acts, ch 102, §8](#)

#### **455I.5 Validity — effect on other instruments.**

1. An environmental covenant that complies with this chapter runs with the land.

2. An environmental covenant that is otherwise effective is valid and enforceable even if any of the following applies to the environmental covenant:

*a.* The environmental covenant is not appurtenant to an interest in real property.

*b.* The environmental covenant can be or has been assigned to a person other than the original holder.

*c.* The environmental covenant is not of a character that has been recognized traditionally at common law.

*d.* The environmental covenant imposes a negative burden.

*e.* The environmental covenant imposes an affirmative obligation on a person having an interest in the real property or on the holder.

*f.* The benefit or burden does not touch or concern real property.

*g.* There is no privity of estate or contract.

*h.* The holder dies, ceases to exist, resigns, or is replaced.

*i.* The owner of an interest subject to the environmental covenant and the holder are the same person.

3. An instrument that creates restrictions or obligations with respect to real property that would qualify as activity and use limitations except for the fact that the instrument was recorded before July 1, 2005, is valid and enforceable and is not rendered invalid or unenforceable based upon any of the potential limitations on enforcement of interests described in subsection 2 or

because it was identified as an easement, servitude, deed restriction, or other interest. This chapter does not apply in any other respect to such an instrument.

4. This chapter does not invalidate or render unenforceable any interest, whether designated as an environmental covenant or other interest, that was created prior to July 1, 2005, or that is otherwise enforceable under the laws of this state.

[2005 Acts, ch 102, §9](#)

;

[2006 Acts, ch 1030, §43, 89](#)

#### **455I.6 Relationship to other land-use law.**

This chapter does not authorize a use of real property that is otherwise prohibited by zoning, by law other than this chapter regulating use of real property, or by a recorded instrument that has priority over the environmental covenant. An environmental covenant may prohibit or restrict uses of real property which are authorized by zoning or by law other than this chapter.

[2005 Acts, ch 102, §10](#)

#### **455I.7 Notice.**

1. A copy of a recorded environmental covenant shall be provided to each of the following in the manner required by an agency:

- a. Each person that signed the environmental covenant.
- b. Each person holding a recorded interest in the real property subject to the environmental covenant.
- c. Each person in possession of the real property subject to the environmental covenant.
- d. Each municipality or other unit of local government in which real property subject to the environmental covenant is located.
- e. Any other person the agency requires.

2. The validity of an environmental covenant is not affected by failure to provide a copy of the environmental covenant as required under this section.

[2005 Acts, ch 102, §11](#)

#### **455I.8 Recording.**

1. An environmental covenant and any amendment or termination of the environmental covenant shall be recorded in every county in which any portion of the real property subject to the environmental covenant is located. For purposes of indexing, a holder shall be treated as a grantee.

2. Except as otherwise provided in section 455I.9, subsection 4, an environmental covenant is subject to the laws of this state governing recording and priority of interests in real property.

[2005 Acts, ch 102, §12](#)

#### **455I.9 Duration — amendment by court or department action.**

1. An environmental covenant is perpetual unless any of the following occurs:

a. The environmental covenant, by its terms, is limited to a specific duration or terminated by the occurrence of a specific event.

b. The environmental covenant is terminated by consent pursuant to section 455I.10.

c. The environmental covenant is terminated pursuant to subsection 2 or 3.

d. The environmental covenant is terminated by foreclosure of an interest that has priority over the environmental covenant.

e. The environmental covenant is terminated or modified in an eminent domain proceeding, but only if all of the following occur:

(1) The agency that signed the document, if any, is a party to the proceeding.

(2) Each person that signed the environmental covenant, unless the person waived in a signed record the right to consent or a court finds that the person no longer exists or cannot be located or identified with the exercise of reasonable diligence, and the current property owner are given notice of the pendency of the proceeding.

(3) The court determines, after hearing, that the termination or modification will not adversely affect human health and safety or the environment.

2. If the agency that signed an environmental covenant is a state agency and has determined that the intended purposes can no longer be realized, the agency may terminate the environmental covenant or reduce its burden on the real property subject to the environmental covenant. Notice shall be provided to each person that signed the covenant or their assignee, to the current property owner, and to any other persons identified in section 455I.10, subsection 1. The agency's determination or failure to make a determination upon request shall constitute final agency action. Failure by the agency to make a determination within sixty days upon request shall constitute final agency action. Any person entitled to notice by the agency shall be entitled to judicial review pursuant to section 17A.19 with the following exceptions:

a. Proceedings for judicial review shall be filed in the county in which the environmental covenant was recorded.

b. Notwithstanding section 17A.19, subsection 2, service of process shall not be jurisdictional and shall be as provided in the Iowa rules of civil procedure.

c. Notwithstanding section 17A.19, subsection 3, a petition for judicial review shall be filed within thirty days of the written decision by the agency. Such filing shall be jurisdictional.

d. The district court shall hear and consider relevant evidence, including testimony or other evidence not considered by the agency, regarding the question of whether the environmental covenant should be terminated or the burden on the real estate reduced if, based on changed circumstances, the court determines the intended purposes of the environmental covenant can no longer be realized.

3. If the agency that signed an environmental covenant is a federal agency, the agency's determination or failure to make a determination as provided in subsection 2 shall be reviewable in accordance with applicable federal law.

4. Except as otherwise provided in subsections 1, 2, and 3, an environmental covenant may not be extinguished, limited, or impaired through issuance of a tax deed, foreclosure of a tax lien, or application of the doctrine of adverse possession, prescription, abandonment, waiver, lack of enforcement, or acquiescence, or a similar doctrine.

5. An environmental covenant may not be extinguished, limited, or impaired by application of section 558.68 or sections 614.24 through 614.38.

[2005 Acts, ch 102, §13](#)

#### **455I.10 Amendment or termination by consent.**

1. An environmental covenant may be amended or terminated by consent only if the amendment or termination is signed by all of the following:

a. The agency.

b. The current owner in fee simple of the real property subject to the environmental covenant.

c. Each person that originally signed the environmental covenant or an assignee of an original signatory, unless the person waived in a recorded document the right to consent or the agency finds that the person no longer exists or cannot be located or identified with the exercise of reasonable diligence.

d. Except as otherwise provided in subsection 4, paragraph "b", the holder.

2. If an interest in real property is subject to an environmental covenant, the interest is not affected by an amendment to the environmental covenant unless the current owner of the interest consents to the amendment or has waived in a recorded document the right to consent to amendments.

3. Except for an assignment undertaken pursuant to a governmental reorganization, assignment of an environmental covenant to a new holder is an amendment.

4. Except as otherwise provided in an environmental covenant, all of the following apply:

a. A holder may not assign its interest without consent of the other parties as provided in subsection 1.

b. A holder may be removed and replaced by agreement of the other parties specified in subsection 1.

c. A court of competent jurisdiction may fill a vacancy in the position of holder.

[2005 Acts, ch 102, §14](#)

#### **455I.11 Enforcement of environmental covenant.**

1. A civil action for injunctive or other equitable relief for violation of an environmental covenant may be maintained by any of the following:

a. A holder or grantor.

b. The agency or, if the agency is not the agency with authority to determine or approve the environmental response project, the department of natural resources.

c. Any person to whom the environmental covenant expressly grants power to enforce the environmental covenant.

d. A person whose interest in the real property or whose collateral or liability may be affected by the alleged violation of the environmental covenant.

e. A municipality or other unit of local government in which the real property subject to the environmental covenant is located.

2. This chapter does not limit the regulatory authority of an agency under law other than this chapter with respect to an environmental response project.

3. A person is not responsible for or subject to liability for environmental remediation or flood control solely because it has the right to enforce an environmental covenant.

[2005 Acts, ch 102, §15](#)

[; 2006 Acts, ch 1030, §44](#)

[; 2012 Acts, ch 1018, §6, 7](#)

Validity and enforceability under this chapter of certain instruments entered into on or after July 1, 1992, and before July 1, 2012, and declared as environmental covenants by July 1, 2013;  
[2012 Acts, ch 1018, §7](#)

#### **455I.12 Relation to Electronic Signatures in Global and National Commerce Act.**

This chapter modifies, limits, or supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §7001 et seq., but does not modify, limit, or supersede section 101(a) of that Act, 15 U.S.C. §7001(a), or authorize electronic delivery of any of the notices described in section 103(b) of that Act, 15 U.S.C. §7003(b).

[2005 Acts, ch 102, §16](#)



## CHAPTER 455J

### ENVIRONMENTAL MANAGEMENT SYSTEMS

#### **455J.1 Environmental management systems — legislative findings — purpose.**

1. The purpose of this chapter is to encourage responsible environmental management and solid waste disposal and to enhance efforts to promote environmental stewardship.
2. The general assembly finds and declares all of the following:
  - a. The policy of responsible environmental management can be furthered by rewarding solid waste disposal projects that operate in an innovative, cost-effective, technologically advanced, and environmentally sensitive manner.
  - b. Responsible environmental management can also be furthered by changing the focus of solid waste disposal projects from disposal management to environmental resource management.
  - c. The concept of environmental stewardship embraces every aspect of the environmental footprint created by the management and disposal of solid waste.
  - d. Environmental management systems mitigate the climate change impacts of solid waste disposal by reducing the amount of greenhouse gases released into the atmosphere. In addition, environmental management systems improve water quality by limiting and treating the impacts of leachate disposal and by providing positive examples of sustainable water resource management.
  - e. The goal of managing resources in a sustainable manner is to increase the benefits to communities and society for the present and for the future.

[2008 Acts, ch 1109, §4](#)

#### **455J.2 Definitions.**

For purposes of this chapter:

1. “*Commission*” means the environmental protection commission.
2. “*Council*” means the solid waste alternatives program advisory council established by the director.
3. “*Department*” means the department of natural resources.
4. “*Director*” means the director of the department of natural resources.
5. “*Environmental management system*” or “*system*” means a solid waste planning area which has been designated as an environmental management system pursuant to section 455J.7. “*Environmental management system*” includes a planning area designated as an environmental management system that is providing multiple environmental services in addition to solid waste disposal and that is planning for the continuous improvement of solid waste management by appropriately and aggressively mitigating the environmental impacts of solid waste disposal.

[2008 Acts, ch 1109, §5](#)

#### **455J.3 Environmental management system designation requirements.**

To qualify for designation as an environmental management system pursuant to section 455J.7, a solid waste planning area shall actively pursue all of the following:

1. *Yard waste management.* Provide for the operation of a yard waste management program or contract with another party to do so.
2. *Hazardous household waste collection.* Provide for the proper management and disposal of hazardous household waste by operating a regional collection center or participating in a regional collection center network. The regional collection center shall provide for the collection and disposal of hazardous household wastes, including but not limited to paint, pesticides, batteries, automotive products, sharps, needles and syringes, and pool chemicals. The regional collection center shall encourage the reuse of any materials for which reuse is possible and may educate households on the use of safer alternatives through efforts designed to increase public participation and to increase the participation of local government entities not currently in a network. Regional collection centers may also provide for the assessment of current educational programs by examining changes in consumer behavior.
3. *Water quality improvement.* Provide for a water quality improvement program within the system’s planning area. Such a program may include offering educational programs, sponsoring awareness initiatives, providing for cleanup activities such as the cleanup of illegal dumping areas, and otherwise promoting responsible environmental behavior.
4. *Greenhouse gas reduction.* Implement a greenhouse gas reduction program designed to prevent the release of greenhouse



gases into the atmosphere. Such a program may include but is not limited to the following activities:

- a.* Generating electricity or producing other fuels through the collection of landfill gas, such as a methane gas recovery or minimization system.
- b.* Collecting and managing food and other organic waste from households and from industrial and commercial establishments, or attempting to recover energy from the reuse of biomass.
- c.* Implementing programs that encourage the efficient use of energy and promote the use of renewable fuels.
- d.* Discouraging the uncontrolled burning of solid waste and yard waste.
- e.* Setting recycling goals to measure energy savings and quantify the level of success of greenhouse gas mitigation efforts.
- f.* Collection and recycling services targeted at waste generated by industrial and commercial facilities such as cardboard, paper, construction, and demolition waste.

*5. Recycling services.*

- a.* Offer recycling services for paper, glass, metal, and plastics within the communities served. In addition to offering recycling of paper, metal, glass, and plastics, a solid waste planning area may also offer recycling services for electronic waste, white goods, and tires.
- b.* Recycling services may also be targeted at waste generated by industrial and commercial facilities such as cardboard, paper, construction, and demolition waste.
- c.* Recycling services offered in an effort to meet the goals of this subsection may be provided through drop-off sites or through curbside recycling programs operated in conjunction with solid waste collection.
- 6. Environmental education.* Plan and implement programs educating the public on environmental stewardship. These programs may include components designed to prevent illegal dumping, reduce greenhouse gas emissions, improve water quality, reduce waste generation, increase recycling and reuse, or any other environmental objective that furthers the purpose and goals of this chapter.

[2008 Acts, ch 1109, §6](#)

**455J.4 Annual compliance reports.**

1. On September 1, 2009, and each year thereafter, each environmental management system shall submit to the department an annual report. The report shall document the system's compliance with the requirements of section 455J.3.
2. The department shall adopt by rule methods and criteria for determining whether a system is in compliance with the provisions of this chapter. In adopting methods and criteria, the department shall consult with stakeholders in order to develop reasonable and appropriate criteria. In determining whether a system is in compliance with the provisions of this chapter, the department shall evaluate whether a system is making continuing progress in regard to the requirements of section 455J.3.

[2008 Acts, ch 1109, §7](#)

**455J.5 Incentives.**

1. A solid waste planning area designated as an environmental management system pursuant to section 455J.7 shall qualify for all of the following:
  - a.* An exemption from solid waste reduction goals imposed on sanitary landfills pursuant to section 455D.3.
  - b.* A reduced tonnage fee of three dollars and sixty-five cents per ton, to be imposed as provided in section 455B.310, notwithstanding section 455B.310, subsection 2, of which two dollars and ten cents shall be remitted to the department.
  - c.* Financial assistance as recommended by the council and approved by the commission pursuant to section 455J.7.
2. Notwithstanding any other provision of law to the contrary, in addition to the incentives in subsection 1, an environmental management system is only required to file its updated comprehensive plan once every five years.

[2008 Acts, ch 1109, §8](#)

**455J.6 Solid waste alternatives program advisory council.**

1. A solid waste alternatives program advisory council is established within the department. The council consists of the following voting members serving staggered three-year terms who shall be appointed by the director:
  - a.* One member representing the Iowa recycling association.
  - b.* One member representing the Iowa waste exchange.
  - c.* One member representing the economic development authority's recycle Iowa program.
  - d.* One member representing the Iowa society of solid waste administrators.
  - e.* Three members representing solid waste planning areas of various sizes.
  - f.* One member representing the Iowa chapter of the national solid wastes management association.
  - g.* One member representing the department.
2. In appointing members to the council, the director shall include representatives from both public and private solid waste entities.
3. Members shall not be entitled to compensation, but shall be entitled to reimbursement for expenses pursuant to section 7E.6.
4. A majority of voting members shall not include any member who has a conflict of interest. A statement by a member that the member has a conflict of interest is conclusive for this purpose. A vacancy in the membership does not prevent the council from performing the duties of the council.

[2008 Acts, ch 1109, §9](#)  
; [2011 Acts, ch 34, §105](#)  
; [2011 Acts, ch 118, §§5, 89](#)

**455J.7 Designation of environmental management systems.**

1. *Consideration of plans.* The council shall consider solid waste management plans submitted by solid waste planning areas and make recommendations for designation as an environmental management system to the commission. All system designations recommended by the council are subject to approval by the commission. Any solid waste planning area may submit a plan to the council and seek designation as a system.

a. By October 1, 2008, the council shall recommend the designation of up to six initial qualifying solid waste planning areas as environmental management systems to serve as pilot projects. By October 1, 2009, and by the same date each year thereafter, the council may recommend the designation of any additional planning areas as systems, provided those areas meet the requirements of section 455J.3.

b. In recommending the designation of a planning area as a system, the council shall make a determination as to whether the area meets the requirements of section 455J.3. The council shall not recommend the designation of a planning area as a system unless the planning area meets the requirements of section 455J.3.

c. The commission shall consider the plans submitted to the council and shall review the council's recommendations on those plans. The commission shall approve or reject each plan and shall make publicly available its reasons for doing so.

2. *System review.*

a. By October 1, 2009, and by the same date each year thereafter, the council shall review the annual reports of all designated systems and determine whether those systems remain in compliance with section 455J.3. If the council determines that a planning area is no longer in compliance, the council may recommend to the commission the revocation of the planning area's system designation.

b. The council may review and monitor the progress of those planning areas that have not been designated as a system and shall coordinate with other statewide boards, task forces, and other entities in order to achieve the goals and objectives of this chapter.

3. *Allocation of funds.*

a. The council shall recommend to the commission a reasonable allocation of the moneys provided in section 455E.11, subsection 2, paragraph "a", subparagraph (1), subparagraph division (d), to eligible systems. In making its recommendation as to the allocation of moneys, the council shall adopt and use a set of reasonable criteria. The criteria shall conform to the goals and purposes of this chapter as described in section 455J.1 and shall be approved by the commission.

b. Notwithstanding any other provision of law to the contrary, the commission shall make a final allocation of the funds described in section 455E.11, subsection 2, paragraph "a", subparagraph (1), subparagraph division (d), to systems meeting the requirements of this chapter.

c. Moneys allocated pursuant to this subsection shall be used by systems to further compliance with any of the requirements of section 455J.3.

[2008 Acts, ch 1109, §10](#)

;

[2009 Acts, ch 41, §263](#)

## CHAPTER 456

### GEOLOGICAL SURVEY

Chapter transferred from ch 460A in Code 2003 pursuant to

Code editor directive; 2002 Acts, 2nd Ex, ch 1003, §260, 262

#### **456.1 Geological survey created — definitions.**

1. A geological survey of the state is created within the department.
2. As used in this chapter, unless the context otherwise requires:
  - a. “*Department*” means the department of natural resources created under section 455A.2.
  - b. “*Director*” means the director of the department.

[C97, §2497; C24, 27, 31, 35, 39, §**4549**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §305.1]  
[86 Acts, ch 1245, §1881](#)

[2002 Acts, 2nd Ex, ch 1003, §260, 262](#)

[2011 Acts, ch 25, §143](#)

#### **456.2 State geologist — qualifications.**

The director shall appoint the state geologist. The state geologist must have a degree in geology from an accredited college or university and must have at least five years of geological experience. The annual salary of the state geologist shall be determined by the director.

[R60, §180, 181; C97, §2498; C24, 27, 31, 35, 39, §**4550**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §305.2]  
[86 Acts, ch 1245, §1882](#)

C93, §460A.2  
[2002 Acts, 2nd Ex, ch 1003, §260, 262](#)  
C2003, §456.2

#### **456.3 Survey.**

The state geologist shall be director of the survey and shall make a complete survey of the natural resources of the state in all their economic and scientific aspects, including the determination of the order, arrangement, dip, and comparative magnitude of the various formations; the discovery and examination of all useful deposits, including their richness in mineral contents and their fossils; and the investigation of the position, formation, and arrangement of the different ores, coals, clays, building stones, glass sands, marls, peats, mineral oils, natural gases, mineral and artesian waters, and such other minerals or other materials as may be useful, with particular regard to the value thereof for commercial purposes and their accessibility.

[R60, §182; C97, §2499; C24, 27, 31, 35, 39, §**4551**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §305.3]  
C93, §460A.3  
[2002 Acts, 2nd Ex, ch 1003, §260, 262](#)  
C2003, §456.3

#### **456.4 Investigations — collection — renting space.**

The state geologist shall investigate the characters of the various soils and their capacities for agricultural purposes, the streams, and other scientific and natural resource matters that may be of practical importance and interest. For the purpose of preserving well drilling samples, rock cores, fossils, and other materials as may be necessary to carry on investigations, the state geologist shall have the authority to lease or rent sufficient space for storage of these materials with the approval of the director of the department of administrative services. A complete cabinet collection may be made to illustrate the natural products of the state, and the state geologist may also furnish suites of materials, rocks, and fossils for colleges and public museums within the state, if

it can be done without impairing the general state collection.

[R60, §182, 185, 187; C97, §2499; C24, 27, 31, 35, 39, §4552; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §305.4]

C93, §460A.4

[2002 Acts, 2nd Ex, ch 1003, §260, 262](#)

C2003, §456.4

[2003 Acts, ch 145, §286](#)

#### **456.5 Authority to enter lands.**

For the purpose of carrying on the aforesaid investigations the state geologist and the state geologist's assistants and employees shall have authority to enter and cross all lands within the state; provided that in so doing no damage is done to private property.

[C24, 27, 31, 35, 39, §4553; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §305.5]

C93, §460A.5

[2002 Acts, 2nd Ex, ch 1003, §260, 262](#)

C2003, §456.5

#### **456.6 Detailed reports.**

The state geologist and the state geologist's assistants shall make detailed maps and reports of counties and districts as fast as the work is completed, which reports shall embrace such geological, mineralogical, topographical, and scientific details as are necessary to make complete records thereof, which may include the necessary illustrations, maps, charts, and diagrams.

[R60, §184; C97, §2500; S13, §2500; C24, 27, 31, 35, 39, §4554; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §305.6]

C93, §460A.6

[2002 Acts, 2nd Ex, ch 1003, §260, 262](#)

C2003, §456.6

#### **456.7 Annual report.**

The state geologist shall, annually, at the time provided by law, make to the governor a full report of the work in the preceding year, which report shall be accompanied by such other reports and papers as may be considered desirable for publication.

[R60, §184; C97, §2498, 2500; S13, §2500; C24, 27, 31, 35, 39, §4555; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §305.7]

C93, §460A.7

[2002 Acts, 2nd Ex, ch 1003, §260, 262](#)

C2003, §456.7

#### **456.8 Cooperation.**

The state geologist shall cooperate with the United States geological survey, with other federal and state organizations, and with adjoining state surveys in the making of topographic maps and the study of geologic problems of the state when, in the opinion of the state geologist, such cooperation will result in profit to the state.

[S13, §2500; C24, 27, 31, 35, 39, §4556; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §305.8]

C93, §460A.8

[2002 Acts, 2nd Ex, ch 1003, §260, 262](#)

C2003, §456.8

#### **456.9 Publication of reports.**

The state geologist may direct the preparation and publication of special reports and bulletins of educational and scientific value or containing information of immediate use to the people.

[C97, §2501; S13, §2501; C24, 27, 31, 35, 39, §4557; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §305.9]

C93, §460A.9

[2002 Acts, 2nd Ex, ch 1003, §260, 262](#)

C2003, §456.9

Reports, §7A.27

#### **456.10 Distribution and sale of reports.**

All publications of the geological survey shall be distributed by the state as are other published reports of state officers when no special provision is made. When such distribution has been made the state geologist shall retain a sufficient number of copies to supply probable future demands and any copies in excess of such number shall be sold to persons making application therefor at the cost price of publication, the money thus accruing to be turned into the treasury of the state.

[C97, §2501; S13, §2501; C24, 27, 31, 35, 39, §4558; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §305.10]

#### **456.11 Maps — surveys.**

The operator of any underground mine shall comply with the following provisions relative to maps and surveys:

1. *Scale.* Each mine map shall be drawn to a scale of not more than two hundred feet to the inch.
2. *General specifications.* Each map shall show the name of the state, county, and township in which the mine is located, the designation of the mine, the name of the company or operator, the certificate of the mining engineer or surveyor as to the accuracy and date of the survey, the north point, and the scale to which the map is drawn.
3. *Boundaries and surface lines.* Every map shall correctly show the surface boundary lines of the mineral rights pertaining to each mine and all section or quarter section lines or corners within the same, the lines of town lots and streets, the tracks and sidetracks of all railroads, the location of all wagon roads, rivers, streams, and ponds, and reservations made of the mineral.
4. *Underground conditions.* For the underground workings, the map shall show all shafts, slopes, tunnels, or other openings to the surface or to the workings of a contiguous mine; all excavations, entries, rooms, and crosscuts; the location of the escape ways, and of the fan or furnace or other means of ventilation and the direction of air currents, and the location of permanent pumps, hauling engines, engine planes, abandoned works, fire walls, and standing water.
5. *Separate maps.* A separate and similar map drawn to the same scale in all cases shall be made of each layer of minerals mined in any mine in this state. A separate map shall also be made of the surface whenever the surface buildings, lines, or objects are so numerous as to obscure the details of the mine workings if drawn upon the same sheet with them, and in such case the surface map shall be drawn upon transparent cloth or paper so that it can be laid upon the map of the underground workings and thus truly indicate the local relation of lines and objects on the surface to the excavations of the mine and any other principal workings of the mine.
6. *Rise and dip of minerals.* Each map of underground workings shall also show by profile drawing and measurement, the last one hundred fifty feet approaching the boundary lines, showing the rise and dip of the minerals.
7. *Copies.* The original or true copies of the maps shall be kept at the office of the mine, and true copies thereof shall also be furnished the state geologist within thirty days after the completion of the same.
8. *Extensions.* An accurate extension of the last preceding survey of every mine in active operation shall be made once in every twelve months prior to July 1 of every year and the result of such survey, with the date thereof, shall be promptly and accurately entered upon the original map, and a true, correct, and accurate copy of the extended map shall be forwarded to the state geologist so as to show all changes in plan of new work in the mine, and all extensions of the old workings to the most advanced face or boundary of the workings which have been made since the last preceding survey, and the parts of the mine abandoned or worked out after the last preceding survey shall be clearly indicated and shown by colorings, which copy must be delivered to the state geologist within thirty days after the last survey is made.
9. *Abandoned mine.* When any underground mine is worked out or is about to be abandoned or indefinitely closed, the operator of the same shall make or cause to be made a completed and extended map of the mine and the result of the same shall be duly extended on all maps of the mine and copies thereof so as to show all excavations and the most advanced workings of the mine, and their exact relation to the boundary or section lines on the surface, and deliver to the state geologist a copy of the completed map.
10. *Copies furnished.* The state geologist shall provide the division of soil conservation and water quality created within the department of agriculture and land stewardship pursuant to section 159.5 a copy of each map and map extension received by the geologist under this section.

[C97, §2485; S13, §2485, 2496-m; C24, 27, 31, 35, 39, §1245, 1351 – 1355, 1357, 1358; C46, 50, 54, 58, 62, 66, 71, 73, §82.28, 83.14 – 83.18, 83.20, 83.21; C75, 77, 79, 81, §305.12]

2002 Acts, 2nd Ex, ch 1003, §260, 262

2015 Acts, ch 103, §44

#### **456.12 Failure to furnish map.**

When the operator of any mine neglects or refuses for a period of ninety days to furnish to the state geologist the map or plan, or a copy thereof, of such mine or any extension thereof, as provided in this chapter, the state geologist shall cause to be made an accurate map or plan of such mine or extension as the case may be, at the expense of the operator. The cost shall be paid by the state and recovered from such operator. It shall be the duty of the county attorney of the county in which such mine is located, at the request of the state geologist, to bring action in the name of the state for such recovery.

[S13, §2485-a, 2496-m; C24, 27, 31, 35, 39, §1246, 1359; C46, 50, 54, 58, 62, 66, 71, 73, §82.29, 83.22; C75, 77, 79, 81, §305.13]

**456.13 Maps property of state — custody — copies.**

The maps so delivered to the state geologist shall be the property of the state and shall remain in the custody of the state geologist. They shall be kept at the office of the geological survey and be open to examination by all persons interested in the maps; but such examination shall only be made in the presence of the state geologist or a designee, and the state geologist shall not permit any copies of the maps to be made without the written consent of the operator or the owner of the property, except as provided in section 456.11 or if the mine has been abandoned for at least five years.

[C97, §2485; S13, §2485, 2496-m; C24, 27, 31, 35, 39, §**1247, 1356**; C46, 50, 54, 58, 62, 66, 71, 73, §82.30, 83.19; C75, 77, 79, 81, §305.14]

C93, §460A.14

[2002 Acts, 2nd Ex, ch 1003, §260, 262](#)

C2003, §456.13

## CHAPTER 456A

### REGULATION AND FUNDING — NATURAL RESOURCES DEPARTMENT

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

#### **456A.1 Definitions.**

As used in this chapter unless the context otherwise requires:

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

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

[82 Acts, ch 1199, §92, 96](#)

]

[86 Acts, ch 1245, §1827](#)

C93, §456A.1

**456A.2 through 456A.5**Reserved.

#### **456A.6 Expenses generally.**

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

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

C93, §456A.6

**456A.7 through 456A.11**Reserved.

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

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

[88 Acts, ch 1216, §43](#)

C89, §107.12

C93, §456A.12

#### **456A.13 Officers and employees — peace officer status.**

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

[C73, §4052; C97, §2540; SS15, §2539, 2540; C24, 27, §1715; C31, §1703-d20, -d22, 1715; C35, §1703-g13, -g15; C39,

§1703.40, 1703.42; C46, 50, 54, 58, 62, 66, 71, §107.13, 107.15; C73, 75, 77, 79, 81, §107.13]

[86 Acts, ch 1245, §1828, 1854](#)

C93, §456A.13

[98 Acts, ch 1183, §114](#)

#### **456A.14 Temporary appointments — peace officer status.**

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

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

[86 Acts, ch 1245, §1829](#)

;

[92 Acts, ch 1160, §15](#)

C93, §456A.14

[2004 Acts, ch 1132, §91](#)

#### **456A.15 Removal.**

The persons appointed or employed as provided under sections 456A.13 and 456A.14 may be removed by the director at any time subject to the approval of the commission.

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

C83, §107.15

C93, §456A.15

[2016 Acts, ch 1073, §125](#)

Section amended

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

1. A person who files an individual or a joint income tax return with the department of revenue under section 422.13 may designate any amount to be paid to the state fish and game protection fund. If the refund due on the return or the payment remitted with the return is insufficient to pay the additional amount designated by the taxpayer to the state fish and game protection fund, the amount designated shall be reduced to the remaining amount of refund or the remaining amount remitted with the return.

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

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

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

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

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

7. The department shall adopt rules pursuant to chapter 17A to implement this section. However, before a checkoff pursuant to this section shall be permitted, all liabilities on the books of the department of administrative services and accounts identified as owing under section 8A.504 and the political contribution allowed under section 68A.601 shall be satisfied.

[

[82 Acts, ch 1015, §1, 2](#)

,

[ch 1196, §1](#)

]

[84 Acts, ch 1263, §2](#)



; [85 Acts, ch 230, §2](#)  
; [86 Acts, ch 1244, §22](#)

[2002 Acts, ch 1162, §63](#)  
; [2003 Acts, ch 145, §286](#)  
; [2004 Acts, ch 1101, §66](#)  
; [2015 Acts, ch 30, §138](#)

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

#### **456A.17 Funds — restrictions.**

1. The following four funds are created in the state treasury:
  - a. A state fish and game protection fund.
  - b. A state conservation fund.
  - c. An administration fund.
  - d. A county conservation board fund.
2. The state fish and game protection fund, except as otherwise provided, consists of all moneys accruing from license fees and all other sources of revenue arising under the fish and wildlife programs. Notwithstanding section 12C.7, subsection 2, interest or earnings on investments or time deposits of the moneys in the state fish and game protection fund shall be credited to that fund.
3. The county conservation board fund consists of all moneys credited to it by law or appropriated to it by the general assembly.
4. The state conservation fund, except as otherwise provided, consists of all other funds accruing to the department for the purposes embraced by this chapter.
5. The administration fund shall consist of an equitable portion of the gross amount of the state fish and game protection fund and the state conservation fund, to be determined by the commission, sufficient to pay the expense of administration entailed by this chapter.
6. All receipts and refunds and reimbursements related to activities funded by the administration fund are appropriated to the administration fund. All refunds and reimbursements relating to activities of the state fish and game protection fund shall be credited to the state fish and game protection fund.
7. Notwithstanding section 8.33, revenues deposited in the state conservation fund, and remaining in the state conservation fund on June 30 of any fiscal year shall not revert to the general fund of the state but shall remain available for expenditure for one year after the close of the fiscal year during which such revenues were deposited. Any such revenues remaining unexpended at the end of the one-year period during which the revenues are available for expenditure shall revert to the general fund of the state.
8. The department may apply for a loan for the construction of facilities for the collection and treatment of waste water and for the supply, treatment, and distribution of drinking water under the state water pollution control works and drinking water facilities financing program as established in sections 455B.291 through 455B.299. In order to provide for the repayment of a loan granted under the financing program, the commission may impose a lien on not more than ten percent of the annual revenues from user fees and related revenue derived from park and recreation areas under chapter 461A which are deposited in the state conservation fund. If a lien is established as provided in this paragraph, repayment of the loan is the first priority on the revenues received and dedicated for the loan repayment each year.

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

] [84 Acts, ch 1262, §3](#)  
; [86 Acts, ch 1244, §23](#)  
; [86 Acts, ch 1245, §1830, 1831](#)

[94 Acts, ch 1107, §72](#)  
; [95 Acts, ch 98, §2](#)  
; [2002 Acts, ch 1162, §64](#)  
; [2002 Acts, 2nd Ex. ch 1003, §242, 262](#)  
; [2003 Acts, ch 17, §1, 2](#)  
; [2010 Acts, ch 1034, §3, 4](#)  
; [2011 Acts, ch 25, §55](#)

#### **456A.18 Report of funds.**

The director shall, at least monthly, make return and pay to the treasurer of state all moneys then in the director's hands belonging to the funds created in section 456A.17.

[C31, §1703-d23, 1820; C35, §1703-g18; C39, §**1703.45**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §107.18]  
[86 Acts, ch 1245, §1832](#)

C93, §456A.18  
[2005 Acts, ch 3, §75](#)

#### **456A.19 Expenditures.**

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

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

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

*c.* All administrative expense shall be paid from the administration fund.

*d.* All other expenditures shall be paid from the state conservation fund.

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

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

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

[84 Acts, ch 1262, §4](#)

; [86 Acts, ch 1245, §1833, 1834](#)

; [88 Acts, ch 1134, §25](#)

; [88 Acts, ch 1158, §18](#)

[94 Acts, ch 1107, §73](#)

; [95 Acts, ch 214, §22](#)

; [2002 Acts, ch 1162, §65](#)

; [2003 Acts, ch 108, §79](#)

; [2003 Acts, ch 145, §286](#)

; [2011 Acts, ch 25, §56](#)

; [2013 Acts, ch 30, §103](#)

; [2015 Acts, ch 29, §114](#)

#### **456A.20 Limitation on nursery stock — exception.**

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

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

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

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

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

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

[86 Acts, ch 1245, §1835, 1845](#)

C93, §456A.20

[99 Acts, ch 206, §25](#)

;

[2000 Acts, ch 1154, §32](#)

#### **456A.21 Forestry management and enhancement fund.**

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

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

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

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

- b. One professional forester who shall serve the southwest region of the state.
- 4. The commission may adopt rules pursuant to chapter 17A to administer this section.
- 5. Section 8.33 shall not apply to moneys in the fund. Notwithstanding section 12C.7, moneys earned as income, including as interest, from the fund shall remain in the fund until expended as provided in this section.

[99 Acts, ch 206, §26](#)

;

[2000 Acts, ch 1160, §2](#)

;

[2002 Acts, ch 1162, §66](#)

;

[2003 Acts, ch 108, §80, 81](#)

;

[2003 Acts, ch 145, §286](#)

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

#### **456A.23 General duties.**

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

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

[83 Acts, ch 168, §1](#)

;

[91 Acts, ch 268, §224](#)

C93, §456A.23

#### **456A.24 Specific powers.**

The department is hereby authorized and empowered to:

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

subsection or rules adopted by the department pursuant to this subsection is subject to a scheduled fine pursuant to section 805.8B, subsection 4.

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

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

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

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

[83 Acts, ch 33, §1](#)

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[83 Acts, ch 168, §2 – 4](#)

;

[86 Acts, ch 1245, §1836, 1837, 1845](#)

;

[91 Acts, ch 78, §1](#)

;

[92 Acts, ch 1160, §16](#)

C93, §456A.24

[93 Acts, ch 13, §1](#)

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[93 Acts, ch 38, §1](#)

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[2001 Acts, ch 14, §1](#)

;

[2001 Acts, ch 137, §5](#)

;

[2004 Acts, ch 1132, §92](#)

#### **456A.25 Orders.**

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

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

C93, §456A.25

#### **456A.26 Interpretation and limitations.**

Sections 456A.23 through 456A.25 shall not be construed as authorizing the commission to change any penalty for violating any game law or regulation, or change the amount of any license established by the legislature, or to promulgate any open season on any fish, animal, or bird contrary to the laws of the state of Iowa, or to extend except as provided in this chapter any open season or bag limit on any kind of fish, game, fur-bearing animals, or of any birds prescribed by the laws of the state of Iowa or by federal laws or regulations, or to contract any indebtedness or obligation beyond the funds to which they are lawfully entitled.

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

C93, §456A.26

[2009 Acts, ch 133, §156](#)

#### **456A.27 Federal wildlife Act — assent.**

The state of Iowa assents to the provisions of the Act of Congress entitled “An Act To Provide That The United States Shall Aid The States In Wildlife Restoration Projects, And For Other Purposes”, approved September 2, 1937, 50 Stat. 917, codified at 16 U.S.C. §669 – 669k, and the department may perform acts as necessary to the conduct and establishment of cooperative wildlife restoration projects, as defined in the Act of Congress, in compliance with the Act and with regulations promulgated by the secretary of agriculture under the Act. No funds accruing to the state of Iowa from license fees paid by hunters shall be diverted for any other purpose than as set out in sections 456A.17 and 456A.19.

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

[86 Acts, ch 1245, §1838, 1845](#)

[2006 Acts, ch 1010, §119](#)  
; [2015 Acts, ch 30, §139](#)

**456A.28 Fish restoration projects.**

The state of Iowa assents to the provisions of the Act of Congress entitled “An Act To Provide That The United States Shall Aid The States In Fish Restoration Projects, And For Other Purposes”, approved August 9, 1950, Ch. 658, 64 Stat. 430, codified at 16 U.S.C. §777 – 777n, and the department may perform acts as necessary to the conduct and establishment of cooperative fish restoration projects, as defined in the Act of Congress, in compliance with the Act and with regulations promulgated by the secretary of the interior under the Act. No funds accruing to the state of Iowa from fishing license fees shall be diverted for any other purposes than as set out in sections 456A.17 and 456A.19.

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

[86 Acts, ch 1245, §1839, 1845](#)

[2015 Acts, ch 30, §140](#)

**456A.29 Outdoor recreational and watershed projects.**

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

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

[86 Acts, ch 1245, §1840, 1845](#)

[2012 Acts, ch 1023, §157](#)

**456A.30 Federal assistance for outdoor recreation.**

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

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

C93, §456A.30

**456A.31 Comprehensive plan.**

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

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

[86 Acts, ch 1245, §1841, 1845](#)

C93, §456A.31

**456A.32 Application for aid.**

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

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

[86 Acts, ch 1245, §1842, 1845](#)

C93, §456A.32

**456A.33 Watershed projects.**

The department may perform acts as necessary to conduct an establishment of cooperative outdoor recreational and watershed

projects as defined by the Congress of the United States and by regulations of the appropriate federal agency and may accept federal funds and assistance for the purpose of planning, acquisition, and development of outdoor recreational and watershed projects.

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

[86 Acts, ch 1245, §1843, 1845](#)

C93, §456A.33

#### **456A.33A Watershed priority.**

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

[91 Acts, ch 268, §225](#)

CS91, §107.33A

C93, §456A.33A

#### **456A.33B Lake restoration plan and report.**

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

*a. "Lake"* includes a significant public lake and a public shallow lake or wetland.

*b. "Public shallow lake or wetland"* means a water body that meets the following criteria:

(1) Is owned by the federal government, the state of Iowa, a county, or a municipal government, and is maintained principally for public use.

(2) Is a multi-use system capable of supporting diverse wildlife, fish, or recreational opportunities.

(3) Has a surface water area of at least ten acres.

(4) Does not have a watershed-to-lake surface area ratio of greater than two hundred to one.

(5) Is an open freshwater system where maximum depth is typically less than six to eight feet at its deepest spot and is under four and one-half feet mean depth.

(6) Is typically fringed by a border of emergent vegetation in water depth less than six feet and when clear is dominated by both emergent and submergent vegetation and provides important wildlife and fish habitat.

*c. "Significant public lake"* means a lake that meets all of the following criteria:

(1) Is owned by the federal government, the state of Iowa, a county, or a municipal government, and is maintained principally for public use.

(2) Is a multi-use system capable of supporting diverse wildlife, fish, or recreational opportunities.

(3) Has a surface water area of at least ten acres.

(4) Does not have a watershed-to-lake surface area ratio of greater than two hundred to one.

(5) Is not an on-stream impoundment that emulates riverine habitat rather than a lake environment.

(6) Is not used solely as a water supply reservoir.

2. *a.* It is the intent of the general assembly that the department of natural resources shall develop annually a lake restoration plan and report that shall be submitted to the joint appropriations subcommittee on transportation, infrastructure, and capitals and the legislative services agency by no later than January 1 of each year. The plan and report shall include the department's plans and recommendations for lake restoration projects to receive funding consistent with the process and criteria provided in this section, and shall include the department's assessment of the progress and results of projects funded with moneys appropriated under this section.

*b.* The department shall recommend funding for lake restoration projects that are designed to achieve the following goals:

(1) Ensure a cost-effective, positive return on investment for the citizens of Iowa.

(2) Ensure local community commitment to lake and watershed protection.

(3) Ensure significant improvement in water clarity, safety, and quality of Iowa lakes.

(4) Provide for a sustainable, healthy, functioning lake system.

(5) Result in the removal of the lake from the impaired waters list.

(6) When restored, will contribute to the department's fish and wildlife conservation plans.

3. The process and criteria the department shall utilize to recommend funding for lake restoration projects shall be as follows:

*a.* The department, with input from stakeholders, shall maintain an annual list of not more than thirty-five significant public lakes and not more than five public shallow lakes or wetlands to be considered for funding based on the feasibility of restoring each lake and the use or potential use of the lake, if restored. The list shall include lake projects under active development that the department shall recommend be given priority for funding so long as progress toward completion of the projects remains consistent with the goals of this section.

*b.* The department shall meet with stakeholders and representatives of communities where lakes on the annual list are located to provide an annual lake restoration assessment and to explain the process and criteria for receiving lake restoration funding. Communities with lakes not included on the annual list may petition the director of the department for a preliminary lake restoration assessment and explanation of the funding process and criteria. The department shall work with stakeholders and

representatives of each community to develop a joint lake restoration action plan. At a minimum, each joint action plan shall document the causes, sources, and magnitude of lake impairment, evaluate the feasibility of the lake and watershed restoration options, establish water quality and fishery and wildlife goals and a schedule for attainment, describe long-term management actions, assess the economic benefits of the project, identify the sources and amounts of any leveraged funds, and describe the community's commitment to the project, including local funding. The stakeholders' and community's commitment to the project may include moneys to fund a lake diagnostic study and watershed assessment, including development of a TMDL (total maximum daily load).

c. Each joint lake restoration plan shall comply with the following guidelines:

(1) Biologic controls will be utilized to the maximum extent, wherever possible.

(2) If proposed, dredging of the lake will be conducted to a mean depth of at least eight feet to gain water quality benefits unless a combination of biologic and structural controls is sufficient to assure water quality targets will be achieved at a shallower average water depth.

(3) The costs of lake restoration will include the maintenance costs of improvements to the lake.

(4) Delivery of phosphorus and sediment from the watershed will be controlled and in place before lake restoration begins. Loads of phosphorus and sediment, in conjunction with in-lake management, will meet or exceed the following water quality targets:

(a) Clarity. A four-and-one-half-foot Secchi depth will be achieved fifty percent of the time from April 1 through September 30.

(b) Safety. Beaches will meet water quality standards for recreational use.

(c) Biota. A diverse, balanced, and sustainable aquatic community will be maintained.

(d) Sustainability. The water quality benefits from the restoration efforts will be sustained for at least fifty years.

d. The department shall evaluate the joint action plans and prioritize the plans based on the criteria required in this section. The department's annual lake restoration plan and report shall include the prioritized list and the amounts of state and other funding the department recommends for each lake restoration project. The department shall seek public comment on its recommendations prior to submitting the plan and report to the general assembly.

[2006 Acts, ch 1179, §26](#)

; [2007 Acts, ch 22, §81, 82](#)

; [2011 Acts, ch 25, §143](#)

; [2012 Acts, ch 1023, §63](#)

; [2016 Acts, ch 1133, §15 – 19](#)

NEW subsection 1 and former subsections 1 and 2 amended and renumbered as 2 and 3

#### **456A.34 Limit on state's commitment.**

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

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

[86 Acts, ch 1245, §1844, 1845](#)

C93, §456A.34

#### **456A.35 Applications not limited.**

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

[C79, 81, §107.35]

C93, §456A.35

#### **456A.36 Timber buyers.**

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

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

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



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

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

2. a. (1) A timber buyer shall file with the commission a surety bond signed by the person as principal and a corporate surety authorized to engage in the business of executing surety bonds within the state. In lieu of a corporate surety a timber buyer may, with the approval of the commission, file a bond signed by the timber buyer as principal and accompanied by a bank certificate of deposit in a form approved by the commission showing to the satisfaction of the commission that funds equal to the amount of the required bond are on deposit in a bank to be held by the bank for the period covered by the certificate. The funds shall be made payable upon demand to the director, subject to the provisions of this section, for the use and benefit of the people of the state and for the use and benefit of a timber grower from whom the timber buyer purchased and who is not paid by the timber buyer or for the use and benefit of a timber grower whose timber has been cut by the timber buyer or the timber buyer's agents, and who has not been paid.

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

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

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

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

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

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

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

3. The following are violations of this section:

a. For a timber buyer to fail to pay, as agreed, for timber purchased.

b. For a timber buyer to cut or cause to be cut or appropriate timber not purchased.

c. For a timber buyer to willfully make a false statement in connection with the bond or other information required to be given to the commission or a timber grower.

d. For a timber buyer to fail to honestly account to the timber grower or the commission for timber purchased or cut if the buyer is under a duty to do so.

e. For a timber buyer to commit a fraudulent act in connection with the purchase or cutting of timber.

f. For a timber buyer to transport timber without written proof of ownership or the written consent of the owner.

g. For a person to purchase timber without obtaining, prior to taking possession of the timber, written proof of the vendor's ownership of the timber or the written consent of the owner of the timber. The purchaser shall keep the written proof of ownership or consent on file for at least three months from the date the timber was released to the purchaser's possession.

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

b. If the timber buyer refuses admittance, or if prior to such refusal the director demonstrates the necessity for a warrant, the director may make application under oath to the district court of the county in which the premises or records are located for the issuance of a search warrant.

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

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

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



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

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

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

[C81, §107.36]

[96 Acts, ch 1073, §1, 2](#)  
; [2011 Acts, ch 25, §115](#)

#### **456A.37 Aquatic invasive species — prevention and control.**

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

a. “*Aquatic invasive species*” means a nonnative wildlife or plant species that has been determined by the department to pose a significant threat to the aquatic resources or water infrastructure of the state.

b. “*Aquatic plant*” means a submergent, emergent, floating, or floating-leaved plant, including algae, and includes any part of such a plant.

c. “*Bait*” means the same as defined in section 481A.1.

d. “*Water-related equipment*” means a motor vehicle, boat, watercraft, dock, boat lift, raft, vessel, trailer, tool, implement, device, or any other associated equipment or container, including but not limited to portable bait containers, live wells, ballast tanks, bilge areas, and water-hauling equipment that is capable of containing or transporting aquatic invasive species, aquatic plants, or water.

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

a. Restrict the introduction, propagation, use, possession, and spread of aquatic invasive species.

b. Identify waters of the state with infestations of aquatic invasive species. The commission shall require that such waters be posted as infested.

c. If the commission determines that an additional species should be defined as an “*aquatic invasive species*”, the species shall be defined by the commission by rule as an “*aquatic invasive species*”.

3. *Prohibitions.*

a. A person shall not transport on a public road, or place or attempt to place into waters of the state, any water-related equipment that has an aquatic invasive species or aquatic plant attached to or within the water-related equipment except as follows:

(1) When authorized by a written permit issued by the director upon a finding that the person is unable to comply with the requirements of this lettered paragraph “a”, is substantially impacted by the prohibitions of this lettered paragraph “a”, and is affording adequate protection of the aquatic resources or water infrastructure of the state by an alternative means.

(2) When the department, or other governmental entity approved by the director, is undertaking management activities that would constitute prohibited activities under this lettered paragraph “a” but are necessary to manage the aquatic resources or water infrastructure of the state, including but not limited to aquatic invasive species control, and sufficient mitigation efforts are undertaken to avoid or minimize, to the greatest extent possible, exposure of the waters of the state to an aquatic invasive species.

(3) When disposing of or engaging in a control activity of an aquatic invasive species and exposure to other waters of the state is minimized.

(4) When transporting commercial or municipal aquatic plant harvesting equipment to a suitable location away from any waters of the state, for purposes of cleaning the equipment of any remaining aquatic plants or wildlife.

(5) When water-related equipment is legally purchased or traded by or from a commercial source.

(6) For purposes of constructing or transporting a shooting or observation blind, provided that there are no aquatic invasive species present on or in the blind, and the aquatic plants used on or in the blind are emergent, cut above the waterline, and contain no propagules such as seed heads, roots, or rhizomes.

(7) For purposes of submitting a sample to the department or to another entity as directed by the department, provided that the sample is in a sealed container. Any test results of such samples shall be reported to the department.

(8) When engaged in emergency response activities, provided that the person engaged in such activities is affiliated with a law enforcement agency or an agency with emergency response authority.

(9) When otherwise permitted under a disaster declaration issued consistent with chapter 29C.

b. A person shall drain all water from water-related equipment when leaving the waters of the state and before transporting the water-related equipment off a water access area or riparian property. Drain plugs, bailers, valves, or other devices used to control the drainage of water from ballast tanks, bilges, and live wells shall be removed or opened while transporting water-related equipment except as follows:

(1) When authorized by a written permit issued by the director upon a finding that the person is unable to comply with the requirements of this lettered paragraph “b”, is substantially impacted by the prohibitions of this lettered paragraph “b”, and is affording adequate protection of the aquatic resources or water infrastructure of the state by an alternative means.

(2) When the department, or other governmental entity approved by the director, is undertaking management activities that

would constitute prohibited activities under this lettered paragraph “b” but are necessary to manage the aquatic resources or water infrastructure of the state, including but not limited to aquatic invasive species control, and sufficient mitigation efforts are undertaken to avoid or minimize, to the greatest extent possible, exposure of the waters of the state to an aquatic invasive species.

(3) When water-related equipment constitutes a marine sanitary system, a closed engine cooling system, or is a tank or container of potable drinking water or other beverage intended for human consumption.

(4) When engaged in emergency response activities, provided that the person engaged in such activities is affiliated with a law enforcement agency or an agency with emergency response authority.

(5) When otherwise permitted under a disaster declaration issued consistent with chapter 29C.

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

4. *Inspections.* Persons operating and transporting water-related equipment shall inspect the equipment for aquatic invasive species when the equipment is removed from, or before entering waters of the state. If an aquatic invasive species is present on or within the water-related equipment, the aquatic invasive species shall be removed immediately. Any water-related equipment is subject to inspection by a representative of the department. A representative of the department may prohibit a person from placing or operating water-related equipment in waters of the state if the person refuses to allow an inspection of the water-related equipment or refuses to remove and dispose of aquatic invasive species, aquatic plants, or water on or within the water-related equipment.

[96 Acts, ch 1042, §1](#)

; [2001 Acts, ch 137, §5](#)

; [2004 Acts, ch 1137, §1](#)

; [2005 Acts, ch 137, §2, 3](#)

; [2005 Acts, ch 179, §70, 71](#)

; [2013 Acts, ch 67, §1](#)

; [2014 Acts, ch 1026, §104](#)

#### **456A.38 Lease to beginning farmers program.**

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

a. “Agricultural land”, “beginning farmer”, and “farming” mean the same as defined in section 16.58.

b. “Authority” means the same as defined in section 16.1.

c. “Program” means the lease to beginning farmers program as provided in this section.

2. The department of natural resources shall establish and administer a lease to beginning farmers program. The department shall annually lease agricultural land that it holds or manages as wildlife habitat in each county to beginning farmers seeking to participate in the program. The department shall advertise the program in a manner that encourages wide participation by beginning farmers to lease the agricultural land.

3. The department shall establish annual lease payments for available agricultural land under the program by using the following criteria:

a. Market factors.

b. Prior leases for the same or comparable agricultural land.

c. The cost of establishment or maintenance of soil conservation practices, if applicable.

d. Other criteria established by the department.

4. The department shall execute a lease with a beginning farmer selected to participate in the program after such person has been certified by the authority as a beginning farmer who meets the requirements of the authority, which shall be based on section 16.75, subsection 3, paragraphs “a”, “c”, “f”, and “g”.

5. a. If two or more beginning farmers seek to execute a lease under the program for the same agricultural land, the department shall select the beginning farmer to participate in the program by drawing lots.

b. If no beginning farmer seeks to participate in the program, or no beginning farmer is found qualified to participate in the program, the department shall lease the agricultural land under another lease program that it administers pursuant to chapter 461A, including as provided in

[571 IAC ch. 21](#)

6. The department shall establish terms and conditions in the lease for beginning farmers participating in the program. The lease executed by the department under the program shall at least include all of the following:

a. The number of acres leased. The department shall not lease more than two hundred forty acres of agricultural land to a beginning farmer for the production of crops. However, this restriction does not apply to agricultural land leased for grazing livestock.

b. The term of the lease. The term may be based on the use of the agricultural land. A lease shall not be for more than seven years. A beginning farmer shall not sublease the agricultural land.

c. The required and permitted uses of the agricultural land during the lease term. The department may require the establishment of a conservation system, crop rotation, or cover crop, if appropriate. The department may require that a beginning farmer adopt generally accepted farming practices or soil conservation practices, so long as such practices are compatible with the department’s policies related to resource management and outdoor recreation.

7. At the end of a lease term, a beginning farmer who leased agricultural land under the program is eligible to be selected again

to lease the same agricultural land. However, the department shall provide a preference to an available beginning farmer who has not previously participated in the program.

8. The department is not required to lease agricultural land under the program that it would not otherwise lease for farming. The department may lease agricultural land for farming under another lease program administered by the department pursuant to its authority under chapter 461A, including as provided in

[571 IAC ch. 21](#)

, only after it has made agricultural land available for lease to all beginning farmers seeking to participate in the program.

9. The department shall adopt rules necessary to administer this section.

[2013 Acts, ch 64, §1](#)

; [2014 Acts, ch 1080, §91, 92, 98](#)

; [2014 Acts, ch 1092, §154, 197, 200](#)

; [2016 Acts, ch 1073, §126, 127](#)

Subsection 1, paragraph a amended

Subsection 1, NEW paragraph b and former paragraph b redesignated as c

## CHAPTER 456B

### SPECIAL PROVISIONS — NATURAL RESOURCES DEPARTMENT

This chapter not enacted as a part of this title; transferred from  
chapter 108 in Code 1993

#### GENERAL PROVISIONS

##### **456B.1 Definitions.**

As used in this chapter unless the context otherwise requires:

1. “*Commission*” means the natural resource commission.
2. “*Department*” means the department of natural resources created under section 455A.2.
3. “*Director*” means the director of the department.
4. “*Protected wetlands*” means type 3, type 4, and type 5 wetlands as described in circular 39, “Wetlands of the United States”, 1971 Edition, published by the United States department of the interior. However, a protected wetland does not include land where an agricultural drainage well has been plugged causing a temporary wetland or land within a drainage district or levee district.
5. “*Wetlands*” means an area of two or more acres in a natural condition that is mostly under water or waterlogged during the spring growing season and is characterized by vegetation of hydric soils.

[86 Acts, ch 1245, §1846](#)

C87, §108.1

[90 Acts, ch 1199, §1](#)

C93, §456B.1

**456B.2 through 456B.6**Reserved.

##### **456B.7 Stream control on private lands.**

1. Upon receiving consent in writing from the landowner, the department may enter upon private lands containing waters and streams draining into state-owned lakes and streams, for any or all of the following purposes:

- a.* Deepening.
- b.* Filling.
- c.* Widening.
- d.* Contracting.
- e.* Improving and protecting banks.
- f.* Constructing spillways and discharge structures.
- g.* Controlling erosion on tributary land.
- h.* Providing structures or other works conducive to the regulation of stream flow.

2. Any action taken by the commission under this section is subject to the approval of the environmental protection commission.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §108.7;

[82 Acts, ch 1199, §53, 96](#)

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[86 Acts, ch 1245, §1847](#)

[2011 Acts, ch 25, §143](#)

##### **456B.8 Jurisdiction — public access.**

Any such agreement with any landowner shall give the commission jurisdiction of such land, waters, and streams to accomplish

the purposes set out in said agreement and in case any improvement contemplated by section 456B.7 is for the sole purpose of improving any stream and not mainly for the purpose of preventing silting in a state-owned lake, then said agreement with the landowner shall include an easement of public access to said stream where improved and along the banks thereof.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §108.8]

C93, §456B.8

#### **456B.9 Accreted land.**

Any land created, by any such improvement, in areas now under the jurisdiction of the state will remain under such jurisdiction until otherwise disposed of.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §108.9]

C93, §456B.9

#### **456B.10 Artificial lakes — soil conservation.**

In the construction of artificial lakes on intermittent streams, for which funds are appropriated by the general assembly, the commission shall not proceed with actual construction work unless and until soil conservation practices are in effect on at least seventy-five percent of the land comprising the watershed of the proposed impoundment, or a willingness to carry on such practices has been shown by the owners or operators of seventy-five percent of the land by signing of a soil conservation farm plan and cooperative agreements with the local soil and water conservation district governing body.

[C35, §1703-g28; C39, §1703.58; C46, 50, 54, §108.5; C58, 62, 66, 71, 73, 75, 77, 79, 81, §108.10]

[86 Acts, ch 1245, §1854](#)

; [87 Acts, ch 23, §3](#)

[2012 Acts, ch 1023, §157](#)

#### **456B.11 Agricultural drainage wells — wetlands — conservation easements.**

The department shall develop and implement a program for the acquisition of wetlands and conservation easements on and around wetlands that result from the closure or change in use of agricultural drainage wells upon implementation of the programs specified in section 460.302 to eliminate groundwater contamination caused by the use of agricultural drainage wells. The program shall be coordinated with the department of agriculture and land stewardship. The department may use moneys appropriated for this purpose from the agriculture management account of the groundwater protection fund in addition to other moneys available for wetland acquisition, protection, development, and management.

[87 Acts, ch 225, §301](#)

CS87, §108.11

C93, §456B.11

### **PROTECTED WETLANDS**

#### **456B.12 Inventory of protected wetlands.**

1. The department shall inventory the wetlands and marshes of each county and make a preliminary designation as to which constitute protected wetlands. The department shall consult with the county conservation board in making the preliminary designations. Upon completion of the inventory with preliminary designations, the department shall use an existing map or prepare a map and a list of the marshes and wetlands which are designated as protected wetlands in each county. The department shall file at least one copy of the list and map with the county conservation board and the county recorder. The department shall notify the landowners affected by the preliminary wetlands designation by certified mail. The notice shall state that any person may challenge the designation of the protected wetlands or may request the designation of additional marshes or wetlands as protected wetlands, by doing one of the following:

*a.* Filing a petition for a hearing with the director within sixty days following the date of notice. The petition shall state specifically the reasons for disputing the preliminary designations of the department. The hearing shall be held in the county within sixty days following the expiration of the sixty-day period for filing petitions.

*b.* Filing a request for mediation with the farm mediation service as provided in section 654A.16 within sixty days following the date of the notice. The department shall participate in mediation as provided in section 654A.16.

2. Within sixty days following the completion of the hearing, or the issuance of a mediation release in which both parties agree to the designation or no agreement is reached, the director shall issue an order designating the protected wetlands in the county. The order shall be considered a final decision of the department in a contested case for the purposes of judicial review pursuant to chapter 17A.

[90 Acts, ch 1199, §2](#)

[2011 Acts, ch 25, §143](#)

**456B.13 Protection of wetlands.**

1. A person shall not drain a protected wetland without first obtaining a permit from the department.
2. The department shall not issue a permit to drain a protected wetland except under one of the following conditions:
  - a. The protected wetland is replaced by the applicant with a wetland of equal or greater value as determined by the department.
  - b. The protected wetland does not meet the criteria for continued designation as a protected wetland.
3. This section does not prohibit any of the following:
  - a. A landowner utilizing the bed of a protected wetland for pasture or cropland if there is no construction of dikes, ditches, tile lines, or buildings and the agricultural use does not result in drainage.
  - b. A person maintaining, repairing, or replacing an improvement to a drainage district as provided in chapter 468, as long as the improvement continues to serve the drainage district and the functions of the improvement are not expanded beyond the scope of functions as designed prior to the maintenance, repair, or replacement.

[90 Acts, ch 1199, §3](#)

C91, §108.13

[91 Acts, ch 172, §1](#)

C93, §456B.13

[98 Acts, ch 1025, §1](#)

**456B.14 Civil penalty.**

A person who violates the permit requirement of section 456B.13 is subject to a civil penalty of not more than five hundred dollars for each day that the violation continues. A civil penalty assessed under this section shall not apply until the fourth day after a violator is given written notification of the violation.

[90 Acts, ch 1199, §4](#)

C91, §108.14

C93, §456B.14

## CHAPTER 457A

### CONSERVATION EASEMENTS

This chapter not enacted as a part of this title;  
transferred from chapter 111D in Code 1993

#### **457A.1 Acquisition by other than condemnation.**

The department of natural resources, soil and water conservation districts as provided in chapter 161A, the historical division of the department of cultural affairs, the state archaeologist appointed by the state board of regents pursuant to section 263B.1, any county conservation board, and any city or agency of a city may acquire by purchase, gift, contract, or other voluntary means, but not by eminent domain, conservation easements in land to preserve scenic beauty, wildlife habitat, riparian lands, wetlands, or forests; promote outdoor recreation, agriculture, soil or water conservation, or open space; or otherwise conserve for the benefit of the public the natural beauty, natural and cultural resources, and public recreation facilities of the state.

[C71, 73, 75, 77, 79, 81, §111D.1;

[82 Acts, ch 1199, §58, 96](#)

]

[86 Acts, ch 1245, §1873](#)

C93, §457A.1

[2002 Acts, ch 1012, §1](#)

;

[2003 Acts, ch 128, §1](#)

#### **457A.2 Definitions.**

1. “*Conservation easement*” means an easement in, servitude upon, restriction upon the use of, or other interest in land owned by another, created for any of the purposes set forth in section 457A.1. A conservation easement shall be transferable to any other public body authorized to acquire conservation easements. A conservation easement shall be perpetual unless expressly limited to a lesser term, or unless released by the holder, or unless a change of circumstances renders the easement no longer beneficial to the public. A comparative economic test shall not be used to determine whether a conservation easement is beneficial to the public. A conservation easement shall be enforceable during the term of the easement notwithstanding sections 614.24 through 614.38.

2. “*Natural and cultural resources*” includes, but is not limited to, archaeological and historical resources.

[C71, 73, 75, 77, 79, 81, §111D.2]

[86 Acts, ch 1245, §1874](#)

C93, §457A.2

[2002 Acts, ch 1012, §2](#)

;

[2003 Acts, ch 44, §70](#)

#### **457A.3 Recording.**

Conservation easements shall be recorded as other instruments affecting real estate are recorded, and each public body acquiring one or more conservation easements shall maintain a current inventory thereof. Unrecorded and uninventoried conservation easements shall be deemed abandoned.

[C71, 73, 75, 77, 79, 81, §111D.3]

C93, §457A.3

#### **457A.4 Statement of extent.**

A conservation easement shall clearly state its extent and purpose.

[C71, 73, 75, 77, 79, 81, §111D.4]  
C93, §457A.4

**457A.5 Rule of construction.**

The powers accorded by this chapter shall be in addition to, and not in derogation of, all powers provided by law with respect to the public bodies named in section 457A.1.

[C71, 73, 75, 77, 79, 81, §111D.5]  
C93, §457A.5

**457A.6 and 457A.7**Reserved.

**457A.8 Privately held easements.**

A conservation easement may be held by a private, nonprofit organization for public benefit if the instrument granting the easement or the bylaws of the organization provide that the easement will be transferred either to a public body or another private, nonprofit organization upon the dissolution of the private, nonprofit organization. A conservation easement meeting these requirements acquired after July 1, 1984 is transferable and perpetual as provided in section 457A.2.

[84 Acts, ch 1115, §1](#)

C85, §111D.8  
C93, §457A.8



## CHAPTER 461

### NATURAL RESOURCES AND OUTDOOR RECREATION

#### SUBCHAPTER I

#### GENERAL PROVISIONS

##### **461.1 Title.**

This chapter shall be known and may be cited as the “*Natural Resources and Outdoor Recreation Act*”.

[2010 Acts, ch 1158, §1, 17](#)  
; [2014 Acts, ch 1092, §98](#)

##### **461.2 Definitions.**

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

1. “*Department*” means the department of agriculture and land stewardship, the department of natural resources, or the department of transportation.
2. “*Fiscal year*” means the state fiscal year effective as provided in section 3.12.
3. “*Initiative*” includes a program, project, practice, strategy, or plan established or administered by an agency that furthers a constitutional purpose as provided in section 461.3.
4. “*Recreational purpose*” includes hunting, trapping, angling, horseback riding, swimming, boating, camping, picnicking, hiking, bird watching, nature study, water skiing, snowmobiling, other summer and winter sports, and viewing or enjoying historical, archaeological, scenic, or scientific sites.
5. “*Trust fund*” means the natural resources and outdoor recreation trust fund created in section 461.31.
6. “*Trust fund moneys*” means moneys originating from the natural resources and outdoor recreation trust fund.

[2010 Acts, ch 1158, §2, 17](#)

##### **461.3 Constitutional purpose and implementation.**

1. This chapter is created for the constitutional purposes of protecting and enhancing water quality and natural areas in this state, including parks, trails, and fish and wildlife habitat, and conserving agricultural soils in this state.
2. This chapter is intended to implement Article VII, section 10, of the Constitution of the State of Iowa by establishing the natural resources and outdoor recreation trust fund, accounts in the trust fund, and appropriating or allocating trust fund moneys to support initiatives specified in subchapter IV.

[2010 Acts, ch 1158, §3, 16](#)

#### SUBCHAPTER II

#### PARTICIPATION

##### **461.11 Departmental consultation.**

1. When making decisions regarding the expenditure of trust fund moneys affecting soil and water conservation, the secretary of agriculture shall regularly consult with the soil conservation committee established in section 161A.4. When making decisions regarding the expenditure of trust fund moneys affecting natural resources and outdoor recreation, the director of the department of natural resources shall regularly consult with the natural resource commission established pursuant to section 455A.5. When making decisions regarding the expenditure of trust fund moneys affecting trails, the department of transportation shall consult with the state transportation commission as provided in chapter 307A.
2. The heads of each department receiving trust fund moneys shall regularly meet and whenever practicable collaborate in decision making including by adopting rules, establishing funding priorities, and determining when it is beneficial to provide

joint funding of initiatives.  
[2010 Acts, ch 1158, §4, 17](#)

### SUBCHAPTER III ADMINISTRATION

#### **461.21 Audit.**

1. The auditor of state or a certified public accounting firm appointed by the auditor of state shall conduct an annual audit of the trust fund and all accounts and transactions of the trust fund and accounts.

2. The auditor of state or the certified public accounting firm appointed by the auditor as provided in subsection 1 shall be paid from trust fund moneys without reducing the percentage of trust fund moneys distributed to the Iowa resources enhancement and protection fund or any one account established pursuant to this chapter.

[2010 Acts, ch 1158, §5, 17](#)

#### **461.22 Report.**

The three departments shall jointly prepare and submit to the governor and the general assembly not later than January 15 of each year a complete report in an electronic format detailing all of the following:

1. The receipts and expenditures of the trust fund and its accounts, a summary of initiatives supported by trust fund moneys, the results of those expenditures, any performance goals or measurements, and plans for future short-term or long-term expenditures.

2. Recommendations to the general assembly, including legislation proposed by one or more of the departments.

[2010 Acts, ch 1158, §6, 17](#)

#### **461.23 Rules.**

The department of revenue, the department of agriculture and land stewardship, the department of natural resources, and department of transportation shall adopt rules separately or jointly as necessary in order to implement and administer this chapter.

[2010 Acts, ch 1158, §7, 17](#)

#### **461.24 Public listing.**

The department of natural resources, the department of agriculture and land stewardship, and the department of transportation shall cooperate to publish and maintain a public listing of how moneys contained in the natural resources and outdoor recreation trust fund as created in section 461.31 are distributed and spent during the course of each fiscal year. The departments shall designate one of the departments to be responsible for publishing and maintaining the public listing on the internet site operated by that department.

[2010 Acts, ch 1158, §8, 17](#)

### SUBCHAPTER IV NATURAL RESOURCES AND OUTDOOR RECREATION TRUST FUND AND DISTRIBUTIONS TO SUPPORT DEDICATED PURPOSES

#### **461.31 Natural resources and outdoor recreation trust fund — creation.**

1. A natural resources and outdoor recreation trust fund is created within the state treasury.

2. *a.* The trust fund shall be composed of moneys required to be credited to the trust fund by law and moneys accepted by a department for placement in an account established in this subchapter and from any source.

*b.* Trust fund moneys are exclusively appropriated by law to carry out the constitutional purposes provided in section 461.3.

*c.* Trust fund moneys shall supplement and not replace moneys appropriated by the general assembly to support the constitutional purposes provided in section 461.3.

*d.* Trust fund moneys shall only be used to support voluntary initiatives and shall not be used for regulatory efforts, enforcement actions, or litigation.

3. In administering a trust fund account, a department may contract, sue and be sued, and authorize payment for costs, fees, commissions, and other reasonable expenses from the account. However, a department shall not in any manner directly or indirectly pledge the credit of this state.

4. Notwithstanding section 8.33, any unexpended balance in the trust fund or in an account created within the trust fund at the

end of each fiscal year shall be retained in the trust fund or the respective account. Notwithstanding section 12C.7, subsection 2, interest or earnings on investments or time deposits of the moneys in the trust fund and its respective accounts shall be credited to the trust fund and its respective accounts. The recapture of awards originating from an account and other repayments to an account shall be retained in that account.

[2010 Acts, ch 1158, §9, 17](#)

#### **461.32 Natural resources account — allocations.**

1. A natural resources account is created in the trust fund. Twenty-three percent of the moneys credited to the trust fund shall be allocated to the account.

2. The account shall be used by the department of natural resources to support all of the following initiatives:

- a. The establishment, restoration, or enhancement of state parks, state preserves, state forests, wildlife areas, wildlife habitats, native prairies, and wetlands.
- b. Wildlife diversity.
- c. Recreational purposes.
- d. Technical assistance and financial incentives to private landowners to promote the management of forests, fisheries, wetlands, and wildlife.
- e. The improvement of water trails, rivers, and streams.
- f. Education and outreach that provide instruction regarding natural history and the outdoors. The subjects of such instruction may relate to opportunities involving recreational purposes, outdoor safety, and ethics.

3. The department of natural resources shall to every extent possible consider its comprehensive plan provided in section 456A.31 when making funding decisions.

[2010 Acts, ch 1158, §10, 17](#)

#### **461.33 Soil conservation and water protection account — allocations.**

1. A soil conservation and water protection account is created in the trust fund. Twenty percent of the moneys credited to the trust fund shall be allocated to the account.

2. The account shall be used by the department of agriculture and land stewardship to support all of the following initiatives:

a. Soil conservation and watershed protection, including by supporting the division of soil conservation and water quality within the department of agriculture and land stewardship and soil and water conservation district commissioners. The department may provide for the installation of conservation practices and watershed protection improvements as provided in chapters 161A, 161C, 461A, 466, and 466A.

b. The conservation of highly erodible land. The department of agriculture and land stewardship may execute contracts with private landowners who agree to reserve such land only for uses that prevent erosion in excess of the applicable soil loss limits as established in section 161A.44.

c. Soil conservation or crop management practices used on land producing biomass for biorefineries, including cellulosic ethanol production.

3. The department of agriculture and land stewardship may use the account to provide financial incentives or technical assistance to landowners.

[2010 Acts, ch 1158, §11, 17](#)

; [2015 Acts, ch 103, §49](#)

#### **461.34 Watershed protection account — allocations.**

1. A watershed protection account is created in the trust fund. Fourteen percent of the moneys credited to the trust fund shall be allocated to the account.

2. The account shall be used cooperatively by the department of natural resources and the department of agriculture and land stewardship to support all of the following initiatives:

a. Water resource projects administered by the department of natural resources to preserve watersheds, including but not limited to all of the following:

(1) Projects to protect, restore, or enhance water quality in the state through the provision of financial assistance to communities for impairment-based, locally directed watershed projects. The department may use the account to support the water resource restoration sponsor program as provided in section 455B.199.

(2) Regional and community watershed assessment, planning, and prioritization efforts, including as provided in chapter 466B.

b. Surface water protection projects and practices administered by the department of agriculture and land stewardship or the department of natural resources, including but not limited to the installation of permanent vegetation cover, filter strips, grass waterways, and riparian forest buffers; dredging; and bank stabilization. The departments of agriculture and land stewardship and natural resources may use the account to support the conservation buffer strip program provided in section 466.4 and the conservation reserve enhancement program as provided in section 466.5.

3. The departments' decision to prioritize initiatives may be based on the priority list of watersheds provided in section 456A.33A.

[2010 Acts, ch 1158, §12, 17](#)

**461.35 Iowa resources enhancement and protection fund — allocation.**

Thirteen percent of the moneys credited to the trust fund shall be allocated to the Iowa resources enhancement and protection fund created in section 455A.18 for further allocation as provided in section 455A.19.

[2010 Acts, ch 1158, §13, 17](#)

**461.36 Local conservation partnership account — allocations.**

1. A local conservation partnership account is created in the trust fund. Thirteen percent of the moneys credited to the trust fund shall be allocated to the account.

2. The department of natural resources shall distribute trust fund moneys from the account to local communities for the following initiatives:

*a.* The maintenance and improvement of parks, preserves, wildlife areas, wildlife habitats, native prairies, and wetlands.

*b.* Wildlife diversity.

*c.* Recreational purposes.

*d.* The improvement of water trails, rivers, and streams.

*e.* Education and outreach programs and projects that provide instruction regarding natural history and the outdoors. The subjects of such instruction may relate to opportunities involving recreational purposes, outdoor safety, and ethics.

*f.* Any other purpose described in section 350.1.

3. A local community may cooperate with the state or the federal government to carry out the initiative. Two or more local communities may form an entity if allowed under chapter 28E in order to carry out the initiative.

4. As used in this section, “*local community*” means a county conservation board, a city, or a nongovernmental organization operating on a nonprofit basis.

[2010 Acts, ch 1158, §14, 17](#)

; [2013 Acts, ch 90, §137](#)

**461.37 Trails account — allocations.**

1. A trails account is created in the trust fund. Ten percent of the moneys credited to the trust fund shall be allocated to the account.

2. The department of transportation and the department of natural resources shall use moneys in the account to support initiatives related to the design, establishment, maintenance, improvement, and expansion of land trails.

3. The department of natural resources may use the account to support the design, establishment, maintenance, improvement, and expansion of water trails.

[2010 Acts, ch 1158, §15, 17](#)

; [2013 Acts, ch 90, §138](#)

**461.38 Lake restoration account — allocations.**

1. A lake restoration account is created in the trust fund. Seven percent of the moneys credited to the trust fund shall be allocated to the account.

2. The department of natural resources shall use moneys in the account to support public lake restoration initiatives as follows:

*a.* An initiative shall account for a lake’s recreational, environmental, aesthetic, ecological, and social value. It must improve water quality.

*b.* The department’s decision to prioritize an initiative may be based on the department’s lake restoration plan and report as provided in section 456A.33B.

[2010 Acts, ch 1158, §16, 17](#)

; [2013 Acts, ch 90, §139](#)



## CHAPTER 461A

### PUBLIC LANDS AND WATERS

This chapter not enacted as a part of this title;  
transferred from chapter 111 in Code 1993

#### SUBCHAPTER I

#### GENERAL PROVISIONS

##### **461A.1 Definitions.**

As used in this chapter unless the context otherwise requires:

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

[C24, 27, 31, 35, 39, §**1797**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.1]

[86 Acts, ch 1238, §57, 58](#)

;

[86 Acts, ch 1245, §1861, 1992](#)

C93, §461A.1

##### **461A.2 Duties in general.**

The commission shall investigate places in Iowa rich in natural history, forest reserves, archaeological specimens, and geological deposits; and the means of promoting forestry and maintaining and preserving animal and bird life and the conservation of the natural resources of the state.

[C24, 27, 31, 35, 39, §**1798**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.2]

C93, §461A.2

##### **461A.3 Duties as to parks.**

It shall be the duty of the commission to establish, maintain, improve, and beautify public parks and preserves upon the shores of lakes, streams, or other waters, or at other places within the state which have become historical or which are of scientific interest, or which by reason of their natural scenic beauty or location are adapted therefor. The commission shall have the power to maintain, improve or beautify state-owned bodies of water, and to provide proper public access thereto. The commission shall have the power to provide and operate facilities for the proper public use of the areas above described.

The commission shall open all roads which pass through the Ledges State Park from September 15 to November 1 of each year.

[C24, 27, 31, 35, 39, §**1799**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.3]

[86 Acts, ch 1245, §1877](#)

C93, §461A.3

##### **461A.3A Restore the outdoors program — appropriation.** Repealed by 2013 Acts, ch 132, §56.

##### **461A.4 Construction of structures and operation of commercial concessions.**

1. *a.* A person shall not construct a structure including but not limited to a pier, wharf, sluice, piling, wall, fence, obstruction, erection, or building upon or over any state-owned or state-managed land or water under the jurisdiction of the commission

without first obtaining from the commission a written permit. A permit, in matters relating to or in any manner affecting flood control, shall not be issued without approval of the environmental protection commission of the department. A person shall not construct or maintain a structure beyond the line of private ownership along or upon the shores of state-owned or state-managed waters in a manner to obstruct the passage of pedestrians along the shore between the ordinary high-water mark and the water's edge, except by permission of the commission.

b. The commission shall adopt and enforce rules governing and regulating the construction of a structure as provided in this subsection. The commission may prohibit or restrict its construction, or order the owner to remove the structure, when the commission determines that it is in the best interest of the public. The commission shall comply with the provisions of chapter 17A when issuing an order under this section.

2. A person shall not operate a commercial concession in a park, forest, fish and wildlife area, or recreation area under the jurisdiction of the department without first entering into a written contract with the department. The contract shall state the consideration and other terms under which the concession may be operated. The department may cancel or, in an emergency, suspend a concession contract for the protection of the public health, safety, morals, or welfare.

[C27, 31, 35, §1799-b2; C39, §**1703.19, 1799.1**; C46, 50, 54, 58, §106.19, 111.4; C62, 66, 71, 73, 75, 77, 79, 81, §111.4;  
[82 Acts, ch 1199, §55, 96](#)

]  
[86 Acts, ch 1245, §1862, 1877](#)

;  
[88 Acts, ch 1192, §1](#)

;  
[90 Acts, ch 1108, §1](#)

C93, §461A.4  
[2008 Acts, ch 1161, §6](#)

**461A.5 Obstruction removed.** Repealed by 2008 Acts, ch 1161, §10.

#### **461A.5A Injunctive relief.**

If it appears to the department that a person is violating or about to violate a provision of section 461A.4 or refuses to comply with an order issued by the commission pursuant to section 461A.4, the department may refer the matter to the attorney general, who may bring an action in the district court in any county of the state for an injunction to restrain the person from committing the violation. Upon a proper showing, the court may order a permanent or temporary injunction. The state shall not be required to post a bond.

[2008 Acts, ch 1161, §7](#)

#### **461A.5B Penalties.**

1. Except as provided in subsection 2, a person who violates a provision of section 461A.4 or of a departmental rule or refuses to comply with an order issued by the commission pursuant to section 461A.4 is guilty of a simple misdemeanor.

2. The state may proceed against a person who violates a provision of section 461A.4 or refuses to comply with an order issued by the commission pursuant to section 461A.4 by initiating an alternative civil enforcement action in lieu of a criminal prosecution. The amount of the civil penalty shall not exceed five thousand dollars. Each day of a violation shall be considered a separate offense. The alternative civil enforcement action may be brought against the person as a contested case proceeding by the department under chapter 17A if the amount of the civil penalty is not more than ten thousand dollars or as a civil judicial proceeding by the attorney general upon referral by the department. In a contested case proceeding, the department may impose, assess, and collect the civil penalty.

[2008 Acts, ch 1161, §8](#)

#### **461A.6 Costs — lien.**

The cost of removing a structure as provided in section 461A.4 shall be paid by its owner, and the state shall have a lien upon the property for the cost of removal. The costs shall be payable at the time of removal and such lien may be enforced and foreclosed, as provided for the foreclosure of security interests in uniform commercial code, chapter 554, article 9, part 6.

[C31, 35, §1799-d1; C39, §**1799.3**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.6]  
C93, §461A.6

[2000 Acts, ch 1149, §170, 187](#)

;  
[2008 Acts, ch 1161, §9](#)

#### **461A.7 Eminent domain.**

The commission may purchase or condemn lands for public parks. No contract for the purchase of such public parks shall be

made to an amount in excess of funds appropriated therefor by the general assembly.

[C24, 27, 31, 35, 39, §1800; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.7]

[86 Acts, ch 1245, §1980](#)

C93, §461A.7

#### **461A.8 Highways.**

The commission may purchase or condemn highways connecting parks with the public highways. When the highways have been purchased or condemned the same shall be public highways of this state and shall be maintained as other public highways of the county.

[C24, 27, 31, 35, 39, §1801; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.8]

[86 Acts, ch 1245, §1981](#)

C93, §461A.8

#### **461A.9 Condemnation statutes.**

All the provisions of the law relating to the condemnation of lands for public state purposes shall apply to the provisions hereof in and so far as applicable.

[C24, 27, 31, 35, 39, §1802; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.9]

C93, §461A.9

Eminent domain, chapters 6A and 6B

#### **461A.10 Title to lands.**

The title to all lands purchased, condemned, or donated, hereunder, for park or highway purposes, shall be taken in the name of the state and if thereafter it shall be deemed advisable to sell any portion of the land so purchased or condemned, the proceeds of such sale shall be placed to the credit of the said public state parks fund to be used for such park purposes.

[C24, 27, 31, 35, 39, §1803; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.10]

C93, §461A.10

#### **461A.11 Gifts — jurisdiction over dedicated lands — plan.**

The commission may accept gifts of land or other property, or the use of lands or other property for a term of years, and improve and use the land as public state parks.

Any land adjacent to a meandered lake or a meandered stream which has been conveyed by gift, dedication or other means to the public, but has not been conveyed to the jurisdiction of a specific state agency or political subdivision, shall be subject to the jurisdiction of the commission and to the rules promulgated pursuant to this chapter. The commission shall prepare a plan for the appropriate public use of such land in accordance with this chapter within two years of its coming under the jurisdiction of the commission. The plan may be amended by the commission.

[C24, 27, 31, 35, 39, §1804; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.11]

[86 Acts, ch 1237, §5](#)

;

[86 Acts, ch 1245, §1982](#)

C93, §461A.11

#### **461A.12 Conditions — lands.**

The conditions attached to a gift shall be entered in writing as part of the record of the title by which the state takes the lands, and shall be inscribed upon any chart, map, or description of said park if the conditions are made by the grantor in lieu of money as a consideration paid by the state.

[C24, 27, 31, 35, 39, §1805; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.12]

C93, §461A.12

#### **461A.13 Conditions — personality.**

If the donation be other than real estate and a particular specification for its use be made by the donor, no part of such donation shall be used or expended for any other purpose.

[C24, 27, 31, 35, 39, §1806; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.13]

C93, §461A.13

**461A.14 Reversion of gift.**

If the lands transferred to the state as a gift, or if lands purchased in whole or in part by the state from moneys given for that purpose, shall be abandoned or sold and not used for state park purposes, the donor shall reclaim the land or funds donated by filing the donor's request in writing with the executive council within six months of the time of the abandonment or sale by the state of such lands, but no interest or other charge shall be demanded of or paid by the state. Any unclaimed funds shall be used for park purposes.

[C24, 27, 31, 35, 39, §1807; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.14]  
C93, §461A.14

**461A.15 Use of private funds.**

The commission may permit the improvement of parks, when established, or the improvement of bodies of water, upon the border of which such parks may be established, by the expenditure of private funds, such improvement to be done, however, under the direction of the commission, by and with the consent of the executive council.

[C24, 27, 31, 35, 39, §1808; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.15]  
C93, §461A.15

**461A.16 Landscape architect.**

The commission may call upon the Iowa state university of science and technology for the services of at least one competent landscape architect, engineer, or gardener, who shall, under the direction of the commission, proceed to work with it in the improvement of the state property under the control of said commission. The president of said university shall, when called upon, designate the landscape architect, engineer, or gardener, as the case may be, who shall work with said commission.

[C24, 27, 31, 35, 39, §1809; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.16]  
C93, §461A.16

**461A.17 Expense and compensation.**

All necessary expenses incurred by such landscape architect, engineer, or gardener, under the provisions of section 461A.16, shall be paid in the same manner as are other expenditures by the commission, but no compensation shall be paid for such services.

[C24, 27, 31, 35, 39, §1811; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.17]  
C93, §461A.17

**461A.18 Jurisdiction.**

Jurisdiction over all meandered streams and lakes of this state and of state lands bordering thereon, not now used by some other state body for state purposes, is conferred upon the commission. The exercise of this jurisdiction is subject to the approval of the department in matters relating to or in any manner affecting flood control. The commission, with the approval of the executive council, may establish parts of the property into state parks, and when so established all of the provisions of this chapter relative to public parks apply to the property.

[C24, 27, 31, 35, 39, §1812; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.18;  
[82 Acts, ch 1199, §56, 96](#)  
]  
C93, §461A.18

**461A.19 Boundaries.**

The commission shall at once proceed to establish the boundary lines between the state-owned property under its jurisdiction and privately owned property when said commission deems it feasible and necessary, and shall where deemed advisable mark the same so that the boundaries of such state-owned property may be easily ascertainable to the public.

[C24, 27, 31, 35, 39, §1813; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.19]  
C93, §461A.19

**461A.20 State department of transportation — duties.**

The commission may call upon the state department of transportation for the services of at least one competent engineer, who shall, under the direction of the commission, proceed to work in conjunction with it in carrying out the true spirit and purpose of this chapter.

[C24, 27, 31, 35, 39, §1814; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.20]  
[86 Acts, ch 1245, §1877](#)  
C93, §461A.20



#### **461A.21 County engineer — duties.**

The commission may call upon the county engineer of any county to advise relative to the true boundary between the state-owned property and private property in the county, and to furnish plats and surveys showing such true boundary lines, and when directed by the commission, shall mark such boundary lines as herein provided.

[C24, 27, 31, 35, 39, §1815; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.21]  
C93, §461A.21

#### **461A.22 Surveys and plats.**

All surveys and plats shall be filed with the secretary of the executive council, and shall become public records of this state.

[C24, 27, 31, 35, 39, §1816; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.22]  
[86 Acts, ch 1245, §1863](#)  
C93, §461A.22

#### **461A.23 Compensation.**

The compensation and expenses of the highway engineer shall be paid as a part of the maintenance of the state department of transportation, and of the county engineer by the county, as the case may be.

[C24, 27, 31, 35, 39, §1817; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.23]  
C93, §461A.23

#### **461A.24 Boundaries — adjustment.**

Whenever a controversy shall arise as to the true boundary line between state-owned property and private property, the commission may adjust the boundary line or take such other action in the premises as in its judgment may seem right. When the disputed boundary line is fixed it shall be surveyed and marked.

[C24, 27, 31, 35, 39, §1818; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.24]  
[86 Acts, ch 1245, §1983](#)  
C93, §461A.24

#### **461A.25 Leases and easements.**

The commission may recommend that the executive council lease property under the commission's jurisdiction. All leases shall reserve to the public of the state the right to enter upon the property leased for any lawful purpose. The council may, if it approves the recommendation and the lease to be entered into is for five years or less, execute the lease in behalf of the state and commission. If the recommendation is for a lease in excess of five years, with the exception of agricultural lands specifically dealt with in Article I, section 24 of the Constitution of the State of Iowa, the council shall advertise for bids. If a bid is accepted, the lease shall be let or executed by the council in accordance with the most desirable bid. The lease shall not be executed for a term longer than fifty years. Any such leasehold interest, including any improvements placed on it, shall be listed on the tax rolls as provided in chapters 428 and 443; assessed and valued as provided in chapter 441; taxes shall be levied on it as provided in chapter 444 and collected as provided in chapter 445; and the leasehold interest is subject to tax sale, redemption, and apportionment of taxes as provided in chapters 446, 447 and 448. The lessee shall discharge and pay all taxes.

The commission shall adopt rules providing for granting easements to political subdivisions and utility companies on state land under the jurisdiction of the department. An applicant for an easement shall provide the director with information setting forth the need for the easement, availability of alternatives, and measures proposed to prevent or minimize adverse impacts on the affected property. An easement shall be executed by the director, approved as to form by the attorney general, and if granted for a term longer than five years, approved by the commission.

For the purposes of this section, property under the commission's jurisdiction does not include an area of the bed of a lake or river occupied by a dock or other appurtenance or means of access to a dock, including but not limited to boat hoists and boat slips, or occupied by a boat ramp, constructed or installed and maintained under littoral or riparian rights.

[C24, 27, 31, 35, 39, §1819; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.25]  
[83 Acts, ch 101, §12](#)  
C93, §461A.25  
[97 Acts, ch 10, §1](#)  
;  
[2006 Acts, ch 1102, §1](#)

#### **461A.26 Special police.**

The commission in carrying out its duties may appoint the director and such other supervisory personnel of the department as necessary to act as special police to carry out the law enforcement program of the department. The officers are vested with the

powers and charged with the duties of peace officers while in the performance of their official duties.

[C35, §1821-e1; C39, §1821.1; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.26]

[86 Acts, ch 1245, §1864](#)

C93, §461A.26

#### **461A.27 Management by municipalities.**

The commission may enter into an agreement or arrangement with the board of supervisors of a county or the council of a city whereby the county or city shall undertake the care and maintenance of any lands under the jurisdiction of the commission. Counties and cities may maintain the lands and pay the expense of maintenance. A city may pay the expense from the general fund.

[C24, 27, 31, 35, 39, §1822; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.27]

[83 Acts, ch 123, §57, 209](#)

C93, §461A.27

#### **461A.28 Expenditure by cities.**

Any one or more cities may through action of its city council expend money to aid in the purchase of land within the county for state parks which, when purchased, shall be the property of the state of Iowa, to be cared for as state parks.

[C27, 31, 35, §1822-a1; C39, §1822.1; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.28]

C93, §461A.28

#### **461A.29 Limitation on expenditures.**

The amount to be paid by such city or cities shall in no event exceed one-half of the total purchase price of the land involved in any single purchase, and in no event shall the total amount paid by such city or cities in any single purchase exceed the sum of fifty thousand dollars.

[C27, 31, 35, §1822-a2; C39, §1822.2; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.29]

C93, §461A.29

#### **461A.30 City funds available.**

Any such city or cities aiding in the purchase of land for state parks, as provided for in sections 461A.28 and 461A.29 may pay for the same out of the general fund, or may issue bonds for the payment of the same and levy a tax for the payment of such bonds and the interest thereon, in accordance with the provisions of law relating to general corporate purpose bonds of a city.

[C27, 31, 35, §1822-a3; C39, §1822.3; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.30]

C93, §461A.30

#### **461A.31 Sale of islands.**

No islands in any of the meandered streams and lakes of this state or in any of the waters bordering upon this state shall hereafter be sold, except with the majority vote of the executive council upon the majority recommendation of the commission, and in the event any of such islands are sold as herein provided the proceeds thereof shall become a part of the funds to be expended under the terms and provisions of this chapter.

[C24, 27, 31, 35, 39, §1823; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.31]

C93, §461A.31

#### **461A.31A Sale of timber.**

If the estimated quantity of timber grown in a state park or a preserve to be sold by the department in a sixty-day period is ten thousand board feet or more or if the estimated value of the timber grown in a state park or a preserve to be sold by the department during the same period of time is five thousand dollars or more, the department shall conduct a public hearing on the proposed sale. Notice of the hearing shall be published as provided in section 331.305. After the public hearing, the department may proceed with the sale of the timber.

[99 Acts, ch 206, §27](#)

#### **461A.32 Sale of park lands — conveyances to cities or counties.**

The commission may sell or exchange such parts of public lands under the jurisdiction of the commission as in its judgment may be undesirable for conservation purposes, excepting state-owned meandered lands already surveyed and platted at state expense as a conservation plan and project tentatively adopted and now in the process of rehabilitation and development authorized by a special legislative Act. The sale or exchange shall be made upon the terms, conditions or considerations as the

commission may approve, whereupon the secretary of state shall issue a patent therefor in the manner provided by law in other cases. The proceeds of any such sale or exchange shall become a part of the funds to be expended under the provisions of this chapter.

Upon request by resolution of any city or county or any legal agency thereof, the executive council may, upon majority recommendation of the commission, convey without consideration to such city or county or legal agency thereof, such public lands under the jurisdiction of the commission as in its judgment may be desirable for city or county parks. Conveyance shall be in the name of the state, with the great seal of the state attached and shall contain a provision that when such lands cease to be used as public park by said city or county such lands revert to the state, and such park shall, within one year after such land has reverted to the state, be restored, as nearly as possible, to the condition it was in when acquired by such city, county or legal agency thereof at the expense of such city, county or legal agency.

The state may require that the city, county or legal agency thereof file a notice of intention every three years.

[C24, 27, 31, 35, 39, §1824; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.32]

[86 Acts, ch 1244, §25](#)

;

[86 Acts, ch 1245, §1877](#)

C93, §461A.32

#### **461A.33 Form of conveyance.**

Conveyances shall be in the name of the state, signed by the governor and secretary of state, with the great seal of the state attached.

[C24, 27, 31, 35, 39, §1825; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.33]

C93, §461A.33

#### **461A.34 Powers in municipalities.**

Municipalities, or individuals, or corporations organized for that purpose only, acting separately or in conjunction with each other, may establish like parks outside the limits of cities, and when established without the support of the public state parks fund, the municipalities, corporations, or persons establishing the same, as the case may be, shall have control thereof independently of the executive council; but none of the said municipalities, individuals, or corporations, acting under the provisions of this section shall establish, maintain or operate any such park as herein contemplated for pecuniary profit.

[C24, 27, 31, 35, 39, §1827; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.34]

C93, §461A.34

#### **461A.35 Prohibited destructive acts.**

1. It shall be unlawful for any person to use, enjoy the privileges of, destroy, injure, or deface plant life, trees, buildings, or other natural or material property, or to construct or operate for private or commercial purposes any structure, or to remove any plant life, trees, buildings, sand, gravel, ice, earth, stone, wood, or other natural material, or to operate vehicles, within the boundaries of any state park, preserve, or stream or any other lands or waters under the jurisdiction of the commission for any purpose whatsoever, except upon the terms, conditions, limitations, and restrictions as set forth by the commission.

2. A person who violates this section commits a simple misdemeanor, punishable as a scheduled violation pursuant to section 805.8B, subsection 6, paragraph "c".

[C39, §1828.01; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.35]

[86 Acts, ch 1245, §1877](#)

[2012 Acts, ch 1118, §1](#)

#### **461A.35A Entrance fee.**

The department shall not impose a fee upon a person for entering into a state park or preserve.

[99 Acts, ch 206, §28, 29](#)

#### **461A.36 Speed limit.**

The maximum speed limit of all vehicles on state park and preserve drives, roads, and highways shall be thirty-five miles per hour. All driving shall be confined to designated roadways. Whenever the commission determines that a thirty-five mile-per-hour speed limit is greater than is reasonable or safe under the conditions found to exist at any place of congestion or upon any part of the park roads, drives, or highways, the commission shall determine and declare a reasonable and safe speed limit, which shall be effective when appropriate signs giving notice of the changed speed limit are erected at the places of congestion or other parts of the park roads, drives, or highways.

[C39, §1828.02; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.36]

[86 Acts, ch 1245, §1877](#)

C93, §461A.36  
[2016 Acts, ch 1073, §131](#)

For applicable scheduled fines, see §805.8A, subsections 5 and 14  
Section amended

**461A.37 Excessive loads.**

Excessively loaded vehicles shall not operate over state park or preserve drives, roads or highways. The determination as to whether the load is excessive will be made by the director or the director's representative and will depend upon the load and the road conditions.

[C39, §1828.03; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.37]  
[86 Acts, ch 1245, §1878](#)  
C93, §461A.37

**461A.38 Parking.**

All vehicles shall be parked in designated parking areas, and no vehicle shall be left unattended on any state park or preserve drive, road or highway, except in the case of an emergency.

[C39, §1828.04; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.38]  
C93, §461A.38

For applicable scheduled fine, see §805.8A, subsection 1, paragraph a

**461A.39 Hitching to trees.**

No horse or other animal shall be hitched or tied to any tree or shrub, or in such a manner as to result in injury to state property.

[C39, §1828.05; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.39]  
C93, §461A.39

For applicable scheduled fine, see §805.8B, subsection 6, paragraph a

**461A.40 Fires.**

No fires shall be built, except in a place provided therefor, and such fire shall be extinguished when site is vacated unless it is immediately used by some other party.

[C39, §1828.06; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.40]  
C93, §461A.40

For applicable scheduled fine, see §805.8B, subsection 6, paragraph b

**461A.41 Removing plants, flowers, or fruit.**

No person shall, in any manner, remove, destroy, injure, or deface any tree, shrub, plant, or flower, or the fruit thereof, or disturb or injure any structure or natural attraction, except that upon written permission of the commission certain specimens may be removed for scientific purposes.

This section shall not apply to activities of the commission or its officers, or employees when caring for and managing state-owned land and waters under the jurisdiction of the commission. This section shall not apply to the gathering or removal of any tree, shrub, plant, flower, fruits, structures, or natural attractions under terms, conditions, limitations, and restrictions adopted by the commission as rules under chapter 17A.

[C39, §1828.07; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.41]  
[86 Acts, ch 1245, §1877](#)  
C93, §461A.41

**461A.42 Use of firearms, explosives, weapons, and fireworks prohibited — exceptions.**

1. The use of firearms, explosives, and weapons of all kinds by a person is prohibited in all state parks and preserves except under the following conditions:

a. A firearm or other weapon authorized for hunting may be used in preserves or parts of preserves designated by the state advisory board on preserves at the request of the commission.

b. A person may use a bow and arrow with an attached bow fishing reel and ninety-pound minimum line attached to the arrow to take rough fish as provided by rule of the commission.

c. The commission may establish, by rule, the state parks or parts of state parks where firearms may be discharged during special events, festivals and education programs, or a special hunt to control animal populations. The rules governing special hunts to control animal populations shall be applied separately to each designated state park.

2. The use of fireworks, as defined in section 727.2, in state parks and preserves is prohibited except as authorized by a permit



issued by the department. The commission shall establish, by rule adopted pursuant to chapter 17A, a fireworks permit system which authorizes the issuance of a limited number of permits to qualified persons to use or display fireworks in selected state parks and preserves.

3. A person violating this section is guilty of a simple misdemeanor punishable as a scheduled violation pursuant to section 805.8B, subsection 6, paragraph “c”.

[C39, §**1828.08**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.42]

[86 Acts, ch 1245, §1877](#)

; [91 Acts, ch 101, §1](#)

[97 Acts, ch 180, §1](#)

; [99 Acts, ch 153, §10](#)

; [2012 Acts, ch 1118, §2](#)

#### **461A.43 Littering grounds.**

No person shall place any waste, refuse, litter or foreign substance in any area or receptacle except those provided for that purpose.

[C39, §**1828.09**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.43]

C93, §461A.43

For applicable scheduled fine, see §805.8B, subsection 6, paragraph e

#### **461A.44 Prohibited areas.**

No person shall enter upon portions of any state park or preserve in disregard of official signs forbidding same, except by permission of the director or the director’s representative.

[C39, §**1828.10**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.44]

[86 Acts, ch 1245, §1878](#)

C93, §461A.44

For applicable scheduled fine, see §805.8B, subsection 6, paragraph c

#### **461A.45 Animals on leash.**

No privately owned animal shall be allowed to run at large in any state park or preserve or upon lands or in waters owned by or under the jurisdiction of the commission except by permission of the commission. Every such animal shall be deemed as running at large unless the owner carries such animal or leads it by a leash or chain not exceeding six feet in length, or keeps it confined in or attached to a vehicle.

[C39, §**1828.11**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.45]

C93, §461A.45

For applicable scheduled fine, see §805.8B, subsection 6, paragraph a

#### **461A.46 Closing time.**

Except by arrangement or permission granted by the director or the director’s authorized representative, all persons shall vacate state parks and preserves before 10:30 p.m. Areas may be closed at an earlier or later hour, of which notice shall be given by proper signs or instructions. The provisions of this section shall not apply to authorized camping in areas provided for that purpose.

[C39, §**1828.12**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.46]

C93, §461A.46

For applicable scheduled fine, see §805.8B, subsection 6, paragraph b

#### **461A.47 Camping.**

The commission is hereby authorized to fix fees for camping and other special privileges which shall be in such amounts as may be determined by the commission upon a basis of the cost of providing and reasonable value of such privileges.

[C39, §**1828.13**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.47]

C93, §461A.47

#### **461A.48 Camping areas.**

No person shall camp in any portion of a state park or preserve except in portions prescribed or designated by the commission.

[C39, §1828.14; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.48]  
C93, §461A.48

For applicable scheduled fine, see §805.8B, subsection 6, paragraph d

**461A.49 Time limit.**

No camping unit shall be permitted to camp for a period longer than that designated by the commission for the specific state park or preserve, and in no event longer than for a period of two weeks.

[C39, §1828.15; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.49]  
C93, §461A.49

For applicable scheduled fine, see §805.8B, subsection 6, paragraph b

**461A.50 Registering — vacating.**

Any person who camps in any state park or preserve shall register the person's name and address with the park custodian and advise the custodian when the camp is vacated.

[C39, §1828.16; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.50]  
C93, §461A.50

For applicable scheduled fine, see §805.8B, subsection 6, paragraph a

**461A.51 Camping refused.**

Custodians are given authority to refuse camping privileges and to rescind any and all camping permits for cause.

[C39, §1828.17; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.51]  
C93, §461A.51

## SUBCHAPTER II

### ICE, SAND, AND GRAVEL REMOVAL

**461A.52 Agreement with commission.**

No person shall remove any ice, sand, gravel, stone, wood, or other natural material from any lands or waters under the jurisdiction of the commission without first entering into an agreement with the commission.

[C39, §1828.18; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.52]  
C93, §461A.52

**461A.53 Permits.**

1. The commission may enter into agreements for the removal of ice, sand, gravel, stone, wood, or other natural material from lands or waters under the jurisdiction of the commission if, after investigation, it is determined that such removal will not be detrimental to the state's interest.

2. The commission may specify the terms and consideration under which such removal is permitted and issue written permits for such removal.

[C39, §1828.19; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.53]  
C93, §461A.53

[2010 Acts, ch 1160, §1, 2](#)

**461A.54 Barriers on ice field.**

Any person removing ice under a permit shall erect barriers on any part of an ice field where ice is cut, where said field crosses or traverses any part of a stream or lake that is used as a way of passage.

[C39, §1828.20; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.54]  
C93, §461A.54

**461A.55 Dredging.**

In removing sand, gravel, or other material from state-owned waters by dredging, the operator shall so arrange the operator's equipment that other users of the lake or stream shall not be endangered by cables, anchors, or any concealed equipment. No

waste material shall be left in the water in such manner as to endanger other craft or to change the course of any stream.

[C39, §1828.21; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.55]

C93, §461A.55

#### **461A.56 Disturbing natural bank.**

Where operations are entirely on private property adjacent to a public lake or stream the natural bank between the state and privately owned areas shall not be removed except by permission of the commission.

[C39, §1828.22; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.56]

C93, §461A.56

#### **461A.57 Penalties.**

Unless another punishment is provided, any person violating any of the provisions of sections 461A.36 through 461A.41, 461A.43, and 461A.45 through 461A.56 is guilty of a simple misdemeanor.

[C39, §1828.23; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.57]

[85 Acts, ch 206, §2](#)

[2012 Acts, ch 1118, §3](#)

; [2015 Acts, ch 30, §142](#)

### SUBCHAPTER III

#### MAINTENANCE EQUIPMENT

#### **461A.58 Use by cities and state department of transportation.**

The city council within the limits of the municipal corporation and the state department of transportation may permit use of maintenance equipment under their control in state parks and other lands of the commission.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §111.58;

[81 Acts, ch 117, §1011](#)

]

[86 Acts, ch 1245, §1877](#)

C93, §461A.58

### SUBCHAPTER IV

#### WATER RECREATIONAL AREAS

#### **461A.59 Powers in municipalities.**

Municipalities or corporations organized for that purpose only, acting separately or in conjunction with each other in counties not having a county conservation board, may establish water recreational areas and when established without the support of public funds of the state of Iowa, the municipalities or corporations establishing the same, as the case may be, shall have control thereof independently of the executive council.

[C66, 71, 73, 75, 77, 79, 81, §111.59]

C93, §461A.59

#### **461A.60 Application for permit.**

Any municipality or corporation seeking to establish a water recreational area without public funds of the state of Iowa shall file with the commission a verified petition asking for a permit to establish a water recreational area.

[C66, 71, 73, 75, 77, 79, 81, §111.60]

[86 Acts, ch 1245, §1877](#)

C93, §461A.60

**461A.61 Petition.**

Said petition shall state:

1. The name of the municipality or corporation.
2. The applicant's principal office and place of business.
3. A legal description of the lands to be included within said water recreational area, a showing that seventy-five percent of the area is either owned or under option for purchase by the applicant, together with a map thereof.
4. A general description of the public and private highways, grounds and real estate, streams and private lands of any kind within said area.
5. The tentative locations, types of dams to be constructed for any artificial lakes to be established, the proposed area to be inundated by the waters to be impounded by said dams, and a map showing the location of said dams and areas to be inundated.
6. A map showing the location of proposed roads, fixtures, utilities and other facilities necessary in the operation of said water recreational area.
7. The proposed plan of operation and regulations for the use of said facilities by the public.

[C66, 71, 73, 75, 77, 79, 81, §111.61]

C93, §461A.61

**461A.62 Copy to environmental protection commission.**

A copy of the petition and the applications, plans, and specifications required under chapter 455B shall be filed with the environmental protection commission and any approval or permit required under chapter 455B shall be obtained prior to the establishment of the water recreational area or the granting of a permit for the area by the commission.

[C66, 71, 73, 75, 77, 79, 81, §111.62;

[82 Acts, ch 1199, §57, 96](#)

]

[83 Acts, ch 101, §13](#)

;

[86 Acts, ch 1245, §1865](#)

C93, §461A.62

**461A.63 Hearing — notice.**

On the filing of said petition the commission shall fix a date for hearing thereon and shall cause notice thereof to be published in some newspaper of general circulation in each county in which said proposed water recreational area will be established, said notice to be published for two consecutive weeks.

[C66, 71, 73, 75, 77, 79, 81, §111.63]

[86 Acts, ch 1245, §1877](#)

C93, §461A.63

**461A.64 Time and place.**

Said hearing shall not be less than ten days nor more than thirty days from the date of the last publication and shall be held in the office of the commission or such place as the commission shall decide.

[C66, 71, 73, 75, 77, 79, 81, §111.64]

[86 Acts, ch 1245, §1877](#)

C93, §461A.64

**461A.65 Objections.**

Any person, corporation, company, levee or drainage district or city whose rights or interests may be affected by said proposed water recreational area may file written objections to said proposed water recreational area or to the granting of said permit.

[C66, 71, 73, 75, 77, 79, 81, §111.65]

C93, §461A.65

**461A.66 Filing.**

All such objections shall be on file in the office of said commission not less than five days before the date of hearing on said application but said commission may permit the filing of said objections later than five days before said hearing in which event the applicant must be granted a reasonable time to meet said objections.

[C66, 71, 73, 75, 77, 79, 81, §111.66]

[86 Acts, ch 1245, §1877](#)

C93, §461A.66



**461A.67 Examination — testimony.**

The commission may examine the proposed water recreational area or may cause such examination to be made by an engineer or such other persons as it desires to be selected by it, who shall report the results of said examination to the commission. At said hearing the commission shall consider the petition and any objections filed thereto and may at its discretion hear such testimony as may aid it in determining the propriety of granting such permit.

[C66, 71, 73, 75, 77, 79, 81, §111.67]

[86 Acts, ch 1245, §1877](#)

C93, §461A.67

**461A.68 Final order — condition.**

It may grant such permit in whole or in part upon such terms, conditions and restrictions as may be determined by it to be just and proper and in the public interest, provided that before any permit shall be granted to any such municipality or corporation the commission shall, after public hearing as provided hereby, determine whether the water recreational area will be in the interests of the public health and welfare and an affirmative finding to such effect shall be a condition precedent to the granting of such permit.

[C66, 71, 73, 75, 77, 79, 81, §111.68]

C93, §461A.68

**461A.69 Costs and fees.**

Applicant shall pay all costs and expenses of the hearing and necessary preliminary investigation in connection therewith, including the cost of publishing notice of hearing.

[C66, 71, 73, 75, 77, 79, 81, §111.69]

C93, §461A.69

**461A.70 Permit.**

The commission shall cause to be prepared a uniform blank form of permit which shall provide a space for a general description of the area authorized to be included in any water recreational area to be established hereunder, the name and address of the municipality or corporation to whom said permit is granted and the terms and conditions upon which it is granted. Said permit shall be signed by the chairperson and all other members of the commission and the official seal of said commission shall be attached thereto.

[C66, 71, 73, 75, 77, 79, 81, §111.70]

[86 Acts, ch 1245, §1877](#)

C93, §461A.70

**461A.71 Public access and use.**

Any lake in the water recreational area, together with at least twenty-five percent of the water frontage of the water recreational area and all land which adjoins and lies within one hundred yards from any point of such twenty-five percent of the water frontage, shall be permanently subject to and available for free public access and use. The municipality or corporation shall grant to the state of Iowa a perpetual easement for such public access and use, and such easement shall not be impaired or destroyed in whole or in part by nonuse. Before a permit is granted as provided in section 461A.70, the commission and the municipality or corporation shall agree on the location and description of such water frontage and land to be permanently subject to and available for free public access and use, and such location and description shall be stated in the permit. However, in lieu of the foregoing procedure, the commission and the municipality or corporation may agree that the commission may select such water frontage and land after the permit is granted, and the permit shall so state. At any time the commission, with the written consent of the municipality or corporation, may designate any additional land within the water recreational area to be permanently subject to and available for free public access and use; and the municipality or corporation shall grant to the state of Iowa a perpetual easement for such public access and use, which easement shall not be impaired or destroyed in whole or in part by nonuse. However, the commission may enter into agreements from time to time with one or more municipalities or corporations for the management, development, improvement, care and maintenance of such lake, water frontage and land.

[C66, 71, 73, 75, 77, 79, 81, §111.71]

[86 Acts, ch 1245, §1877](#)

C93, §461A.71

**461A.72 Sale of permit.**

No permit shall be sold until the sale is approved by the commission.

[C66, 71, 73, 75, 77, 79, 81, §111.72]

C93, §461A.72

**461A.73 Records.**

The commission shall keep a record of all permits granted and issued by it showing when and to whom issued and the location of the area of the proposed water recreational area covered thereby.

[C66, 71, 73, 75, 77, 79, 81, §111.73]

[86 Acts, ch 1245, §1877](#)

C93, §461A.73

**461A.74 Extension of permit.**

Any municipality or corporation owning a permit granted hereby desiring to acquire an extension of said permit may petition the commission in the same manner provided for the granting of such permit and the same proceeding shall be had as on an original application.

[C66, 71, 73, 75, 77, 79, 81, §111.74]

C93, §461A.74

**461A.75 Condemnation of land.**

Whenever a permit has been granted as provided in section 461A.70 and the commission finds that the municipality or corporation owning such permit cannot acquire at a reasonable cost any necessary land or interest therein, the commission, with the approval of the executive council, may condemn such land or interest therein as provided in chapter 6B. However, such condemnation shall be limited to land and interests therein which will be permanently subject to and available for free public access and use, as provided in section 461A.71, or which will be required for a dam or other facilities necessary for the water recreational area. All costs of such condemnation, including all costs occasioned by appeal as set out in section 6B.33, and including the award and compensation for such land or interest therein, shall be paid by such municipality or corporation. The commission may permit such municipality or corporation to use such land or interest therein for the purposes of this subchapter, upon such terms, conditions and restrictions as the commission shall determine to be just and proper and for free public access and use. Title to such land or interest therein shall remain in the state of Iowa.

[C66, 71, 73, 75, 77, 79, 81, §111.75]

[86 Acts, ch 1245, §1877](#)

[2014 Acts, ch 1026, §143](#)

**461A.76 Contracts with local authorities.**

1. Notwithstanding anything in chapter 468, subchapter I, parts 1 through 5, to the contrary, county boards of supervisors and trustees having control of any levee or drainage district established thereunder, including joint levee or drainage districts, may enter into contracts and agreements with municipalities or corporations authorized to establish water recreational areas under the provisions of this subchapter. Such contracts or agreements shall be in writing and may be made prior to or after the establishment of a water recreational area. If made prior to the establishment of a water recreational area they may be made conditional upon the final establishment of such area and if conditional upon such final establishment may be entered into prior to the hearing provided for in section 461A.63.

2. Such contracts or agreements may embrace any of the following subjects:

- a. For the impoundment of drainage waters to create artificial lakes or ponds.
- b. For compensation to drainage districts for drainage improvements destroyed or rendered useless by the establishment of water recreational areas and the structures, waters or works thereof.
- c. For the diversion of waters from established drainage ditches or tile drains to other channels.
- d. For sanitary measures and precautions.
- e. For the control of water levels in lakes, ponds or impoundments of water to avoid damage to or malfunction of drainage facilities.
- f. For the construction of additional drainage facilities promoting the interests of either or both of the contracting parties.
- g. For the granting of easements or licenses by one party to the other.
- h. For the payment of money by one contracting party to the other in consideration of acts or performance of the other party required by such contract or agreement.

3. When any expenditure of levee or drainage district funds is proposed by the authority contained in this section and where the estimated expenditure will exceed fifty percent of the original total cost of the district and subsequent improvements therein as defined by section 468.126, the same procedure respecting notice and hearing shall be followed as is provided in said section 468.126, for repair proposals where the estimated cost of the repair exceeds fifty percent of the original total cost of the district and subsequent improvements therein.

[C66, 71, 73, 75, 77, 79, 81, §111.76]

[2011 Acts, ch 34, §106](#)  
; [2014 Acts, ch 1026, §143](#)

**461A.77 Prohibited near borders of state.**

In order to reduce the possibility of affecting conservation measures to flood control projects which may be in progress in other states, water recreational areas shall not be established hereunder within seventy miles of the border of any other state.

[C66, 71, 73, 75, 77, 79, 81, §111.77]

C93, §461A.77

**461A.78 Method not exclusive.**

This subchapter shall not be the exclusive method for establishing a water recreational area and shall not be construed to prohibit the establishment of public recreational areas by the Missouri river preservation and land use authority under chapter 463B.

[C66, 71, 73, 75, 77, 79, 81, §111.78]

[91 Acts, ch 246, §4](#)

[2014 Acts, ch 1026, §143](#)

## SUBCHAPTER V

### PUBLIC OUTDOOR RECREATION AND RESOURCES

**461A.79 Public outdoor recreation and resources.**

1. Fifty percent of the funds appropriated for purposes of this section for public outdoor recreation and resources shall be expended on land acquisition and capital improvements in carrying out this chapter. Acquisition projects, both fee-simple and less-than-fee, from willing sellers, may be for purposes of establishment or expansion of state parks, public hunting areas, natural areas, public fishing areas, water access sites, trail corridors, and other acquisition projects that are in accord with this chapter. Notwithstanding the exemption provided by section 427.1, land acquired under this subsection is subject to the full consolidated levy of property taxes which shall be paid from revenues available to be expended under this subsection. Capital improvements may be either new developments or rehabilitative in nature. Lake and watershed restoration projects are eligible for funding under this subsection. Not more than fifty percent of the revenues available to be expended under this subsection may be used by the commission to enter into agreements with county conservation boards and county boards of supervisors in those counties without conservation boards to carry out the purposes of this subsection. The agreement shall not provide for the payment by the commission of more than seventy-five percent of the cost of the project and the agreement shall specify that the county conservation board or county board of supervisors, whichever is applicable, shall provide funds for the remaining cost of the project covered by the agreement. Moneys available to be expended under this subsection may be used for the matching of federal funds.

2. Forty-five percent of the funds appropriated for purposes of this section for public outdoor recreation and resources shall be expended on the state recreation tourism grant program. This program shall provide matching grants to cities and unincorporated communities for purposes of developing or improving recreational projects or tourist attractions. A city or unincorporated community may submit an application to the commission for a matching grant, except that an unincorporated community shall submit the application through the county board of supervisors. Applications shall be reviewed by the advisory council for public outdoor recreation and resources. The advisory council shall submit recommendations to the commission regarding possible recipients and grant amounts. Grants made to an unincorporated community shall be paid to the county board of supervisors to be used for the project of the unincorporated community. The amount of the grant shall not exceed fifty percent of the cost of the development or improvement to be made and the application must demonstrate that the city or unincorporated community will provide the required matching funds.

3. Five percent of the funds appropriated for purposes of this section for public outdoor recreation and resources shall be expended on advertising which shall promote the use of recreational facilities and tourist attractions in the state. The commission shall enter into an agreement with the economic development authority for the expenditure of these funds for this purpose.

4. Moneys available to be expended for purposes of this section for public outdoor recreation and resources shall be credited to or deposited to the general fund of the state and appropriations made for purposes of this section shall be allocated as provided in this section. Moneys credited to or deposited to the general fund of the state pursuant to this subsection are subject to the requirements of section 8.60.

[84 Acts, ch 1262, §1](#)

[86 Acts, ch 1245, §1877](#)

; [91 Acts, ch 260, §1212](#)

[; 92 Acts, ch 1163, §28](#)

[93 Acts, ch 131, §18](#)

[; 94 Acts, ch 1107, §74](#)

[; 2011 Acts, ch 118, §85, 89](#)

**461A.80 Public outdoor recreation and resources advisory council.**

1. An advisory council for public outdoor recreation and resources appropriations made for the purposes of section 461A.79 is created. The council shall consist of a public member appointed by the governor from each congressional district, the chairperson of the commission, the director, and a designee of the economic development authority.

2. Each county conservation board of those counties which are located in a congressional district shall nominate one person from the congressional district for appointment to the advisory council. The commission shall compile a list of the nominations of the county conservation boards for each congressional district and shall provide this list to the governor. The governor shall appoint one member from each congressional district from the nominations as provided. Appointments shall be made for three-year terms beginning July 1 in the year of appointment. A person shall not serve more than two terms. A vacancy shall be filled for the unexpired term in the same manner as the original appointment was made.

3. No more than three public members shall belong to the same political party. The council shall elect a chairperson annually from among the council's members, and the director shall serve as council secretary. Persons already serving in an elected or appointed governmental capacity are not eligible to serve as council members.

4. The advisory council shall meet annually, in July, and upon the call of the chairperson of the advisory council. The advisory council shall make policy recommendations to the commission regarding the projects and programs to be funded from funds available for public outdoor recreation and resources from appropriations made for the purposes of section 461A.79.

5. The public members of the advisory council shall be reimbursed for actual and necessary expenses for each day employed in the official discharge of their duties. The expenses shall be paid from the administration fund of the commission. Each member of the council may also be eligible to receive compensation as provided in section 7E.6.

[84 Acts, ch 1262, §2](#)

[86 Acts, ch 1245, §1866, 1877](#)

[94 Acts, ch 1107, §75](#)

[; 2011 Acts, ch 118, §85, 89](#)

[; 2012 Acts, ch 1021, §83](#)

## SUBCHAPTER VI

### STATE LANDS VOLUNTEER PROGRAM

**461A.81 State lands volunteer program — liability.**

The department shall establish a state lands volunteer program to authorize nonprofit organizations, and individuals providing services on behalf of the nonprofit organizations, to provide, at no compensation, volunteer services for the benefit of state parks and recreation areas, state game and forest areas, or other lands under the jurisdiction of the department of natural resources. The department shall adopt rules governing the administration of the program to include eligibility requirements for nonprofit organizations participating in the program and provisions governing approved volunteer duties or services. Nonprofit organizations, and individuals providing services on behalf of nonprofit organizations, authorized to provide volunteer services for no compensation by the department pursuant to this section shall be considered state volunteers and afforded the same protections as provided in section 669.24 while performing approved volunteer duties or services on state lands, as described in this section, as a volunteer.

[2014 Acts, ch 1046, §1](#)

## CHAPTER 461C

### PUBLIC USE OF PRIVATE LANDS AND WATERS

This chapter not enacted as a part of this title;  
transferred from chapter 111C in Code 1993

#### **461C.1 Purpose.**

The purpose of this chapter is to encourage private holders of land to make land and water areas available to the public for a recreational purpose and for urban deer control by limiting a holder's liability toward persons entering onto the holder's property for such purposes. The provisions of this chapter shall be construed liberally and broadly in favor of private holders of land to accomplish the purposes of this chapter.

[C71, 73, 75, 77, 79, 81, §111C.1]

[2006 Acts, ch 1121, §1](#)  
; [2007 Acts, ch 22, §84](#)  
; [2013 Acts, ch 128, §1](#)  
; [2013 Acts, ch 140, §29, 39](#)

#### **461C.2 Definitions.**

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

1. "*Charge*" means any consideration, the admission price or fee asked in return for invitation or permission to enter or go upon the land.
2. "*Holder*" means the possessor of a fee interest, a tenant, lessee, occupant or person in control of the premises; provided, however, holder shall not mean the state of Iowa, its political subdivisions, or any public body or any agencies, departments, boards, or commissions thereof.
3. "*Land*" means private land that is one or any combination of the following: abandoned or inactive surface mines; caves; land used for agricultural purposes; marshlands; timber; grasslands; or the privately owned roads, paths, trails, waters, water courses, exteriors and interiors of buildings, structures, machinery, or equipment appurtenant thereto. "*Land*" includes land that is not open to the general public. "*Land*" also includes private land located in a municipality in connection with and while being used for urban deer control.
4. "*Municipality*" means any city or county in the state.
5. "*Recreational purpose*" means the following or any combination thereof: hunting, trapping, horseback riding, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, motorcycling, all-terrain vehicle riding, nature study, water skiing, snowmobiling, other summer and winter sports, educational activities, and viewing or enjoying historical, archaeological, scenic, or scientific sites while going to and from or actually engaged therein. "*Recreational purpose*" includes the activity of accompanying another person who is engaging in such activities. "*Recreational purpose*" is not limited to active engagement in such activities, but includes entry onto, use of, passage over, and presence on any part of the land in connection with or during the course of such activities.
6. "*Urban deer control*" means deer hunting with a bow and arrow on private land in a municipality, without charge, as authorized by a municipal ordinance, for the purpose of reducing or stabilizing an urban deer population in the municipality. "*Urban deer control*" is not limited to active engagement in the activity of urban deer control but includes entry onto, use of, passage over, and presence on any part of the land in connection with or during the course of such activity.

[C71, 73, 75, 77, 79, 81, §111C.2]

[88 Acts, ch 1216, §46](#)  
  
[2006 Acts, ch 1121, §2, 3](#)  
; [2012 Acts, ch 1100, §58](#)  
; [2013 Acts, ch 128, §2](#)  
; [2013 Acts, ch 140, §29, 39](#)



#### **461C.3 Liability of holder limited.**

1. Except as specifically recognized by or provided in section 461C.6, a holder of land does not owe a duty of care to keep the premises safe for entry or use by others for a recreational purpose or urban deer control, or to give any warning of a dangerous condition, use, structure, or activity on such premises to persons entering for such purposes.

2. Except as specifically recognized by or provided in section 461C.6, a holder of land does not owe a duty of care to others solely because the holder is guiding, directing, supervising, or participating in any recreational purpose or urban deer control undertaken by others on the holder's land.

[C71, 73, 75, 77, 79, 81, §111C.3]

[2006 Acts, ch 1121, §4](#)  
; [2013 Acts, ch 128, §3](#)  
; [2013 Acts, ch 140, §29, 39](#)

#### **461C.4 Users not invitees or licensees.**

Except as specifically recognized by or provided in section 461C.6, a holder of land who either directly or indirectly invites or permits without charge any person to use such property for a recreational purpose or urban deer control does not thereby:

1. Extend any assurance that the premises are safe for any purpose.

2. Confer upon such person the legal status of an invitee or licensee to whom the duty of care is owed.

3. Assume a duty of care to such person solely because the holder is guiding, directing, supervising, or participating in any recreational purpose or urban deer control undertaken by the person on the holder's land.

4. Assume responsibility for or incur liability for any injury to person or property caused by an act or omission of such persons.

[C71, 73, 75, 77, 79, 81, §111C.4]

[2006 Acts, ch 1121, §5](#)  
; [2013 Acts, ch 128, §4, 5](#)  
; [2013 Acts, ch 140, §29, 39](#)

#### **461C.5 Duties and liabilities of holder of leased land.**

Unless otherwise agreed in writing, the provisions of sections 461C.3 and 461C.4 shall be deemed applicable to the duties and liability of a holder of land leased, or any interest or right therein transferred to, or the subject of any agreement with, the United States or any agency thereof, or the state or any agency or subdivision thereof, for a recreational purpose or urban deer control.

[C71, 73, 75, 77, 79, 81, §111C.5]

[2006 Acts, ch 1121, §6](#)  
; [2013 Acts, ch 128, §6](#)  
; [2013 Acts, ch 140, §29, 39](#)

#### **461C.6 When liability lies against holder.**

Nothing in this chapter limits in any way any liability which otherwise exists:

1. For willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity.

2. For injury suffered in any case where the holder of land charges the person or persons who enter or go on the land for the recreational use thereof or for deer hunting, except that in the case of land or any interest or right therein, leased or transferred to, or the subject of any agreement with, the United States or any agency thereof or the state or any agency thereof or subdivision thereof, any consideration received by the holder for such lease, interest, right, or agreement shall not be deemed a charge within the meaning of this section.

[C71, 73, 75, 77, 79, 81, §111C.6]

[2006 Acts, ch 1121, §7](#)  
; [2013 Acts, ch 128, §7](#)  
; [2013 Acts, ch 140, §29, 39](#)

#### **461C.7 Construction of law.**

Nothing in this chapter shall be construed to:

1. Create a duty of care or ground of liability for injury to persons or property.

2. Relieve any person using the land of another for a recreational purpose or urban deer control from any obligation which the person may have in the absence of this chapter to exercise care in the use of such land and in the person's activities thereon, or from the legal consequences of failure to employ such care.

3. Amend, repeal or modify the common law doctrine of attractive nuisance.

[C71, 73, 75, 77, 79, 81, §111C.7]

[2006 Acts, ch 1121, §8](#)

; [2013 Acts, ch 128, §8](#)  
; [2013 Acts, ch 140, §29, 39](#)

**461C.8 Urban deer control — municipal ordinance.**

1. A municipality may adopt an ordinance authorizing trained, volunteer hunters to hunt deer with a bow and arrow on private land within the municipality, without charge, for the purpose of urban deer control.
2. The ordinance shall specify all of the following:
  - a. How a person qualifies to participate in urban deer control.
  - b. Where urban deer control can occur.
  - c. Conditions under which urban deer control can be conducted, which are intended to minimize the risk of injury to persons and property.
3. A hunter who participates in urban deer control pursuant to this section shall be otherwise qualified to hunt deer in this state, purchase a hunting license that includes the wildlife habitat fee, and obtain a special deer hunting license valid only for the dates, locations, and type of deer specified on the license. Special deer hunting licenses issued pursuant to this section shall be available only to residents and shall cost the same as deer hunting licenses issued during general deer seasons. The commission may establish procedures for issuing more than one license per person as necessary to achieve the purposes of urban deer control, and the cost of each additional license shall be ten dollars.
4. An urban deer control ordinance is not effective until it has been approved by the department of natural resources.
5. The department of natural resources shall adopt rules in accordance with chapter 17A necessary for the administration of this section.

[2006 Acts, ch 1121, §9](#)  
; [2012 Acts, ch 1096, §1, 23](#)

## CHAPTER 465A

### OPEN SPACE LANDS

This chapter not enacted as a part of this title;  
transferred from chapter 111E in Code 1993  
Intent that highway scenic routes program  
be coordinated with open space program, §306D.1(2)

#### **465A.1 Statement of purpose — intent.**

1. The general assembly finds that:

*a.* Iowa's most significant open space lands are essential to the well-being and quality of life for Iowans and to the economic viability of the state's recreation and tourism industry.

*b.* Many areas of high national significance in the state have not received adequate public protection to keep them free of visual blight, resource degradation, and negative impacts from inappropriate land use and surrounding development. Some of these areas include national park service and United States fish and wildlife service properties, national landmarks and trails, the Des Moines river greenbelt, the great river road, areas where interstate highways enter the state, cross major rivers, and pass by other areas of national significance, major state park and recreation areas, unique and protected water areas, and significant natural, geological, scenic, historic, and cultural properties of the state.

*c.* While state and federal funds are generally available for the acquisition and protection of fish and wildlife areas and habitats as well as boating access to public waters, funding programs for public open space acquisition and protection have not been adequate to meet needs.

*d.* Relative to other midwestern states, Iowa ranks last in the proportion of land acquired and protected for public open space.

2. *a.* A program shall be established to:

(1) Educate the citizens of the state about the needs and urgency of protecting the state's open spaces.

(2) Plan for the protection of the state's significant open space areas.

(3) Acquire and protect those properties on a priority basis through a variety of appropriate means.

*b.* In addition to other goals for the program, it is intended that a minimum of ten percent of the state's land area be included under some form of public open space protection by the year 2000.

[87 Acts, ch 174, §1](#)

[2011 Acts, ch 25, §120](#)

#### **465A.2 Statewide open space acquisition and protection program — objectives and agency duties.**

1. The department of natural resources has the following duties in undertaking programs to meet the objectives stated in section 465A.1.

*a.* Prepare and conduct new education and awareness programs designed to create greater public understanding of the needs, issues, and opportunities for protecting the state's significant open spaces. The department shall incorporate the recommendations of other state agencies and private sector organizations which have interests in open space protection. The department may enter into contracts with other agencies and the private sector for preparing and conducting these programs.

*b.* Prepare a statewide, long-range plan for the acquisition and protection of significant open space lands throughout the state as identified in section 465A.1. The department of transportation, department of economic development, and department of cultural affairs, private organizations, county conservation boards, city park and recreation departments, and the federal agencies with lands in the state shall be directly involved in preparing the plan. The plan shall include, but is not limited to, the following elements:

(1) Specific acquisition and protection needs and priorities for open space areas based on the following sequence of priorities:

(a) National.

(b) Regional.

(c) Statewide.

(d) Local.

- (2) Identification of open space acquisition and protection techniques available or needed to carry out the plan.
  - (3) Additional education and awareness programs which are needed to encourage the acquisition and protection of areas identified in the plan.
  - (4) Management needs including maintenance, rehabilitation, and improvements.
  - (5) Funding levels needed to accomplish the statewide open space programs.
  - (6) Recommendations as to how federal programs can be modified or developed to assist the state's open space programs.
  - c. Acquire and protect open space properties as identified by priority in the plan as funding is made available for this purpose. In acquiring and protecting open space, the department shall:
    - (1) Accept applications for funding assistance from federal agencies, other state agencies, regional organizations, county conservation boards, city park and recreation agencies, and private organizations with an interest in open spaces.
    - (2) Obtain the maximum efficiency of funds appropriated for this program through the use of acquisition and protection techniques that provide the degree of protection required at the lowest cost.
    - (3) Encourage the provision of supporting or matching funds; however, the absence of these funds shall not prevent the approval of those projects of clear national importance.
  - 2. The department may enter into contracts with private consultants for preparing all or part of the plan required under subsection 1, paragraph "b". The plan shall be submitted to the general assembly by July 1, 1988. Prior to submission of the plan to the general assembly, the department shall request comments on the proposed plan from state and federal agencies and private organizations with interests in open space protection. The comments shall be submitted to the general assembly.
  - 3. The department may initiate pilot acquisition and protection projects prior to completion of the open space plan if the pilot projects have high national significance as identified in section 1, subsection 2.
- [87 Acts, ch 174, §2](#)

[2011 Acts, ch 118, §85, 89](#)  
; [2012 Acts, ch 1021, §85](#)

Duties of former department of economic development were assumed by economic development authority beginning July 1, 2011, pursuant to 2011 Acts, ch 118

#### **465A.3 Funding sources.**

- 1. To achieve the purposes of this chapter, the department, other state agencies, political subdivisions of the state, and private organizations may use funds from the following sources:
  - a. Appropriations by the general assembly.
  - b. Private grants and gifts.
  - c. Federal grants and loans intended for these purposes.
- 2. The department may enter into agreements with other state agencies, political subdivisions of the state, and private organizations for the purposes of carrying out this natural open space program or specific elements of the program.

[87 Acts, ch 174, §3](#)

CS87, §111E.3

C93, §465A.3

#### **465A.4 Payment in lieu of property taxes.**

As a part of the budget proposal submitted to the general assembly under section 455A.4, subsection 1, paragraph "c", the director of the department of natural resources shall submit a budget request to pay the property taxes for the next fiscal year on open space property acquired by the department which would otherwise be subject to the levy of property taxes. The assessed value of open space property acquired by the department shall be that determined under section 427.1, subsection 18, and the director may protest the assessed value in the manner provided by law for any property owner to protest an assessment. For the purposes of chapter 257, the assessed value of the open space property acquired by the department shall be included in the valuation base of the school district and the payments made pursuant to this section shall be considered as property tax revenues and not as miscellaneous income. The county treasurer shall certify taxes due to the department. The taxes shall be paid annually from the departmental fund or account from which the open space property acquisition was funded. If the departmental fund or account has no moneys or no longer exists, the taxes shall be paid from funds as otherwise provided by the general assembly. If the total amount of taxes due certified to the department exceeds the amount appropriated, the taxes due shall be reduced proportionately so that the total amount equals the amount appropriated. This section applies to open space property acquired by the department on or after January 1, 1987.

[87 Acts, ch 174, §4](#)

;

[89 Acts, ch 135, §52](#)

CS87, §111E.4

C93, §465A.4

## CHAPTER 465B

### RECREATION TRAILS

This chapter not enacted as a part of this title;  
transferred from chapter 111F in Code 1993

#### **465B.1 Statement of purpose — intent.**

The general assembly finds that recreation trails provide a significant benefit for the health and well-being of Iowans and state visitors. Iowa has a national reputation as a place for hiking, walking, and bicycling. The use of recreation trails has a significant influence on Iowa's economy. Iowa's scenic landscapes, many small communities, and existing natural and transportation corridors are ideally suited for new recreation trails to support recreation and tourism activities such as walking, biking, driving for pleasure, horseback riding, boating and canoeing, skiing, snowmobiling, and others.

The general assembly finds that a program shall be established to acquire, develop, promote, and manage existing and new recreation trails. The objective of a statewide trails program shall be for the state to acquire and develop two thousand miles of new recreation trails and completion of existing trail projects before the year 2000.

[87 Acts, ch 173, §1](#)

CS87, §111F.1

C93, §465B.1

#### **465B.2 Statewide trails development program.**

1. The state department of transportation shall undertake the following actions to establish a program to meet the objective stated in section 465B.1:

*a.* Prepare a long-range plan for the acquisition, development, promotion, and management of recreation trails throughout the state. The plan shall identify needs and opportunities for recreation trails of different kinds having national, statewide, regional, and multicounty importance. Recommendations in the plan shall include but not be limited to:

- (1) Specific acquisition needs and opportunities for different types of trails.
- (2) Development needs including trail surfacing, restrooms, shelters, parking, and other needed facilities.
- (3) Promotional programs which will encourage Iowans and state visitors to increase use of trails.
- (4) Management activities including maintenance, enforcement of rules, and replacement needs.
- (5) Funding levels needed to accomplish the statewide trails objectives.
- (6) Ways in which trails can be more fully incorporated with parks, cultural sites, and natural resource sites.

*b.* Include, within the plan, recommendations for standards for establishing functional classifications for all types of recreation trails as well as a system for determining jurisdictional control over trails. Levels of jurisdiction may be vested in the state, counties, cities, and private organizations.

2. *a.* The state department of transportation may enter into contracts for the preparation of the trails plan. The department shall involve the department of natural resources, the Iowa department of economic development, and the department of cultural affairs in the preparation of the plan. The recommendations and comments of organizations representing different types of trail users and others with interests in this program shall also be incorporated in the preparation of the trails plan and shall be submitted with the plan to the general assembly. The plan shall be submitted to the general assembly no later than January 15, 1988. Existing trail projects involving acquisition or development may receive funding prior to the completion of the trails plan.

*b.* The department shall give priority to funding the acquisition and development of trail portions which will complete segments of existing trails. The department shall give preference to the acquisition of trail routes which use existing or abandoned railroad right-of-ways, river valleys, and natural greenbelts. Multiple recreational use of routes for trails, other forms of transportation, utilities, and other uses compatible with trails shall be given priority.

*c.* The department may acquire property by negotiated purchase and hold title to property for development of trails. The department may enter into agreements with other state agencies, political subdivisions of the state, and private organizations for the planning, acquisition, development, promotion, management, operations, and maintenance of recreation trails.

3. The department may adopt rules under chapter 17A to carry out a trails program.

[87 Acts, ch 173, §2](#)



[2011 Acts, ch 34, §107](#)

**465B.3 Involvement of other agencies.**

The department of natural resources, the economic development authority, and the department of cultural affairs shall assist the state department of transportation in developing the statewide plan for recreation trails, in acquiring property, and in the development, promotion, and management of recreation trails.

[87 Acts, ch 173, §3](#)

[2011 Acts, ch 118, §85, 89](#)

**465B.4 Funding.**

To achieve the purposes of this chapter, the state department of transportation, other state agencies, political subdivisions of the state, and private organizations may use funds from the following sources:

1. Funds appropriated by the general assembly.
2. Private grants and gifts.
3. Federal grants and loans intended for these purposes.

[87 Acts, ch 173, §4](#)

CS87, §111F.4

C93, §465B.4

## CHAPTER 465C

### STATE PRESERVES

This chapter not enacted as a part of this title;  
transferred from chapter 111B in Code 1993

#### **465C.1 Definitions.**

As used in this chapter:

1. “*Area*” means an area of land or water or both land and water.
2. “*Board*” means the state advisory board for preserves established by this chapter.
3. “*Commission*” means the natural resource commission.
4. “*Dedication*” means the allocation of an area as a preserve by a public agency or by a private owner by written stipulation in a form approved by the state advisory board for preserves.
5. “*Department*” means department of natural resources created under section 455A.2.
6. “*Director*” means director of the department.
7. “*Preserve*” means an area of land or water formally dedicated under this chapter for maintenance as nearly as possible in its natural condition though it need not be completely primeval in character at the time of dedication or an area which has unusual flora, fauna, geological, archaeological, scenic, or historical features of scientific or educational value.

[C66, 71, 73, 75, 77, 79, 81, §111B.1]

[86 Acts, ch 1245, §1869](#)

C93, §465C.1

[2006 Acts, ch 1030, §48](#)

#### **465C.2 Advisory board.**

There is hereby created a state system of preserves and a state advisory board for preserves.

[C66, 71, 73, 75, 77, 79, 81, §111B.2]

C93, §465C.2

#### **465C.3 Membership.**

The board shall be composed of seven members, six of which shall be appointed by the governor. The commission, the conservation committee of the Iowa academy of science, and the state historical society shall submit to the governor a list of possible appointments. Members shall be selected from persons with a demonstrated interest in the preservation of natural lands and waters, and historic sites. The director shall serve as one member of the board. Any vacancies on the board shall be filled, for the remainder of the term vacated, by appointment by the governor provided by this chapter.

The first members appointed after the effective date of this chapter shall serve as follows: Two members to serve until July 1, 1968; two members to serve until July 1, 1969; two members to serve until July 1, 1970, and the director shall serve as long as the director is director. Members shall serve until their successors are appointed and qualified. As terms of members so appointed expire, their successors shall be appointed for terms to expire three years thereafter. Any member who has served two consecutive full terms will not be eligible for reappointment for a period of one year following the expiration of the member's second term.

[C66, 71, 73, 75, 77, 79, 81, §111B.3]

[86 Acts, ch 1245, §1877](#)

C93, §465C.3

#### **465C.4 Expenses.**

The members of the board may be reimbursed for necessary expenses in connection with performance of their duties. Each member of the board may also be eligible to receive compensation as provided in section 7E.6.

[C66, 71, 73, 75, 77, 79, 81, §111B.4]  
[86 Acts, ch 1245, §1870](#)  
C93, §465C.4

#### **465C.5 Organization.**

The board shall organize annually by the election of a chairperson. The board shall meet annually and at such other times as it deems necessary. Meetings may be called by the chairperson, and shall be called by the chairperson on the request of three members of the board.

[C66, 71, 73, 75, 77, 79, 81, §111B.5]  
C93, §465C.5

#### **465C.6 Advisors.**

Representatives of such agencies, institutions, and organizations as the board may determine may serve as advisors to the board. Such advisors shall receive no compensation for this function but at the discretion of the board may be reimbursed for necessary expenses in connection with the performance of their duties.

[C66, 71, 73, 75, 77, 79, 81, §111B.6]  
C93, §465C.6

#### **465C.7 Ecologist.**

The director shall employ, upon recommendation by the board, at salaries fixed by the board, a trained ecologist and other personnel as necessary to carry out the powers and duties of the board.

[C66, 71, 73, 75, 77, 79, 81, §111B.7]  
[86 Acts, ch 1245, §1871](#)  
C93, §465C.7

#### **465C.8 Powers and duties.**

The board shall have the following powers and duties:

1. To approve an area as a preserve.
2. To make and publish all rules necessary to carrying out the purposes of this chapter.
3. To recommend dedication as preserves, of areas owned by the state under the jurisdiction of the department.
4. To recommend acquisition of areas for dedication as preserves subject to approval by the natural resource commission.
5. To recommend dedication as preserves, areas owned by other public agencies, private groups, and individuals.
6. To make surveys and maintain registries and records of preserves and other areas of educational or scientific value and of habitats for rare and endangered species of plants and animals in the state.
7. To promote research and investigations, carry on interpretive programs and publish and disseminate information pertaining to preserves and related areas of educational or scientific value.
8. To promote the establishment and protection of, and advise in the management of, wild parks and other areas of educational or scientific value and otherwise foster and aid in the preservation of natural conditions elsewhere than in preserves.
9. To authorize payment of travel and other necessary expenses of the members of the board and advisors to the board, and salaries, wages, compensations, travel, supplies, and equipment necessary to carry out the duties of the board, and to authorize any other expenditures as may be necessary to carry into effect the purposes of this chapter.
10. To design and control the use of official state preserve signs and recommend to the state department of transportation locations for state preserve signs.
11. To submit to the governor and the legislature a report before January 15, 1967, and every two years thereafter which shall account for each preserve in the system and make such other reports and recommendations as it may deem necessary.
12. To prepare and recommend a budget, for inclusion as a line item money request in the departmental budget, for appropriation from the state general fund.

[C66, 71, 73, 75, 77, 79, 81, §111B.8]  
[86 Acts, ch 1245, §1872](#)  
C93, §465C.8

#### **465C.9 Articles of dedication.**

The public agency or private owner shall complete articles of dedication on forms approved by the board. When the articles of dedication have been approved by the governor, the board shall record them with the county recorder for the county or counties in which the area is located.

The articles of dedication may contain restrictions on development, sale, transfer, method of management, public access, and commercial or other use, and may contain such other provisions as may be necessary to further the purposes of this chapter. They

may define the respective jurisdictions of the owner or operating agency and the board. They may provide procedures to be applied in case of violation of the dedication. They may recognize reversionary rights. They may vary in provisions from one preserve to another in accordance with differences in relative conditions.

[C66, 71, 73, 75, 77, 79, 81, §111B.9]

C93, §465C.9

[2006 Acts, ch 1030, §49](#)

#### **465C.10 When dedicated as a preserve.**

An area shall become a preserve when it has been approved by the board for dedication as a preserve, whether in public or private ownership, formally dedicated as a preserve within the system by a public agency or private owner and designated by the governor as a preserve.

[C66, 71, 73, 75, 77, 79, 81, §111B.10]

C93, §465C.10

[2006 Acts, ch 1030, §50](#)

#### **465C.11 Area held in trust.**

An area designated as a preserve within the system is hereby declared put to its highest, best, and most important use for public benefit. It shall be held in trust and shall not be alienated except to another public use upon a finding by the board of imperative and unavoidable public necessity and with the approval of the commission, the general assembly by concurrent resolution, and the governor. The board's interest or interests in any area designated as a preserve shall not be taken under the condemnation statutes of this state without such a finding of imperative and unavoidable public necessity by the board, and with the consent of the commission, the general assembly by concurrent resolution, and the governor.

The board, with the approval of the governor, may enter into amendments to any articles of dedication upon its finding that such amendment will not permit an impairment, disturbance, or development of the area inconsistent with the purposes of this chapter.

Before the board shall make a finding of imperative and unavoidable public necessity, or shall enter into any amendment to articles of dedication, it shall provide notice of such proposal and opportunity for any person to be heard. Such notice shall be published at least once in a newspaper with a general circulation in the county or counties wherein the area directly affected is situated, and mailed within ten days of such published notice to all persons who have requested notice of all such proposed actions. Each notice shall set forth the substance of the proposed action and describe, with or without legal description, the area affected, and shall set forth a place and time not less than sixty days thence for all persons desiring to be heard to have reasonable opportunity to be heard prior to the finding of the board.

[C66, 71, 73, 75, 77, 79, 81, §111B.11]

[86 Acts, ch 1245, §1877](#)

C93, §465C.11

#### **465C.12 Agencies urged to dedicate preserves.**

All departments, agencies, and instrumentalities of the state, including counties, municipalities, public corporations, boards, commissions, and universities shall be urged to dedicate as nature preserves within the system under the procedures outlined in this chapter, suitable areas or portions of areas within their jurisdiction.

[C66, 71, 73, 75, 77, 79, 81, §111B.12]

C93, §465C.12

#### **465C.13 Other purposes not affected.**

Nothing contained in this chapter shall be construed as interfering with the purposes stated in the establishment of or pertaining to any state or local park, preserve, wildlife refuge, or other area or the proper management and development thereof except that any agency administering any area designated as a nature preserve under the system shall be responsible for preserving the natural character of the area in accordance with the articles of dedication.

Designation of an area as a preserve within the system shall not void or replace any protected status under law which the area would have were it not so designated.

[C66, 71, 73, 75, 77, 79, 81, §111B.13]

C93, §465C.13

#### **465C.14 Confidentiality of ecologically sensitive sites and information.**

The director of the department of natural resources and the state ecologist shall comply with the requirements of section 22.7, subsection 21, regarding information pertaining to the nature and location of ecologically sensitive resources or sites. The director of the department of natural resources, in consultation with the state ecologist, shall consult with other public officers serving as lawful custodians of ecologically sensitive information to determine whether the information should be confidential or

be released.

[86 Acts, ch 1228, §3](#)

C87, §111B.14

C93, §465C.14



## CHAPTER 465C

### STATE PRESERVES

This chapter not enacted as a part of this title;  
transferred from chapter 111B in Code 1993

#### **465C.1 Definitions.**

As used in this chapter:

1. “*Area*” means an area of land or water or both land and water.
2. “*Board*” means the state advisory board for preserves established by this chapter.
3. “*Commission*” means the natural resource commission.
4. “*Dedication*” means the allocation of an area as a preserve by a public agency or by a private owner by written stipulation in a form approved by the state advisory board for preserves.
5. “*Department*” means department of natural resources created under section 455A.2.
6. “*Director*” means director of the department.
7. “*Preserve*” means an area of land or water formally dedicated under this chapter for maintenance as nearly as possible in its natural condition though it need not be completely primeval in character at the time of dedication or an area which has unusual flora, fauna, geological, archaeological, scenic, or historical features of scientific or educational value.

[C66, 71, 73, 75, 77, 79, 81, §111B.1]

[86 Acts, ch 1245, §1869](#)

C93, §465C.1

[2006 Acts, ch 1030, §48](#)

#### **465C.2 Advisory board.**

There is hereby created a state system of preserves and a state advisory board for preserves.

[C66, 71, 73, 75, 77, 79, 81, §111B.2]

C93, §465C.2

#### **465C.3 Membership.**

The board shall be composed of seven members, six of which shall be appointed by the governor. The commission, the conservation committee of the Iowa academy of science, and the state historical society shall submit to the governor a list of possible appointments. Members shall be selected from persons with a demonstrated interest in the preservation of natural lands and waters, and historic sites. The director shall serve as one member of the board. Any vacancies on the board shall be filled, for the remainder of the term vacated, by appointment by the governor provided by this chapter.

The first members appointed after the effective date of this chapter shall serve as follows: Two members to serve until July 1, 1968; two members to serve until July 1, 1969; two members to serve until July 1, 1970, and the director shall serve as long as the director is director. Members shall serve until their successors are appointed and qualified. As terms of members so appointed expire, their successors shall be appointed for terms to expire three years thereafter. Any member who has served two consecutive full terms will not be eligible for reappointment for a period of one year following the expiration of the member's second term.

[C66, 71, 73, 75, 77, 79, 81, §111B.3]

[86 Acts, ch 1245, §1877](#)

C93, §465C.3

#### **465C.4 Expenses.**

The members of the board may be reimbursed for necessary expenses in connection with performance of their duties. Each member of the board may also be eligible to receive compensation as provided in section 7E.6.

[C66, 71, 73, 75, 77, 79, 81, §111B.4]  
[86 Acts, ch 1245, §1870](#)  
C93, §465C.4

#### **465C.5 Organization.**

The board shall organize annually by the election of a chairperson. The board shall meet annually and at such other times as it deems necessary. Meetings may be called by the chairperson, and shall be called by the chairperson on the request of three members of the board.

[C66, 71, 73, 75, 77, 79, 81, §111B.5]  
C93, §465C.5

#### **465C.6 Advisors.**

Representatives of such agencies, institutions, and organizations as the board may determine may serve as advisors to the board. Such advisors shall receive no compensation for this function but at the discretion of the board may be reimbursed for necessary expenses in connection with the performance of their duties.

[C66, 71, 73, 75, 77, 79, 81, §111B.6]  
C93, §465C.6

#### **465C.7 Ecologist.**

The director shall employ, upon recommendation by the board, at salaries fixed by the board, a trained ecologist and other personnel as necessary to carry out the powers and duties of the board.

[C66, 71, 73, 75, 77, 79, 81, §111B.7]  
[86 Acts, ch 1245, §1871](#)  
C93, §465C.7

#### **465C.8 Powers and duties.**

The board shall have the following powers and duties:

1. To approve an area as a preserve.
2. To make and publish all rules necessary to carrying out the purposes of this chapter.
3. To recommend dedication as preserves, of areas owned by the state under the jurisdiction of the department.
4. To recommend acquisition of areas for dedication as preserves subject to approval by the natural resource commission.
5. To recommend dedication as preserves, areas owned by other public agencies, private groups, and individuals.
6. To make surveys and maintain registries and records of preserves and other areas of educational or scientific value and of habitats for rare and endangered species of plants and animals in the state.
7. To promote research and investigations, carry on interpretive programs and publish and disseminate information pertaining to preserves and related areas of educational or scientific value.
8. To promote the establishment and protection of, and advise in the management of, wild parks and other areas of educational or scientific value and otherwise foster and aid in the preservation of natural conditions elsewhere than in preserves.
9. To authorize payment of travel and other necessary expenses of the members of the board and advisors to the board, and salaries, wages, compensations, travel, supplies, and equipment necessary to carry out the duties of the board, and to authorize any other expenditures as may be necessary to carry into effect the purposes of this chapter.
10. To design and control the use of official state preserve signs and recommend to the state department of transportation locations for state preserve signs.
11. To submit to the governor and the legislature a report before January 15, 1967, and every two years thereafter which shall account for each preserve in the system and make such other reports and recommendations as it may deem necessary.
12. To prepare and recommend a budget, for inclusion as a line item money request in the departmental budget, for appropriation from the state general fund.

[C66, 71, 73, 75, 77, 79, 81, §111B.8]  
[86 Acts, ch 1245, §1872](#)  
C93, §465C.8

#### **465C.9 Articles of dedication.**

The public agency or private owner shall complete articles of dedication on forms approved by the board. When the articles of dedication have been approved by the governor, the board shall record them with the county recorder for the county or counties in which the area is located.

The articles of dedication may contain restrictions on development, sale, transfer, method of management, public access, and commercial or other use, and may contain such other provisions as may be necessary to further the purposes of this chapter. They

may define the respective jurisdictions of the owner or operating agency and the board. They may provide procedures to be applied in case of violation of the dedication. They may recognize reversionary rights. They may vary in provisions from one preserve to another in accordance with differences in relative conditions.

[C66, 71, 73, 75, 77, 79, 81, §111B.9]

C93, §465C.9

[2006 Acts, ch 1030, §49](#)

#### **465C.10 When dedicated as a preserve.**

An area shall become a preserve when it has been approved by the board for dedication as a preserve, whether in public or private ownership, formally dedicated as a preserve within the system by a public agency or private owner and designated by the governor as a preserve.

[C66, 71, 73, 75, 77, 79, 81, §111B.10]

C93, §465C.10

[2006 Acts, ch 1030, §50](#)

#### **465C.11 Area held in trust.**

An area designated as a preserve within the system is hereby declared put to its highest, best, and most important use for public benefit. It shall be held in trust and shall not be alienated except to another public use upon a finding by the board of imperative and unavoidable public necessity and with the approval of the commission, the general assembly by concurrent resolution, and the governor. The board's interest or interests in any area designated as a preserve shall not be taken under the condemnation statutes of this state without such a finding of imperative and unavoidable public necessity by the board, and with the consent of the commission, the general assembly by concurrent resolution, and the governor.

The board, with the approval of the governor, may enter into amendments to any articles of dedication upon its finding that such amendment will not permit an impairment, disturbance, or development of the area inconsistent with the purposes of this chapter.

Before the board shall make a finding of imperative and unavoidable public necessity, or shall enter into any amendment to articles of dedication, it shall provide notice of such proposal and opportunity for any person to be heard. Such notice shall be published at least once in a newspaper with a general circulation in the county or counties wherein the area directly affected is situated, and mailed within ten days of such published notice to all persons who have requested notice of all such proposed actions. Each notice shall set forth the substance of the proposed action and describe, with or without legal description, the area affected, and shall set forth a place and time not less than sixty days thence for all persons desiring to be heard to have reasonable opportunity to be heard prior to the finding of the board.

[C66, 71, 73, 75, 77, 79, 81, §111B.11]

[86 Acts, ch 1245, §1877](#)

C93, §465C.11

#### **465C.12 Agencies urged to dedicate preserves.**

All departments, agencies, and instrumentalities of the state, including counties, municipalities, public corporations, boards, commissions, and universities shall be urged to dedicate as nature preserves within the system under the procedures outlined in this chapter, suitable areas or portions of areas within their jurisdiction.

[C66, 71, 73, 75, 77, 79, 81, §111B.12]

C93, §465C.12

#### **465C.13 Other purposes not affected.**

Nothing contained in this chapter shall be construed as interfering with the purposes stated in the establishment of or pertaining to any state or local park, preserve, wildlife refuge, or other area or the proper management and development thereof except that any agency administering any area designated as a nature preserve under the system shall be responsible for preserving the natural character of the area in accordance with the articles of dedication.

Designation of an area as a preserve within the system shall not void or replace any protected status under law which the area would have were it not so designated.

[C66, 71, 73, 75, 77, 79, 81, §111B.13]

C93, §465C.13

#### **465C.14 Confidentiality of ecologically sensitive sites and information.**

The director of the department of natural resources and the state ecologist shall comply with the requirements of section 22.7, subsection 21, regarding information pertaining to the nature and location of ecologically sensitive resources or sites. The director of the department of natural resources, in consultation with the state ecologist, shall consult with other public officers serving as lawful custodians of ecologically sensitive information to determine whether the information should be confidential or

be released.

[86 Acts, ch 1228, §3](#)

C87, §111B.14

C93, §465C.14

CHAPTER 466B  
SURFACE WATER PROTECTION,  
FLOOD MITIGATION, AND  
WATERSHED MANAGEMENT

SUBCHAPTER I  
SURFACE WATER PROTECTION AND  
FLOOD MITIGATION

**466B.1 Short title.**

This chapter shall be known and may be cited as the “*Surface Water Protection and Flood Mitigation Act*”.

[2008 Acts, ch 1034, §1](#)

;

[2009 Acts, ch 146, §7](#)

**466B.2 Definitions.**

For the purposes of this chapter, unless the context otherwise requires:

1. “*Council*” means the water resources coordinating council created in section 466B.3.
2. “*Department*” means the department of natural resources.
3. “*Political subdivision*” means any of the following:
  - a. A city.
  - b. A county.
  - c. A soil and water conservation district described in section 161A.5.
  - d. A benefited recreational lake district or a water quality district or a combined district incorporated as a public entity and organized pursuant to chapter 357E.
4. “*Regional watershed*” means a watershed of hydrologic unit code scale 8.
5. “*Subwatershed*” means a watershed of hydrologic unit code scale 12 or smaller.
6. “*Watershed*” means a geographic area in which surface water is drained by rivers, streams, or other bodies of water.

[2008 Acts, ch 1034, §2](#)

; [2013 Acts, ch 132, §57](#)

; [2016 Acts, ch 1020, §1](#)

Subsection 3 amended

**466B.3 Water resources coordinating council.**

1. *Council established.* A water resources coordinating council is established within the department of agriculture and land stewardship.

2. *Purpose.* The purpose of the council shall be to preserve and protect Iowa’s water resources, and to coordinate the management of those resources in a sustainable and fiscally responsible manner. In the pursuit of this purpose, the council shall use an integrated approach to water resource management, recognizing that insufficiencies exist in current approaches and practices, as well as in funding sources and the utilization of funds. The integrated approach used by the council shall attempt to overcome old categories, labels, and obstacles with the primary goal of managing the state’s water resources comprehensively rather than compartmentally.

3. *Accountability.* The success of the council’s efforts shall ultimately be measured by the following outcomes:



- a.* Whether the citizens of Iowa can more easily organize local watershed projects.
- b.* Whether the citizens of Iowa can more easily access available funds and water quality program resources.
- c.* Whether the funds, programs, and regulatory efforts coordinated by the council eventually result in a long-term improvement to the quality of surface water in Iowa.
- d.* Whether the potential for flood damage in each watershed in the state has been reduced.
- 4. *Membership.* The council shall consist of the following members:
  - a.* The director of the department of natural resources or the director's designee.
  - b.* The director of the division of soil conservation and water quality within the department of agriculture and land stewardship or the director's designee.
  - c.* The director of the department of public health or the director's designee.
  - d.* The director of the department of homeland security and emergency management or the director's designee.
  - e.* The dean of the college of agriculture and life sciences at Iowa state university or the dean's designee.
  - f.* The dean of the college of public health at the university of Iowa or the dean's designee.
  - g.* The dean of the college of natural sciences at the university of northern Iowa or the dean's designee.
  - h.* The director of transportation or the director's designee.
  - i.* The director of the economic development authority or the director's designee.
  - j.* The executive director of the Iowa finance authority or the executive director's designee.
  - k.* The secretary of agriculture, who shall be the chairperson, or the secretary's designee. As the chairperson, and in order to further the coordination efforts of the council, the secretary may invite representatives from any other public agency, private organization, business, citizen group, or nonprofit entity to give public input at council meetings, provided the entity has an interest in the coordinated management of land resources, soil conservation, flood mitigation, or water quality. The secretary shall also invite and solicit advice from the following:
    - (1) The director of the Iowa water science center of the United States geological survey or the director's designee.
    - (2) The state conservationist from the Iowa office of the United States department of agriculture's natural resources conservation service or the state conservationist's designee.
    - (3) The executive director for Iowa from the United States department of agriculture's farm services agency or the executive director's designee.
    - (4) The state director for Iowa from the United States department of agriculture's office of rural development or the state director's designee.
    - (5) The director of region seven of the United States environmental protection agency or the director's designee.
    - (6) The corps commander from the United States army corps of engineers' Rock Island district or the commander's designee.
  - l.* The dean of the college of engineering at the university of Iowa or the dean's designee.
- 5. *Meetings and quorum.*
  - a.* The council shall be convened by the secretary of agriculture at least quarterly.
  - b.* A majority of the members fixed by statute shall constitute a quorum, and any action taken by the council must be adopted by a majority of the voting membership.
- 6. *Duties and powers.*
  - a.* The council shall engage in the regular coordination of water resource-related functions, including protection strategies, planning, assessment, prioritization, review, concurrence, advocacy, and education.
  - b.* In coordinating water resource-related functions, the council may do all of the following:
    - (1) Consider the steps necessary to address the planning, management, and implementation of water resource improvement.
    - (2) Identify ways to facilitate communication and participation among all water resource stakeholders, including owners of land in Iowa whether they are residents or not.
    - (3) Identify inefficiencies in current programs and recommend ways to eliminate duplicative services.
    - (4) Improve the availability and management of water resource information.
    - (5) Provide incentives for, and recognition of, environmental excellence.
    - (6) Regularly assess and identify measurable improvements in water quality.
    - (7) Oversee the complete, statewide regional watershed assessment, prioritization, and planning process described in section 466B.5, including a short-term interim program and a long-term comprehensive state water quality and quantity plan updated every five years as provided in sections 466B.5 and 466B.6.
    - (8) Develop a protocol which identifies high-priority watersheds, including local and community-based subwatersheds, and which appropriately directs resources to those watersheds.
    - (9) Review best available technologies on a regular basis, so that investments of time and program resources can be prioritized and directed to projects that will best and most effectively improve water quality and reduce flood damage within regional and community subwatersheds.
    - (10) Review voluntary, performance-based standards for water resource management, land management, and soil conservation.
    - (11) Develop a protocol for assigning multiagency teams to regional watersheds and local subwatersheds and guide those teams in the coordination of citizen and agency activities within those watersheds.
    - (12) Engage in dialogue with, and pursue efforts to make cooperative agreements with, other states when a watershed extends beyond borders of this state.
    - (13) Enter into agreements and make contracts with third parties for the performance of duties imposed by this chapter.
    - (14) Prepare a memorandum of understanding identifying the roles and responsibilities of council members in the coordination

of the implementation of community-based subwatershed improvement plans. The memorandum shall be a commitment by the agencies participating in council meetings to reach consensus regarding communications with subwatershed planning units.

c. The council shall develop recommendations for policies and funding promoting a watershed management approach to reduce the adverse impact of future flooding on this state's residents, businesses, communities, and soil and water quality. The council shall consider policies and funding options for various strategies to reduce the impact of flooding including but not limited to additional floodplain regulation; wetland protection, restoration, and construction; the promulgation and implementation of statewide storm water management standards; conservation easements and other land management; perennial ground cover and other agricultural conservation practices; pervious pavement, bioswales, and other urban conservation practices; and permanent or temporary water retention structures. In developing recommendations, the council shall consult with hydrological and land use experts, representatives of cities, counties, drainage and levee districts, agricultural interests, and soil and water conservation districts, and other urban and regional planning experts.

[2008 Acts, ch 1034, §3](#)

; [2009 Acts, ch 41, §139](#)

; [2009 Acts, ch 146, §8 – 12](#)

; [2010 Acts, ch 1061, §62](#)

; [2011 Acts, ch 118, §85, 89](#)

; [2011 Acts, ch 119, §1 – 5](#)

; [2012 Acts, ch 1021, §86](#)

; [2012 Acts, ch 1023, §65](#)

; [2013 Acts, ch 29, §58](#)

; [2015 Acts, ch 29, §114](#)

; [2015 Acts, ch 103, §52](#)

#### **466B.4 Legislative findings and marketing campaign.**

1. *Findings.* The general assembly finds all of the following:

a. Most Iowans desire to have improved water quality throughout the state, but many Iowans do not understand the problems with local water quality.

b. Most Iowans believe that the protection of fish and wildlife benefits all Iowans.

c. The benefits of improving water quality could far outweigh the costs of implementing mechanisms to improve it.

d. Most Iowans look to some level of government for the protection of water resources rather than to themselves and their own actions. However, it is not possible or desirable for state government to take complete control and responsibility for water quality.

e. In addition to the use of Iowa land for agriculture and economic development, the land in watersheds and floodplains should be managed to reduce flooding, reduce flood damage, ameliorate the effects of drought, improve water quality, improve habitat and the natural environment, increase renewable energy production, and enhance recreational opportunities.

2. *Marketing campaign.* The water resources coordinating council shall develop a marketing campaign to educate Iowans about the need to take personal responsibility for the quality and quantity of water in their local watersheds. The emphasis of the campaign shall be that not only is everyone responsible for clean water, but that everyone benefits from it as well, and that everyone is responsible for and benefits from reducing the risk for flooding and mitigating possible future flood damage. The goals of the campaign shall be to convince Iowans to take personal responsibility for clean water and reducing the risk of flooding and to equip them with the tools necessary to effect change through local water quality improvement projects and better flood plain management and flood risk programs.

3. *Contingent on funding.* The duties imposed in subsection 2 are contingent upon the receipt of funding sufficient to cover the costs associated with the marketing campaign.

[2008 Acts, ch 1034, §4](#)

; [2009 Acts, ch 146, §13](#)

; [2010 Acts, ch 1193, §127](#)

#### **466B.5 Regional watershed assessment, planning, and prioritization.**

1. *Regional watershed assessment program.* The department of natural resources shall create a regional watershed assessment program. The program shall assess all the regional watersheds in the state.

a. The statewide assessment shall be conducted at the rate of approximately one-fifth of the watersheds per year, and an initial full assessment shall be completed within five years. Thereafter, the department of natural resources shall review and update the assessments on a regular basis.

b. Each regional watershed assessment shall provide a summary of the overall condition of the watershed. The information provided in the summary may include land use patterns, soil types, slopes, management practices, stream conditions, and both point and nonpoint source impairments.

c. In conducting a regional watershed assessment, the department of natural resources may provide opportunities for local data collection and input into the assessment process.

2. *Planning and prioritization.* In conducting the regional watershed assessment program, the department of natural resources shall provide hydrological and geological information sufficient for the water resources coordinating council to prioritize watersheds statewide and for the various communities in those watersheds to plan remedial efforts in their local communities and subwatersheds.

3. *Report to council.* Upon completion of the statewide assessment, and upon updating the assessments, the department of natural resources shall report the results of the assessment to the council and the general assembly, and shall make the report publicly available.

[2008 Acts, ch 1034, §5](#)  
; [2011 Acts, ch 119, §6](#)

#### **466B.6 Community-based subwatershed improvement plans.**

1. *Facilitation of community-based subwatershed plans.* After the department of natural resources' completion of the initial regional watershed assessment, and after the council's prioritization of the regional watersheds, the council shall designate one or more of the agencies represented on the council to facilitate the development and implementation of local, community-based subwatershed improvement plans.

2. *Assessment, planning, prioritization, and implementation.* In facilitating the development of community-based subwatershed improvement plans, the agency or agencies designated by the council shall, based on the results of the regional watershed assessment program, identify critical subwatersheds within priority regional watersheds and recruit communities, citizen groups, local governmental entities, or other stakeholders to engage in the assessment, planning, prioritization, and implementation of a local community-based subwatershed improvement plan. The agency or agencies designated by the council may assist in the formation of a group of initial local community-based subwatershed improvement plans that can be implemented as pilot projects, in order to develop an effective process that can be replicated across the state.

[2008 Acts, ch 1034, §6](#)  
; [2011 Acts, ch 119, §7](#)

#### **466B.7 Community-based subwatershed monitoring.**

1. *Monitoring assistance.* After completion of the statewide regional watershed assessment and prioritization, and throughout the implementation of local community-based subwatershed improvement plans, the department of natural resources shall assist communities with the monitoring and measurement of local subwatersheds. The monitoring and measurement shall be designed for the particular needs of individual communities.

2. *Data collection and use.* Local communities in which the department of natural resources conducts subwatershed monitoring shall use the information to support subwatershed planning activities, do local data collection, and identify priority areas needing additional resources. Local communities shall also collect data over time and use the data to evaluate the impacts of their management efforts.

[2008 Acts, ch 1034, §7](#)  
; [2011 Acts, ch 119, §8](#)

#### **466B.8 Wastewater and storm water infrastructure assessment.**

The department of natural resources shall assess and prioritize communities within a watershed presenting the greatest level of risk to water quality and the health of residents. This prioritization shall include both sewerage and unsewered communities.

[2008 Acts, ch 1034, §8](#)  
; [2011 Acts, ch 119, §9](#)

#### **466B.9 Rulemaking authority.**

The department of natural resources and the department of agriculture and land stewardship shall have the power and authority reasonably necessary to carry out the duties imposed by this chapter. As to the department of natural resources, this includes rulemaking authority to carry out the regional watershed assessment program described in section 466B.5. As to the department of agriculture and land stewardship, this includes rulemaking authority to assist in the implementation of community-based subwatershed improvement plans.

[2008 Acts, ch 1034, §9](#)  
; [2011 Acts, ch 119, §10](#)

#### **466B.10 Floodplain managers.**

The council shall encourage and support the formation of a chapter of the association of state floodplain managers in Iowa that would provide a vehicle for local floodplain managers and floodplain planners to further pursue professional educational opportunities.

[2010 Acts, ch 1193, §128](#)

#### **466B.11 Flood education.**

The Iowa state university agricultural extension service, the council, and agency members of the council shall, to the extent feasible, work with floodplain and hydrology experts to educate the general public about floodplains, flood risks, and basic floodplain management principles. This educational effort shall include developing educational materials and programs in consultation with floodplain experts.

[2010 Acts, ch 1193, §129](#)

## SUBCHAPTER II

### WATERSHED MANAGEMENT AUTHORITIES

#### **466B.21 Definitions.**

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

1. “*Authority*” means a watershed management authority created pursuant to a chapter 28E agreement as provided in this subchapter.
2. “*Board*” means a board of directors of a watershed management authority.  
[2010 Acts, ch 1116, §3](#)  
; [2013 Acts, ch 132, §58](#)

#### **466B.22 Watershed management authorities created.**

1. Two or more political subdivisions may create, by chapter 28E agreement, a watershed management authority pursuant to this subchapter. The participating political subdivisions must be located in the same United States geological survey hydrologic unit code 8 watershed. All political subdivisions within a watershed must be notified within thirty days prior to organization of any watershed management authority within the watershed, and provided the opportunity to participate.
2. The chapter 28E agreement shall include a map showing the area and boundaries of the authority.
3. A political subdivision may participate in more than one authority created pursuant to this subchapter.
4. A political subdivision is not required to participate in a watershed management authority or be a party to a chapter 28E agreement under this subchapter.  
[2010 Acts, ch 1116, §4](#)

#### **466B.23 Duties.**

A watershed management authority may perform all of the following duties:

1. Assess the flood risks in the watershed.
2. Assess the water quality in the watershed.
3. Assess options for reducing flood risk and improving water quality in the watershed.
4. Monitor federal flood risk planning and activities.
5. Educate residents of the watershed area regarding water quality and flood risks.
6. Allocate moneys made available to the authority for purposes of water quality and flood mitigation.
7. Make and enter into contracts and agreements and execute all instruments necessary or incidental to the performance of the duties of the authority. A watershed management authority shall not acquire property by eminent domain.  
[2010 Acts, ch 1116, §5](#)

#### **466B.24 Board of directors.**

1. An authority shall be governed by a board of directors. Members of a board of directors of an authority shall be divided among the political subdivisions comprising the authority and shall be appointed by the respective political subdivision’s elected legislative body.
2. A board of directors shall consist of one representative of each participating political subdivision. This subsection shall not apply if a chapter 28E agreement under this subchapter provides an alternative board composition method.
3. The directors shall serve staggered terms of four years. The initial board shall determine, by lot, the initial terms to be shortened and lengthened, as necessary, to achieve staggered terms. A person appointed to fill a vacancy shall be appointed in the same manner as the original appointment for the duration of the unexpired term. A director is eligible for reappointment. This subsection shall not apply if a chapter 28E agreement under this subchapter provides an alternative for the length of term, appointment, and reappointment of directors.
4. A board may provide procedures for the removal of a director who fails to attend three consecutive regular meetings of the board. If a director is so removed, a successor shall be appointed for the duration of the unexpired term of the removed director in the same manner as the original appointment. The appointing body may at any time remove a director appointed by it for misfeasance, nonfeasance, or malfeasance in office.
5. A board shall adopt bylaws and shall elect one director as chairperson and one director as vice chairperson, each for a term of two years, and shall appoint a secretary who need not be a director.
6. A majority of the membership of a board of directors shall constitute a quorum for the purpose of holding a meeting of the board. The affirmative vote of a majority of a quorum shall be necessary for any action taken by an authority unless the authority’s bylaws specify those particular actions of the authority requiring a greater number of affirmative votes. A vacancy in the membership of the board shall not impair the rights of a quorum to exercise all the rights and perform all the duties of the authority.

[2010 Acts, ch 1116, §6](#)

#### **466B.25 Activities coordination.**

In all activities of a watershed management authority, the authority may coordinate its activities with the department of natural resources, the department of agriculture and land stewardship, councils of governments, public drinking water utilities, and soil and water conservation districts.

[2010 Acts, ch 1116, §7](#)

**466B.26 through 466B.30**Reserved.

### **SUBCHAPTER III**

#### **WATERSHED PLANNING ACTIVITIES**

#### **466B.31 Watershed planning advisory council.**

1. A watershed planning advisory council is established for purposes of assembling a diverse group of stakeholders to review research and make recommendations to various state entities regarding methods to protect water resources in the state, assure an adequate supply of water, mitigate and prevent floods, and coordinate the management of those resources in a sustainable, fiscally responsible, and environmentally responsible manner. The advisory council may seek input from councils of governments or other organizations in the development of its recommendations. The advisory council shall meet once a year and at other times as deemed necessary to meet the requirements of this section. The advisory council may appoint a task force to assist the advisory council in completing its duties.

2. The watershed planning advisory council shall consist of all of the following members:

*a.* The voting members of the advisory council shall include all of the following:

- (1) One member selected by the Iowa association of municipal utilities.
- (2) One member selected by the Iowa league of cities.
- (3) One member selected by the Iowa association of business and industry.
- (4) One member selected by the Iowa water pollution control association.
- (5) One member selected by the Iowa rural water association.
- (6) One member selected by growing green communities.
- (7) One member selected by the Iowa environmental council.
- (8) One member selected by the Iowa farm bureau federation.
- (9) One member selected by the Iowa corn growers association.
- (10) One member selected by the Iowa soybean association.
- (11) One member selected by the Iowa pork producers council.
- (12) One member selected by the soil and water conservation districts of Iowa.
- (13) One person representing the department of agriculture and land stewardship selected by the secretary of agriculture.
- (14) One person representing the department of natural resources selected by the director.
- (15) Two members selected by the Iowa conservation alliance.
- (16) One member selected by the Iowa drainage district association.
- (17) One member selected by the agribusiness association of Iowa.
- (18) One member selected by the Iowa floodplain and stormwater management association.
- (19) One member selected by Iowa rivers revival.

*b.* The nonvoting members of the advisory council shall include all of the following:

(1) Two members of the senate. One senator shall be appointed by the majority leader of the senate and one senator shall be appointed by the minority leader of the senate.

(2) Two members of the house of representatives. One member shall be appointed by the speaker of the house of representatives and one member shall be appointed by the minority leader of the house of representatives.

3. By December 1 of each year, the watershed planning advisory council shall submit a report to the governor, the general assembly, the department of agriculture and land stewardship, the department of natural resources, and the water resources coordinating council. The report shall include recommendations regarding all of the following:

- a.* Improving water quality and optimizing the costs of voluntarily achieving and maintaining water quality standards.
- b.* Creating economic incentives for voluntary nonpoint source load reductions, point source discharge reductions beyond those required by the federal Water Pollution Control Act, implementation of pollution prevention programs, wetland restoration and creation, and the development of emerging pollution control technologies.
- c.* Facilitating the implementation of total maximum daily loads, urban storm water control programs, and nonpoint source management practices required or authorized under the federal Water Pollution Control Act. This paragraph shall not be construed to obviate the requirement to develop a total maximum daily load for waters that do not meet water quality standards as required by section 303(d) of the federal Water Pollution Control Act or to delay implementation of a total maximum daily load that has been approved by the department and the director.
- d.* Providing incentives, methods, and practices for the development of new and more accurate and reliable pollution control quantification protocols and procedures, including but not limited to development of policy based on information and data that is publicly available and that can be verified and evaluated.
- e.* Providing greater flexibility for broader public involvement through community-based, nonregulatory, and performance-



driven watershed management planning.

- f. Assigning responsibility for monitoring flood risk, flood mitigation, and coordination with federal agencies.
- g. Involving cities, counties, and other local and regional public and private entities in watershed improvement including but not limited to incentives for participation in a watershed management authority created under this chapter.
- 4. Each year, the voting members of the advisory council shall designate one voting member as chairperson.

[2010 Acts, ch 1116, §1](#)  
; [2011 Acts, ch 131, §98, 158](#)

#### **466B.32 Watershed demonstration pilot projects.**

The department of natural resources and the department of agriculture and land stewardship, in collaboration with the United States department of agriculture's natural resources conservation service and the Iowa flood center established pursuant to section 466C.1, and in cooperation with the council, shall seek funding to plan, implement, and monitor one or more watershed demonstration pilot projects for urban and rural areas involving a twelve-digit hydrologic unit code subwatershed as defined by the United States geological survey. The pilot projects shall include features that seek to do all of the following:

1. Maximize soil water holding capacity from precipitation.
2. Minimize severe scour erosion and sand deposition during floods.
3. Manage water runoff in uplands under saturated soil moisture conditions.
4. Reduce and mitigate structural and nonstructural flood damage.

[2010 Acts, ch 1116, §2](#)

**466B.33 through 466B.40**Reserved.

### SUBCHAPTER IV

#### WATER QUALITY INITIATIVE — NUTRIENTS

#### **466B.41 Definitions.**

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

1. “*Center*” means the Iowa nutrient research center established pursuant to section 466B.47.
2. “*Council*” means the Iowa nutrient research center advisory council established pursuant to section 466B.48.
3. “*Division*” means the division of soil conservation and water quality created within the department of agriculture and land stewardship pursuant to section 159.5.
4. “*Fund*” means the water quality initiative fund created in section 466B.45.
5. “*Nutrient*” includes nitrogen and phosphorus.

[2013 Acts, ch 132, §59](#)  
; [2015 Acts, ch 103, §53](#)

#### **466B.42 Water quality initiative.**

The division shall establish a water quality initiative in order to assess and reduce nutrients in this state's watersheds, including subwatersheds, and regional watersheds. The division shall establish and administer projects to reduce nutrients in surface waters from nonpoint sources in a scientific, reasonable, and cost-effective manner. The division shall utilize a pragmatic, strategic, and coordinated approach with the goal of accomplishing reductions over time.

[2013 Acts, ch 132, §60](#)

**466B.43 and 466B.44**Reserved.

#### **466B.45 Water quality initiative fund.**

1. A water quality initiative fund is created in the state treasury under the management and control of the division.
2. The fund shall include moneys appropriated by the general assembly. The fund may include other moneys available to and obtained or accepted by the division, including moneys from public or private sources.
3. Moneys in the fund are appropriated to the division and shall be used exclusively to carry out the provisions of this subchapter as determined by the division, and shall not require further special authorization by the general assembly.
4. *a.* Notwithstanding section 12C.7, interest or earnings on moneys in the fund shall be credited to the fund.  
*b.* Notwithstanding section 8.33, moneys appropriated or otherwise credited to the fund for a fiscal year shall not revert to the fund from which appropriated at the close of the fiscal year for which the appropriation was made but shall remain available for expenditure for the purposes designated until the close of the fiscal year that begins three years from the beginning date of the fiscal year for which the appropriation was made.

[2013 Acts, ch 132, §61](#)

**466B.46 Iowa nutrient research fund — creation and purpose.**

1. An Iowa nutrient research fund is created in the state treasury under the management and control of the center.
2. The fund shall include all of the following:
  - a. Moneys appropriated by the general assembly.
  - b. Moneys assessed and collected by or on behalf of the department of natural resources to be credited to the fund as provided in sections 455B.109, 459.602, 459.603, 459.604, 459A.502, and 459B.402.
  - c. Moneys accepted by the center from public or private sources.
3. Moneys in the fund are appropriated to the center and shall be used exclusively by the center to carry out its purpose as described in section 466B.47.
4.
  - a. Notwithstanding section 12C.7, interest or earnings on moneys in the fund shall be credited to the fund.
  - b. The moneys credited to the fund are not subject to section 8.33 and shall not be transferred, used, obligated, appropriated, or otherwise encumbered except as provided in this section.

[2016 Acts, ch 1134, §33, 34](#)

NEW section

**466B.47 Iowa nutrient research center — establishment and purpose.**

1. The state board of regents shall establish and maintain in Ames as part of Iowa state university of science and technology an Iowa nutrient research center.
2. The purpose of the center shall be to pursue a science-based approach to nutrient management research that may include but is not limited to evaluating the performance of current and emerging nutrient management practices, and using an adaptive management framework for providing recommendations for the implementation of nutrient management practices and the development of new nutrient management practices.
3. The center shall be administered by a director who shall be appointed by the dean of the college of agriculture and life sciences of Iowa state university of science and technology.
4. The center shall facilitate collaboration among appropriate institutions of higher education governed by the state board of regents, including but not limited to institutes, departments, and centers.
5. Any information collected or received by the center that identifies a person holding a legal interest in agricultural land or specific agricultural land shall be a confidential record under section 22.7.

[2013 Acts, ch 132, §62](#)

**466B.48 Iowa nutrient research center advisory council — establishment and purpose.**

1. The state board of regents shall establish and maintain in Ames as part of Iowa state university of science and technology an Iowa nutrient research center advisory council.
2. The council shall consist of the following members:
  - a. The dean of the college of agriculture and life sciences of Iowa state university of science and technology, or the dean's designee.
  - b. The director of the Iowa state university of science and technology extension service, or the director's designee.
  - c. A representative of the IIHR — hydrosience and engineering within the college of engineering of the university of Iowa who shall be appointed by the president of the university.
  - d. A person knowledgeable in an area related to nutrient research who shall be appointed by the president of the university of northern Iowa.
  - e. A person knowledgeable in an area related to nutrient research who shall be appointed by the state association of private colleges and universities.
  - f. The secretary of agriculture or the secretary's designee.
  - g. The director of the division or the director's designee.
  - h. The director of the department of natural resources, or the director's designee.
3.
  - a. An appointed or designated member of the council shall serve at the pleasure of the person making the appointment or designation.
  - b. A majority of the members of the council as provided in subsection 2 constitutes a quorum. Any action taken by the council must be adopted by the affirmative vote of a majority of its members present, except that a lesser number may adjourn a meeting. The majority shall not include any member who has a conflict of interest and a statement by a member of a conflict of interest shall be conclusive for this purpose.
  - c. The council shall elect a chairperson and any other officers from the membership of the council as the council determines necessary. An officer shall serve for a term required by rules adopted by the council. A vacancy in the membership does not impair the right of a quorum to exercise all rights and perform all duties of the council.
  - d. The council shall adopt rules that it determines are necessary for the conduct of business.
  - e. Only the member appointed by the state association of private colleges and universities is eligible for reimbursement of actual expenses as provided in section 7E.6. However, no member is eligible for a payment of a per diem.
4. The council shall function on a continuing basis for the study and recommendation of solutions for consideration by the Iowa

nutrient research center in carrying out its purpose as provided in section 466B.47.

[2013 Acts, ch 132, §63](#)

; [2015 Acts, ch 103, §54](#)

**466B.49 Confidentiality.**

Any information received, collected, or held under this subchapter is a confidential record, and is exempted from public access as provided in section 22.7, if all of the following apply:

1. The information is received, collected, or held by a nonprofit organization that conducts nutrient management research, including but not limited to conducting evaluations, assessments, or validations.
2. The information identifies any of the following:
  - a. A person who holds a legal interest in agricultural land or who has previously held a legal interest in agricultural land.
  - b. A person who is involved or who has previously been involved in managing the agricultural land or producing crops or livestock on the agricultural land.
  - c. The identifiable location of the agricultural land.

[2014 Acts, ch 1139, §28, 29](#)

## CHAPTER 481A

### WILDLIFE CONSERVATION

This chapter not enacted as a part of this title;  
transferred from chapter 109 in Code 1993

#### GENERAL PROVISIONS

##### **481A.1 Definitions.**

Words and phrases as used in this chapter and chapters 350, 456A, 456B, 457A, 461A through 461C, 462A, 462B, 463B, 464A, 465A through 465C, 481B, 482, 483A, 484A, and 484B and such other chapters as relate to the subject matter of these chapters shall be construed as follows:

1. “*Alien*” shall not be construed to mean any person who has applied for naturalization papers.
2. “*Amphibian*” means a member of the class Amphibia.
3. “*Aquaculture*” means the controlled propagation, growth, and harvest of aquatic organisms, including, but not limited to fish, amphibians, reptiles, mollusks, crustaceans, gastropods, algae, and other aquatic plants, by an aquaculturist.
4. “*Aquaculture unit*” means all private waters for aquaculture with or without buildings, used for the purpose of propagating, raising, holding, or harvesting aquatic organisms for commercial purposes.
5. “*Aquaculturist*” means an individual involved in producing, transporting, or marketing aquatic products from private waters for commercial purposes.
6. “*Bag limit*” or “*possession limit*” is the number of any kind of game, fish, bird or animal or other wildlife form permitted to be taken or held in a specified time.
7. “*Bait*” includes but is not limited to minnows, green sunfish, orange-spotted sunfish, gizzard shad, frogs, crayfish, and salamanders.
8. “*Biological balance*” means that condition when the number of animals present over the long term is at or near the number of animals of a particular species that the available habitat is capable of supporting.
9. “*Bird*” means a member of the class Aves.
10. “*Buy*” means to purchase, offer to purchase, barter for, trade for, or lease.
11. “*Closed season*” is that period of time during which hunting, fishing, trapping or taking is prohibited.
12. “*Commercial purposes*” means selling, giving, or furnishing to others.
13. “*Commission*” means the natural resource commission.
14. “*Contraband*” as used in the laws pertaining to the work of the commission shall mean anything, the possession of which was illegally procured, or the possession of which is unlawful.
15. “*Department*” means the department of natural resources.
16. “*Director*” means the director of the department or the director’s designee.
17. “*Farm deer*” means the same as defined in section 170.1.
18. “*Fish*” means a member of the class Pisces.
19. “*Frog*” means a member of the order Anura.
20. “*Fur-bearing animals*” means the following which are declared to be fur-bearing animals for the purpose of regulation and protection under the Code: beaver, badger, mink, otter, muskrat, raccoon, skunk, opossum, spotted skunk or civet cat, weasel, coyote, bobcat, wolf, groundhog, red fox, and gray fox. This chapter does not apply to domesticated fur-bearing animals.
21. “*Game*” means all of the animals specified in this subsection except those designated as not protected, and includes the heads, skins, and any other parts, and the nests and eggs of birds and their plumage.
  - a. The Anatidae: such as swans, geese, brant, and ducks.
  - b. The Rallidae: such as rails, coots, mudhens, and gallinules.
  - c. The Limicolae: such as shorebirds, plovers, surfbirds, snipe, woodcock, sandpipers, tattlers, godwits, and curlews.
  - d. The Gallinae: such as wild turkeys, grouse, pheasants, partridges, and quail.
  - e. The Columbidae: such as mourning doves and wild rock doves only.
  - f. The Sciuridae: such as gray squirrels and fox squirrels.
  - g. The Leporidae: cottontail rabbits and jackrabbits only.
  - h. The Cervidae: such as elk or deer, other than farm deer.

22. “*Measurement of fish*” is the length from end of nose to longest tip of tail.
23. “*Minnows*” means chubs, suckers, shiners, dace, stonerollers, mud minnows, redhorse, blunt-nose, and fathead minnows.
24. “*Mussels*” means the pearly fresh water mussels, clams or naiads, and their shells.
25. “*Open season*” is that period of time during which hunting, fishing, trapping or taking is permitted.
26. “*Person*” shall mean any person, firm, partnership or corporation.
27. “*Possession*” is both active and constructive possession and any control of things referred to.
28. “*Private waters for aquaculture*” means waters confined within an artificial containment, such as man-made ponds, vats, tanks, raceways, and other indoor or outdoor facilities constructed wholly within or on the land of an owner or lessee and used for aquaculture.
29. “*Reptile*” means a member of the class Reptilia.
30. “*Sell*” or “*sale*” is selling, bartering, exchanging, offering or exposing for sale.
31. “*Spawn*” means any of the eggs of any fish, amphibian, or mussel.
32. “*Take*” or “*taking*” or “*attempting to take*” or “*hunt*” is any pursuing, or any hunting, fishing, killing, trapping, snaring, netting, searching for or shooting at, stalking or lying in wait for any game, animal, bird, or fish protected by the state laws or rules adopted by the commission whether or not such animal be then subsequently captured, killed, or injured.
33. “*Transport*” or “*transportation*” is all carrying or moving or causing to be carried or moved.
34. “*Turtle*” means any member of the order Testudines.
35. “*Whitetail*” means an animal belonging to the Cervidae family and classified as part of the Virginianus species of the Odocoileus genus, commonly referred to as whitetail.
36. “*Wild animal*” means a wild mammal, bird, fish, amphibian, reptile, or other wildlife found in this state, whether game or nongame, migratory or nonmigratory, the ownership and title to which is claimed by this state.
37. “*Wild mammal*” means a member of the class Mammalia.

[C39, §1703.60; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.1]

[83 Acts, ch 168, §5](#)

; [86 Acts, ch 1245, §1850 – 1852](#)

; [88 Acts, ch 1216, §1, 2](#)

; [92 Acts, ch 1160, §17](#)

; [92 Acts, ch 1186, §1](#)

; [92 Acts, ch 1216, §1](#)

[93 Acts, ch 99, §1](#)

; [95 Acts, ch 134, §5](#)

; [2003 Acts, ch 149, §14 – 16, 23](#)

; [2012 Acts, ch 1118, §4](#)

; [2014 Acts, ch 1026, §110](#)

#### **481A.2 State ownership and title — exceptions.**

The title and ownership of all fish, mussels, clams, and frogs in any of the public waters of the state, and in all ponds, sloughs, bayous, or other land and waters adjacent to any public waters stocked with fish by overflow of public waters, and of all wild game, animals, and birds, including their nests and eggs, and all other wildlife, found in the state, whether game or nongame, native or migratory, except deer in parks and in public and private preserves, the ownership of which was acquired prior to April 19, 1911, are hereby declared to be in the state, except as otherwise provided in this chapter. The title and ownership of all aquatic organisms in aquaculture units and private aquacultural waters shall be in private persons.

[S13, §2562-c, 2563-j; SS15, §2562-b; C24, 27, 31, 35, 39, §1704; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.2]

[90 Acts, ch 1044, §1](#)

;

[92 Acts, ch 1216, §2](#)

C93, §481A.2

#### **481A.3 Conclusive presumption.**

Any person catching, taking, killing, or having in possession any of such fish, mussels, clams, frogs, game, animals, or birds, their nests or eggs, or other wildlife in violation of the provisions of this chapter, shall be held to consent that the title to the same shall be and remain in the state for the purpose of regulating and controlling the catching, taking, or having in possession the same, and disposing thereof after such catching, taking, or killing.

[S13, §2562-c; SS15, §2562-b; C24, 27, 31, 35, 39, §1705; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.3]

C93, §481A.3

#### **481A.4 Fish hatcheries — game farms.**

The commission may establish and control the state hatcheries and game farms, which shall be used for the purpose of stocking



the waters of the state with fish and the natural covers with game birds to the extent of the means provided for that purpose; and impartially and equitably distribute all birds, eggs, and fry raised by or furnished to the state, or for it through other sources, in the streams, lakes, and natural covers of the state.

[C97, §2539; SS15, §2539; C24, 27, 31, 35, 39, §1709; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.4]  
C93, §481A.4

#### **481A.5 State game refuges.**

1. The commission may establish state game refuges or sanctuaries on any land owned by the state of Iowa suitable for this purpose when necessary for the preservation of biological balance pursuant to the provisions of section 481A.39, for the protection of public parks, for the protection of the public health, safety and welfare, or to effect sound wildlife management.

2. In emergency situations when the maintenance of the biological balance as provided in section 481A.39 is threatened, the director may establish temporary state game refuges in conformity with sound wildlife management. The establishment of a temporary refuge shall be accomplished by posting notices in conspicuous places around the refuge. The establishment of a temporary refuge by the director shall be effective until five days after the next meeting of the commission or for such longer time as the commission may determine is necessary to maintain a biological balance as provided in section 481A.39 and to effect sound wildlife management.

[C27, 31, 35, §1709-a1; C39, §1709.1; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.5]  
C93, §481A.5

#### **481A.6 Game management area.**

The commission may establish a game management area upon any public lands or waters, or with the consent of the owner upon any private lands or waters, when necessary to maintain a biological balance as provided in section 481A.39 or to provide for public hunting, fishing, or trapping in conformity with sound wildlife management; and when a game management area is established, the commission shall with the consent of the owner, if any, have the right to post and prohibit, and to regulate or limit the lands or waters against trespassing, hunting, fishing, or trapping, and any violation of the regulations is unlawful.

[C35, §1709-e1; C39, §1709.2; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.6]  
[90 Acts, ch 1216, §6](#)  
C93, §481A.6

For applicable scheduled fines, see §805.8B, subsection 3, paragraph c

#### **481A.6A Pen-reared pheasants — release by landowners and tenants.**

1. As used in this section, “*pen-reared pheasant*” means a Chinese ring-necked pheasant (*Phasianus colchicus torquatus*) and its subspecies which originates from a captive population and which has been propagated and held by a hatchery. For the purposes of this section “*pen-reared pheasant*” does not include a Reeves (*Syrnaticus reevesii*) or Lady Amherst (*Chrysolophus amherstiae*) pheasant, a subspecies of the Chinese ring-necked pheasant classified as a Japanese (*Phasianus versicolor*) or a Black-necked (*P. colchicus colchicus*) pheasant, or a melanistic mutant (black, white, or other color mix) of the Chinese ring-necked pheasant. This subsection is not applicable to game birds released for officially sanctioned field meets or trials and retriever meets or trials on private land pursuant to section 481A.22, pen-raised game birds used on private land pursuant to section 481A.56, or game birds released on hunting preserves pursuant to chapter 484B.

2. Notwithstanding section 481A.60, an owner or tenant of land may obtain pen-reared pheasants from a hatchery approved by the department, and raise or release the pen-reared pheasants on the owner’s or tenant’s land. A person shall not relocate a pen-reared pheasant to any other land.

3. A person taking a pen-reared pheasant shall comply with all requirements provided in this chapter and chapter 483A.  
[2010 Acts, ch 1180, §1](#)  
; [2012 Acts, ch 1118, §5](#)  
; [2013 Acts, ch 90, §143](#)

#### **481A.6B Pheasant population studies — reports.**

1. The department, in cooperation with private and public partners, shall conduct a multiyear study to determine the effectiveness of stocking wild or first-generation pheasants in the state.

2. The department, in cooperation with private and public partners, shall stock wild or first-generation pheasants in an area with suitable pheasant habitat that has a very low or no wild pheasant population. The rate at which the pheasant population changes over time in the stocked area shall be compared to the rate of change in another area where no pheasants have been stocked. Both areas shall be located in the southern half of the state. The results of the study shall be published and made available to the public at the conclusion of the study.

3. The department shall collect a sufficient amount of new data as is necessary to confirm or revise population parameters used by the department to predict pheasant population change. A report discussing the data collected and the changes made to the department’s pheasant population prediction model, if any, shall be submitted to the general assembly and made available to the public by December 31, 2015.

4. The department, in cooperation with an institution under the control of the state board of regents, shall also conduct a study to determine the economic impact of pheasant hunting in Iowa. The study shall focus on the impact to rural areas of the state and to small communities. A report on the results of the study shall be submitted to the general assembly by December 31, 2014.

5. The duties imposed in this section are contingent on the receipt of outside funding by the department sufficient to cover the costs associated with the studies required.

6. This section is repealed June 30, 2018.

[2012 Acts, ch 1106, §1](#)

#### **481A.7 Hunting on game refuges.**

1. It shall be unlawful to hunt, pursue, kill, trap or take any wild animal, bird, or game on any state game refuge so established at any time of the year, and no one shall carry firearms thereon, providing, however, that predatory birds and animals may be killed or trapped under the authority and direction of the director.

2. The commission may specify the distance from a state game refuge where shooting is prohibited, and shall have notice of same posted at such distance in conspicuous places around the refuge, provided, however, this prohibition shall not apply to owners or tenants hunting on their own land outside of a state game refuge. The commission may prohibit shooting at any reasonable distance from a state game refuge deemed necessary to accomplish the purposes for which the refuge is established.

[C27, 31, 35, §1709-a2; C39, §**1709.3**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.7]

[86 Acts, ch 1245, §1855](#)

C93, §481A.7

For applicable scheduled fines, see §805.8B, subsection 3, paragraph d

#### **481A.8 Notice of establishment.**

When any such refuge or preserve is established by the commission, it shall post notices of such establishment in conspicuous places around the refuge.

[C27, 31, 35, §1709-a3; C39, §**1709.4**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.8]

C93, §481A.8

#### **481A.9 Spawning grounds.**

To effect sound wildlife management and maintain biological balance as provided in section 481A.39, the commission may set aside certain portions of any state waters for spawning grounds where the same are suitable for this purpose for such length of time as it may deem advisable by the posting of notices in conspicuous places around such area, and it shall be unlawful for any person to fish or to in any manner interfere with the spawning of fish in this area. Any person violating any of the provisions of this section shall be guilty of a simple misdemeanor.

[C31, 35, §1709-c1; C39, §**1709.5**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.9]

C93, §481A.9

#### **481A.10 Reports and accounting.**

At the time provided by law, the director shall make a report to the governor of the director's doings for the preceding biennial period, including therein an itemized statement of all receipts and disbursements; also all contracts for the taking of soft fish from the waters of this state, with the profits accruing from such contracts; also such other information upon the subject of the culture of fish and the protection of game as may be of value. All funds derived under said contracts shall be paid into the state fish and game protection fund.

[C97, §2539; SS15, §2539; C24, 27, 31, 35, 39, §**1710**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.10]

C93, §481A.10

#### **481A.10A Farmer advisory committee.**

1. The director shall establish a farmer advisory committee for the purpose of providing information to the department regarding crop and tree damage caused by deer, wild turkey, and other predators.

2. Members of the committee shall include a representative designated by each of the following organizations:

- a. The Iowa corn growers association.
- b. The Iowa farm bureau federation.
- c. The Iowa farmers union.
- d. The Iowa state horticulture society.
- e. The Iowa Christmas tree growers association.
- f. The Iowa nursery and landscape association.
- g. The department of agriculture and land stewardship.
- h. The Iowa state university agricultural extension service.

3. The committee shall meet with a representative of the department of natural resources on a semiannual basis. The committee

shall serve without compensation or reimbursement for expenses.

[87 Acts, ch 233, §224](#)

[2008 Acts, ch 1037, §1, 6](#)

; [2014 Acts, ch 1026, §111](#)

#### **481A.11 Confiscated or accidentally killed game.**

Except as provided in section 481A.13, any game or fish seized by the commission under section 481A.12 or any game accidentally killed by a motor vehicle on a public highway shall, when salvageable, be disposed of as determined by the commission or its designee.

[C77, 79, 81, §109.11]

C93, §481A.11

#### **481A.12 Seizure of wildlife taken or handled illegally.**

The director or any peace officer shall seize with or without warrant and take possession of, or direct the disposal of, any fish, furs, birds, or animals, or mussels, clams, or frogs, which have been caught, taken, or killed at a time, in a manner, or for a purpose, or had in possession or under control, or offered for shipment, or illegally transported in the state or to a point beyond its borders, contrary to the Code. All fish, furs, birds, or animals, or mussels, clams, or frogs seized under this section may be relinquished to a representative of the commission or disposed of.

[SS15, §2539; C24, 27, 31, 35, 39, §1714; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.12]

[88 Acts, ch 1216, §3](#)

C93, §481A.12

[94 Acts, ch 1148, §1](#)

#### **481A.13 Search warrants.**

Any court having jurisdiction of the offense, upon receiving proof of probable cause for believing that any fish, mussels, clams, frogs, birds, furs, or animals caught, taken, killed, had in possession, under control, or shipped, contrary to the Code, or hidden or concealed in any place, shall issue a search warrant and cause a search to be made in any place therefor. The property so seized under warrant shall be safely kept under the direction of the court so long as necessary for the purpose of being used as evidence in any trial, and if a trial results in a conviction the property seized shall be confiscated by the director or the director's officers.

[SS15, §2539; C24, 27, 31, 35, 39, §1716; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.13]

[88 Acts, ch 1216, §4](#)

C93, §481A.13

Search warrant proceedings, chapters 808 and 809

#### **481A.14 Dams — fishways.**

It shall be unlawful for any person, firm, or corporation to place, erect, or cause to be placed or erected, any dam or other device or contrivance in such manner as to hinder or obstruct the free passage of fish up, down, or through such waters, except as otherwise provided in this chapter. Dams for manufacturing or other lawful purposes may be erected across the waters of the state. No permanent dam or obstruction across such waters shall be erected or maintained which is not provided with a fishway, except by written approval of the director, nor shall any pumping station or plant except sand pumping and dredging machines, in or connected with such waters be constructed or operated except by written approval of the director, which is not provided with screens to prevent fish from entering the pumping station or plant. Such fishways and screens shall be constructed and used according to the plans and specifications prepared and furnished by the director. Any dam, obstruction, or pumping plant which is not so constructed is a public nuisance and may be abated accordingly.

[C97, §2540, 2547, 2548; S13, §2547; SS15, §2540, 2548; C24, 27, 31, 35, 39, §1741; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.14]

[86 Acts, ch 1245, §1855](#)

C93, §481A.14

Nuisances in general, chapter 657

#### **481A.15 Destruction or alteration of dam.**

It is unlawful for any owner or the owner's agent to remove or destroy any existing dam, or alter it in a way so as to lower the water level, without having received written approval from the environmental protection commission of the department.

[C24, 27, 31, 35, 39, §1742; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.15;

[82 Acts, ch 1199, §54, 96](#)

] [86 Acts, ch 1245, §1853](#)  
C93, §481A.15

**481A.16 Taking by director for stocking and exchange.**

The director may take from the public waters of the state, at any time and in any manner, any fish for the purpose of propagating or restocking other waters, or exchanging with fish and wildlife agencies of other states, the federal government, or private fish hatcheries.

[C97, §2546; S13, §2546; C24, 27, 31, 35, 39, §1744; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.16]  
[83 Acts, ch 110, §1](#)  
C93, §481A.16

**481A.17 Target shooting sports program.**

The department shall establish a target shooting sports program to promote recreational target shooting sports. The purposes of the program shall be to introduce more Iowans to target shooting sports, promote existing target shooting programs, provide more target shooting facilities, and improve existing target shooting facilities. The commission may adopt rules to achieve these purposes.

[2012 Acts, ch 1118, §6](#)

**481A.18 Hunting incidents — mandatory reporting.**

This section applies to a person who is involved in a hunting incident with a firearm or a fall from a device that allows or assists a person to hunt from an elevated location, if the hunting incident results in an injury to a person, or property damage exceeding one hundred dollars. The person shall report the hunting incident to the sheriff's office in the county where the hunting incident occurred or to the department within twelve hours after the hunting incident occurred. However, if an injury caused by the hunting incident prevents timely reporting, the person shall make the report as soon as practicable. A person who fails to report the hunting incident as required in this section is guilty of a simple misdemeanor.

[90 Acts, ch 1198, §1](#)  
C91, §109.18  
C93, §481A.18  
[2008 Acts, ch 1161, §15](#)

**481A.19 Reciprocity of states.**

1. a. Any person licensed by the authority of Illinois, Minnesota, Missouri, Wisconsin, Nebraska, or South Dakota to take fish, game, mussels, or fur-bearing animals from or in the waters forming the boundary between such state and Iowa, may take such fish, game, mussels, or fur-bearing animals from that portion of said waters lying within the territorial jurisdiction of this state, without having procured a license from the director of this state, in the same manner that persons holding Iowa licenses may do, if the laws of Illinois, Minnesota, Missouri, Wisconsin, Nebraska, or South Dakota, respectively, extend a similar privilege to persons so licensed under the laws of Iowa.

b. Any person licensed by the authority of Illinois, Minnesota, Missouri, Wisconsin, Nebraska, or South Dakota to take fish, game, mussels, or fur-bearing animals from or in lands under the jurisdiction of any of those states may take such fish, game, mussels, or fur-bearing animals from or in lands under the jurisdiction of the commission when such land is adjacent to that respective state but is separated from other land in Iowa by a body of water, without having procured a license from the director of this state, in the same manner that persons holding Iowa licenses may do, if the laws of Illinois, Minnesota, Missouri, Wisconsin, Nebraska, or South Dakota, respectively, extend a similar privilege to persons so licensed under the laws of Iowa.

2. Any privileges conferred by this section shall be subject to a reciprocal agreement as negotiated by the commission and the authority of a state provided in subsection 1 which confers upon a licensee of this state reciprocal rights, privileges, and immunities as provided in section 483A.31. Such agreements may include determination of which state's seasons and limits shall apply for specific geographical areas.

[C24, 27, 31, 35, 39, §1762; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.19]  
[86 Acts, ch 1245, §1855](#)

[2008 Acts, ch 1161, §16](#)  
; [2009 Acts, ch 144, §15, 16](#)  
; [2011 Acts, ch 34, §108](#)

**481A.20 Parrots and canaries.**

This chapter shall not be construed to forbid the selling or shipping of parrots, canaries, or any other cage birds which are imported from other countries or not native to any part of the United States.

[S13, §2563-r; C24, 27, 31, 35, 39, §1777; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.20]  
C93, §481A.20

#### **481A.21 Birds as targets.**

A person shall not keep or use any live pigeon or other bird as a target, to be shot at for amusement or as a test of skill in marksmanship, or shoot at a bird kept or used for such purpose, or be a party to such shooting, or lease any building, room, field, or premises, or knowingly permit the use thereof, for the purpose of such shooting. This section does not prevent any person from shooting at live pigeons, sparrows, and starlings when used in the training of hunting dogs. This section does not prevent any person from shooting at a game bird that is released a minimum of twenty-five yards from that person on a licensed hunting preserve. For the purposes of this section, “*game bird*” means the same as defined in section 484B.1.

[S13, §2563-i; C24, 27, 31, 35, 39, §1778; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.21]  
[88 Acts, ch 1216, §5](#)

[2009 Acts, ch 179, §213, 217](#)  
; [2010 Acts, ch 1154, §1](#)

For applicable scheduled fines, see §805.8B, subsection 3, paragraph c

#### **481A.22 Field and retriever meets — permits and tags required.**

1. *a.* All officially sanctioned field meets or trials and retriever meets or trials where the skill of dogs is demonstrated in pointing, retrieving, trailing, or chasing any game bird, game animal, or fur-bearing animal shall require a field trial permit. Except as otherwise provided by law, it shall be unlawful to kill any wildlife in such events. Notwithstanding the provisions of section 481A.21 it shall be lawful to hold field meets or trials and retriever meets or trials where dogs are permitted to work in exhibition or contest whereby the skill of dogs is demonstrated by retrieving dead or wounded game birds which have been propagated by licensed game breeders within the state or secured from lawful sources outside the state and lawfully brought into the state. All of the birds must be released on the day of trials on premises where the trials are held.

*b.* Any birds released may be shot by official guns after having secured a permit as provided in this section.

*c.* The permits may be issued by the director of the department upon proper application and the payment of a fee of two dollars for each trial held. A representative of the department shall attend all such trials and enforce the laws and regulations governing same.

2. The person or persons designated by the committee in charge to do the shooting for the trials shall be known as the official guns, and no other person shall be permitted to kill or attempt to kill any of the birds released for such trials.

3. Before any birds are released under this section, they must each have attached a tag provided by the department and attached by a representative of the department at a cost of not more than ten cents for each tag. All tags are to remain attached to birds until prepared for consumption.

4. It is unlawful for any person to hold, conduct, or to participate in a field or retriever trial before the permit required by this section has been secured or for any person to possess or remove from the trial grounds any birds which have not been tagged as required in this section.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.22]  
[86 Acts, ch 1244, §24](#)  
; [90 Acts, ch 1216, §7](#)

[2015 Acts, ch 30, §157](#)  
; [2016 Acts, ch 1011, §88](#)

For applicable scheduled fines, see §805.8B, subsection 3, paragraph c  
Subsection 4 amended

#### **481A.23 Transportation for sale prohibited.**

It shall be unlawful for any person, firm, or corporation, except as otherwise provided, to offer for transportation or to transport by common carrier or vehicle of any kind, to any place within or without the state, for the purposes of sale, any of the fish, game, animals, or birds taken, caught, or killed within the state, or to peddle any of such fish, game, animals, or birds.

[C97, §2555; SS15, §2540, 2555; C24, 27, 31, 35, 39, §1780; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.23]  
C93, §481A.23

Analogous provision, §481A.38

#### **481A.24 Use of mobile radio transmitter prohibited — exceptions.**

1. For the purposes of this section:

*a.* “*One-way mobile radio transmitter*” means a radio capable of transmitting a signal only but not capable of transmitting a voice signal. The signal may be tracked or located by radio telemetry or located by an audible sound.

*b.* “*Two-way mobile radio transmitter*” means a radio capable of transmitting and receiving voice messages including, but not



limited to, a citizen band radio or a cellular telephone.

2. Except as otherwise provided in this section, a person who is hunting shall not use a one-way or two-way mobile radio transmitter to communicate the location or direction of game or fur-bearing animals or to coordinate the movement of other hunters. This subsection does not apply to the hunting of coyotes except during the shotgun deer season as set by the commission under section 481A.38.

3. A licensed falconer may use a one-way mobile radio transmitter to recover a free-flying bird of prey properly banded and covered on the falconry permit.

4. A person hunting with the aid of a dog may use at any time a one-way mobile transmitter designed to track or aid in the recovery of the dog.

[C79, 81, §109.24]

[88 Acts, ch 1216, §6](#)

C93, §481A.24

[93 Acts, ch 119, §1](#)

;

[94 Acts, ch 1147, §1](#)

For applicable scheduled fines, see §805.8B, subsection 3, paragraph d

**481A.25** Reserved.

**481A.26 Unlawful transportation.**

No person, except as otherwise provided, shall ship, carry or transport in any one day, game, fish, birds, or animals, except fur-bearing animals in excess of the number legally permitted to be in possession of such a person.

[C97, §2555; SS15, §2555; C24, 27, 31, §1783; C35, §1782-e1; C39, §**1782.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.26]

C93, §481A.26

For applicable scheduled fine, see §805.8B, subsection 3, paragraph c

**481A.27 through 481A.29**Reserved.

**481A.30 Entire shipment contraband.**

In the shipping of fish, game, animals, birds, or furs, whenever a container includes one or more fish, game, animals, birds or furs that are contraband, the entire contents of the container shall be deemed contraband, and shall be seized by the director or the director's officers.

[C24, 27, 31, 35, 39, §**1787**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.30]

C93, §481A.30

**481A.31 Game brought into the state.**

It shall be lawful for any person, firm, or corporation to have in possession any fish or game lawfully taken outside the state and lawfully brought into the state, but the burden of proof shall be upon the person in such possession to show that such fish or game was lawfully killed and lawfully brought into the state.

[SS15, §2555; C24, 27, 31, 35, 39, §**1788**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.31]

C93, §481A.31

**481A.32 Violations — penalties.**

Whoever shall take, catch, kill, injure, destroy, have in possession, buy, sell, ship, or transport any frogs, fish, mussels, birds, their nests, eggs, or plumage, fowls, game, or animals or their fur or raw pelt in violation of the provisions of this chapter or of administrative rules of the commission or whoever shall use any device, equipment, seine, trap, net, tackle, firearm, drug, poison, explosive, or other substance or means, the use of which is prohibited by this chapter, or use the same at a time, place, or in a manner or for a purpose prohibited, or do any other act in violation of the provisions of this chapter or of administrative rules of the commission for which no other punishment is provided, is guilty of a simple misdemeanor and shall be assessed a minimum fine of twenty dollars for each offense.

Each fish, fowl, bird, bird's nest, egg, or plumage, and animal unlawfully caught, taken, killed, injured, destroyed, possessed, bought, sold, or shipped shall be a separate offense.

A person convicted of taking a deer, antelope, moose, buffalo, or elk with a prohibited weapon as defined by rules of the department, is subject to a fine of one hundred dollars for each offense committed while taking the animal with the prohibited weapon.

[R60, §4381 – 4383; C73, §4048, 4053, 4063; C97, §2543, 2544, 2551, 2552, 2556, 2558, 2561; S13, §2547-e, 2551-b, 2561,

2563-a8, -i, -o, -s, -v; SS15, §2540-a, 2544, 2551, 2552, 2556; C24, 27, 31, 35, 39, §1789; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.32]

[88 Acts, ch 1216, §7, 8](#)

C93, §481A.32

[2002 Acts, ch 1147, §1](#)

See also §481A.38 and applicable scheduled fine under §805.8B, subsection 3, paragraphs f and g

#### **481A.33 Violations relating to dams.**

Whoever shall erect any dam or other obstruction prohibited by this chapter or at a place or in a manner prohibited shall be guilty of a simple misdemeanor, or shall injure or destroy any dam lawfully erected, shall be guilty of an aggravated misdemeanor.

[C97, §2548, 2550; SS15, §2548; C24, 27, 31, 35, 39, §1790; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.33]

C93, §481A.33

#### **481A.34 Violations by common carrier.**

A common carrier which violates any of the provisions of this chapter relating to receiving, having in possession, shipping, or delivering any fish, fowl, birds, birds' nests, eggs, or plumage, fur, raw pelts, game, or animals, in violation of the provisions of the Code or contrary to the regulations and restrictions provided in this chapter, and any agent, employee, or servant of a common carrier violating such provisions, is guilty of a simple misdemeanor.

[C73, §4049; C97, §2557; C24, 27, 31, 35, 39, §1791; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.34]

[88 Acts, ch 1216, §9](#)

C93, §481A.34

#### **481A.35 Attorney general and county attorneys.**

It shall be the duty of the attorney general, when requested by the director, to give the attorney general's opinion in writing upon any question of law arising under this chapter; and it shall be the duty of all county attorneys in this state when requested by the director or any officer appointed by the commission, to prosecute all criminal actions brought in their respective counties for violations of the provisions of this chapter. Nothing in this chapter shall be construed as prohibiting any person from instituting legal proceedings for the enforcement of any of the provisions thereof.

[R60, §4385; C73, §4051; C97, §2559; SS15, §2559; C24, 27, 31, 35, 39, §1792; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.35]

C93, §481A.35

#### **481A.36 Information — venue.**

In all prosecutions under this chapter, any number of violations may be charged in one information, but each charge shall be set out in a separate count if more than one charge is included in one information.

Prosecutions for violations may be brought in the county in which any fish, fowl, bird, bird's nest, eggs, or plumage, or animals protected by this chapter were unlawfully caught, taken, killed, trapped, ensnared, bought, sold, or shipped unlawfully, or in any county into or through which they were received, transported, or found in possession of any person.

[R60, §4385; C73, §4051; C97, §2559; SS15, §2559; C24, 27, 31, 35, 39, §1793; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.36]

C93, §481A.36

#### **481A.37 Presumptive evidence.**

It shall be presumptive evidence of a violation of the provisions of this chapter for any person to:

1. Have in possession any fish, game, furs, birds, birds' nests, eggs or plumage, or animals, which have been unlawfully caught, taken, or killed.
2. Be in possession of such fish, game, furs, birds, or animals at a time when or place where it shall be unlawful to take, catch, or kill the same, except game, birds or animals, during the first ten days of the closed season.
3. Have in possession any implements, devices, equipment, or means whatever of taking fish, birds, or animals protected by the Code at any place where the possession or use thereof is prohibited.

[C97, §2554; S13, §2563-a10; SS15, §2554, 2555; C24, 27, 31, 35, 39, §1794; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.37]

[88 Acts, ch 1216, §10, 11](#)

C93, §481A.37

PROPAGATION AND PROTECTION OF FISH,  
GAME, WILD BIRDS, AND ANIMALS

**481A.38 Prohibited acts — restrictions on the taking of wildlife — special licenses.**

It is unlawful for a person to take, pursue, kill, trap or ensnare, buy, sell, possess, transport, or attempt to so take, pursue, kill, trap or ensnare, buy, sell, possess, or transport any game, protected nongame animals, fur-bearing animals or fur or skin of such animals, mussels, frogs, spawn or fish or any part thereof, except upon the terms, conditions, limitations, and restrictions set forth herein, and administrative rules necessary to carry out the purposes set out in section 481A.39, or as provided by the Code.

1. *a.* The commission may upon its own motion and after an investigation, alter, limit, or restrict the methods or means employed and the instruments or equipment used in taking wild mammals, birds subject to section 481A.48, fish, reptiles, and amphibians, if the investigation reveals that the action would be desirable or beneficial in promoting the interests of conservation, or the commission may, after an investigation when it is found there is imminent danger of loss of fish through natural causes, authorize the taking of fish by means found advisable to salvage imperiled fish populations.

*b.* The commission shall adopt a rule permitting a crossbow to be used only by individuals with disabilities who are physically incapable of using a bow and arrow under the conditions in which a bow and arrow is permitted. The commission shall prepare an application to be used by an individual requesting the status. The application shall require the individual's physician to sign a statement declaring that the individual is not physically able to use a bow and arrow.

2. If the commission finds that the number of hunters licensed or the type of license issued to take deer or wild turkey should be limited or further regulated, the commission shall adopt procedures, by rule, for issuing the licenses. This subsection does not apply to the hunting of wild turkey on a hunting preserve licensed under chapter 484B.

3. The department and the commission shall exercise regulatory authority regarding seasons, bag limits, possession limits, locality, the method of taking, or the taking of fish and wildlife within the boundaries of the Sac and Fox tribe settlement in Tama county only to the extent provided in a written agreement between the tribal council of the Sac and Fox tribe of the Mississippi in Iowa and the department. The written agreement shall not be construed to supersede or impair the regulatory authority exercised by the commission pursuant to the federal Migratory Bird Treaty Act, the federal Migratory Bird Stamp Hunting Act, the federal Endangered Species Act, or other federal law, and shall not be construed to supersede or impair the regulatory authority exercised by the Sac and Fox tribe of the Mississippi in Iowa pursuant to any federal act, statute, or law. The department and the commission shall not unreasonably fail to enter into an agreement and shall pursue such an agreement in an expedient manner. This subsection shall become effective upon signing of the written agreement by the director of the department and the chairperson of the Sac and Fox tribe of the Mississippi in Iowa.

[R60, §4381; C73, §4048; C97, §2551, 2555; S13, §2562-c, 2563-j, -k, -m, -n; SS15, §2540, 2551, 2555, 2562-b, -c, 2563-a1, -a2, -u; C24, 27, 31, §1718, 1719, 1755, 1767, 1774; C35, §1718-c1; C39, §**1794.001**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.38;

[82 Acts, ch 1037, §1](#)

]

[84 Acts, ch 1213, §1](#)

; [84 Acts, ch 1260, §1](#)

; [88 Acts, ch 1216, §12](#)

; [89 Acts, ch 87, §1](#)

; [90 Acts, ch 1109, §1](#)

; [92 Acts, ch 1160, §18](#)

[96 Acts, ch 1129, §97](#)

; [99 Acts, ch 39, §1](#)

; [2001 Acts, ch 134, §1, 2](#)

; [2007 Acts, ch 189, §1, 2](#)

; [2011 Acts, ch 25, §143](#)

For applicable scheduled fines, see §805.8B, subsection 3, paragraphs f and g

**481A.39 Biological balance maintained.**

The commission is designated the sole agency to determine the facts as to whether biological balance does or does not exist. The commission shall, by administrative rule, extend, shorten, open, or close seasons and set, increase, or reduce catch limits, bag limits, size limits, possession limits, or territorial limitations or further regulate taking conditions in accordance with sound fish and wildlife management principles.

[C39, §**1794.002**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.39]

[88 Acts, ch 1216, §13](#)

C93, §481A.39

**481A.40 Use of drugs on wildlife — penalty.**

1. For the purposes of this section, “*drug*” means any chemical substance, other than food, that affects the structure or biological function of any wildlife under the jurisdiction of the department of natural resources.

2. Except with written authorization from the director or the director’s designee or as otherwise provided by law, a person shall not administer any drug to any wildlife under the jurisdiction of the department of natural resources, including but not limited to drugs used for fertility control, disease prevention or treatment, immobilization, or growth stimulation.

3. This section does not prohibit the treatment of sick or injured wildlife by a licensed veterinarian or holder of a wildlife rehabilitation permit.

4. This section shall not be construed to limit employees of agencies of the state, the United States, or local animal control officers, licensed animal shelters, or licensed pounds in the performance of their official duties related to public health, wildlife management, or wildlife removal. However, a drug shall not be administered by any person for fertility control or growth stimulation except as provided in subsection 2.

5. An officer of the department may take possession of or dispose of any wildlife under the jurisdiction of the department of natural resources that the officer reasonably believes has been administered drugs in violation of this section.

6. A person who violates this section is guilty of a serious misdemeanor.

[2007 Acts, ch 56, §1](#)

**481A.41** Reserved.

**481A.42 Nongame protected — exclusion.**

Protected nongame species include wild fish, wild birds, wild bats, wild reptiles, and wild amphibians, an egg, a nest, a dead body or part of a dead body, and a product made from part of a body of a wild fish, wild bird, wild bat, wild reptile, or wild amphibian. However, nongame does not include game, fish that may be taken pursuant to regulations established under the Code or departmental rule, fur-bearing animals, turtles, or frogs, as defined in this chapter. The commission shall designate by rule those species of nongame which by their abundance or habits are declared a nuisance, and these species shall not be protected. Rules adopted shall include but are not limited to a provision that states that any bat, except for the Indiana bat, which is found within a building that is occupied by human beings is not a protected nongame species.

[S13, §2563-q; C24, 27, 31, §1776; C39, §**1794.005**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.42]

[83 Acts, ch 168, §6](#)

;

[92 Acts, ch 1107, §1](#)

C93, §481A.42

[93 Acts, ch 20, §1](#)

**481A.43 through 481A.46**Reserved.

**481A.47 Importing fish and game — permits.**

It shall be unlawful except as otherwise provided for any person, firm or corporation, to bring into the state of Iowa for the purpose of propagating or introducing, or to place or introduce into any of the inland or boundary waters of the state, any fish or spawn thereof that are not native to such waters, or introduce or stock any bird or animal unless application is first made in writing to the commission for a permit therefor and such permit granted. Such permit shall be granted only after the commission has made such investigation or inspection of the fish, birds or animals as it may deem necessary to determine whether or not such fish, birds or animals are free from disease and whether or not such introduction will be beneficial or detrimental to the native wildlife and the people of the state, and may or may not approve such planting, releasing or introduction according to its findings. Nothing in the above shall prohibit licensed game breeders from securing native or exotic birds or animals from outside the state and bringing them into the state and they shall not be required to have a permit as provided above when such birds or animals are not released to the wild but are held on the game breeder’s premises as breeding stock.

[C39, §**1794.010**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.47]

C93, §481A.47

For applicable scheduled fines, see §805.8B, subsection 3, paragraph d

**TERRITORIES, OPEN SEASONS, BAG AND**

**POSSESSION LIMITS FOR GAME**

**481A.48 Restrictions on game birds and animals.**

1. A person, except as otherwise provided by law, shall not willfully disturb, pursue, shoot, kill, take or attempt to take, or have in possession any of the following game birds or animals except within the open season established by the commission: gray or fox squirrel, bobwhite quail, cottontail or jackrabbit, duck, snipe, pheasant, goose, woodcock, partridge, mourning dove, coot,

rail, ruffed grouse, wild turkey, pigeon, or deer. The seasons, bag limits, possession limits, and locality shall be established by the department or commission under the authority of sections 456A.24, 481A.38, and 481A.39.

2. The commission may adopt rules for the taking and possession of migratory birds which are subject to the federal Migratory Bird Treaty Act and Migratory Bird Stamp Hunting Act during the time and in the manner permitted under those federal Acts. The commission shall not adopt a rule for the taking or possession of a migratory bird for which an open season is not authorized by another paragraph of this section.

3. The commission may by rule permit the taking and possession of designated raptors and crows during the time and in the manner permitted under the federal Migratory Bird Treaty Act.

4. The commission shall establish methods by which pigeons may be taken which may include but are not limited to the use of trapping, chemical repellants, or toxic perches.

5. The commission shall establish one or more pistol or revolver seasons for hunting deer as separate firearm seasons or to coincide with one or more other firearm deer hunting seasons. Any pistol or revolver firing a magnum three hundred fifty-seven thousandths of one inch caliber or larger, centerfire, straight wall ammunition propelling an expanding-type bullet is legal for hunting deer during the pistol or revolver seasons. The commission shall adopt rules to allow black powder pistols or revolvers for hunting deer. The rules shall not allow pistols or revolvers with shoulder stock or long-barrel modifications. The barrel length of a pistol or revolver used for deer hunting shall be at least four inches. The rules may limit types of ammunition. A person who is sixteen years of age or less shall not hunt deer with a pistol or revolver. A person possessing a prohibited pistol or revolver while hunting deer commits a scheduled violation under section 805.8B, subsection 3, paragraph "h", subparagraph (5).

[R60, §4381; C73, §4048; C97, §2551, 2552; S13, §2563-q; SS15, §2551, 2552, 2563-u; C24, §1767, 1768, 1776; C27, 31, §1767, 1767-a1, 1768, 1776; C39, §1794.011; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.48]

[86 Acts, ch 1133, §2, 3](#)

[97 Acts, ch 141, §1](#)

; [2001 Acts, ch 137, §5](#)

; [2011 Acts, ch 3, §1](#)

For applicable scheduled fines, see §805.8B, subsection 3, paragraph h

**481A.49** Reserved.

**481A.50 Selling birds.**

No part of the plumage, skin or body of any bird protected by this chapter shall be sold or had in possession for sale, irrespective of whether said bird was captured or killed within or without the state, except as otherwise provided.

[C39, §1794.013; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.50]

C93, §481A.50

For applicable scheduled fine, see §805.8B, subsection 3, paragraph c

**481A.51 Hunting license not trapping license.**

A hunting license shall not permit the holder to trap any fur-bearing animal as defined in this chapter.

[SS15, §2563-a1; C24, 27, §1718; C31, §1718-c1; C39, §1794.014; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.51]

C93, §481A.51

**481A.52 Exhibiting catch to officer.**

A person who has in possession any game bird or game animal, fish or fur or part thereof shall upon request of the director or any officer appointed by the department exhibit it to the director or officer, and a refusal to do so is a violation of the Code.

[C31, §1768-c1; C39, §1794.015; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.52]

[88 Acts, ch 1216, §14](#)

C93, §481A.52

For applicable scheduled fines, see §805.8B, subsection 3, paragraph d

**481A.53 Chasing from dens.**

It is unlawful to have in possession while hunting or to use while hunting any ferret or any device or any substance to be used for chasing animals from their dens.

[C31, §1767-c1; C39, §1794.016; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.53]

[88 Acts, ch 1216, §15](#)

C93, §481A.53

For applicable scheduled fine, see §805.8B, subsection 3, paragraph d



#### **481A.54 Shooting rifle, shotgun, pistol, or revolver over water, highway, or railroad right-of-way.**

1. A person shall not shoot any rifle on or over any of the public waters or public highways of the state or any railroad right-of-way.

2. A person shall not shoot a shotgun with a slug load, pistol, or revolver on or over a public roadway as defined in section 321.1, subsection 65.

3. This section does not apply to any peace officers or military personnel in the performance of their official duties.

[C31, §1772-c2; C39, §**1794.017**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.54]

[91 Acts, ch 234, §1](#)

C93, §481A.54

For applicable scheduled fines, see §805.8B, subsection 3, paragraph b

#### **481A.55 Selling game.**

1. Except as otherwise provided, a person shall not buy or sell, dead or alive, a bird or animal or any part of one which is protected by this chapter, but this section does not apply to fur-bearing animals, bones of wild turkeys that were legally taken, and the skins, plumage, and antlers of legally taken game. This section does not prohibit the purchase of jackrabbits from sources outside this state. A person shall not purchase, sell, barter, or offer to purchase, sell, or barter for millinery or ornamental use the feathers of migratory game birds; and a person shall not purchase, sell, barter, or offer to purchase, sell, or barter mounted specimens of migratory game birds.

2. Section 481A.50 and this section do not apply to a game species, fur-bearing animal species, or variety of fish protected under this chapter which is sold by a nonprofit corporation as a part of a meal. The number of game of a game species or fur-bearing animal species, or a variety of fish protected by this chapter which are donated by a person to a nonprofit corporation plus any additional game of the same species or same variety of fish in the person's possession must not exceed the person's legal possession limit.

[C97, §2554; SS15, §2554; C24, 27, 31, §1769; C39, §**1794.018**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.55]

[87 Acts, ch 176, §1](#)

;

[88 Acts, ch 1216, §16](#)

C93, §481A.55

[2007 Acts, ch 28, §13](#)

For applicable scheduled fines, see §805.8B, subsection 3, paragraph d

#### **481A.56 Training dogs.**

1. *a.* A person having a valid hunting license may train a bird dog on any game birds and a person having a valid fur harvester license may train a coonhound, foxhound, or trailing dog on any fur-bearing animals at any time of the year including during the closed season on such birds or animals. However, the animals when pursued to a tree or den shall not be further chased or removed in any manner from the tree or den. A person having a hunting license may train a dog on coyote or groundhog.

*b.* Only a pistol, revolver, or other gun shooting blank cartridges shall be used while training dogs during closed season except as provided in subsection 2 of this section.

2. Any pen-raised game bird may be used and may be shot in the training of bird dogs. Before any bird is released or used in the training of dogs, the bird shall have attached a band procured from the commission. The commission may charge a fee for such bands but the fee shall not exceed ten cents for each band.

3. A call back pen or live trap may be used for the purpose of retrieving banded birds when released in the wild for training purposes. Any bird not so banded when taken in a call back pen or trap shall be immediately returned unbanded to the wild. All call back pens or live traps when in use shall have attached a metal tag plainly labeled with the owner's name and address. Conservation officers shall have authority to confiscate such traps when found in use and not properly labeled.

4. The commission shall have the power to adopt rules prohibiting the training of any hunting dog on any game bird, game animal, or fur-bearing animal in the wild at any time when it has been determined that such training might have an adverse effect on the populations of these species.

[C39, §**1794.019**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.56]

[85 Acts, ch 10, §1](#)

; [86 Acts, ch 1245, §1854](#)

; [88 Acts, ch 1216, §17](#)

[2011 Acts, ch 25, §143](#)

For applicable scheduled fines, see §805.8B, subsection 3, paragraph c

#### **481A.57 Possession and storage.**

A person having lawful possession of game or fur-bearing animals or their pelts lawfully taken by that person with a valid hunting or trapping license, may hold, possess, or store the game or fur-bearing animals or their pelts in an amount that does not

exceed the possession limit for the game or fur-bearing animal, from the date of taking until the day before the first day of the next open season for that game or fur-bearing animal. Any person may possess up to twenty-five pounds of deer venison if the deer was obtained from a lawful source.

[C39, §1794.020; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.57]

[88 Acts, ch 1216, §18](#)

[2002 Acts, ch 1147, §2](#)

; [2016 Acts, ch 1021, §1](#)

For applicable scheduled fine, see §805.8B, subsection 3, paragraph e  
Section amended

#### **481A.58 Trapping birds or poisoning animals.**

No person except those acting under the authority of the director shall capture or take or attempt to capture or take, with any trap, snare or net, any game bird, nor shall any person use any poison or any medicated or poisoned food or any other substance for the killing, capturing or taking of any game bird or animal.

[R60, §4381; C73, §4048; C97, §2551; SS15, §2539, 2551; C24, 27, 31, §1773; C39, §1794.021; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.58]

[86 Acts, ch 1245, §1855](#)

C93, §481A.58

For applicable scheduled fines, see §805.8B, subsection 3, paragraph d

#### **481A.59 Pigeons — interference prohibited.**

It shall be unlawful for any person or persons, except the owner or the owner's representatives, to shoot, kill, maim, injure, steal, capture, detain, or to interfere with any homing pigeon, commonly called "carrier pigeon", which shall at the time, have the name, initials, or other identification of its owner, stamped, marked, or attached thereon; or to remove any mark, band, or other means of identification from such pigeon which has the name, initials, or emblem of the owner stamped or marked upon it.

Whoever shall violate the provisions of this section shall be punished as is provided in section 481A.32.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.59]

C93, §481A.59

### **GAME BREEDERS**

#### **481A.60 Raising game — rulemaking authority.**

A person shall not raise or sell game or fur-bearing animals of the kinds protected by this chapter, except rock doves and pigeons, without first procuring a game breeder's license as provided by law. The commission may adopt rules which ensure that all game birds, game animals, and fur-bearing animals handled and confined by licensed game breeders are provided with humane care and treatment. A violation of a rule adopted by the commission is a cause for license revocation. This section does not apply to governmental zoos and exhibits.

[C39, §1794.022; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.60]

[88 Acts, ch 1216, §19](#)

;

[91 Acts, ch 237, §1](#)

C93, §481A.60

For applicable scheduled fines, see §805.8B, subsection 3, paragraph c

#### **481A.61 Licensed game breeders — marketing game — penalty.**

1. Except as otherwise provided by law, a licensed game breeder whose original stock is obtained from a lawful source may possess any game bird, game animal, or fur-bearing animal, or any of their parts. Possession and use of the game birds, game animals, or fur-bearing animals obtained from a licensed game breeder are lawful.

2. Fur-bearing animals shall not be acquired for breeding or propagating purposes from any source unless they have been pen-raised for at least two successive generations.

3. A game breeder's license is not a license to possess, breed, propagate, sell, or dispose of any species which is defined as endangered or threatened under state law unless the species is listed on the license. Its possession, breeding, propagation, sale, and disposal are subject to all applicable state and federal statutes.

4. A licensed game breeder shall not acquire protected live game animals, game birds, their eggs, or fur-bearing animals taken from the wild within this state.

5. Game birds or game animals may be sold for food only under the following conditions:

a. The licensed game breeder shall file with the commission a facsimile of a stamp of similar type to that used by the United States department of agriculture in grading meat.

b. Licensed game breeders may sell dressed game birds or game animals to markets for resale providing each game bird or game animal has affixed upon it in a conspicuous and legible manner the imprint of the game breeder's stamp.

c. The stamp shall bear the name and number of the game breeder in letters of at least twelve point type size.

6. Markets selling stamped game shall:

a. Maintain the stamp on each game bird or game animal until the bird or animal is disposed of or sold.

b. Keep a record showing the total number of game birds or game animals sold together with the name and address of the game breeder from whom purchased and the number of game birds and animals in each purchase.

7. Markets selling stamped game, together with their records, are subject to inspection by an authorized representative of the commission at any reasonable time.

8. Violation of a provision of this section may be cause for license revocation.

[C39, §1794.023; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.61]

[86 Acts, ch 1245, §1854](#)

;

[88 Acts, ch 1216, §20](#)

C93, §481A.61

For applicable scheduled fines, see §805.8B, subsection 3, paragraph c

#### **481A.62 Records — reports — inspection.**

1. A holder of a game breeder's license shall keep the records and make the reports required by this section on forms provided by the department. The records shall be open for inspection at any reasonable time by the department or its authorized agents.

2. At the time of every sale or conveyance of an animal, animal parts, or products, the licensee shall complete a game breeder's sales receipt on forms provided by the department. The forms shall require the following information:

a. The name, address, county, and license number assigned to the breeder.

b. The name and address of the purchaser.

c. The number, species, sex, and age of the animals or birds conveyed.

3. a. Licensees shall maintain business records for all species in an annual report record book. The records shall include the following information:

(1) For each animal acquired other than by birth on the licensee's game farm, the sex and species, the date of acquisition, the number acquired, and the name and address of the source from which acquired.

(2) For each animal born on the licensee's game farm, the sex, species, date of birth, and number of any band, tag, or tattoo subsequently attached to the animal.

(3) For each animal sold or disposed of other than by death the same information required by the game breeder's sales receipt.

(4) For each animal which dies, disappears, or is destroyed on the licensee's game farm, the sex, species, date of death, and the number of any band, tag, or tattoo attached to the animal.

b. The licensee's copies of the required sales receipts shall be kept with the record book and are considered a part of it.

c. Records required by this section shall be entered in the annual report record book within forty-eight hours of the event.

4. Each licensee shall file an annual report with the commission on or before January 31. The report shall detail the game breeder's operations during the preceding license year. The original report shall be forwarded to the department and a copy shall be retained in the breeder's file for a period of three years from the date of expiration of the breeder's last license issued. Failure to keep or submit the required records and report are grounds for a refusal to renew a license for the succeeding year.

5. An on-site inspection of facilities shall be conducted by an officer of the commission prior to the initial issuance of a game breeder's license. The facilities may be reinspected by an officer of the commission at any reasonable time.

6. Any officer of the commission may enter any place where any game bird, game animal, or fur-bearing animal is at the time located, or where it has been kept, or where the carcass of such animal may be, for the purpose of examining it in any way that may be necessary to determine whether it was or is infected with any contagious or infectious disease.

7. For the purpose of this section, infectious and contagious disease includes rabies, hoof-and-mouth disease, leptospirosis, blackhead, or any other communicable disease so designated by the commission.

8. The commission may regulate or prohibit the importation into the state and exportation from the state of any species of game bird, game animal, or fur-bearing animal, domesticated or not, which in its opinion, for any reason, is determined to be detrimental to the health of animals within or without the state.

9. The commission may quarantine or destroy any game bird, game animal, or fur-bearing animal which is found to be infected with any contagious or infectious disease.

10. A licensed game breeder or other person having control of any game bird, game animal, or fur-bearing animal shall not knowingly offer for sale, sell, or barter such birds or animals which have an infectious or contagious disease, or allow those birds or animals to run at large or come in contact with any other game birds, game animals, or fur-bearing animals.

[C39, §1794.024; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.62]

[88 Acts, ch 1216, §21](#)

[2011 Acts, ch 25, §143](#)

**481A.63** Repealed by 93 Acts, ch 99, §6. See §481A.144.

**481A.64** Reserved.

## SCIENTIFIC COLLECTING

### **481A.65 Licenses.**

The director, after investigation, may issue to any person a scientific collector's license, a wildlife salvage permit, educational project permit, or a wildlife rehabilitation permit. A scientific collector's license will authorize the licensee to collect for scientific purposes only, any birds, nests, eggs, or wildlife. A wildlife salvage permit will authorize the permittee to salvage for educational purposes, any birds, nests, eggs, or animals according to the rules of the department. An educational project permit authorizes the permittee to collect, keep, or possess for educational purposes birds, fish, or wildlife which are not endangered, threatened, or otherwise specially managed according to the rules of the department. A wildlife rehabilitation permit will authorize the permittee to possess for rehabilitation purposes only, any orphaned or injured wildlife according to the rules of the department. A person to whom a license or permit is issued shall not dispose of any birds, nests, eggs, or wildlife or their parts except upon written permission of the director. The application for such licenses and permits shall be made upon blanks furnished by the department. The commission shall establish, by rule, the tenure and applicable fee for each permit authorized in this section. Each holder of a license or permit shall, by January 31 of each year, file with the department a report showing all specimens collected or possessed under authority of the license or permit. Upon a showing of cause the department may enter and inspect the premises and collections authorized by this section. A license or permit may be revoked by the director, after due notice, at any time for cause.

[S13, §2563-o, -p; C24, 27, 31, §1779; C39, §1794.027; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.65]

[88 Acts, ch 1216, §23](#)

C93, §481A.65

[95 Acts, ch 46, §1](#)

### **481A.66 Banding or marking.**

It shall be unlawful for any person to capture birds or animals for banding purposes except that the commission may, after investigation, issue a permit to any person permitting the person to capture birds or animals for the purpose of banding or marking same for scientific study, but no such birds or animals may be killed or injured or retained in possession, but must be liberated safely and promptly. Such permit may be revoked at any time for cause. Each holder of such permit shall report to the commission once each month the number, kind of birds or animals banded, and the band numbers.

[C39, §1794.028; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.66]

C93, §481A.66

## ANGLING LAWS

### **481A.67 Seasons and limits — turtle harvesting restrictions.**

1. It is unlawful for a person, except as otherwise expressly provided, to take, capture, or kill fish, frogs, or turtles except during the open season established by the commission. It is unlawful during open season to take in any one day an amount in excess of the daily catch limit designated for each variety or each locality, or have in possession any variety of fish, frog, or turtle in excess of the possession limit, or have in possession any frog, fish, or turtle at any time under the minimum length or weight. The open season, possession limit, daily catch limit, and the minimum length or weight for each variety of fish, frog, or turtle shall be established by rule of the department or commission under the authority of sections 456A.24, 481A.38, 481A.39, and 482.1.

2. Notwithstanding any provision of law to the contrary, the natural resource commission shall adopt rules pursuant to chapter 17A establishing seasons and daily catch limits for the noncommercial harvest of turtles in any waters of the state pursuant to section 483A.28. Seasons established pursuant to this subsection shall not apply to the noncommercial harvest of snapping turtles.

3. Notwithstanding any provision of law to the contrary, the natural resource commission shall adopt rules pursuant to chapter 17A establishing seasons and daily catch limits for the commercial harvest of turtles in any waters of the state.

4. Beginning no later than January 1, 2017, and ending no earlier than January 1, 2021, the commission shall conduct a review of the status of the turtle population in the state by region, in cooperation with appropriate organizations and in accordance with sound fish and wildlife management principles, and shall report its recommendations to the general assembly on whether restrictions on noncommercial and commercial turtle harvesting in the state should be revised no later than June 30, 2021. This subsection is repealed effective July 1, 2021.

[C97, §2540; SS15, §2540; C24, 27, 31, §1731, 1732, 1733; C39, §1794.029; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.67]

[86 Acts, ch 1245, §1854](#)  
; [88 Acts, ch 1216, §24](#)

[2016 Acts, ch 1024, §1, 2](#)

For applicable scheduled fines, see §805.8B, subsection 3, paragraph i  
Section amended

#### **481A.68 Tip-up fishing device.**

1. As used in this section, “*tip-up fishing device*” means an ice fishing mechanism with an attached flag or signal to indicate fishing action, used to hold a fishing rod or pole with line and hook.

2. A person shall not use more than three tip-up fishing devices for fishing in the waters of the Mississippi river, the Missouri river, and the Big Sioux river, and their connected backwaters. A person may use two or three hooks on the same line, but the total number of hooks used by each person shall not exceed three. Each tip-up fishing device used in fishing shall have attached a tag plainly labeled with the owner’s name and address. A person shall not use a tip-up fishing device for fishing within three hundred feet of a dam or spillway or in a part of the river which is closed or posted against use of the device. Three tip-up fishing devices may be used in addition to the two lines with no more than two hooks per line, as specified in section 481A.72.

3. An untagged tip-up fishing device found in use shall be confiscated by any officer appointed pursuant to section 456A.13 or 456A.14.

[88 Acts, ch 1041, §1](#)

C89, §109.68

C93, §481A.68

[2003 Acts, ch 31, §1](#)

#### **481A.69 Fish designated.**

The commission may adopt rules designating game fish, commercial fish, and rough fish.

[88 Acts, ch 1216, §25](#)

C89, §109.69

C93, §481A.69

For applicable scheduled fines, see §805.8B, subsection 3, paragraph b

#### **481A.70 Reserved.**

#### **481A.71 Releasing unlawful catch.**

Any fish caught that is less than lawful minimum length or weight shall be handled with wet hands and released under water immediately with as little injury as possible.

[C39, §**1794.033**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.71]

C93, §481A.71

For applicable scheduled fine, see §805.8B, subsection 3, paragraph b

#### **481A.72 Hooks and lines.**

1. Except as otherwise provided in this chapter, a person shall not at any time take from the waters of the state any fish except with hook, line, and bait. A person shall not use more than three lines nor more than two hooks on each line in still fishing or trolling. In fly fishing not more than two flies may be used on one line, and in trolling and bait casting not more than two trolling spoons or artificial bait may be used on one line.

2. A person shall not leave fish line or lines and hooks in the water unattended by being out of visual sight of the lines and hooks.

3. One hook means a single, double, or treble pointed hook, and all hooks attached as a part of an artificial bait or lure shall be counted as one hook.

[88 Acts, ch 1216, §26](#)

[2012 Acts, ch 1096, §2, 23](#)

; [2013 Acts, ch 90, §144](#)

For applicable scheduled fines, see §805.8B, subsection 3, paragraph b

#### **481A.73 Trotlines and tagged lines.**

In the waters of the state open to their use, a person shall not use more than five tagged lines set to take fish such as trotlines or



throw lines. Such tagged lines shall not have in the aggregate more than fifteen hooks. Each separate line when in use shall have attached a tag plainly labeled with the owner's name and address, shall be checked at least once each twenty-four hours, and a person shall not use tagged lines in a stocked lake or within three hundred feet of a dam or spillway or in a stream or portion of stream, which is closed or posted against the use of such tackle. One end of such lines shall be set from the shore and be visible above the shore waterline, but no such line shall be set entirely across a stream or body of water. Any untagged or unlawful lines when found in use shall be confiscated by any officer appointed by the director.

[C73, §4052; C97, §2540, 2542; SS15, §2540; C24, 27, 31, §1734; C39, §**1794.035, 1794.037**; C46, 50, 54, 58, 62, 66, 71, 73, §109.73, 109.75; C75, 77, 79, 81, §109.73]

[88 Acts, ch 1216, §27](#)

C93, §481A.73

For applicable scheduled fines, see §805.8B, subsection 3, paragraph j

#### **481A.74 Where permitted.**

Trotlines and throw lines may be used in the border rivers of the state and in the inland waters. However, the commission may by rule prohibit the use of trotlines or throw lines in certain inland waters.

[C73, §4052; C97, §2540, 2542; C24, 27, 31, §1734; C39, §**1794.036**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.74]

C93, §481A.74

#### **481A.75** Reserved.

#### **481A.76 Unlawful means — exception.**

It is unlawful, except as otherwise provided, to use on or in the waters of the state any grabhook, snaghook, any kind of a net, seine, trap, firearm, dynamite, or other explosives, or poisonous or stupefying substances, lime, ashes, electricity, or hand fishing in the taking or attempting to take any fish, except that gaffhooks or landing nets may be used to assist in landing fish. The commission may permit designated fish to be taken by hand fishing, by snagging, by spearing, by bow and arrow, and with artificial light at the times and at the places as determined by rules of the commission.

[C97, §2540; SS15, §2540; C24, 27, 31, §1735; C39, §**1794.038**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.76]

[88 Acts, ch 1216, §28](#)

C93, §481A.76

[2000 Acts, ch 1116, §1](#)

For applicable scheduled fine, see §805.8B, subsection 3, paragraph d

#### **481A.77** Reserved.

#### **481A.78 Stocking private water.**

No private water may be stocked by the commission unless the owner agrees that such waters shall be open to the public for fishing, except that the commission may, after investigation to determine their suitability as to size, depth, living conditions for fish, and management, provide a breeding stock of fish for privately owned farm ponds on request of the owner.

[C39, §**1794.040**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.78]

C93, §481A.78

#### **481A.79** Reserved.

**481A.80 through 481A.82** Repealed by 93 Acts, ch 99, §6. See §481A.1, 481A.144, and 481A.145.

#### **481A.83 Prohibited stocking.**

A person shall not stock or introduce into the waters of the state a live fish, except for hooked bait, without the permission of the director. This section does not apply to privately owned ponds and lakes.

[88 Acts, ch 1216, §30](#)

C89, §109.83

C93, §481A.83

For applicable scheduled fine, see §805.8B, subsection 3, paragraph c

#### **481A.84 Frogs — catching — selling.**

1. Frogs may be taken by holders of a fishing license only and they may be used for bait or food purposes, but no person shall

take more than four dozen frogs in any one day or have in possession at any one time more than eight dozen frogs. Licensed bait dealers authorized by law to sell bait may have in their possession to supply the bait needs of their customers, not more than twenty dozen frogs.

2. No person shall use any device, net, barrier or fence of any kind which prevents frogs from having free access to and egress from the water.

3. Transportation out of the state in any manner or for any purposes, of frogs taken in Iowa, is prohibited.

4. Nothing in this chapter shall be construed to prevent the purchase, sale or possession of frogs or any portion of the carcasses of frogs that have been legally taken and shipped in from without the state.

5. Nothing herein shall prevent any person from catching frogs on the person's own premises for the person's private use.

[C39, §1794.046; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.84]

C93, §481A.84

See §481A.67

For applicable scheduled fines, see §805.8B, subsection 3, paragraph c

#### **481A.85 Prohibited areas.**

It shall be unlawful for any person at any time, except as otherwise provided, to take any fish, minnows, frogs, or other aquatic, biological life from any state fish hatchery, nursery or other area under the jurisdiction of the commission operated for fish production purposes.

[C39, §1794.047; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.85]

C93, §481A.85

For applicable scheduled fine, see §805.8B, subsection 3, paragraph e

#### **481A.86 Federal employees excepted.**

Authorized employees of the United States bureau of sport fisheries and wildlife are hereby authorized to conduct fish culture operations, rescue work on the boundary waters of the state, and other operations necessary for rescue and hatchery work.

[C39, §1794.048; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.86]

C93, §481A.86

### **TRAPPING OR HUNTING OF**

### **FUR-BEARING ANIMALS**

#### **481A.87 Open seasons.**

Except as otherwise provided, a person shall not take, capture, kill, or have in possession a fur-bearing animal or any of its parts at any time except during the open season as set by the commission except where the killing, trapping, or ensnaring is for the protection of a person or public or private property with the prior permission of a duly appointed representative of the commission. If prior permission is impractical or impossible to obtain and the fur-bearing animal represents a threat to a person, domestic animal, or private property, the fur-bearing animal may be taken without prior permission. All fur-bearing animals and all parts thereof taken as provided in this section shall be disposed of on the site or shall be relinquished to a representative of the commission.

[C97, §2553; SS15, §2553; C24, §1766; C27, 31, §1766, 1766-a1; C39, §1794.049; C46, §109.87, 109.93; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.87]

[88 Acts, ch 1216, §31](#)

C93, §481A.87

[94 Acts, ch 1148, §2](#)

For applicable scheduled fines, see §805.8B, subsection 3, paragraph "I"

#### **481A.88 Reserved.**

#### **481A.89 Permit to hold hides.**

Upon application, which shall be filed with the commission within ten days after the close of the open season, any person may be permitted to hold hides or skins of fur-bearing animals lawfully taken for a longer time than specified above. Such application shall be verified and shall show the number and varieties of the skins or hides to be held by the applicant. The commission shall thereupon issue a permit to such applicant to hold such skins or hides, which permit shall authorize the holder to sell or otherwise dispose of such skins or hides.

[C31, §1766-c4; C39, §1794.051; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.89]

C93, §481A.89

#### **481A.90 Disturbing dens.**

1. A person shall not molest or disturb, in any manner, any den, lodge, or house of a fur-bearing animal or beaver dam except by written permission of an officer appointed by the director.

2. This section does not prohibit the owner from destroying a den to protect the owner's property.

[C39, §1794.052; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.90]

[88 Acts, ch 1216, §32](#)

;

[89 Acts, ch 83, §23](#)

C93, §481A.90

For applicable scheduled fine, see §805.8B, subsection 3, paragraph d

#### **481A.91 Shooting or spearing.**

A person shall not kill a beaver, mink, otter, or muskrat with a shotgun or spear. A person shall not possess a beaver, mink, otter, or muskrat or the carcasses, skins, or parts of any one of those animals that have been killed with a shotgun or spear.

[C31, §1767-c2; C39, §1794.053; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.91]

[2016 Acts, ch 1073, §137](#)

For applicable scheduled fine, see §805.8B, subsection 3, paragraph d  
Section amended

#### **481A.92 Traps — disturbing dens — tags for traps.**

1. A person shall not use or attempt to use colony traps in taking, capturing, trapping, or killing any game or fur-bearing animals except muskrats as determined by rule of the commission. Box traps capable of capturing more than one game or fur-bearing animal at each setting are prohibited. A valid hunting license is required for box trapping cottontail rabbits and squirrels. All traps and snares used for the taking of fur-bearing animals shall have a metal tag attached plainly labeled with the user's name and address. All traps and snares, except those which are placed entirely under water, shall be checked at least once every twenty-four hours. Officers appointed by the department may confiscate such traps and snares found in use that are not properly labeled or checked.

2. Except as otherwise provided, a person shall not use chemicals, explosives, smoking devices, mechanical ferrets, wire, tool, instrument, or water to remove fur-bearing animals from their dens. Humane traps, or traps designed to kill instantly, with a jaw spread, as originally manufactured, exceeding eight inches are unlawful to use except when placed entirely under water.

3. Conibear type traps and snares shall not be set on the right-of-way of a public road within two hundred yards of the entry to a private drive serving a residence without the permission of the occupant.

4. A snare when set shall not have a loop larger than eight inches in horizontal measurement except for a snare set with at least one-half of the loop under water. A snare set on private land other than roadsides within thirty yards of a pond, lake, creek, drainage ditch, stream, or river shall not have a loop larger than eleven inches in horizontal measurement.

5. All snares shall have a functional deer lock which will not allow the snare loop to close smaller than two and one-half inches in diameter.

[R60, §4381; C73, §4048; C97, §2551, 2558; SS15, §2539, 2551; C24, 27, 31, §1771, 1773; C39, §1794.054; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.92]

[88 Acts, ch 1216, §33](#)

C93, §481A.92

[99 Acts, ch 40, §1](#)

For applicable scheduled fines, see §805.8B, subsection 3, paragraph c

#### **481A.93 Hunting by artificial light.**

1. A person shall not throw or cast the rays of a spotlight, headlight, or other artificial light on a highway, or in a field, woodland, or forest for the purpose of spotting, locating, or taking or attempting to take or hunt a bird or animal, except raccoons or other fur-bearing animals when treed with the aid of dogs, while having in possession or control, either singly or as one of a group of persons, any firearm, bow, or other implement or device whereby a bird or animal could be killed or taken.

2. This section does not apply to any of the following:

a. Deer being taken by or under the control of a local governmental body within its corporate limits pursuant to an approved special deer population control plan.

b. A person who is totally blind using a laser sight on a bow or gun while hunting, if all of the following apply:

(1) The person's total blindness is supported by medical evidence produced by an eye care professional who is an ophthalmologist, optometrist, or medical doctor. The eye care professional must certify that the person has no vision or light perception in either eye. The certification must be carried on the person of the totally blind person and made available for inspection by the department.

(2) The totally blind person is accompanied and aided by a person who is at least eighteen years of age and whose vision is not

seriously impaired. The accompanying person must purchase a hunting license that includes the wildlife habitat fee as provided in section 483A.1 if applicable. If the accompanying person is not required to have a hunting license the person is not required to pay the wildlife habitat fee. During the hunt, the accompanying adult must be within arm's reach of the totally blind person, and must be able to identify the target and the location of the laser sight beam on the target. A person other than the totally blind person shall not shoot the laser sight-equipped gun or bow.

[C62, 66, 71, 73, 75, 77, 79, 81, §109.93]

[88 Acts, ch 1216, §34](#)

[98 Acts, ch 1203, §1](#)

; [2008 Acts, ch 1161, §20](#)

; [2012 Acts, ch 1096, §3, 23](#)

For applicable scheduled fine, see §805.8B, subsection 3, paragraph e

## FUR DEALERS

### **481A.94 Definition.**

The term “*fur dealer*” as used in this chapter shall mean any person, firm, partnership, or corporation engaged in the business of buying, bartering, trading or otherwise obtaining raw hides or skins of fur-bearing animals.

[C39, §1794.055; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.94]

C93, §481A.94

### **481A.95 License — reciprocity.**

1. A license shall be required of each fur dealer and each employee, agent, or representative of a fur dealer except when the employee, agent, or representative is operating solely on the premises of a licensed fur dealer. A fur dealer shall conduct business only at the location specified on the dealer's license, at an established fur auction, at the nonadvertised residence of a licensed fur harvester, or at the place of business specified on the license of any fur dealer. A nonresident licensed fur dealer may purchase location permits to operate at locations other than at the location specified on the fur dealer's license. A resident licensed fur dealer may obtain location permits without fee. Each location permit shall be valid only for the one location specified on the location permit and shall entitle the fur dealer and employee, agent, or representative of the licensed fur dealer to operate at that location. The commission shall, upon application and the payment of the required license fee, if any, furnish the proper license and location permits to the dealer.

2. A resident of another state shall pay the fee provided by statute for the nonresident fur dealer's license unless that state has a reciprocity agreement with this state. The reciprocity agreement must provide that each state will charge nonresidents from the other state the same fee for the nonresident fur dealer's license and the fee under the agreement must be less than the statutory fee of this state for nonresidents and higher than the statutory fee of this state for residents.

[C31, §1766-c3; C35, §1794-e1; C39, §1794.056; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.95]

[84 Acts, ch 1199, §1](#)

;

[89 Acts, ch 90, §1](#)

;

[91 Acts, ch 237, §2](#)

C93, §481A.95

For applicable scheduled fines, see §805.8B, subsection 3, paragraph e

### **481A.96 Possession by dealer.**

A licensed fur dealer may have in possession at any time skins or hides of animals which have been lawfully taken.

[C31, §1766-c4; C39, §1794.058; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.96]

C93, §481A.96

### **481A.97 Reports.**

Fur dealers shall keep accurate, current records of their transactions. The records shall show the number and kinds of hides and skins which have been purchased, the date of purchase, and the name and address of the seller. Such records shall be open at all reasonable times to inspection by the commission. On or before May 15 of each year, each fur dealer shall file a verified inventory with the commission. The inventory shall include all transactions for the preceding year.

[C31, §1766-c1; C39, §1794.059; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.97]

C93, §481A.97

For applicable scheduled fines, see §805.8B, subsection 3, paragraph d

**481A.98 Reporting violations.**

Each fur dealer shall report to the commission, the name of any person if known to the dealer, who attempts to sell any skins or hides which appear to have been unlawfully taken, or possessed by that person.

[C31, §1766-c2; C39, §1794.060; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.98]

[88 Acts, ch 1216, §35](#)

C93, §481A.98

**481A.99 through 481A.119**Reserved.

**PROHIBITED ACTS****481A.120 Hunting from aircraft or snowmobiles prohibited.**

A person, either singly or as one of a group of persons, shall not intentionally kill or wound, attempt to kill or wound, or pursue any animal, fowl, or fish from or with an aircraft in flight or from or with any self-propelled vehicles designed for travel on snow or ice which utilize sled type runners, or skis, or an endless belt tread, or wheel or any combination thereof and which are commonly known as snowmobiles.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.120]

[88 Acts, ch 1216, §36](#)

C93, §481A.120

For applicable scheduled fine, see §805.8B, subsection 3, paragraph e

**481A.121 Turtles and crayfish — taking by nonresidents or aliens.**

It shall be unlawful for any nonresident or alien to take turtles or crayfish in Iowa, by any means or method, except from the Missouri and Mississippi rivers and the Big Sioux river.

[C62, 66, 71, 73, 75, 77, 79, 81, §109.121]

C93, §481A.121

**481A.122 Hunters' orange apparel.**

1. A person shall not hunt deer with firearms unless the person is at the time wearing one or more of the following articles of visible, external apparel: A vest, coat, jacket, sweatshirt, sweater, shirt, or coveralls, the color and material of which shall be solid blaze orange.

2. A person shall not hunt upland game birds, as defined by the department, unless the person is at the time wearing one or more of the following articles of visible, external apparel: A hat, cap, vest, coat, jacket, sweatshirt, sweater, shirt, or coveralls, the color and material of which shall be at least fifty percent solid blaze orange.

3. This section is not applicable to a person who is legally hunting with a raptor.

[C71, 73, 75, 77, 79, 81, §109.122]

[88 Acts, ch 1216, §37](#)

C93, §481A.122

[2004 Acts, ch 1115, §1](#)

;

[2009 Acts, ch 144, §17](#)

For applicable scheduled fine, see §805.8B, subsection 3, paragraph d

**481A.123 Prohibited hunting near buildings, feedlots.**

1. A person shall not discharge a firearm or shoot or attempt to shoot a game or fur-bearing animal within two hundred yards of a building inhabited by people or domestic livestock or within two hundred yards of a feedlot unless the owner or tenant has given consent. However, within the corporate limits of a city, a person may take deer with a firearm within fifty yards of a building inhabited by people or domestic livestock, or a feedlot pursuant to an approved special deer population control plan, if the person obtains permission of the owner or tenant of the building or feedlot.

2. As used in this section, “*feedlot*” means a lot, yard, corral, or other area in which livestock are present and confined, for the purposes of feeding and growth before slaughter. The term does not include areas which are used for the raising of crops or other vegetation and upon which livestock are allowed to graze or feed.

3. *a.* This section does not apply to the discharge of a firearm for the purpose of target shooting on premises posted as a target shooting range that is open to the public, if the premises have been used as a target shooting range prior to the erection of a building inhabited by people or domestic livestock, or prior to the construction of a feedlot, located within two hundred yards of the target shooting range. This subsection applies only to the erection of a building inhabited by people or domestic livestock or to the construction of a feedlot located within two hundred yards of a target shooting range that is open to the public and that is



identified as a target shooting range by the city, county, state, or federal government, which erection or construction occurs on or after May 14, 2004.

*b.* As used in this subsection, “*target shooting*” means the discharge of a firearm at an inanimate object, for amusement or as a test of skill in marksmanship.

*4. a.* This section does not apply to the discharge of a firearm on premises identified as a public hunting area, if the premises have been identified as a public hunting area prior to the erection of a building inhabited by people or domestic livestock, or prior to the construction of a feedlot, located within two hundred yards of the public hunting area. This subsection applies only to the erection of a building inhabited by people or domestic livestock or to the construction of a feedlot located within two hundred yards of a public hunting area, which erection or construction occurs on or after May 14, 2004.

*b.* As used in this subsection, “*public hunting area*” means public lands or waters available for hunting by the public, and identified as a public hunting area by the city, county, state, or federal government.

*5. a.* This section does not apply to the discharge of a firearm on a farm unit by the owner or tenant of the farm unit or by a family member of the owner or tenant of the farm unit.

*b.* As used in this subsection, “*family member*”, “*farm unit*”, “*owner*”, and “*tenant*” mean the same as defined in section 483A.24, subsection 2.

*6.* This section does not apply to the discharge of a firearm for the purpose of developing and retaining the shooting proficiency of certified law enforcement officers on premises owned by the state, a county, or a municipality, and operated by a law enforcement agency, which are not open to the general public and which were in operation prior to March 28, 2013.

[C77, 79, 81, §109.123]

[88 Acts, ch 1216, §38](#)

; [90 Acts, ch 1194, §1](#)

; [92 Acts, ch 1149, §1](#)

[2000 Acts, ch 1116, §2](#)

; [2004 Acts, ch 1160, §1, 2](#)

; [2007 Acts, ch 28, §14](#)

; [2013 Acts, ch 9, §1, 2](#)

For applicable scheduled fine, see §805.8B, subsection 3, paragraph c

#### **481A.124 Taking predominantly white deer of the whitetail species prohibited.**

1. A person shall not take a predominantly white deer in this state.

2. This section only applies to whitetail, other than farm deer that are kept as provided in chapter 170.

3. A person violating subsection 1 is guilty of a simple misdemeanor.

[88 Acts, ch 1184, §1](#)

C89, §109.124

C93, §481A.124

[2003 Acts, ch 149, §17, 23](#)

#### **481A.125 Intentional interference with lawful hunting, fishing, or fur-harvesting activities — penalties.**

1. As used in this section, “*interfere with hunting, fishing, or fur-harvesting activities*” means one or more of the following:

*a.* To intentionally place oneself in a location where a human presence may affect the behavior of a fur-bearing animal, game, bird, or fish or the feasibility of killing or taking a fur-bearing animal, game, bird, or fish with the intent of obstructing or harassing another person who is lawfully hunting, fishing, or fur harvesting.

*b.* To intentionally create a visual, aural, olfactory, or physical stimulus for the purpose of affecting the behavior of a fur-bearing animal, game, bird, or fish with the intent of obstructing or harassing another person who is lawfully hunting, fishing, or fur harvesting.

*c.* To intentionally affect the condition or alter the placement of personal property used for the purpose of killing or taking a fur-bearing animal, game, bird, or fish with the intent of obstructing or harassing another person who is lawfully hunting, fishing, or fur harvesting.

2. A person shall not interfere with the lawful hunting, fishing, or fur-harvesting activities of another person in an area where hunting, fishing, or fur harvesting is authorized by a custodian of public property or an owner or lessee of private property.

3. A person who commits:

*a.* A first offense of interfering with hunting, fishing, or fur-harvesting activities is guilty of a simple misdemeanor.

*b.* A second or subsequent offense is punishable as a serious misdemeanor.

4. If a person who commits interfering with hunting, fishing, or fur-harvesting activities possesses a license, certificate, or permit issued by the department, the license, certificate, or permit is subject to suspension or revocation pursuant to section 481A.134.

5. This section shall not prohibit a landowner, tenant, or an employee of a landowner or tenant from performing normal agricultural operations or a law enforcement officer from performing official duties.

[91 Acts, ch 234, §2](#)

CS91, §109.125  
C93, §481A.125  
[2000 Acts, ch 1076, §1](#)  
;  
[2000 Acts, ch 1232, §76, 77](#)

**481A.125A Remote control or internet hunting — criminal and civil penalties.**

1. As used in this section, “*remote control or internet hunting*” means use of a computer or other electronic device, equipment, or software to remotely control the aiming or discharge of a firearm or other weapon, allowing a person who is not physically present to take a wild animal, a game bird or ungulate kept on a hunting preserve under chapter 484B, or a preserve whitetail kept on a hunting preserve under chapter 484C.

2. A person shall not offer for sale, take, or assist in the taking of a wild animal, a game bird or ungulate kept on a hunting preserve under chapter 484B, or a preserve whitetail kept on a hunting preserve under chapter 484C, by remote control or internet hunting.

3. A person who violates this section is guilty of a serious misdemeanor. A second or subsequent violation of this section is punishable as a class “D” felony.

4. In addition, any person who violates this section is subject to a civil penalty, which may be levied by the department, of not more than ten thousand dollars for each violation of this section. The moneys collected from imposition of a civil penalty shall be deposited in the state fish and game protection fund.

[2007 Acts, ch 156, §1](#)

**TAXIDERMY**

**481A.126 Taxidermy.**

1. “*Taxidermist*” as used in this section means a person engaged in the business of preserving or mounting game, fish, or fur-bearing animals as defined in this chapter.

2. A license is required for the practice of taxidermy. The commission, upon application and payment of the required license fee, shall furnish proper certificates to the applicant. The director may revoke the license for good cause.

3. A licensed taxidermist may possess at any time game, fish, or fur-bearing animals which have been lawfully taken.

4. A taxidermist shall keep accurate records of its transactions showing the numbers and kinds of specimens received for preserving, the date of acquisition, and the name and address of the owner of the specimens.

5. A person shall not put or leave any game, fish, or fur-bearing animal in the custody of another person for the purpose of having taxidermy services performed unless each specimen has a tag attached which is signed by the possessor and states the address of the possessor, the total number and species of the specimens and the date the specimens were killed.

6. All transactions, tags, and specimens left in the custody of the taxidermist by another person shall be open to inspection by a conservation officer at any reasonable hour.

[  
[82 Acts, ch 1010, §1](#)

] C83, §109.126  
[88 Acts, ch 1216, §39, 40](#)  
C93, §481A.126

For applicable scheduled fines, see §805.8B, subsection 3, paragraph d

**481A.127 through 481A.129**Reserved.

**CIVIL DAMAGES — SUSPENSIONS**

**481A.130 Damages in addition to penalty — animals — ginseng.**

1. In addition to the penalties for violations of this chapter and chapters 350, 461A, 481B, and 482, a person convicted of unlawfully selling, taking, catching, killing, injuring, destroying, or having in possession any animal, shall reimburse the state for the value of such as follows:

- a. For each elk, antelope, buffalo, or moose, two thousand five hundred dollars.
- b. For each wild turkey, two hundred dollars.
- c. For each bird or animal or the raw pelt or plumage of such bird or animal for which damages are not otherwise prescribed, fifty dollars.
- d. For each reptile, mussel, or amphibian, fifteen dollars.
- e. For each beaver, bobcat, mink, otter, red fox, gray fox, or raccoon, two hundred dollars.

f. For each animal classified by the commission as an endangered or threatened species, one thousand dollars.

g. For each antlered deer, reimbursement shall be based on the score of the antlered deer as measured by the Boone and Crockett club's scoring system for whitetail deer as follows:

(1) 150 gross inches or less: A minimum of two thousand dollars and not more than five thousand dollars, and eighty hours of community service or, in lieu of the community service, a minimum of four thousand dollars and not more than ten thousand dollars, in an amount that is deemed reasonable by the court.

(2) More than 150 gross inches: A minimum of five thousand dollars and not more than ten thousand dollars, and eighty hours of community service or, in lieu of the community service, a minimum of ten thousand dollars and not more than twenty thousand dollars, in an amount that is deemed reasonable by the court.

h. For each deer, except as provided in paragraph "g", and for each swan or crane, one thousand five hundred dollars.

i. For each fish, reimbursement shall be as follows:

(1) For each fish of a species other than shovelnose sturgeon, with an established daily limit greater than twenty-five, fifteen dollars.

(2) For each fish of a species other than paddlefish and muskellunge, with an established daily limit of twenty-five or less, fifty dollars.

(3) For each shovelnose sturgeon, paddlefish, and muskellunge, one thousand dollars.

2. In addition to any other penalty, a person convicted of unlawfully harvesting wild ginseng in violation of section 456A.24 shall reimburse the state at one hundred fifty percent of the ginseng's market value, as determined by the department.

3. This section does not apply to a landowner who cooperates with the department of natural resources and the department of agriculture and land stewardship to remove all whitetail from enclosed land as provided in section 170.5, even if all whitetail are not removed.

4. This section does not apply to a person who is liable to pay restitution to the department pursuant to section 481A.151 for injury to a wild animal caused by polluting a water of this state in violation of state law.

[C75, 77, 79, 81, §109.130;

[82 Acts, ch 1211, §1 – 3](#)

]

[88 Acts, ch 1216, §41](#)

;

[90 Acts, ch 1142, §1](#)

;

[92 Acts, ch 1186, §2](#)

C93, §481A.130

[93 Acts, ch 38, §2](#)

;

[98 Acts, ch 1203, §2, 3](#)

;

[99 Acts, ch 58, §1](#)

;

[2003 Acts, ch 149, §18, 23](#)

;

[2004 Acts, ch 1124, §1](#)

;

[2007 Acts, ch 28, §15](#)

;

[2009 Acts, ch 144, §18 – 20](#)

#### **481A.131 Judgment — execution.**

1. In each case of conviction of unlawfully taking, catching, killing, injuring, destroying, or having in possession any fish, game, or fur-bearing animal, the court shall enter a judgment in favor of the state of Iowa for liquidated damages in an amount as provided in section 481A.130. If two or more persons who have acted together are convicted of the unlawful taking, catching, killing, injuring, destroying, or having possession of any fish, game, or fur-bearing animal, the judgment shall be entered against them jointly.

2. Any liquidated damages assessed under this section and section 481A.130 shall be paid to the clerk of court. The clerk of court shall remit the damages paid to the department of natural resources. The department of natural resources shall credit such damages to the state fish and game protection fund.

3. The return of any uninjured fish, game, or fur-bearing animal which has been unlawfully taken, caught, or possessed, to the place where taken or caught or to any other place approved by the commission, shall constitute the discharge of any liquidated damages provided under section 481A.130.

4. Civil suits for the collection of judgments may be prosecuted by the attorney general or by county attorneys.

[C75, 77, 79, 81, §109.131;

[82 Acts, ch 1211, §4](#)

]

[86 Acts, ch 1245, §1854](#)

[2012 Acts, ch 1118, §7](#)

**481A.132 Service of process or arrest — pendency of damage claim.**

Service of process upon or arrest of any person charged with provisions of this chapter for which damages may be assessed pursuant to section 481A.130, shall serve as notice of the pendency of the liquidated damage claim. Trial on the criminal charge may be separated from the determination of the liquidated damage claim in the discretion of the court or by the request of the defendant, but upon conviction of the defendant in the criminal case, the only issue to be determined by the court on the liquidated damage claim is the fact of such conviction.

[C77, 79, 81, §109.132]

C93, §481A.132

**481A.133 Suspension of licenses, certificates, and permits.**

A person who is assessed damages pursuant to section 481A.130 shall immediately surrender all licenses, certificates, and permits to hunt, fish, or trap in the state to the department. The licenses, permits, and certificates, and the privileges associated with them shall remain suspended until the assessed damages and any accrued interest are paid in full. Upon payment of the assessed damages and any accrued interest, the suspension shall be lifted. Interest shall begin to accrue as of the date of judgment at a rate of ten percent per year.

[90 Acts, ch 1198, §2](#)

C91, §109.133

C93, §481A.133

[2007 Acts, ch 28, §16](#)

CANCELLATIONS, SUSPENSIONS,

REVOCATIONS, AND PENALTIES

**481A.134 Authority to cancel, suspend, or revoke license — point system.**

The department shall establish rules pursuant to chapter 17A providing for the suspension or revocation of licenses issued by the department. The rules may include procedures for summary cancellation of a license based on documentation that the licensee failed to pay the applicable fee for the license. For purposes of determining when to suspend or revoke a license issued by the department under this section, the department shall adopt a point system pursuant to chapter 17A for the purpose of weighing the seriousness of violations of the provisions of this chapter or chapter 481B, 482, 483A, 484A, or 484B, or of committing trespass as defined in section 716.7 while hunting deer, other than farm deer as defined in section 170.1 or preserve whitetail as defined in section 484C.1. The weighted scale may be amended from time to time as experience dictates.

[90 Acts, ch 1198, §3](#)

C91, §109.134

[92 Acts, ch 1160, §19](#)

C93, §481A.134

[2004 Acts, ch 1070, §1](#)

;

[2007 Acts, ch 28, §17](#)

**481A.135 Repeat offender — records, enforcement, and penalties.**

1. The commission shall establish by rule, a recordkeeping system and other administrative procedures necessary to administer this section.

2. A person who pleads guilty or is convicted of a violation of any provision of this chapter or chapter 481B, 482, 483A, 484A, or 484B, or trespass as defined in section 716.7 while hunting deer, other than farm deer as defined in section 170.1 or preserve whitetail as defined in section 484C.1, while the person's license or licenses are suspended or revoked is guilty of a simple misdemeanor if the person has no other violations within the previous three years which occurred while the person's license or licenses have been suspended or revoked.

3. A person who pleads guilty or is convicted of a violation of any provision of this chapter or chapter 481B, 482, 483A, 484A, or 484B, or trespass as defined in section 716.7 while hunting deer, other than farm deer as defined in section 170.1 or preserve whitetail as defined in section 484C.1, while the person's license or licenses are suspended or revoked is guilty of a serious misdemeanor if the person has one other violation within the previous three years which occurred while the person's license or licenses have been suspended or revoked.

4. A person who pleads guilty or is convicted of a violation of any provision of this chapter or chapter 481B, 482, 483A, 484A, or 484B, or trespass as defined in section 716.7 while hunting deer, other than farm deer as defined in section 170.1 or preserve

whitetail as defined in section 484C.1, while the person's license or licenses are suspended or revoked is guilty of an aggravated misdemeanor when the person has had two or more convictions within the previous three years which occurred while the person's license or licenses have been suspended or revoked.

5. An indictment or trial information for a violation requiring an enhanced penalty under this section shall specify the underlying violation committed by the person.

[90 Acts, ch 1198, §4](#)

[92 Acts, ch 1160, §20](#)

[2007 Acts, ch 28, §18](#)

; [2010 Acts, ch 1140, §22](#)

**481A.136 Unlawful commercialization of wildlife — penalty.**

1. A person shall not buy or sell a wild animal or part of a wild animal if the wild animal is taken, transported, or possessed in violation of the laws of this state, or a rule adopted by the department.

2. A person violating subsection 1 is guilty of a serious misdemeanor.

[92 Acts, ch 1186, §3](#)

**481A.137 Abandonment of dead or injured wildlife.**

1. While taking or attempting to take game or fur-bearing animals, a person shall not abandon an injured game or fur-bearing animal without making a reasonable effort to retrieve the animal from the field. A person shall not leave a useable portion of game or a fur-bearing animal in the field.

2. A person violating subsection 1 is subject to a scheduled fine as provided in section 805.8B, subsection 3, paragraph "e".

3. As used in this section, "*useable portion*" means the following:

a. For game, that part of an animal which is customarily processed for human consumption.

b. For a fur-bearing animal, the fur or hide of the animal.

4. This section does not apply to pigeons or crows.

[92 Acts, ch 1149, §2](#)

;

[2001 Acts, ch 137, §5](#)

**481A.138 through 481A.140**Reserved.

## AQUACULTURE

**481A.141 Aquaculture — license required.**

1. A person shall not engage in the business of aquaculture until that person has applied for and has been issued an aquaculture unit license from the department. The application period extends from January 1, or the date of the application, through December 31. A license shall not be issued to operate an aquaculture unit on private or nonmeandered lakes and streams and ponds that may become stocked with fish from public waters or natural migration. A pond stocked by the department pursuant to section 481A.78 shall not be used for aquaculture purposes.

2. The following persons must obtain an aquaculture unit license:

a. A person who, for commercial purposes, rears or maintains live animals or plants for food, bait, or for stocking in waters of the state.

b. An owner or operator of a pond where guests or customers are allowed to fish for a fee, or allowed to take fish without regard to angling licenses, seasons, gear restrictions, or bag limits.

3. The cultivation and sale of tropical fish species or ornamental aquatic plants or animals, not utilized for human consumption or bait purposes, but maintained in closed systems and utilized by the pet industry or hobbyists are exempt from license requirements.

[92 Acts, ch 1216, §3](#)

**481A.142 Licensed aquaculture units — activities allowed.**

A holder of an aquaculture unit license may:

1. Possess, propagate, buy, sell, deal in, and transport the aquatic organisms produced from breeding stock legally acquired, including minnows.

2. Sell fish for stocking purposes within or outside the state. Fish which are nonindigenous to Iowa shall not be received or sold in the state unless the aquaculture unit has obtained an importation permit from the department. The department shall establish, by rule, requirements governing importation, and shall include a list of approved aquaculture species. Failure to comply with this



subsection will result in loss of license and a violator is subject to the scheduled fine provided in section 805.8B.

3. Hold, feed, and sell carp, buffalofish, and other fish legally taken by commercial fishers.

4. Harvest aquatic life on land under control of the aquaculture unit with commercial devices without obtaining any permits for the devices.

5. *a.* Sell bait, including minnows and frogs, propagated or raised within the licensed unit without having to obtain a bait dealer's license. However, aquaculture units wishing to take bait from areas other than their licensed units must also obtain a bait dealer's license.

*b.* A nonresident aquaculture unit licensee shall be limited to selling bait at wholesale unless the home state of the nonresident licensee allows residents of this state to sell bait at retail.

6. Take any gull, tern, or merganser within the bounds of the unit. An owner or operator of the licensed aquaculture unit, however, must first obtain a permit for this activity from the department or the United States fish and wildlife service. Each permittee shall file an annual report with the department which itemizes the birds taken during the period covered by the permit, and dispose of birds taken according to methods established by the department. The department shall not issue a subsequent permit to any person failing to file this report.

[92 Acts, ch 1216, §4](#)

; [2001 Acts, ch 137, §5](#)

; [2004 Acts, ch 1029, §1](#)

; [2012 Acts, ch 1118, §8](#)

For applicable scheduled fines, see §805.8B, subsection 3, paragraph d

#### **481A.143 Licensed aquaculture units — requirements.**

1. Each licensed aquaculture unit shall prepare an annual report of all fish bought, sold, and shipped. The records shall include species name as well as the weight, volume, or count of fish involved. Reports shall be filed on or before December 31 of each year for the preceding year. The department may refuse to renew a unit license if the annual report is not provided.

2. Each licensed aquaculture unit shall secure its breeding stock from licensed aquaculture units or licensed aquaculturists in the state or from lawful sources outside the state. An aquaculture unit shall not secure stock in any other manner.

3. A shipment of fish must be accompanied by a duplicate of the sales invoice showing the name and address of the producer, date of shipment, the species being transported, the weight, volume, or count of each species being shipped and the name and address of the consignee. A duplicate of the sales invoice must be retained by the aquaculture unit or aquaculturist for one year following the sale.

4. A licensed aquaculture unit shall comply with all state laws pertaining to possession, taking, or selling of bait which it handles. The director may revoke the unit license of any person violating this subsection or a rule adopted by the department.

5. Minnow and bait boxes and tanks within licensed aquaculture units shall be open for inspection by the department at all times.

6. Aquaculture units shall not import live fish, viable eggs, or semen of any species of the salmonid family (trout, salmon, or char) and ictalurid family (catfishes and bullheads), including hybrids, unless the owner or operator possesses a fish importation permit. For the species listed in this subsection only, importation permits shall not be issued unless the fish, eggs, or semen have been inspected by the department and found to be free of disease detrimental to the state's fishery resources. The owner or operator of an aquaculture unit must provide a statement certifying the fish listed in this subsection or their eggs or semen to be disease free, and include the date of inspection. Certification is not required for other fish species, but the department may require inspection at any time. The department shall establish, by rule, those diseases detrimental to the state's fishery resources and the location of authorized certified pathologists for inspection.

[92 Acts, ch 1216, §5](#)

#### **481A.144 Licensed bait dealers — requirements.**

1. A person shall not sell minnows, frogs, crayfish, or salamanders for fish bait without first obtaining a bait dealer's license from the department upon payment of the license fee. A licensee shall comply with all laws pertaining to taking, possessing, and selling of bait handled by the licensee. If convicted of violating a provision of this chapter or a rule adopted pursuant to this chapter, a licensee shall forfeit the licensee's bait dealer license upon demand of the director.

2. When taking bait from lakes and streams, bait dealers shall take only the size of bait which they can use, and shall return all small minnows and frogs to the water immediately.

3. A minnow and bait box and a tank shall be open to inspection by the department at all times. A licensee shall have tanks and bait boxes of sufficient size and with proper aeration to keep the bait alive and prevent substantial loss.

4. A person shall not take or attempt to take minnows for commercial purposes from any waters of the state or shall not transport minnows without first obtaining a bait dealer's license. However, a person taking or transporting minnows for personal use is not required to have a bait dealer's license.

[92 Acts, ch 1216, §6](#)

; [93 Acts, ch 99, §2](#)

; [2012 Acts, ch 1118, §9](#)

For applicable scheduled fines, see §805.8B, subsection 3, paragraph k

#### **481A.145 Taking and selling of minnows and other bait — regulations.**

1. Except for species listed as threatened or endangered under chapter 481B, a licensed bait dealer may take sufficient bait from lakes and streams of this state that are not closed to the taking of bait, to supply the licensee's customers for hook and line fishing if the licensee is present while the bait is being taken.

2. Except as otherwise provided in this chapter, a person shall not carry, transport, ship, or cause to be carried, transported, or shipped, any minnows for the purpose of sale beyond the boundaries of the state. Minnows which are bred, hatched, propagated, or raised on a licensed aquaculture unit may be transported outside the state.

3. A person shall not transport, use, sell or offer to sell for bait or introduce into any inland waters of this state or into any waters from which the waters of the state may become stocked, any minnows or fish of the carp, quillback, gar, or dogfish species. Fish of the carp, quillback, gar, or dogfish species may be returned to the waters from which they are taken. A person shall not possess live gizzard shad at any lake in this state.

4. Minnow traps not exceeding thirty-six inches in length may be used when the taking of minnows is allowed. Each trap, when in use, shall have a metal tag attached plainly labeled with the owner's name and address.

5. A person shall not use a minnow dip net which exceeds four feet in diameter, a cast net which exceeds ten feet in diameter, or a minnow seine which exceeds twenty feet in length or has a mesh size smaller than one-quarter inch bar measure. Licensed bait dealers may obtain a permit from the department to use minnow seines longer than twenty feet, but not exceeding fifty feet in length.

6. The department may designate certain lakes and streams, and parts of them, from which minnow populations should be protected for the best management of the lakes or streams. If an investigation of a lake or stream or a portion of a lake or stream by the department indicates that the minnow population should be protected, the lake or stream or a portion of the lake or stream shall be closed to the taking of minnows for a period of time deemed advisable by the department.

[92 Acts, ch 1216, §7](#)

;

[93 Acts, ch 99, §3 – 5](#)

For applicable scheduled fines, see §805.8B, subsection 3, paragraphs c, d, and k

#### **481A.146 Authority of the director.**

The director may take any fish from the public waters of the state, at any time and in any manner, for the purpose of propagation or restocking other waters, or exchanging with fish and wildlife agencies of other states, the federal government, or licensed aquaculture units.

[92 Acts, ch 1216, §8](#)

#### **481A.147 Theft of fish.**

All fish in an aquaculture unit are private property and are not the property of the state, and the theft of fish from an aquaculture unit is punishable as provided in section 714.2.

[92 Acts, ch 1216, §9](#)

**481A.148 through 481A.150**Reserved.

### **POLLUTION — RESTITUTION**

#### **481A.151 Restitution for pollution causing injury to wild animals.**

1. A person who is liable for polluting a water of this state in violation of state law, including this chapter, shall also be liable to pay restitution to the department for injury caused to a wild animal by the pollution. The amount of the restitution shall also include the department's administrative costs for investigating the incident. The administration of this section shall not result in a duplication of damages collected by the department under section 455B.392, subsection 1, paragraph "a", subparagraph (3).

2. The commission shall adopt rules providing for procedures for investigations and the administrative assessment of restitution amounts. The rules shall establish an opportunity to appeal a departmental action including by a contested case proceeding under chapter 17A. A final administrative decision assessing an amount of restitution may be enforced by the attorney general at the request of the director.

3. Rules adopted by the commission shall provide for methods used to determine the extent of an injury and the monetary values for the loss of injured wild animals based on species.

a. The rules shall provide for methods used to count dead fish and to calculate restitution values. The rules may incorporate methods and values published by the American fisheries society. To every extent practicable, the values shall be based on the estimates of lost recreational angler opportunities where applicable. As an alternative method of valuation, the rules may provide that for fish species that are protected by catch limits, possession limits, size limits, or closed seasons applicable to anglers, liquidated damages apply. The amount of the liquidated damages shall not exceed fifteen dollars per fish. For fish species that are

classified by the commission as endangered or threatened, the rules may establish liquidated damages not to exceed one thousand dollars per fish.

*b.* The rules shall provide guidelines for estimating the extent of loss of a species that is affected by a pollution incident but which would not be practical to count in sample areas. The rules may establish liquidated damage amounts for species whose replacement cost is difficult to determine.

4. Moneys collected by the department in restitution shall be deposited into the state fish and game protection fund. The moneys shall be used exclusively to support restoration or improvement of fisheries, including but not limited to aquatic habitat improvement projects as provided in rules adopted by the commission. However, moneys collected from restitution paid for investigative costs shall be used as determined by the director.

[2002 Acts, ch 1137, §58, 71](#)

## CHAPTER 481B

### ENDANGERED PLANTS AND WILDLIFE

This chapter not enacted as a part of this  
title; transferred from chapter 109A in Code 1993  
See §481A.134 and 481A.135 for point system and additional penalties

#### **481B.1 Definitions.**

As used in this chapter:

1. “*Commission*” means the natural resource commission.
2. “*Director*” means the director of the department of natural resources.
3. “*Endangered species*” means any species of fish, plant life, or wildlife which is in danger of extinction throughout all or a significant part of its range. “Endangered species” does not include a species of insecta determined by the commission or the secretary of the United States department of interior to constitute a pest whose protection under this chapter would present an overwhelming and overriding risk to humans.
4. “*Fish or wildlife*” means any member of the animal kingdom, including any mammal, fish, amphibian, mollusk, crustacean, arthropod, or other invertebrate, and includes any part, product, egg, or offspring, or the dead body of parts thereof. Fish or wildlife includes migratory birds, nonmigratory birds, or endangered birds for which protection is afforded by treaty or other international agreement.
5. “*Import*” means to bring into, or introduce into, or attempt to bring into, or attempt to introduce into, any place subject to the jurisdiction of this state.
6. “*Person*” means person as defined in section 4.1, subsection 20.
7. “*Plant*” or “*plant life*” means any member of the plant kingdom, including seeds, roots, and other parts thereof.
8. “*Species*” includes any subspecies of fish, plant life, or wildlife and any other group of fish, plants, or wildlife of the same species or smaller taxa in common spatial arrangement that interbreed or cross-pollinate when mature.
9. “*Take*”, in reference to fish and wildlife, means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect and it includes an attempt to engage in any such conduct.
10. “*Take*”, in reference to plants, means to collect, pick, cut, dig up or destroy in any manner.
11. “*Threatened species*” means any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

[C77, 79, 81, §109A.1]

[86 Acts, ch 1245, §1856, 1857](#)

C93, §481B.1

#### **481B.2 Cooperation with federal government.**

The commission shall perform those acts necessary for the conservation, protection, restoration, and propagation of endangered and threatened species in cooperation with the federal government, pursuant to Pub. L. No. 93-205, and pursuant to rules promulgated by the secretary of the interior.

[C77, 79, 81, §109A.2]

C93, §481B.2

[2006 Acts, ch 1010, §124](#)

#### **481B.3 Investigations.**

The director shall conduct investigations on fish, plants, and wildlife in order to develop information relating to population, distribution, habitat needs, limiting factors, and other biological and ecological data to determine management measures necessary for their continued ability to sustain themselves successfully. On the basis of these determinations and other available scientific and commercial data, which may include consultation with scientists and others who may have specialized knowledge, learning, or experience, the commission shall pursuant to chapter 17A promulgate a rule listing those species of fish, plants, and

wildlife which are determined to be endangered or threatened within the state.

The commission shall review the state list of endangered and threatened species at least every two years and may amend the list.

[C77, 79, 81, §109A.3]

C93, §481B.3

#### **481B.4 Programs.**

The director shall establish programs, including acquisition of land or aquatic habitat, necessary for the management of endangered or threatened species.

In carrying out the programs authorized by this section, the commission may enter into cooperative agreements with federal and state agencies, political subdivisions of the state, or with private persons for the administration and management of any area or program established under this section or for investigation as outlined in section 481B.3.

[C77, 79, 81, §109A.4]

C93, §481B.4

#### **481B.5 Prohibitions.**

Except as otherwise provided in this chapter or by rule, a person shall not take, possess, transport, import, export, process, sell or offer for sale, buy or offer to buy, nor shall a common or contract carrier transport or receive for shipment, any species of fish, plants, or wildlife appearing on the following lists which shall be adopted by rule of the commission:

1. The list of fish, plants, and wildlife indigenous to the state determined to be endangered or threatened within the state pursuant to section 481B.3.

2. The United States list of endangered or threatened native fish and wildlife as contained in

[50 C.F.R. pt. 17](#)

as amended to December 30, 1991.

3. The United States list of endangered or threatened plants as contained in

[50 C.F.R. pt. 17](#)

as amended to December 30, 1991.

4. The United States list of endangered or threatened foreign fish and wildlife as contained in

[50 C.F.R. pt. 17](#)

as amended to December 30, 1991.

[C77, 79, 81, §109A.5]

[92 Acts, ch 1133, §1, 2](#)

C93, §481B.5

[2003 Acts, ch 108, §89](#)

For applicable scheduled fines, see §805.8B, subsection 3, paragraph e

#### **481B.6 Species not on list.**

The commission may, by rule, treat any species as an endangered species or threatened species even though it is not listed pursuant to section 481B.3 if it finds that the species so closely resembles in appearance a species which is listed pursuant to section 481B.3 and that enforcement personnel would have substantial difficulty in attempting to differentiate between the listed and unlisted species, and the effect of this substantial difficulty is an additional threat to an endangered or threatened species, or finds that the treatment of an unlisted species will substantially facilitate the enforcement and further the intent of this chapter.

[C77, 79, 81, §109A.6]

C93, §481B.6

#### **481B.7 Special care to ensure survival.**

The director may permit the taking, possession, purchase, sale, transportation, importation, exportation, or shipment of endangered or threatened species which appear on the state list for scientific, zoological, or educational purposes, for propagation in captivity of such fish, plants, or wildlife, to ensure their survival.

[C77, 79, 81, §109A.7]

C93, §481B.7

#### **481B.8 Damage to property or human life.**

Upon good cause shown and where necessary to reduce damage to property or to protect human health, endangered or threatened species found on the state list may be removed, captured, or destroyed, but only pursuant to a permit issued by the director.

[C77, 79, 81, §109A.8]

C93, §481B.8



**481B.9 Exemptions.**

A species of fish, plant, or wildlife appearing on any of the lists of endangered species or threatened species which enters the state from another state or from outside the territorial limits of the United States may enter, be transported, possessed, and sold in accordance with rules adopted by the commission.

[C77, 79, 81, §109A.9]

[92 Acts, ch 1133, §3](#)

C93, §481B.9

**481B.10 Penalties.**

Whoever violates any of the provisions of this chapter shall be guilty of a simple misdemeanor.

[C77, 79, 81, §109A.10]

C93, §481B.10

## CHAPTER 573

### LABOR AND MATERIAL ON PUBLIC IMPROVEMENTS

#### **573.1 Terms defined.**

For the purpose of this chapter:

1. “*Construction*”, in addition to its ordinary meaning, includes repair, alteration and demolition.
2. “*Material*” shall, in addition to its ordinary meaning, embrace feed, gasoline, kerosene, lubricating oils and greases, provisions and fuel, and the use of forms, accessories, and equipment, but shall not include personal expenses or personal purchases of employees for their individual use.
3. “*Public corporation*” shall embrace the state, and all counties, cities, public school corporations, and all officers, boards, or commissions empowered by law to enter into contracts for the construction of public improvements.
4. “*Public improvement*” is one, the cost of which is payable from taxes or other funds under the control of the public corporation, except in cases of public improvement for drainage or levee purposes the provisions of the drainage law in cases of conflict shall govern.
5. “*Service*” shall, in addition to its ordinary meaning, include the furnishing to the contractor of workers’ compensation insurance, and premiums and charges for such insurance shall be considered a claim for service.

[C24, 27, 31, 35, 39, §10299; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §573.1]

[85 Acts, ch 22, §1](#)

#### **573.2 Public improvements — bond — waiver and remedies.**

Contracts for the construction of a public improvement shall, when the contract price equals or exceeds twenty-five thousand dollars, be accompanied by a bond, with surety, conditioned for the faithful performance of the contract, and for the fulfillment of other requirements as provided by law. The bond may also be required when the contract price does not equal that amount. However, if a contractor provides a performance or maintenance bond as required by a public improvement contract governed by this chapter and subsequently the surety company becomes insolvent and the contractor is required to purchase a new bond, the contractor may apply for reimbursement from the governmental agency that required a second bond and the claims shall be reimbursed from funds allocated for road construction purposes.

If the requirement for a bond is waived pursuant to section 12.44, a person, firm, or corporation, having a contract with the targeted small business or with subcontractors of the targeted small business, for labor performed or materials furnished, in the performance of the contract on account of which the bond was waived, is entitled to any remedy provided under this chapter. When a bond has been waived pursuant to section 12.44, the remedies provided for under this paragraph are available in an action against the public corporation.

[C24, 27, 31, 35, 39, §10300; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §573.2;

[82 Acts, ch 1096, §1](#)

]

[86 Acts, ch 1246, §32](#)

;

[88 Acts, ch 1032, §1](#)

#### **573.3 Bond mandatory.**

The obligation of the public corporation to require, and the contractor to execute and deliver said bond, shall not be limited or avoided by contract.

A public corporation, with respect to a public improvement which is or has been competitively bid or negotiated, shall not require a contractor to procure a bond, as required under section 573.2, from a particular insurance or surety company, agent, or broker.

[C24, 27, 31, 35, 39, §10301; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §573.3]

[2000 Acts, ch 1023, §58](#)

#### **573.4 Deposit in lieu of bond.**

A deposit of money, a certified check on a solvent bank of the county in which the improvement is to be located, a credit union certified share draft, state or federal bonds, bonds issued by a city, school corporation, or county of this state, or bonds issued on behalf of a drainage or highway paving district of this state may be received in an amount equal to the amount of the bond and held in lieu of a surety on the bond, and when so received the securities shall be held on the terms and conditions applicable to a surety.

[C24, 27, 31, 35, 39, §10302; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §573.4]

[84 Acts, ch 1055, §14](#)

#### **573.5 Amount of bond.**

Said bond shall run to the public corporation. The amount thereof shall be fixed, and the bond approved, by the official board or officer empowered to let the contract, in an amount not less than seventy-five percent of the contract price, and sufficient to comply with all requirements of said contract and to insure the fulfillment of every condition, expressly or impliedly embraced in said bond; except that in contracts where no part of the contract price is paid until after the completion of the public improvement the amount of said bond may be fixed at not less than twenty-five percent of the contract price.

[C24, 27, 31, 35, 39, §10303; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §573.5]

#### **573.6 Subcontractors on public improvements.**

The following provisions shall be held to be a part of every bond given for the performance of a contract for the construction of a public improvement, whether said provisions be inserted in such bond or not, to wit:

1. The principal and sureties on this bond hereby agree to pay to all persons, firms, or corporations having contracts directly with the principal or with subcontractors, all just claims due them for labor performed or materials furnished, in the performance of the contract on account of which this bond is given, when the same are not satisfied out of the portion of the contract price which the public corporation is required to retain until completion of the public improvement, but the principal and sureties shall not be liable to said persons, firms, or corporations unless the claims of said claimants against said portion of the contract price shall have been established as provided by law.

2. Every surety on this bond shall be deemed and held, any contract to the contrary notwithstanding, to consent without notice:

- a. To any extension of time to the contractor in which to perform the contract.
- b. To any change in the plans, specifications, or contract, when such change does not involve an increase of more than twenty percent of the total contract price, and shall then be released only as to such excess increase.
- c. That no provision of this bond or of any other contract shall be valid which limits to less than one year from the time of the acceptance of the work the right to sue on this bond for defects in the quality of the work or material not discovered or known to the obligee at the time such work was accepted.

[S13, §1527-s18; C24, 27, 31, 35, 39, §10304; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §573.6]

#### **573.7 Claims for material or labor.**

Any person, firm, or corporation who has, under a contract with the principal contractor or with subcontractors, performed labor, or furnished material, service, or transportation, in the construction of a public improvement, may file, with the officer, board, or commission authorized by law to let contracts for such improvement, an itemized, sworn, written statement of the claim for such labor, or material, service, or transportation.

A person furnishing only materials to a subcontractor who is furnishing only materials is not entitled to a claim against the retainage or bond under this chapter and is not an obligee or person protected under the bond pursuant to section 573.6.

[C97, §3102; S13, §1989-a57; C24, 27, 31, 35, 39, §10305; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §573.7]

[83 Acts, ch 55, §1](#)

#### **573.8 Highway improvements.**

In case of highway improvements by the county, claims shall be filed with the county auditor of the county letting the contract. In case of contracts for improvements on the farm-to-market highway system paid from farm-to-market funds, claims shall be filed with the auditor of the state department of transportation.

But no claims filed for credit extended for the personal expenses or personal purchases of employees for their individual use shall cause any part of the unpaid funds of the contractor to be withheld.

[C24, 27, 31, 35, 39, §10306; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §573.8]

#### **573.9 Officer to endorse time of filing claim.**

The officer shall endorse over the officer's official signature upon every claim filed with the officer, the date and hour of filing.

[C24, 27, 31, 35, 39, §10307; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §573.9]

### **573.10 Time of filing claims.**

Claims may be filed with said officer as follows:

1. At any time before the expiration of thirty days immediately following the completion and final acceptance of the improvement.

2. At any time after said thirty-day period, if the public corporation has not paid the full contract price as herein authorized, and no action is pending to adjudicate rights in and to the unpaid portion of the contract price.

[C97, §3102; S13, §1989-a57; C24, 27, 31, 35, 39, §10308; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §573.10]

### **573.11 Claims filed after action brought.**

The court may permit claims to be filed with it during the pendency of the action hereinafter authorized, if it be made to appear that such belated filing will not materially delay the action.

[C24, 27, 31, 35, 39, §10309; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §573.11]

### **573.12 Payments and retention from payments on contracts.**

#### **1. Retention.**

a. Payments made under contracts for the construction of public improvements, unless provided otherwise by law, shall be made on the basis of monthly estimates of labor performed and material delivered, as determined by the project architect or engineer. The public corporation shall retain from each monthly payment not more than five percent of that amount which is determined to be due according to the estimate of the architect or engineer.

b. The contractor may retain from each payment to a subcontractor not more than the lesser of five percent or the amount specified in the contract between the contractor and the subcontractor.

#### **2. Prompt payment.**

a. (1) Interest shall be paid to the contractor on any progress payment that is approved as payable by the public corporation's project architect or engineer and remains unpaid for a period of fourteen days after receipt of the payment request at the place, or by the person, designated in the contract, or by the public corporation to first receive the request, or for a time period greater than fourteen days, unless a time period greater than fourteen days is specified in the contract documents, not to exceed thirty days, to afford the public corporation a reasonable opportunity to inspect the work and to determine the adequacy of the contractor's performance under the contract.

(2) Interest shall accrue during the period commencing the day after the expiration of the period defined in subparagraph (1) and ending on the date of payment. The rate of interest shall be determined as set forth in section 573.14.

b. (1) A progress payment or final payment to a subcontractor for satisfactory performance of the subcontractor's work shall be made no later than one of the following, as applicable:

(a) Seven days after the contractor receives payment for that subcontractor's work.

(b) A reasonable time after the contractor could have received payment for the subcontractor's work, if the reason for nonpayment is not the subcontractor's fault.

(2) A contractor's acceptance of payment for one subcontractor's work is not a waiver of claims, and does not prejudice the rights of the contractor, as to any other claim related to the contract or project.

#### **3. Interest payments.**

a. If the contractor receives an interest payment under section 573.14, the contractor shall pay the subcontractor a share of the interest payment proportional to the payment for that subcontractor's work.

b. If a public corporation other than a school corporation, county, or city retains funds, the interest earned on those funds shall be payable at the time of final payment on the contract in accordance with the schedule and exemptions specified by the public corporation in its administrative rules. The rate of interest shall be determined by the period of time during which interest accrues, and shall be the same as the rate of interest that is in effect under section 12C.6 as of the day interest begins to accrue.

[S13, §1989-a57; C24, 27, 31, 35, 39, §10310; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §573.12;

[81 Acts, ch 127, §3](#)

]

[87 Acts, ch 155, §1](#)

; [90 Acts, ch 1229, §1, 2](#)

; [91 Acts, ch 148, §1](#)

; [2005 Acts, ch 179, §158](#)

; [2013 Acts, ch 30, §261](#)

### **573.13 Inviolability and disposition of fund.**

A public corporation shall not be permitted to plead noncompliance with section 573.12 and the retained percentage of the contract price, which in no case shall be more than five percent, constitutes a fund for the payment of claims for materials furnished and labor performed on the improvement and shall be held and disposed of by the public corporation as provided in this chapter.

[S13, §1989-a57; C24, 27, 31, 35, 39, §10311; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §573.13]

**573.14 Retention of unpaid funds.**

The fund provided for in section 573.13 shall be retained by the public corporation for a period of thirty days after the completion and final acceptance of the improvement. If at the end of the thirty-day period claims are on file as provided the public corporation shall continue to retain from the unpaid funds a sum equal to double the total amount of all claims on file. The remaining balance of the unpaid fund, or if no claims are on file, the entire unpaid fund, shall be released and paid to the contractor.

The public corporation shall order payment of any amount due the contractor to be made in accordance with the terms of the contract. Except as provided in section 573.12 for progress payments, failure to make payment pursuant to this section, of any amount due the contractor, within forty days, unless a greater time period not to exceed fifty days is specified in the contract documents, after the work under the contract has been completed and if the work has been accepted and all required materials, certifications, and other documentations required to be submitted by the contractor and specified by the contract have been furnished the awarding public corporation by the contractor, shall cause interest to accrue on the amount unpaid to the benefit of the unpaid party. Interest shall accrue during the period commencing the thirty-first day following the completion of work and satisfaction of the other requirements of this paragraph and ending on the date of payment. The rate of interest shall be determined by the period of time during which interest accrues, and shall be the same as the rate of interest that is in effect under section 12C.6, as of the day interest begins to accrue, for a deposit of public funds for a comparable period of time. However, for institutions governed pursuant to chapter 262, the rate of interest shall be determined by the period of time during which interest accrues, and shall be calculated as the prime rate plus one percent per year as of the day interest begins to accrue. This paragraph does not abridge any of the rights set forth in section 573.16. Except as provided in sections 573.12 and 573.16, interest shall not accrue on funds retained by the public corporation to satisfy the provisions of this section regarding claims on file. This chapter does not apply if the public corporation has entered into a contract with the federal government or accepted a federal grant which is governed by federal law or rules that are contrary to the provisions of this chapter. For purposes of this unnumbered paragraph, “prime rate” means the prime rate charged by banks on short-term business loans, as determined by the board of governors of the federal reserve system and published in the federal reserve bulletin.

[C97, §3104; S13, §1989-a59; C24, 27, 31, 35, 39, §10312; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §573.14;

[81 Acts, ch 127, §4](#)

]

[90 Acts, ch 1229, §4](#)

;

[91 Acts, ch 148, §2](#)

;

[2005 Acts, ch 179, §159](#)

**573.15 Exception.**

No part of the unpaid fund due the contractor shall be retained as provided in this chapter on claims for material furnished, other than materials ordered by the general contractor or the general contractor’s authorized agent, unless such claims are supported by a certified statement that the general contractor had been notified within thirty days after the materials are furnished or by itemized invoices rendered to contractor during the progress of the work, of the amount, kind, and value of the material furnished for use upon the said public improvement, and no part of such unpaid fund due the contractor shall be retained as provided in this chapter because of the commencement of any action by the contractor against the state department of transportation under authority granted in section 613.11.

[C31, 35, §10312-d1; C39, §10312.1; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §573.15]

**573.15A Early release of retained funds.**

Notwithstanding section 573.14, a public corporation may release retained funds upon completion of ninety-five percent of the contract in accordance with the following:

1. Any person, firm, or corporation who has, under contract with the principal contractor or with subcontractors, performed labor, or furnished materials, service, or transportation, in the construction of the public improvement, may file with the public corporation an itemized, sworn, written statement of the claim for the labor, or materials, service, or transportation. The claim shall be filed with the public corporation either before the expiration of the thirty days after completion of ninety-five percent of the contract or at any time after the thirty-day period if the public corporation has not paid the full contract price and no action is pending to adjudicate rights in and to the unpaid portion of the contract price.

2. The fund, as provided in section 573.13, shall be retained by the public corporation for a period of thirty days after ninety-five percent of the contract has been completed. If at the end of the thirty-day period, a claim has been filed, in accordance with this section, the public corporation shall continue to retain from the unpaid funds, a sum equal to double the total amount of all claims on file. The remaining balance of the unpaid fund, or if there are no claims on file, the entire unpaid fund, may be released and paid to the contractor.



3. The public corporation, the principal contractor, or any claimant for labor or materials, service, or transportation, who has filed a claim or the surety on any bond given for performance of the contract, at any time after the expiration of thirty days, and not later than sixty days after the completion of ninety-five percent of the contract, may bring an action in equity in the county where the public improvement is located to determine rights to moneys contained in the fund or to enforce liability on the bond. The action shall be brought in accordance with sections 573.16 through 573.18, with the completion of ninety-five percent of the contract taking the place of the date of final acceptance.

4. A public corporation that releases funds at the completion of ninety-five percent of the contract, in accordance with this section, shall not be required to retain additional funds.

[96 Acts, ch 1126, §6](#)

#### **573.16 Optional and mandatory actions — bond to release.**

The public corporation, the principal contractor, any claimant for labor or material who has filed a claim, or the surety on any bond given for the performance of the contract, may, at any time after the expiration of thirty days, and not later than sixty days, following the completion and final acceptance of said improvement, bring action in equity in the county where the improvement is located to adjudicate all rights to said fund, or to enforce liability on said bond.

Upon written demand of the contractor served, in the manner prescribed for original notices, on the person filing a claim, requiring the claimant to commence action in court to enforce the claim, an action shall be commenced within thirty days, otherwise the retained and unpaid funds due the contractor shall be released. Unpaid funds shall be paid to the contractor within twenty days of the receipt by the public corporation of the release as determined pursuant to this section. Failure to make payment by that date shall cause interest to accrue on the unpaid amount. Interest shall accrue during the period commencing the twenty-first day after the date of release and ending on the date of the payment. The rate of interest shall be determined pursuant to section 573.14. After an action is commenced, upon the general contractor filing with the public corporation or person withholding the funds, a surety bond in double the amount of the claim in controversy, conditioned to pay any final judgment rendered for the claims so filed, the public corporation or person shall pay to the contractor the amount of funds withheld.

[C97, §3103; S13, §1989-a58; C24, 27, 31, 35, 39, §10313; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §573.16]

[91 Acts, ch 148, §3](#)

Action against surety, §616.15  
Manner of service, R.C.P. 1.302 – 1.315

#### **573.17 Parties.**

The official board or officer letting the contract, the principal contractor, all claimants for labor and material who have filed their claim, and the surety on any bond given for the performance of the contract shall be joined as plaintiffs or defendants.

[C24, 27, 31, 35, 39, §10314; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §573.17]

#### **573.18 Adjudication — payment of claims.**

1. The court shall adjudicate all claims for which an action is filed under section 573.16. Payments from the retained percentage, if still in the hands of the public corporation, shall be made in the following order:

- a. Costs of the action.
- b. Claims for labor.
- c. Claims for materials.
- d. Claims of the public corporation.

2. Upon settlement or adjudication of a claim and after judgment is entered, unpaid funds retained with respect to the claim which are not necessary to satisfy the judgment shall be released and paid to the contractor within twenty days of receipt by the public corporation of evidence of entry of judgment or settlement of the claim. Failure to make payment by that date shall cause interest to accrue on the unpaid amount. Interest shall accrue during the period commencing on the twenty-first day after receipt by the public corporation of evidence of entry of judgment and ending on the date of payment. The rate of interest shall be determined as set forth in section 573.14.

[C24, 27, 31, 35, 39, §10315; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §573.18]

[91 Acts, ch 148, §4](#)

; [2013 Acts, ch 30, §261](#)

#### **573.19 Insufficiency of funds.**

When the retained percentage aforesaid is insufficient to pay all claims for labor or materials, the court shall, in making distribution under section 573.18, order the claims in each class paid in the order of filing the same.

[C97, §3102; S13, §1989-a57; C24, 27, 31, 35, 39, §10316; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §573.19]

#### **573.20 Converting property into money.**

When it appears that the unpaid portion of the contract price for the public improvement, or a part thereof, is represented in

whole or in part, by property other than money, or if a deposit has been made in lieu of a surety, the court shall have jurisdiction thereover, and may cause the same to be sold, under such procedure as it may deem just and proper, and disburse the proceeds as in other cases.

[C24, 27, 31, 35, 39, §10317; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §573.20]

**573.21 Attorney fees.**

The court may tax, as costs, a reasonable attorney fee in favor of any claimant for labor or materials who has, in whole or in part, established a claim.

[C97, §3103; S13, §1989-a58; C24, 27, 31, 35, 39, §10318; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §573.21]

**573.22 Unpaid claimants — judgment on bond.**

If, after the said retained percentage has been applied to the payment of duly filed and established claims, there remain any such claims unpaid in whole or in part, judgment shall be entered for the amount thereof against the principal and sureties on the bond. In case the said percentage has been paid over as herein provided, judgment shall be entered against the principal and sureties on all such claims.

[C24, 27, 31, 35, 39, §10319; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §573.22]

**573.23 Abandonment of public work — effect.**

When a contractor abandons the work on a public improvement or is legally excluded therefrom, the improvement shall be deemed completed for the purpose of filing claims as herein provided, from the date of the official cancellation of the contract. The only fund available for the payment of the claims of persons for labor performed or material furnished shall be the amount then due the contractor, if any, and if said amount be insufficient to satisfy said claims, the claimants shall have a right of action on the bond given for the performance of the contract.

[C24, 27, 31, 35, 39, §10320; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §573.23]

**573.24 Notice of claims to state department of transportation.**

If payment for such improvement is to be made in whole or in part from the primary road fund, the county auditor shall immediately notify the state department of transportation of the filing of all claims.

[C24, 27, 31, 35, 39, §10321; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §573.24]

**573.25 Filing of claim — effect.**

The filing of any claim shall not work the withholding of any funds from the contractor except the retained percentage, as provided in this chapter.

[C24, 27, 31, 35, 39, §10322; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §573.25]

**573.26 Public corporation — action on bond.**

Nothing in this chapter shall be construed as limiting in any manner the right of the public corporation to pursue any remedy on the bond given for the performance of the contract.

[C24, 27, 31, 35, 39, §10323; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §573.26]

**573.27 Payment before work completed.**

Notwithstanding anything in this Code to the contrary, when at least ninety-five percent of any contract for the construction of public improvements has been completed to the satisfaction of the public contracting authority and owing to conditions beyond the control of the construction contractor the remaining work on the contract cannot proceed for a period of more than sixty days, such public contracting authority may make full payment for the completed work and enter into a supplemental contract with the construction contractor involved on the same terms and conditions so far as applicable thereto for the construction of the work remaining to be done, provided however, that the contractor's surety consents thereto and agrees that the bond shall remain in full force and effect.

[C62, 66, 71, 73, 75, 77, 79, 81, §573.27]



## Waverly Codes

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## **CHAPTER 36**

### **LEISURE SERVICES COMMISSION**

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- 36.2 Term.
- 36.3 Qualifications.
- 36.4 Compensation.
- 36.5 Officers.
- 36.6 Director.
- 36.7 Meetings.
- 36.8 Duties and Powers.
- 36.9 Gifts and Donations.

**SEC. 36.1 APPOINTMENT.** The mayor, with the approval of the council, shall appoint seven (7) leisure services commissioners.

**SEC. 36.2 TERM.** Following appointment of the initial commission according to law, each member shall be appointed for a term of three (3) years.

#### **SEC. 36.3 QUALIFICATIONS.**

1. The commissioners must be eligible electors, and residents of the city.
2. No person while on the commission, shall hold any other office nor be an employee of the city.

**SEC. 36.4 COMPENSATION.** Leisure services commissioners shall serve without compensation, but may be reimbursed for actual expenses, including travel expenses, incurred in performing any duty described in this chapter, subject to council approval.

#### **SEC. 36.5 OFFICERS.**

1. Selection. The officers of the commission shall be the chairperson and vice chairperson who shall be elected at the first organizational meeting of the commission in January of each year and who shall serve one (1) year terms.



2. Duties. The chairperson shall be the presiding officer and decide on all points of order and procedure. In the absence of the chairperson, the vice chairperson shall be the presiding officer and assume all responsibilities of the chairperson.

**SEC. 36.6 DIRECTOR.** The leisure services director shall have the following duties:

1. To attend all meetings of the leisure services commission, to take part in discussion of the commission and to keep the commission informed of activities of the leisure services department, and other matters relevant to the maintenance and operation of the department.
2. To inform the city administrator of the recommendations of the commission so that recommendations can be acted upon by the city council and/or city administrator.
3. To serve as the secretary to the commission and shall be responsible for preparing the agenda for all commission meetings, giving advance public notice of commission meetings and preparing the minutes of the commission proceedings.

**SEC. 36.7 MEETINGS.** The commission shall hold regular monthly meetings at a date, time and place as determined by the commission. Special meetings may be called by the chairperson. All meetings shall be open to the public. A quorum shall consist of a majority of the commissioners.

**SEC. 36.8 DUTIES AND POWERS.** The commission shall have the following powers and duties:

1. To recommend to the city council a budget providing for the operations of the leisure services department including cemetery, swimming pool, golf course, public grounds maintenance.
2. To recommend to the city council the establishment of fees for certain activities of the leisure services department.
3. To recommend to the city council policies for the operation of all functions under the jurisdiction of the leisure services department.
4. To recommend to the city council a long term capital improvements program for leisure services facilities, including the acquisition of park sites.
5. To promote leisure services activities which will benefit all the citizens of Waverly.

**SEC. 36.9 GIFTS AND DONATIONS.** All grants, gifts and donations which are received by the city and subsequently designated to be used for leisure services purposes only shall be placed in a special leisure services fund to be expended in a manner recommended by the commission and authorized by the city council

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Revised November, 2014

## **CHAPTER 44**

### **PLANNING AND ZONING COMMISSION**

#### **Sections:**

- 44.1 Appointment.
- 44.2 Term.
- 44.3 Qualifications.
- 44.4 Compensation.
- 44.5 Selection.
- 44.6 Meetings.
- 44.7 Duties and Powers.
- 44.8 Hearings.

**SEC. 44.1 APPOINTMENT.** The mayor, with the approval of the council, shall appoint nine (9) members to the commission. (Ord. 979 06-16-14)

**SEC. 44.2 TERM.** Following appointment of the initial commission according to law, each member shall be appointed to hold office for a term of five (5) years.

#### **SEC. 44.3 QUALIFICATIONS.**

1. General. The commissioners must be eligible electors, and residents of the city.
2. Other Office. No person while on the commission, shall hold any city office or be an employee of the city.

**SEC. 44.4 COMPENSATION.** Planning commissioners shall serve without compensation, but may be reimbursed for actual expenses, including travel expenses, incurred in performing any duty described in this chapter subject to approval of the city council.

**SEC. 44.5 SELECTION.** The member chairing the board shall be elected at the first organizational meeting of the commission, in May of each year, by all the commissioners present. A second commissioner shall, in like manner, be elected as vice chair. The members serving as chair and vice chair of the commission shall have concurrent terms of one (1) year.

1. The member chairing the board shall be the presiding officer of the commission, and shall rule on all points of order and procedure. The member serving as vice chair shall have all the duties and powers as the member chairing the commission, when the chair is absent or otherwise unable to act.

2. The City Administrator or the City Administrator's designee shall have the following duties:
  - a. Attend all meetings of the commission and inform and advise the members concerning matters relevant to the commissions duties.
  - b. Serve as secretary to the commission and shall be responsible for drafting the agenda for all commission meetings, providing public notice of meetings and recording the minutes of the meetings.

**SEC. 44.6 MEETINGS.** The commission shall hold regular meetings each month, and shall have any other meetings deemed necessary and called by resolution or by the member serving as the chair.

**SEC. 44.7 DUTIES AND POWERS.** The powers and duties of the commission shall include the following:

1. Make careful and comprehensive studies of present conditions and future growth of the city and the relation between the territory neighboring the present city limits and such conditions and growth.
2. Contract with any professional consultant, the Iowa Development Commission and the federal government, for local planning assistance.
3. Establish, amend, supplement and maintain a **comprehensive plan** for physical development of the city.
4. Supervise the making of surveys, studies, maps, plans or charts of the city, or any part of the city, and any land outside the city limits which is related to the comprehensive plan.
5. Review and recommend to the city council prior to council action thereon:
  - a. Plats. All plats, including plats of subdivisions or resubdivisions of land within the city limits or within two miles adjacent to such limits. Plats describe lots, throughways or places intended to be dedicated to the public.
  - b. Vacation. All plans for vacating any or partially vacating any existing throughway or public ground.

c. Improvements.

(1) All plans for public improvements which affect the city plan, including the character or location of any street, bridge, viaduct, thoroughway, park, parkway or river front.

(2) All plans for private improvements which are proposed to be erected upon public grounds, including statuary, memorials or works of art.

d. All zoning district boundary changes and all rezoning requests.

e. All site development plans.

**SEC. 44.8 HEARINGS.** The planning and zoning commission is authorized to hold and shall conduct such public hearings as required by state law or city ordinance at which interested parties and citizens shall have an opportunity to be heard when a zoning regulation, restriction, or boundary is proposed to be changed.



## **CHAPTER 57**

### **TREE ORDINANCE**

#### **Sections:**

- 57.1 Purpose.
- 57.2 Definitions.
- 57.3 Permit Required.
- 57.4 Business of Removing, Cutting, Trimming to be Licensed, Fees.
- 57.5 Permits and Licenses--Exemptions.
- 57.6 Bond or Evidence of Insurance.
- 57.7 Worker's Compensation Policy.
- 57.8 Felling of Trees/Limbs Onto Streets.
- 57.9 Materials Used on Trees Needs Permit.
- 57.10 Pollutants to Trees Not Allowed.
- 57.11 Arboricultural Specifications and Standards of Practice.
- 57.12 Removal of Trees.
- 57.13 Duty to Trim Trees.
- 57.14 Container Planting.
- 57.15 Erect Barriers for Protection of Trees.
- 57.16 Destroying of Trees.
- 57.17 Penalty.

**SEC. 57.1 PURPOSE.** The purpose of this chapter is to beautify and preserve the appearance of the city by requiring street trees to be uniformly located and maintained. The primary responsibility for maintaining street trees is placed upon the abutting property owner or his designated agent, and the director shall personally supervise any extensive trimming or cutting of said trees.

**SEC. 57.2 DEFINITIONS.** For use in this chapter, the following terms are defined:

1. The term "person" shall mean any individual, firm, corporation, trust, association or any other organized group.
2. The term "street" shall mean the entire width between property lines of avenues or highways.
3. The term "parking" shall mean that part of the street, avenue or highway in the city not covered by sidewalk and lying between the lot line and the curb line; or, on unpaved streets, that part of the street, avenue or highway lying between the lot line and that portion of the street usually traveled by vehicular traffic.
4. The term "property owner" shall mean a person owning private property in the city as shown by the county auditor's plats of the city.
5. The term "public property" shall mean any and all property located within the confines of the city and owned by the city or held in the name of the city by any of the departments, commissions or agencies within the city government.
6. The term "director" shall mean the leisure services director.

### **SEC. 57.3 PERMIT REQUIRED.**

1. Except as allowed in Section 57.13, no person shall cut or remove any plant, tree or shrub on the streets or on public property without first obtaining a permit from the director, who shall issue said permit if the proposed work is necessary and the proposed methods and workmanship are satisfactory.
2. The director may demand the posting of bond or insurance before the permit is granted. Such bond or insurance shall be of sufficient amount to reasonably cover any damages that may occur to life or property while the provisions of the permit are being carried out.
3. Every permit granted in accordance with this section by the director shall describe the work to be done, the estimated cost, define the species, sizes and location of all trees and shrubs concerned and contain a definite date of expiration.
4. Any permit may be declared void if the terms are violated.

### **SEC. 57.4 BUSINESS OF REMOVING, CUTTING, TRIMMING TO BE LICENSED, FEES.**

1. No person shall engage in the business of removing, cutting or trimming of trees or shrubbery in the city without first obtaining a license therefor. The applicant shall submit written application to the director setting forth his experience and qualifications. Upon determination by the director that he is qualified he shall be granted a license which shall allow the removal, cutting and trimming of trees and shrubbery in the city, which shall be an annual license commencing January 1, and terminating December 31, of each year. The license fee shall be established by resolution of the city council and shall be paid prior to the issuance of the license. No trimming, cutting or removal shall be done until the license has been obtained.
2. In addition, applicants may be required to pass a test designed and administered by the director.

**SEC. 57.5 PERMITS AND LICENSES--EXEMPTIONS.** The preceding section relating to permits and licenses shall not apply to the following:

1. The United States of America, the State of Iowa, any county, municipality or political subdivisions of the State, any department, bureau or agency of any of the foregoing or any official representative of any of the foregoing in pursuit of official duties.
2. Any person with reference to trees and shrubs on his own premises;
3. Any individual performing labor or services on or in connection with trees at the direction and under the personal supervision of a licensed tree trimmer while in the performance of such functions;
4. Any public utility engaged in tree trimming and/or tree removal for the purpose of line clearance in order to insure the continuity of utility service to the public.
5. Trimming or cutting which is in compliance with Section 57.13.

**SEC. 57.6 BOND OR EVIDENCE OF INSURANCE.** Any person, before engaging in the business

or occupation of removing, cutting or trimming trees or shrubbery in the city, shall deposit with the director a good and sufficient bond or evidence of insurance in the sum of not less than ten thousand dollars (\$10,000.00), provide evidence of liability insurance in the sum of One hundred thousand dollars (\$100,000.00), conditioned that such person shall faithfully comply with the provisions of this chapter and shall indemnify, save and keep harmless the city and its officers from any and all claims, damages and losses and actions by reason of any acts or things done under or by authority or permission granted herein.

**SEC. 57.7 WORKER'S COMPENSATION POLICY.** Any person, before engaging in the business or occupation of removing, cutting or trimming trees in the city shall furnish satisfactory evidence to the director that the workers employed by that person are covered by a suitable worker's compensation policy according to the laws of that State.

**SEC. 57.8 FELLING OF TREES/LIMBS ONTO STREETS.** If a tree or limb will fall on any street, alley or sidewalk, the director must be notified prior to felling.

1. Safety requirements. The person to whom the permit is issued shall be responsible for placing such signs, flags, flares and barricades as are needed to warn persons of the danger of using the street, sidewalk or alley.
2. Trees or branches which are felled or trimmed onto public property must be removed immediately unless an extension of time is granted by the director in writing.
3. Stump removal cavities must be cleared and refilled with soil in the same operation. At no time shall a cavity remain unfilled overnight.

**SEC. 57.9 MATERIALS USED ON TREES NEED PERMIT.** No person shall fasten any sign, box, wire, rope or other material to, around or through any tree or shrub in any street, park or public place in the city except by the permission of the director or when such materials are designed to preserve such tree or shrub and have been placed under a permit granted by the director.

**SEC. 57.10 POLLUTANTS TO TREES NOT ALLOWED.** No person shall deposit, place, store or maintain upon any street, park or public place in the city any stone, brick, sand, concrete or other material which shall impede the free passage of water, air and fertilizer to the roots of any tree or shrub growing therein except by permission of the director or when such materials are designed for the construction of sidewalks, pavement, gutters or other public improvements under a permit granted by the city or some department thereof.

**SEC. 57.11 ARBORICULTURAL SPECIFICATIONS AND STANDARDS OF PRACTICE.**

1. Location.
  - a. Whenever possible trees should be planted inside the property lines and not between the sidewalk and the curb.
  - b. All trees and shrubs hereafter planted in any street shall be planted midway between the outer line of the sidewalk and the curb. In the event a curb line is not established, trees shall not be planted within 10 feet from the near edge of the road.

- c. Trees shall not be planted on the parking if said parking is less than 12' in length and 4 feet 9 inches in depth (sidewalk to curb), or contains less than 50 square feet of exposed soil or grass surface.
- d. Trees shall not be planted closer than 20 feet to the street intersections (property lines extended) and 4 feet 9 inches from any driveway.
- e. No tree that will attain a mature height of 30' tall may be planted under existing utility lines.

2. Nuisance. The following trees are not permitted to be planted in any street or public place in the city:

Boxelder	Siberian Elm	Chinese Elm
Cottonwood	White Poplar	Lombardy Poplar
Boileana	Poplar Willows	Tree of Heaven
American Elm	Silver Maple	Catalpa
Black Locust	Weeping Birch	European Mt. Ash
Poplar	Fruit Trees (except ornamentals)	

or any species of Ash.

**\*\*No conifers or evergreens should be planted between the sidewalk and the curb of any city street for safety and visibility considerations. See director for trees recommended for planting.**

- 3. Method of support. Trees may be guyed or supported in an upright position according to accepted arboricultural practices. The guys or supports shall be fastened in such a way that they will not girdle or cause serious injury to the trees or endanger public safety.
- 4. Trimming or pruning.
  - a. All public tree trimming or pruning shall utilize Natural Target Pruning Practice now commonly accepted by the United States Forest Service. All efforts to protect the Branch Collar will be the responsibility of the tree trimmer or pruner.
  - b. All limbs over 1 inch in diameter must be bottom cut first to prevent stripping of bark as limbs fall. Any limbs which endanger other limbs, trees or property shall be lowered to the ground - not felled.
  - c. To avoid the spreading of disease, tools shall be disinfected with alcohol before use on another tree.

**SEC. 57.12 REMOVAL OF TREES.** The director shall remove, on the order of the council, any tree on the streets of this municipality which interferes with the making of improvements or with travel thereon. He shall additionally remove any trees on the street, not on private property, which have become diseased, or which constitutes a threat to the public, or which may otherwise be declared a nuisance by the director. The Director or his Designee has the right to determine a Hazardous tree on private property that is a threat to public safety, and issue a 30 day notice to remove to the owner. If not removed in 30 days, the city shall remove it at the owner's expense and bill accordingly on their property taxes. The owner has the right to appeal said decision in front of the Forestry Committee within the 30 day period.

**SEC. 57.13 DUTY TO TRIM TREES.** The owner of property abutting a street shall keep the trees on

his property or on the parking and overhanging the street, trimmed so that all branches will be at least (16) feet above the surface of the street and at least (8) eight feet above the sidewalks.

**SEC. 57.14 CONTAINER PLANTING.** No individual or firm shall establish a container either above or below ground for plants or trees on public property without a permit from the director. The petitioner shall submit a request complete with a design detail to the director prior to the issuance of said permit.

1. Requirements.

- a. Provisions in Section 57.11. Arboricultural specifications and standards of practice, must be met.
  - b. The planting medium must be of sufficient size to support and sustain the plants and the container shall not be less than 24 inches in depth and 30 inches in diameter, inside dimensions.
  - c. All costs arising from the establishment, maintenance or removal of plants or plant containers will be born by the abutting property owner.
  - d. Plants, containers and their contents must be maintained in the conditions specified by original design at all times. Any planter not serving its designed aesthetic function shall be replanted or removed.
2. Notice to replant or remove. Any container and plant material not maintained to quality and designed standard as required by the director is hereby declared a nuisance, and must be abated by abutting property owner.
3. Freedom from liability. Any individual or firm granted the right to place or establish containers on public property pursuant to this section shall execute an indemnification agreement, which indemnifies and holds harmless the City of Waverly from any and all liability which may be incurred as a result of the placement of said containers and their contents.

**SEC. 57.15 ERECT BARRIERS FOR PROTECTION OF TREES.** During all building and construction operations, the contractor or builder shall erect suitable protective barriers around all trees and shrubs in any street, park or public place in the city in order to prevent said trees from being injured.

**SEC. 57.16 DESTROYING OF TREES.** No person shall break, deface, injure, kill or destroy any tree or shrub or set fire or permit any fire to burn where such fire or heat thereof will injure any portion of any tree or shrub in any street, park or public place in the city. Topping of any city owned tree is prohibited except when authorized.

**SEC. 57.17 PENALTY.** Anyone violating any of the provisions of this ordinance shall, upon conviction, be subject to imprisonment not exceeding thirty (30) days, or a fine not exceeding \$100.00.



## **CHAPTER 63**

### **NUISANCES**

#### **Sections:**

- 63.1 Defining Nuisances.
- 63.2 Nuisances Prohibited.
- 63.3 Depositing Rubbish.
- 63.4 Notice to Abate Nuisance.
- 63.5 Contents of Notice to Abate.
- 63.6 Method of Service.
- 63.7 Request for Hearing and Appeal.
- 63.8 Abatement by Municipality.
- 63.9 Collection of the Cost of Abatement.
- 63.10 Abatement in Emergency.

**SEC. 63.1 DEFINING NUISANCES.** The term "nuisance" shall mean whatever is injurious to health, indecent, or offensive to the senses or an obstacle to the free use of property so as essentially to interfere with the comfortable enjoyment of life or property. Nuisances are declared to be, but not limited to, the following:

1. All dogs, cats, goats, horses, cattle, swine, fowl, or other domestic animals running at large within the city limits.
2. All pools or ponds of stagnant water.
3. A carcass of any kind of dead animal not disposed of within twenty-four (24) hours after its death.
4. Dense growth of all vines, brush, or other vegetation in the city so as to constitute a health, safety, or fire hazard.
5. The corrupting or rendering unwholesome or impure the water of any river, creek, pond or ground water, or unlawfully diverting the same from its natural course to the injury or prejudice of others.
6. Accumulations of refuse or solid waste as defined in Chapter 69 of this code and further defined as "any solid waste or junk stored on the property (i.e., items of decomposing lumber, junk vehicles, tires, yard waste, household appliances, housing materials, scrap metal, solid waste, debris and garbage placed and/or stored on the property."
7. Dense smoke, noxious fumes, gas and soot, or cinders, in unreasonable quantities.

8. Abandoned Appliances. Abandoning or otherwise leaving unattended any refrigerator, ice box, or similar container, with doors that may become locked, outside of buildings and accessible to children, or allowing any such refrigerator, ice box, or similar container, to remain outside of buildings on premises in the person's possession or control, abandoned or unattended and so accessible to children.
9. Storing of Inflammable Junk. The depositing or storing of inflammable junk, such as old rags, rope, cordage, rubber, bones and paper, by dealers in such articles within the city, unless it be in a building of fireproof construction.
10. All obscene pictures, books, pamphlets, magazines and newspapers.
11. All houses kept for the purpose of prostitution or promiscuous sexual intercourse, gambling houses, houses of ill fame, and bawdy houses.
12. The public use of profane or obscene language.
13. The burning of leaves, debris, or other materials upon a public street, sidewalk or other such public places.
14. All diseased animals running at large.
15. Trees infected with Dutch Elm Disease and trees infested with Emerald Ash Borer (Ord. 981 06-16-14).
16. All trees, hedges, billboards or other obstructions which prevent persons from having a clear view of any portion or part of a public street, road, highway, alley or railroad track so as to endanger the safety of the public.
17. All buildings, walls and other structures which have been damaged by fire, decay or otherwise to an extent exceeding one-half their original value, and which are so situated so as to endanger the safety of the public.
18. All unnecessary noises and vibrations that are unreasonably disturbing to the public.
19. Obstructions and excavations affecting the ordinary use by the public of streets, alleys, sidewalks or public grounds, except under such conditions as are provided for by this code.
20. Any use of property abutting on a public street or sidewalk or any use of a public street or sidewalk which causes large crowds of people to gather or an obstruction of traffic and the free use of the streets or sidewalks.
21. All explosives, inflammable liquids and other dangerous substances stored in any manner or in any amount other than that provided for by this code.
22. All use or display of fireworks except as provided by this code.

23. Weeds in violation of Chapter 64 of this code.

24. Abandoned or junked vehicles in violation of Chapters 65 and 66 of this code.

**SEC. 63.2 NUISANCES PROHIBITED.** The creation or maintenance of a nuisance is hereby prohibited, and a nuisance, public or private, may be abated in the manner provided in this chapter.

**SEC. 63.3 DEPOSITING RUBBISH.** Depositing rubbish or blocking the dry run as prohibited of Chapter 68 of this code.

**SEC. 63.4 NOTICE TO ABATE NUISANCE.** Whenever the mayor or other municipal officer finds that a nuisance exists, he shall cause to be served upon the owner, agent, or occupant of the property on which the nuisance is located, or upon the person causing or maintaining the nuisance, a written notice to abate or to request a hearing as provided for in this chapter.

**SEC. 63.5 CONTENTS OF NOTICE TO ABATE.** The notice to abate shall contain:

1. A description of what constitutes the nuisance or other condition;
2. The location of the nuisance or condition;
3. A statement of the act or acts necessary to abate the nuisance or condition;
4. A reasonable time within which to complete the abatement;
5. A statement that if the nuisance or condition is not abated as directed and no request for a hearing is made within the time prescribed, the city will abate it and assess the costs against the person to whom the notice was sent.

**SEC. 63.6 METHOD OF SERVICE.** The notice to abate shall be caused to be served by the police chief, upon the named person in the manner provided by law for the personal service of original notices or by certified mail delivered to the property owner.

**SEC. 63.7 REQUEST FOR HEARING AND APPEAL.** Any person ordered to abate a nuisance or condition may have a hearing with the officer ordering the abatement as to whether the prohibited condition exists. A request for hearing must be made in writing and delivered to the officer ordering the abatement within the time stated in the notice, or it will be conclusively presumed that a nuisance or prohibited condition exists, and it must be abated as ordered. At the conclusion of the hearing, the hearing officer shall render a written decision as to whether a nuisance or prohibited condition exists. If he finds that a nuisance or prohibited condition exists, he must order it abated within an additional time which must be reasonable under the circumstances. An appeal from this decision may be had by immediately filing a written notice with the hearing officer. This appeal will be

heard before the city council at a time and place fixed by the council. The findings of the council shall be conclusive and, if a nuisance or prohibited condition is found to exist, it shall be ordered abated within a time reasonable under the circumstances.

**SEC. 63.8 ABATEMENT BY MUNICIPALITY.** If the person notified to abate a nuisance or condition neglects or fails to abate as directed, the city may perform the required action to abate, keeping an accurate account of the expense incurred. The itemized expense account shall be filed with the city clerk who shall pay such expenses on behalf of the municipality.

**SEC. 63.9 COLLECTION OF THE COST OF ABATEMENT.** The city clerk shall mail a statement of the total expense incurred to the property owner who has failed to abide by the notice to abate, and if the amount shown by the statement has not been paid within one (1) month, the city clerk shall certify the costs to the county auditor and it shall then be collected with, and in the same manner, as general property taxes.

**SEC. 63.10 ABATEMENT IN EMERGENCY.** If it is determined that an emergency exists by reason of the continuing maintenance of the nuisance or condition, the city may perform any action which may be required to abate the nuisance or condition without prior notice. The city shall assess the costs in the manner set out in this chapter, after notice to the property owner under the applicable provision of Sections 63.4 and 63.5 and hearing as provided in Section 63.7.

## **CHAPTER 64**

### **WEEDS**

#### **Sections:**

- 64.1 When a Nuisance.
- 64.2 Opportunity to Abate.
- 64.3 Request for Hearing.
- 64.4 Abatement.
- 64.5 Fees.

**SEC. 64.1 WHEN A NUISANCE.** Whenever an officer of the city government determines that grasses and/or weeds within 300 feet of established buildings are more than twelve inches high, those grasses and weeds shall constitute a public nuisance.

**SEC. 64.2 OPPORTUNITY TO ABATE.** A written notice or a verbal notice shall be given to the landowner when it is determined that weeds and grasses constitute a nuisance. Said landowner shall have seven (7) days in which to cut the weeds and grasses or to request a hearing before the city officer giving notice.

**SEC. 64.3 REQUEST FOR HEARING.** The landowner may request a hearing before the officer giving notice by either verbal or written request addressed to the said officer. The said officer may in his discretion deny an appeal of the hearing to the city council.

**SEC. 64.4 ABATEMENT.** If, after due notice, any weeds and/or grasses have not been cut, the city or its contractor(s) shall cut the weeds and/or grasses.

**SEC. 64.5 FEES.** The city shall bill the landowner for the costs incurred by the city in cutting the grass or weeds and administrative costs as are reasonably assignable to providing for notice and hearing in accordance with a fee schedule set by the city council by resolution. Fees not collected within 60 days of billing may be certified by the city administrator to the county treasurer and assessed against the property served and collected into manner of property taxes.



## **CHAPTER 68**

### **DRY RUN WATERWAY**

#### **Sections:**

2. Background.
3. Purpose.
4. Definitions.
5. Prohibited Activities.
6. Impediments Within the Dry Run Channel a Nuisance.
7. Duty of Owner.
8. Notice to Abate.
9. Duty of City.
10. Abatement.
11. Cost of Abatement.
12. Hearing, Appeal.
13. Penalties.

**SEC. 68.1 BACKGROUND.** The dry run waterway conveys storm water from a large portion of the City of Waverly to the Cedar River. It is subject to periodic flooding, which has resulted in major property damage and loss of life. The city has expended large sums of public money for flood control projects to minimize flooding in the dry run area, including construction of a retention basin to control discharging waters into the dry run.

**SEC. 68.2 PURPOSE.** The purpose of this chapter is to protect the safety of the citizens and property in the city by prohibiting conditions which might interfere with the efficient conveyance of flood waters through the dry run and to promote the health and sanitation of the community by prohibiting conditions causing standing water conducive to breeding insects. It is recognized that this chapter is not a solution to flooding of the dry run.

#### **SEC. 68.3 DEFINITIONS.**

3. The term "dry run" as used in this chapter shall mean natural waterways extending through the west part of Waverly and more specifically defined as the south branch and the north branch as follows:
  4. South Branch. The natural waterway extending west from the Cedar River from approximately Seventh Avenue Southwest on west to its point of intersection with Fourth Street Southwest (Highway 218) between Seventh Avenue Southwest and Eighth Avenue Southwest.

North Branch. The natural waterway extending west from the Cedar River at approximately Seventh Avenue Southwest on north and west to its points of beginning; in the Willow Lawn area, approximately 1000 feet west of Twenty-fourth Street Northwest immediately north of Third Avenue Northwest; and north of Fifth Avenue Northwest, at its point of intersection with Twentieth Street Northwest.

2. The term "Dry Run Channel" includes all areas within the boundaries which confine water to its channel throughout the entire width when the dry run waterway is carrying its maximum quantity of water.
3. The term "foreign object" as used in this chapter shall mean any object or thing, except vegetation, located in the dry run channel that is not a structural part of the channel.

**SEC. 68.4 PROHIBITED ACTIVITIES.** No person shall engage in any of the following activities within the dry run channel:

1. Deposit any garbage, trash, refuse or foreign object or materials of any kind into the channel;
2. Plant any trees, shrubs or other growing objects within the dry run channel;
3. Deposit any dirt or fill in the dry run channel or alter the channel in any manner, without the prior written consent of the city administrator of the City of Waverly.
4. Erect any structure or other improvement within or across the dry run channel without the prior written consent of the city administrator of the City of Waverly.

**SEC. 68.5 IMPEDIMENTS WITHIN THE DRY RUN CHANNEL A NUISANCE.** It is hereby declared that the existence of any foreign objects or vegetation with any dimension exceeding 12 inches on private property within the dry run channel constitutes a threat to the health and safety of the citizens of this city, and is a nuisance.

**SEC. 68.6 DUTY OF OWNER.** It shall be the duty of owners of private property in the dry run channel to:

1. Remove any foreign object from that portion of the dry run channel belonging to the property owner;
2. Trim any vegetation growing within the channel, including grass, weeds, shrubs and trees, so such vegetation shall not exceed a height of 12 inches.

3. Abate a nuisance existing in the dry run channel upon a receipt of a notice to abate as provided in Section 68.7 of this chapter.

**SEC. 68.7 NOTICE TO ABATE.** Upon discovery of any foreign object or vegetation with a dimension exceeding 12 inches on private property within the dry run channel, the Public Works Director shall notify by certified mail the owner of that portion of the channel upon which such foreign object or vegetation is located, that:

1. The foreign object or vegetation constitutes a nuisance within the provisions of this chapter;
2. The owner must remove any foreign object cited in the notice within 48 hours and trim any vegetation cited in the notice within five (5) days, or request a hearing, as provided in Section 68.11 of this chapter;
3. Failure to remove the cited foreign object or trim the cited vegetation, or request a hearing within the time prescribed, will cause the person to be guilty of a Municipal Infraction and the city may at its option abate the nuisance and direct assessment of the costs against the violator and/or pursue prosecution therefore.

**SEC. 68.8 DUTY OF CITY.** The public works department of the city shall have the duty to check the entire dry run channel at least two (2) times each calendar year, for violations of this chapter.

**SEC. 68.9 ABATEMENT.** If the owner of property within the dry run channel shall fail to remove foreign objects or trim vegetation in violation of this chapter upon notification by the Public Works Director, as provided in Section 68.7, or request a hearing as provided in Section 68.10, the public works department of the city of shall abate such nuisance by removing the foreign object and trimming the vegetation which violates this chapter.

**SEC. 68.10 COST OF ABATEMENT.** All costs of removing foreign objects or trimming vegetation in violation of this chapter after notification per Section 68.7 shall be charged to the owner of the property from which the object or vegetation was removed. If city personnel abate the nuisance, these costs shall include all costs of notification and the actual labor and equipment costs of removal. If the city contracts another party to abate the nuisance, the costs shall include costs of notification and the actual costs of such service billed to the city. The clerk shall mail a statement of the total expense incurred to the property owner who has failed to abide by the Notice to Abate, and if the amount shown by the statement has not been paid within one month, the clerk shall certify the costs to the county auditor and it shall be collected with and in the same manner as general property taxes.

**SEC. 68.11 HEARING, APPEAL.** Any person ordered to abate a nuisance or condition under this chapter may have a hearing with the city administrator as to whether a nuisance or prohibited condition exists. A request for a hearing must be made in writing and delivered to the city administrator within the time stated in the notice or it will be conclusively presumed that a nuisance or prohibited condition exists and it must be abated as ordered.

1. At the conclusion of the hearing, the city administrator shall render a written decision as to whether a nuisance or prohibited condition exists. If he finds that a nuisance or prohibited condition exists, he must order it abated within an additional 48 hours. An appeal from this decision may be had by filing within 48 hours a written notice of appeal with the city administrator. This appeal will be heard before the city council at a time and place fixed by the council. The findings of the council shall be conclusive and, if a nuisance or prohibited condition is found to exist, it shall be ordered abated within an additional 48 hours.

**SEC. 68.12 PENALTIES.** Anyone disposing of foreign objects into the dry run channel in violation of this chapter, or anyone failing to remove foreign objects or trim vegetation in violation of this chapter, following notice by the city administrator as provided in Section 68.7 herein, shall be deemed to have committed a Municipal Infraction punishable under Chapter 23 of the Municipal Code.  
(Ord. 1015 11/29/16)

## **CHAPTER 71**

### **OPEN BURNING**

#### **Sections:**

4. Purpose
5. Definitions
6. Prohibitions
7. Exemptions
8. Permits
9. General Conditions
10. Limitations
11. Authority to Extinguish
12. Penalties

**SEC. 71.1 PURPOSE.** The purpose of this Ordinance is to reduce the danger to public health, safety, and welfare from uncontrolled open burning of materials within the City Limits by adoption of the following regulations.

**SEC. 71.2 DEFINITIONS.** For the purpose of this Ordinance these words shall have the following meanings:

2. "Person" includes any individual, firm, corporation, partnership, trust, or any other organized group.
3. "Combustible Material" is any material that will take fire and burn including, rubbish, trash, or discarded materials from commercial, industrial, domestic or agricultural operations or other normal community activities. "Combustible material" for the purpose of this Ordinance shall not include "yard wastes".
4. "Yard Wastes" means organic debris (e.g. grass clippings, leaves, tree limbs, bark branches, flowers, etc.) which is produced on the property as a part of yard and garden development and maintenance.
5. "Clean Dry Wood" is defined as tree limbs, bark, or branches that have been allowed to dry to a point where it is easily combustible without creating undue amounts of smoke plus other wood products free of glue, paint, varnish, stain, and preservatives.



- f. "Recreational Fires" means fires for cooking, heating, camping, recreation or bonfires using clean dry wood or charcoal.
- g. "Burn Barrel" means any barrel, drum, trash container, or other container not specifically designed to house a fire.

**SEC. 71.3 PROHIBITIONS.** No person shall allow, cause, or permit open burning of combustible materials or yard waste except as provided in the exemptions contained in this Ordinance. No person shall burn any material in a burn barrel.

**SEC. 71.4 EXEMPTIONS.** The following open burning of combustible materials and yard wastes shall be permitted:

- 3. Recreational fires no greater than four feet in diameter shall be permitted.
- 4. Prairie grass or wildflower areas that require annual burnoffs. These areas may be burned by permit following notification to the City. Each burn event requires a permit.
- 5. Burning of yard waste on lots over one-half acre by permit issued annually by the City of Waverly. A new permit is required prior to initial burning of yard waste and in the case of a change in property ownership or a change in size of parcel.
- 6. Burning by Government. Open burning of combustible material by the government unit for public benefit shall be permitted when supervised by the Fire Department.
- 7. Variances from rules. Any person wishing to conduct open burning of materials not exempted shall make written application delivered to the City Administrator or their designee for variance to allow burning of materials. Variance may be granted by the City Administrator or their designee only upon a finding of special or emergency circumstances. If variance is granted a permit shall be issued specifying the time and manner in which the burning shall be allowed.

**SEC. 71.5 PERMITS.** Permits allowing open burning of yard wastes as provided by this Ordinance shall be issued by the Waverly Zoning Office except for emergency permits issued by the City Administrator or their designee. Applications for burn permits shall be available at the Zoning Office or the City Clerk's Office. Copies of all permits shall be provided to the Police Department and Fire Department. Three types of permits shall be available:

5. Permits authorizing burning yard wastes on lots over one-half acre.
6. Permits authorizing burning prairie grass or wild flower areas.
7. Permits authorizing emergency burns.

The fees for permits shall be established by resolution of the City Council.

Appeal from Administrative denial of a burn permit shall be made to the City Council.

**SEC. 71.6 GENERAL CONDITIONS.** (For Open Burning)

4. The Fire Chief, County or State may prohibit any or all open burning when atmospheric conditions or local circumstances make such fires hazardous or a nuisance.
5. Attendance of Open Fires. Open fires shall be constantly attended by an adult person until such fire is extinguished. This person shall have a hose connected to the water supply, or other fire-extinguishing equipment readily available for use.
6. Authority to Investigate. The City shall have authority to enter onto private property to investigate and determine if violations of this Ordinance exist, or to extinguish fires as provided by Section 71.8 of this Ordinance.
7. Hours. Open burning may only be performed between the hours of 9:00 a.m. and sundown. At sundown, all fires must be completely extinguished so that no burning embers remain or smoke or gas emit there from. These time restrictions shall not apply to recreational fires.

**SEC. 71.7 LIMITATIONS.** Open burning of materials within the City shall be limited as follows:

1. Open burning of materials shall not cause a nuisance as defined at Chapter 455B of the Iowa Code.
2. Open burning of materials shall not cause a nuisance as defined at Chapter 63 of the Waverly Municipal Code.

- 44.9 Open burning of materials except by a Government agency for public benefit shall not be conducted on City streets, alleys, or any other City property.
- 44.10 Open burning of materials shall not take place so close to any building or structure so as to constitute a danger to the building or structure.
- 44.11 Open burning of materials shall not be conducted when weather conditions including wind or dry conditions constitute a risk of spread of fire.
- 44.12 Open burning permits may be denied or revoked based on a violation of this Ordinance.

**SEC. 71.8 AUTHORITY TO EXTINGUISH.** The City of Waverly through its Public Works Department, Fire Department or Police Department is authorized to prohibit or immediately extinguish any open burning occurring within the City that is deemed by City Officials to violate prohibitions of this Ordinance or to constitute an emergency or a danger to the safety of persons or property within the City.

**SEC. 71.9 PENALTIES.** Violation of this Ordinance shall constitute a simple misdemeanor or a municipal infraction subjecting violators to appropriate criminal or civil penalties.





## **CHAPTER 102**

### **FLOOD PLAIN MANAGEMENT**

#### **1.2 CHAPTER 102**

#### **1.3 FLOOD PLAIN MANAGEMENT**

##### **Sections:**

- 102.1 Statutory Authorization, Finding of Fact and Purpose.
- 102.2 General Provisions.
- 102.3 Definitions.
- 102.4 Establishment of Zoning Districts.
- 102.5 Floodway (Overlay) District (FW).
- 102.6 Floodway Fringe (Overlay) District (FF).
- 102.7 General Flood Plain (Overlay) District (FP).
- 102.8 Shallow Flooding (Overlay) District (SF).
- 102.9 Administration.
- 102.10 Nonconforming Uses.

##### **Section 102.1 Statutory Authorization, Finding of Fact and Purpose**

**SEC. 102.1.01 STATUTORY AUTHORIZATION.** The legislature of the State of Iowa has in Chapter 414, of the current Code of Iowa, as amended, delegates the responsibility to cities to enact zoning regulations to secure safety from flood and to promote health and the general welfare.

##### **SEC. 102.1.02 FINDINGS OF FACT.**

1. Flood Hazard Areas. The flood hazard areas of the city are subject to periodic inundation which can result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base; all of which adversely affect the health, safety, and general welfare of the community.
2. Cause. These losses, hazards and related effects are caused by the occupancy of flood hazards and related effects are caused by the occupancy of flood hazard areas by uses vulnerable to flood damages which create hazardous conditions as a result of being inadequately elevated or otherwise protected from flood and the cumulative effect of flood plain construction on flood flows, which causes increases in flood heights and flood water velocities.
3. Engineering Methodology. This chapter relies upon engineering methodology for analyzing flood hazards which is consistent with the standards established by the Department of Natural Resources. This methodology consists of a series of interrelated steps including:
  - a. Flood Magnitudes. Determination of flood magnitudes and the corresponding flood frequencies by statistical and engineering factors as expected frequency of occurrence, area inundated, and depth of inundation.



- b. Water Surface Profiles. Calculations of water surface profiles based upon a hydraulic engineering analysis of the capability of the stream channel and overbank areas to convey flood flows.
- c. Floodway. Computation and delineation of a floodway, an area which must be reserved (no obstructions) for conveyance of flood flows so that flood heights and velocities will not be substantially increased by future encroachment on the flood plain.

**SEC. 102.1.03 STATEMENT OF PURPOSE.** It is the purpose of this chapter to promote the public health, safety and general welfare by minimizing those flood losses described in Section 102.1.02 with provisions designed to:

- 1. Reserve Area. Reserve sufficient flood plain area for the conveyance of flood flows so that flood heights and velocities will not be increased substantially.
- 2. Dangerous Area. Restrict or prohibit uses which are dangerous to health, safety or property in times of flood or which cause excessive increases in flood heights or velocities.
- 3. Vulnerable Uses. Require that uses vulnerable to floods, including public utilities which serve such uses, be protected against flood damage at the time of initial construction.
- 4. Buying Lands. Protect individuals from buying lands which are unsuited for intended purposes because of flood hazard.
- 5. Flood Insurance. Assure that eligibility is maintained for property owners in the community to purchase flood insurance through the National Flood Insurance Program.

### **Section 102.2 General Provisions**

**SEC. 102.2.01 LANDS TO WHICH CODE CHAPTER APPLIES.** This chapter shall apply to all lands within the jurisdiction of the City of Waverly on the Flood Boundary and Floodway map to be within the one hundred (100) year flood boundaries.

### **SEC. 102.2.02 ESTABLISHMENT OF OFFICIAL FLOOD PLAIN ZONING MAP.**

- 1. Adoption. The Flood Insurance Rate Map (FIRM) Panels 175, 260, 276, 277, 278, 279 and 285 prepared as part of the flood insurance study for Bremer County and Incorporated Areas, and the City of Waverly dated March 4, 2008 are hereby adopted by reference and declared to be the official Flood Plain Zoning Map.
- 2. Flood Profiles. The flood profiles and all explanatory material contained with the Flood Insurance Study and the Flood Insurance Rate Map(s) are also declared to be a part of this chapter.
- 3. Dry Run. For that area of the dry run reach west of Twelfth (12th) Street Northwest, information and technical data established in the Dry Run Creek Drainage and Flood Control Study January, 1980, shall be used to determine accurate flood plain zoning and said technical data and mapping shall supersede the Flood Boundary and Floodway Map described above for purposes of enforcement of this chapter.

**SEC. 102.2.03 RULES FOR INTERPRETATION OF DISTRICT BOUNDARIES.** The boundaries of the zoning district shall be determined by scaling distances on the "Official Flood Plain Zoning Map." Where interpretation is needed as to the exact location of the boundaries of the district as shown on the Official Flood Plain Zoning Map, the administrator shall make the necessary interpretation. The person contesting the location of the district boundary shall be given a reasonable opportunity to present their case and submit technical evidence.

**SEC. 102.2.04 COMPLIANCE.** No structure or land shall hereafter be used and no structure shall be located, extended, converted or structurally altered without full compliance with the terms of this chapter and other applicable regulations which apply to uses within the jurisdiction of this chapter.

**SEC. 102.2.05 ABROGATION AND GREATER RESTRICTIONS.** It is not intended by this chapter to repeal, abrogate or impair any existing easements, covenants, or deed restrictions. However, where this chapter imposes greater restrictions, the provision of this chapter shall prevail. All other ordinances, resolutions or regulations inconsistent with this code chapter are hereby repealed to the extent of the inconsistency only.

**SEC. 102.2.06 INTERPRETATION.** In their interpretation and application, the provisions of this chapter shall be held to be minimum requirements and shall be liberally construed in favor of the governing body and shall not be deemed a limitation or repeal of any other powers granted by state statutes.

**SEC. 102.2.07 WARNING AND DISCLAIMER OF LIABILITY.** The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on engineering and scientific methods of study. Larger floods may occur on rare occasions. Flood heights may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This chapter does not imply areas outside the flood plain districts or land uses permitted within such districts will be free from flooding or flood damage. This chapter shall not create liability on the part of the City of Waverly or any officer or employee thereof for any flood damages that result from reliance on this chapter or any administrative decision lawfully made thereunder.

**SEC. 102.2.08 SEVERABILITY.** If any section, clause, provision or portion of this chapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this chapter shall not be affected thereby.

### **Section 102.3 Definitions**

**SEC. 102.3.01 DEFINITIONS GENERALLY.** Unless specifically defined below, words or phrases used in this chapter shall be interpreted so as to give them the meaning they have in common usage and to give this chapter its most reasonable application.

**SEC. 102.3.02 BOARD OF ADJUSTMENT.** The term "board of adjustment" means the zoning board of adjustment as established under this code.

**SEC. 102.3.03 BASEMENT.** Any enclosed area of a building which has its floor or lowest level below ground level (subgrade) on all sides.

**SEC. 102.3.04 DEVELOPMENT.** The term "development" means any man-made change to improved or unimproved real estate, including, but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.

**SEC. 102.3.05 FACTORY-BUILT HOME.** Any structure, designed for residential use, which is wholly or in substantial part, made, fabricated, formed, or assembled in manufacturing facilities for installation or assembly and installation, on a building site. For the purpose of this chapter factory-built homes include mobile homes, manufactured homes and modular homes and also include park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days.

**SEC. 102.3.06 FACTORY-BUILT HOME PARK.** A parcel or contiguous parcels of land divided into two or more factory-built home lots for rent or sale.

**SEC. 102.3.07 FLOOD.** The term "flood" means a general and temporary condition of partial or complete inundation of normally dry land areas resulting from the overflow of streams or rivers or from the unusual and rapid run off of surface waters from any sources.

**SEC. 102.3.08 FLOOD ELEVATION.** The term "flood elevation" means the elevation floodwaters would reach at a particular site during the occurrence of a specific flood. For instance, the one hundred year (100) flood elevation is that elevation of floodwaters related to the occurrence of the one hundred (100) year flood.

**SEC. 102.3.09 FLOOD INSURANCE RATE MAP.** The term "flood insurance rate map" means the official map prepared as part of but published separately from the Flood Insurance Study which delineates both the flood hazard areas and the risk premium zones applicable to the community.

**SEC. 102.3.10 FLOOD INSURANCE STUDY.** The term "flood insurance study" means a study initiated, funded, and published by the Federal Insurance Administration for the purpose of evaluating in detail the existence and severity of flood hazards; providing the city with the necessary information for adopting a flood plain management program; and establishing actuarial flood insurance rates.

**SEC. 102.3.11 FLOOD PLAIN.** The term "flood plain" means any land area susceptible to being inundated by water as a result of a flood.

**SEC. 102.3.12 FLOOD PLAIN MANAGEMENT.** The term "flood plain management" means an overall program of corrective and preventive measures for reducing flood damages and promoting the wise use of flood plains, including but not limited to emergency preparedness plans, flood control works, floodproofing, and flood plain management regulations.

**SEC. 102.3.13 FLOODPROOFING.** The term "floodproofing" means any combination of structural or nonstructural additions, changes, or adjustments to structures, including utility and sanitary facilities which will reduce or eliminate flood damage to such structures.

**SEC. 102.3.14 FLOODWAY.** The term "floodway" means the channel of a river or stream and those portions of the flood plains adjoining the channel, which are reasonably required to carry and discharge flood waters or flood flows so that confinement of flood flows to the floodway area will not result in substantially higher flood levels and flow velocities.

**SEC. 102.3.15 FLOODWAY FRINGE.** The term "floodway fringe" means those portions of the flood plain, other than the floodway which can be filled, leveed, or otherwise obstructed without causing substantially higher flood levels or flow velocities.

**SEC. 102.3.16 LOWEST FLOOR.** The floor of the lowest enclosed area in a building including a basement except when all the following criteria are met:

1. The enclosed area is designed to flood to equalize hydrostatic pressure during floods with walls or openings that satisfy the provisions of Section 102.6, subsection 4.a.
2. The enclosed area is unfinished (not carpeted, dry walled, etc.) and used solely for low damage potential uses such as building access, parking or storage, and
3. Machinery and service facilities (e.g., hot water heater, furnace, electrical service) contained in the enclosed area are located at least one (1) foot above the 100 year flood level, and
4. The enclosed area is not a "basement" as defined in this section.
5. In cases where the lowest enclosed area satisfies criteria 1,2,3, and 4 above, the lowest floor is the floor of the next highest enclosed area that does not satisfy the criteria above.

**SEC. 102.3.17 NEW CONSTRUCTION.** For flood plain management purposes, the term "new construction" means structures for which the start of construction commenced on or after the effective date of flood plain zoning regulations adopted by this community and includes any subsequent improvements to such structures. For the purpose of determining flood insurance rates, it includes any structures for which the start of construction commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures.

**SEC. 102.3.18 ONE HUNDRED (100) YEAR FLOOD.** The term "one hundred (100) year flood" means a flood, the magnitude of which has a one (1) percent chance of being equaled or exceeded at least once every one hundred (100) years.

**SEC. 102.3.19 STRUCTURE.** The term structure means anything constructed or erected on the ground or attached to the ground, including, but not limited to, buildings, factories, sheds, cabins, factory-built homes, storage tanks, and other similar uses.

**SEC. 102.3.20 SUBSTANTIAL IMPROVEMENT.** The term substantial improvement means any improvement to a structure which satisfies either of the following criteria:

1. Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either: (1) before the improvement or repair is started, or (2) if the structure has been damaged, and is being restored, before the damage occurred. For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration affects the external dimensions of the structure. The term does not, however, include any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe conditions for the existing use.
2. Any addition which increases the original floor area of a building by 25 percent or more. All additions constructed after the date of this code shall be added to any proposed addition in determining whether the total increase in original floor space would exceed 25 percent.

### **Sec. 102.3.21 Market Value.**

1. Market value of a structure referred to in this section will be determined by using the value provided by the Bremer County Assessor. Should a property owner feel that the value provided by the Bremer County Assessor is inaccurate, he/she may provide, for review and acceptance by the City, an appraisal from a certified appraiser.

## **Section 102.4 Establishment of Zoning Districts**

**SEC. 102.4.01 ESTABLISHMENT OF ZONING DISTRICTS.** The flood plain areas within the jurisdiction of this code chapter are hereby divided into the following districts:

1. Floodway (Overlay) District (FW). The floodway district shall be consistent with the boundaries of the floodway as shown on the official Flood Plain Zoning Map.
2. Floodway Fringe (Overlay) District (FF). The floodway fringe district shall be those area as shown as floodway fringe on the official Flood Plain Zoning Map.
3. General Flood Plain (Overlay) District (FP). The general flood plain district shall be those areas shown on the official Flood Plain Zoning Map as being within the approximate one hundred (100) year flood boundary.
4. Shallow Flooding (Overlay) District (SF). The shallow flooding district shall be those area as shown on the official Flood Plain Zoning Map as being within the one hundred (100) year flood boundary and identified on the Flood Insurance Rate Map as (AO or AH) zone(s).

## **Section 102.5 Floodway (Overlay) District (FW)**

**SEC. 102.5.01 PERMITTED USES.** The following uses shall be permitted within the floodway district to the extent they are not prohibited by any other ordinance or underlying zoning district and provided they do not include placement of structures, factory built homes, fill or other obstruction, the storage of materials or equipment, excavation, or alteration of a watercourse:

1. Agricultural Uses. Agricultural uses such as general farming, pasture, grazing, outdoor plant nurseries, horticulture, viticulture, truck farming, forestry, sod farming, and wild crop harvesting.
2. Industrial-Commercial Uses. Industrial-commercial uses such as loading areas, parking areas, airport landing strips.
3. Recreational Uses. Private and public recreational uses such as golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, boat launching ramps, swimming areas, parks, wildlife and nature preserves, game farms, fish hatcheries, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, hiking and horseback riding trails.
4. Residential Uses. Residential uses such as lawns, gardens, parking areas and play areas.
5. Remainder. Such other open space uses similar in nature to the above uses.

**SEC. 102.5.02 CONDITIONAL USES.** The following uses which involve structures (temporary or permanent), fill, storage of materials or equipment may be permitted only upon issuance of a conditional use permit by the board of adjustment as provided for in Section 102.9. Such uses must also meet the applicable provisions of the floodway district performance standards:

1. Open Spaces. Uses or structures accessory to open space uses.
2. Transient Amusement. Circuses, carnivals, or similar transient amusement enterprises.
3. Roadside Places and Structures. Drive-in theaters, new and used car lots, roadside stands, signs, and billboards.
4. Extraction. Extraction of sands, gravel, and other materials.
5. Waters Edge. Marinas, boat rentals, docks, piers, and wharves.
6. Lines. Utility transmission lines and underground pipelines.
7. Remainder. Other uses similar in nature to uses described in Section 102.5.01 or Section 102.5.02 which are consistent with the provisions of Section 102.5.03 and the general spirit and purpose of this code chapter.

**SEC. 102.5.03 PERFORMANCE STANDARDS.** All floodway district uses allowed as a permitted or conditional use shall meet the following standards:

1. Prohibition. No use shall be permitted in the floodway district that would result in any increase in the one hundred (100) year flood level. Consideration of the effects of any development on flood levels shall be based upon the assumption that an equal degree of development would be allowed for similarly situated lands.
2. All uses within the floodway district shall:
  - a. Flood Damage. Be consistent with the need to minimize flood damage.
  - b. Methods and Practices. Use construction methods and practices that will minimize flood damage.
  - c. Resistant Materials. Use construction materials and utility equipment that are resistant to flood damage.
3. Capacity. No use shall affect the capacity or conveyance of the channel or floodway or any tributary to the main stream, drainage ditch, or any other drainage facility or system.
4. Structures. Structures, buildings and sanitary and utility systems, if permitted, shall meet the applicable performance standards of the floodway fringe district and shall be constructed or aligned to present the minimum possible resistance to flood flows.
5. Buildings. Buildings, if permitted, shall have a low flood damage potential and shall not be for human habitation.



6. Storage. Storage of materials or equipment that are buoyant, flammable, explosive or injurious to human, animal or plant life is prohibited. Storage of other materials may be allowed if readily removable from the floodway district within the time available after flood warning.
7. Watercourse. Watercourse alterations or relocations (channel changes and modifications) must be designed to maintain the flood carrying capacity within the altered or relocated portion. In addition, such alterations or relocations must be approved by the Iowa Department of Natural Resources.
8. Fill. Any fill allowed in floodway must be shown to have some beneficial purpose and shall be limited to the minimum amount necessary.
9. Pipeline River Crossings. Pipeline river or stream crossings shall be buried in the stream bed and banks or otherwise sufficiently protected to prevent rupture due to channel degradation and meandering or due to the action of flood flows.
10. Factory-Built Homes. No factory-built homes shall be permitted except in existing factory built home parks. Tie-down standards of the floodway fringe district must be met in such cases.

#### **Section 102.6 Floodway Fringe (Overlay) District (FF)**

**SEC. 102.6.01 PERMITTED USES.** All uses within the floodway fringe district shall be permitted to the extent that they are not prohibited by any other ordinance or underlying zoning district and provided they meet applicable performance standards of the floodway fringe district.

**SEC. 102.6.02 PERFORMANCE STANDARDS.** All uses must be consistent with the need to minimize flood damage and shall meet the following applicable performance standards:

1. Anchored Structures. All structures shall be adequately anchored to prevent flotation, collapse or lateral movement of the structure, be constructed with materials and utility equipment resistant to flood damage, and be constructed by methods and practices that minimize flood damage.
2. Residential Buildings.
  - a. Lowest Floor. All new or substantially improved residential structures shall have the lowest floor, including basements, elevated a minimum of one (1) foot above the one hundred (100) year flood level.
  - b. Fill Construction. Construction shall be upon compacted fill which shall, at all points, be no lower than one (1) foot above the one hundred (100) year flood level and extend at such elevation at least eighteen (18) feet beyond the limits of any structure erected thereon.
  - c. Elevation. Alternate methods of elevating such as piers may be allowed, subject to favorable consideration by the board of adjustment and issuance of a conditional use permit, where existing topography, street grades, or other factors preclude elevating by fill. In such cases, the methods used must be adequate to support the structure as well as withstand the various forces and hazards associated with flooding. All new residential buildings shall be provided with a means of access which will be passable by wheeled vehicles during the 100 year flood.

### 3. Nonresidential Buildings.

- a. First Floor All new or substantially improved nonresidential buildings shall have the first floor (including basement) elevated a minimum of one (1) foot above the one hundred (100) year flood level, or together with attendant utility and sanitary systems, be floodproofed to such a level.
- b. Certification. When floodproofing is utilized, a professional engineer registered in the state shall certify that the floodproofing methods used are adequate to withstand the flood depths, pressures, velocities, impact and uplift forces and other factors associated with the one hundred (100) year flood level; and that the structure, below the 100-year flood level is watertight with walls substantially impermeable to the passage of water.
- c. A record of the certification indicating the specific elevation (in relation to mean sea level) to which any structures are floodproofed shall be maintained by the administrator.

### 4. All new and substantially improved structures.

- a. Lowest Floor. Fully enclosed areas below the "lowest floor" (not including basements) that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or meet or exceed the following minimum criteria:
- b. Openings. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
- c. Grade. The bottom of all openings shall be no higher than one foot above grade.
- d. Equipped. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
- e. Prevention of Flotation, Collapse, or Lateral Movement. New and substantially improved structures must be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
- f. Prevent Water Entering. New and substantially improved structures must be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

5. Factory-Built Homes:

- a. Anchored. Factory-built homes including those placed in existing factory-built home parks or subdivisions shall be anchored to resist flotation, collapse, or lateral movement.
- b. Elevated. Factory-built homes including those placed in existing factory-built home parks or subdivisions shall be elevated on a permanent foundation such that the lowest floor of the structure is a minimum of one (1) foot above the 100-year flood level.

6. Utility and Sanitary Systems.

- a. Infiltration. All new and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system as well as the discharge of effluent into flood waters. Wastewater treatment facilities shall be provided with a level of flood protection equal to or greater than one (1) foot above the one hundred (100) year flood elevation.
- b. On Site Waste Disposal. On site waste disposal systems shall be located or designed to avoid impairment to the system or contamination from the system during flooding.
- c. New or Replacement Water Supply Systems. New or replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system. Water supply treatment facilities shall be provided with a level of protection equal to or greater than one (1) foot above the one hundred (100) year flood elevation.
- d. Utilities. Utilities such as gas and electrical systems shall be located and constructed to minimize or eliminate flood damage to the system and the risk associated with such flood damaged or impaired systems.

7. Storage. Storage of materials and equipment that are flammable, explosive or injurious to human, animal or plant life is prohibited unless elevated a minimum of one (1) foot above the one hundred (100) year flood level. Other material and equipment must either be similarly elevated or not be subject to major flood damage and be anchored to prevent movement due to flood waters or be readily removable from the area within the time available after flood warning.

8. Flood Control. Flood control structural works such as levees, floodwalls, etc. shall provide, at a minimum, protection from a one hundred (100) year flood with a minimum of three (3) feet of design freeboard and shall provide for adequate interior drainage. In addition, structural flood control works shall be approved by the Department of Natural Resources.

9. Use. No use shall affect the capacity or conveyance of the channel or floodway of any tributary to the main stream, drainage ditch, or other drainage facility or system.

10. Subdivisions. Subdivisions including factory-built home parks shall be consistent with the need to minimize flood damages and shall have adequate drainage provided to reduce exposure to flood damage. Development associated with subdivision proposals shall meet the applicable performance standards. Subdivision proposals intended for residential development shall provide all lots with a means of vehicle access which is no lower than one (1) foot below the one hundred (100) year flood elevation.
11. Exemption. The exemption of detached garages, sheds, and similar structures from the 100-year flood elevation requirements may result in increased premium rates for insurance coverage of the structure and contents, however, said detached garages, sheds, and similar accessory type structures are exempt from the 100 year flood elevation requirements when:
  - a. The structure shall not be used for human habitation.
  - b. The structure shall be designed to have low flood damage potential.
  - c. The structure shall be constructed and placed on the building site so as to offer minimum resistance to flow of floodwaters.
  - d. Structures shall be firmly anchored to prevent flotation which may result in damage to other structures.
  - e. The structure's service facilities such as electrical and heating equipment shall be elevated or floodproofed to at least one (1) foot above the 100-year flood level.

#### **Section 102.7 General Flood Plain (Overlay) District (FP)**

**SEC. 102.7.01 PERMITTED USES.** The following uses shall be permitted within the general flood plain district to the extent that they are not prohibited by any other ordinance or underlying zoning district and provided that they do not include placement of structures, factory-built homes, fill or other obstruction; the storage of materials or equipment; excavation; or alteration of a watercourse:

1. Agricultural Uses. Agricultural uses such as general farming, pasture, grazing, outdoor plant nurseries, horticulture, viticulture, truck farming, forestry, sod farming, and wild crop harvesting.
2. Industrial-Commercial Uses. Industrial-commercial uses such as loading areas, parking area, airport landing strips.
3. Recreation Uses. Private and public recreation uses such as golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, boat launching ramps, swimming areas, parks, wildlife and nature preserves, game farms, fish hatcheries, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, hiking and horseback riding trails.
4. Residential Uses. Residential uses such as lawns, gardens, parking areas and play areas.

**SEC. 102.7.02 CONDITIONAL USES.** Any use which involves placement of structures, factory-built homes, fill or other obstructions; the storage of materials or equipment; excavation; or alteration of a watercourse may be allowed only upon issuance of a conditional use permit by the board of adjustment and be reviewed by the Iowa Department of Natural Resources to determine whether the land involved is either wholly or partly within the floodway or floodway fringe and the one hundred (100) year flood level. The applicant shall be responsible for providing the Iowa Department of Natural Resources with sufficient technical information to make the determination.

**SEC. 102.7.03 PERFORMANCE STANDARDS.**

1. Floodway. All conditional uses, or portions thereof, to be located in the floodway as determined by the Iowa Department of Natural Resources shall meet the applicable provisions and standards of the Floodway (Overlay) District (Section 102.5).
2. Floodway Fringe. All conditional uses, or portions thereof, to be located in the floodway fringe as determined by the Iowa Department of Natural Resources shall meet the applicable standards of the Floodway Fringe (Overlay) District (Section 102.6).

**Section 102.8 Shallow Flooding (Overlay) District (SF)**

**SEC. 102.8.01 PERMITTED USES.** All uses within the shallow flooding district shall be permitted to the extent they are not prohibited by any other ordinance or underlying zoning district and provided that they meet the applicable performance standards of the shallow flooding district.

**SEC. 102.8.02 PERFORMANCE STANDARDS.** The performance standards for the shallow flooding district shall be the same as the performance standards for the floodway fringe district with the following exceptions:

1. AO Zone. In shallow flooding areas designated as an AO zone on the flood insurance rate map, the minimum floodproofing/flood protection elevation shall be equal to the number of feet as specified on the rate map above the crown of the nearest street.
2. AH Zone. In shallow flooding areas designated as an AH zone on the flood insurance rate map, the minimum floodproofing/flood protection elevation shall be equal to the elevation as specified on the rate map.

**Section 102.9 Administration**

**SEC. 102.9.01 ADMINISTRATOR.** The administrator shall enforce this chapter and have powers and duties which include the following:

1. Review Applications.
  - a. Chapter. Review all flood plain development permit applications to insure that the provisions of this code chapter will be satisfied.
  - b. Agencies. Review all flood plain development permit applications to insure that all necessary permits have been obtained from federal, state or local governmental agencies.

2. Records.
  - a. Elevation. Record and maintain a record of the elevation (in relation to mean sea level) of the lowest habitable floor of all new or substantially improved buildings or the elevation to which new or substantially improved structures have been floodproofed.
  - b. Administration. Keep a record of all permits, appeals, variances and such other transactions and correspondence pertaining to the administration of this chapter.
3. Notice.
  - a. Adjacent Communities and Counties. Notify adjacent communities and/or counties and the Iowa Department of Natural Resources prior to any proposed alteration or relocation of a watercourse and submit evidence of such notifications to the Federal Insurance Administrator.
  - b. Federal Insurance Administrator. Notify the Federal Insurance Administrator of any annexations or modifications to the community's boundaries.
4. Report. Submit to the Federal Insurance Administrator an annual report concerning the community's participation utilizing the annual report form supplied by the Federal Insurance Administrator.
5. Review. Review subdivision proposals to insure such proposals are consistent with the purpose of this chapter and advise the council of potential conflicts.

#### **SEC. 102.9.02 FLOOD PLAIN DEVELOPMENT PERMIT.**

1. Permit Required. A flood plain development permit issued by the administrator shall be secured prior to initiation of any flood plain development (any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, filling, grading, paving, excavation or drilling operations) including the placement of factory-built homes.
2. Application for Permit. Application for flood plain development permit shall be made on forms supplied by the administrator and shall include the following information.
  - a. Work Description. Work to be covered by the permit for which application is to be made.
  - b. Land Description. Description of the land on which the proposed work is to be done (i.e., lot, block, tract, street address or similar description) that will readily identify and locate the work to be done.
  - c. Use and Occupancy. Indication of the use or occupancy for which the proposed work is intended.



- d. Elevation. Elevation of the one Hundred (100) Year Flood.
  - e. Sea Level Elevation. Elevation in relation to mean sea level of the lowest habitable floor including basement of buildings or of the level to which a building is to be floodproofed.
  - f. Improvements. For buildings being improved or rebuilt, the estimated cost of improvements and market value of the building prior to the improvements.
  - g. Information. Such other information as the administrator deems reasonably necessary for the purpose of this chapter.
3. Action on Permit Application. The administrator shall, within a reasonable time, make a determination as to whether the proposed flood plain development meets the applicable provisions and standards of this chapter and shall approve or disapprove the application. The administrator shall not issue permits for conditional uses or variances except as directed by the board of adjustment. For disapprovals, the applicant shall be informed, in writing of the specific reasons therefore.
4. Construction and Use to be as Provided in Application and Plans.
- a. Permits. Flood plain development permits issued on the basis of approved plans and applications authorize only the use, arrangement, and construction set forth in such approved plans and applications and no other use, arrangement or construction.
  - b. Variance. Any use, arrangement, or construction at variance with that authorized shall be deemed a violation of this chapter and shall be punishable as provided by Section 102.10.02. The applicant shall be required to submit certification by a professional engineer or land surveyor, as appropriate, registered in the State of Iowa, that the finished fill, building floor elevations, floodproofing, or other flood protection measures were accomplished in compliance with the provisions of this chapter, prior to the use or occupancy of any structure.

#### **SEC. 102.9.03 CONDITIONAL USES, APPEALS, AND VARIANCES.**

- 1. Appointment and Duties of Board of Adjustment. The board of adjustment shall hear and decide: applications for conditional uses upon which the board is authorized to pass under this chapter, appeals and requests for variances to the provisions of this chapter, and shall take any other action which is required of the board.
- 2. Conditional Uses. Requests for conditional uses shall be submitted to the administrator, who shall forward such to the board of adjustment for consideration. Such requests shall include information ordinarily submitted with applications as well as any additional information deemed necessary by the board of adjustment.

3. Appeals.

- a. Error. Where it is alleged there is any error in any order, requirement, decision, or determination made by the administrator in the enforcement or administration of this chapter, the aggrieved party may appeal such action.
- b. Procedure. The notice of appeal shall be filed with the board of adjustment and with the official from whom the appeal is taken and shall set forth the specific reason for the appeal. The official from whom the appeal is taken shall transmit to the board of adjustment all the papers constituting the record upon which the action appealed from was taken.

4. Variances. The board of adjustment may authorize upon request in specific cases such variances from the terms of this chapter that will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of this chapter will result in unnecessary hardship. Variances granted must meet the following applicable standards:

- a. One Hundred Year Flood. No variance shall be granted for any development within the floodway district which would result in any increase in floods during the occurrence of the one hundred (100) year flood. Consideration of the effects of any development on flood levels shall be based upon the assumption that an equal degree of development would be allowed for similarly situated lands.
- b. Cause. Variances shall only be granted upon: a showing of good and sufficient cause, a determination that failure to grant the variance would result in exceptional hardship to the applicant; and a determination that the granting of the variance will not result in increased flood heights, additional threats to public expense, create nuisances, cause fraud on or victimization of the public.
- c. Minimum Necessary. Variances shall only be granted upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- d. Below minimum. In cases where the variance involves lower level of flood protection for buildings than what is ordinarily required by this code chapter, the applicant shall be notified in writing over the signature of the administrator that the issuance of a variance will result in increased rates for one hundred (100) year flood insurance coverage, and such construction increases risks to life and property.
- e. I.D.N.R. All variances granted shall have the concurrence or approval of the Iowa Department of Natural Resources.

## 5. Hearings and Decisions of the Board of Adjustment.

- a. Hearings. Upon the filing with the board of adjustment of an appeal, an application for a conditional use or a request for a variance, the board shall hold a public hearing. The board shall fix a reasonable time for the hearing and give public notice thereof, as well as due notice to parties in interest. At the hearing, any party may appear in person or by agent or attorney and present written or oral evidence. The board may require the appellant or applicant to provide such information as is reasonably deemed necessary and may request the technical assistance and/or evaluation of a professional engineer or other expert person or agency, including the Iowa Department of Natural Resources.
- b. Decisions. The board shall arrive at a decision on an appeal, conditional use or variance within a reasonable time. In passing upon an appeal, the board may, so long as such action is in conformity with the provisions of this code chapter, reverse or affirm, wholly or in part, or modify the order, requirement, decision, or determination appealed from, and it shall make its decision, in writing, setting forth the findings of fact and the reasons for its decision. In granting a conditional use or variance, the board shall consider such factors as contained in this section and all other relevant sections of this code chapter and may prescribe such conditions as contained in Section 102.9.03 (5)(d).
- c. Factors Upon Which the Decision of the Board Shall be Based. In passing upon applications for conditional uses or requests for variances, the board shall consider all relevant factors specified in other sections of this code chapter and:
  - (1) Encroachments. The danger to life and property due to increased flood heights or velocities caused by encroachments.
  - (2) Downstream. The danger that materials may be swept to other lands or downstream to the injury of others.
  - (3) Water/Sewer Systems. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination and unsanitary conditions.
  - (4) Proposed Facility. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
  - (5) Services. The importance of the services provided by the proposed facility to the community.
  - (6) Flood Plain Location. The requirements of the facility for a flood plain location.
  - (7) Alternative Locations. The availability of alternative locations not subject to flooding for the proposed use.

- (8) Compatibility. The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.
  - (9) City Plans. The relationship of the proposed use to comprehensive plan and flood plain management for the area.
  - (10) Emergency Vehicles. The safety of access to the property in times of flood for ordinary and emergency vehicles.
  - (11) Expectation. The expected heights, velocity, duration, rate of rise and sediment transport of the flood water expected at the site.
  - (12) Remainder. Such other factors which are relevant to the purpose of this code chapter.
- d. Conditions Attached to Conditional Uses or Variances. Upon consideration of the factors listed above, the board may attach such conditions to the granting of conditional uses or variances as it deems necessary to further the purpose of this code chapter. Such conditions may include, but not necessarily be limited to:
- (1) Modification. Modification of waste disposal and water supply facilities.
  - (2) Limitations. Limitation on periods of use and operation.
  - (3) Imposition. Imposition of operational controls, sureties, and deed restrictions.
  - (4) Construction. Requirements for construction of channel modification, dikes, levees, and other protective measures, provided such are approved by the Iowa Department of Natural Resources and are deemed the only practical alternative to achieving the purposes of this code chapter.
  - (5) Floodproofing Measures. Floodproofing measures shall be designed consistent with the flood protection elevation for the particular area, flood velocities, durations, rate of rise, hydrostatic and hydrodynamic forces, and other factors associated with the regulatory flood. The board of adjustment shall require that the applicant submit a plan or document certified by a registered professional engineer that the floodproofing elevation and associated flood factors for the particular area. Such floodproofing measures may include, but are not necessarily limited to the following:
    - a. Anchorage. Anchorage to resist flotation and lateral movement.
    - b. Installation. Installation of watertight doors, bulkheads, and shutters, or similar methods of construction.
    - c. Reinforcement. Reinforcement of walls to resist water pressure.
    - d. Seepage. Use of paints, membranes, or mortars to reduce seepage or water through walls.

- e. Structures. Addition of mass or weight structures to resist flotation.
  - f. Pumps. Installation of pumps to lower water levels in structures.
  - g. Water/Sanitary Systems. Construction of water supply and waste treatment systems so as to prevent the entrance of flood waters.
  - h. Pumping Facilities. Pumping facilities or comparable practices for subsurface drainage systems for building to relieve external foundation wall and basement flood pressures.
  - i. Rupture. Construction to resist rupture or collapse caused by water pressure or floating debris.
  - j. Drains. Installation of valves or controls on sanitary and storm drains which will permit the drains to be closed to prevent backup of sewage and storm waters into the buildings or structures.
  - k. Electrical Equipment. Location of all electrical equipment, circuits and installed electrical appliances in a manner which will assure they are not subject to flooding.
- e. Appeals to the Court. Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustment may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within thirty days after the filing of the decision in the office of the board.

#### **SECTION 102.9.04 EXCEPTIONS.**

1. All new construction and substantial improvements of residential structures with basements within Zones A1-30 and AO on the community's flood insurance rate map (FIRM) shall be designed so that the lowest floor is at least one foot above the base flood level or depth number. Any basement area, together with attendant utilities and sanitary facilities below that level, shall be designed so that the structure is watertight with walls that are impermeable to the passage of water without human intervention. Basement walls shall be built with the capability to resist hydrostatic and hydrodynamic loads and the effects of buoyancy resulting from the 100-year frequency flood and shall be designed so minimal structural damage will occur if this design flood is exceeded.
2. Basements constructed in accordance with this regulation shall not be used for sleeping purposes.
3. A registered professional engineer or architect shall certify that the floodproofing measures used in the structure satisfy these standards. This certification shall include the specific elevation (in relation to mean sea level) to which the structure is floodproofed.
4. The community shall certify that the structure has been built in accordance with this design.

## **Section 102.10 Nonconforming Uses**

**SEC. 102.10.01 NONCONFORMING USES.** A structure or the use of a structure of land which was lawful before the adoption or amendment of this code chapter but which is not in conformity with the provisions of this code chapter may be continued subject to the following conditions:

1. Enlargement. No such use shall be expanded, changed, enlarged or altered in a way which increases its nonconformity.
2. Alteration. No structural alteration, addition, or repair to any nonconforming structure over the life of the structure shall exceed fifty (50) percent of its value at the time of its becoming a nonconforming use, unless the structure is permanently changed to a conforming use.
3. Discontinued Use. If such use is discontinued for twelve (12) consecutive months, any future use of the building premises shall conform to this chapter. The assessor shall notify the administrator in writing of instances of nonconforming uses which have been discontinued for twelve (12) months.
4. Destruction. If any nonconforming use or structure is destroyed by any means, including floods, to an extent of fifty (50) percent or more of its value prior to destruction, it shall not be reconstructed except in conformity with the provisions of this chapter.
5. Nuisances. Uses or adjuncts thereof which are or become nuisances shall not be enchaptered to continue as nonconforming uses.
6. Conditional Uses. Except as provided in Section 102.10, subsection 5, any use which as been permitted as a conditional use or variance shall be considered a conforming use.

**SEC. 102.10.02 PENALTIES.** Violations of the provisions of this chapter or failure to comply with any of its requirements including violations of conditions and safeguards established in connection with grants of conditional uses or variances shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall upon conviction thereof be fined not more than \$100 or imprisoned for not more than 30 days. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the City of Waverly from taking such other lawful action as is necessary to prevent or remedy any violation.

**SEC. 102.10.03 AMENDMENTS.** The regulations, restrictions and boundaries set forth in this chapter may from time to time be amended, supplemented, changed, or repealed as provided in the Code of Iowa, as amended. No amendment, supplement, change, or modification to this chapter shall be undertaken without prior approval from the Iowa Department of Natural Resources.



## **Section 104.7 Park Rules**

**SEC. 104.7.01 DESTROYING PARK PROPERTY.** It shall be unlawful for any person to deface, damage or destroy park property, natural or manmade.

**SEC. 104.7.02 INJURING WILDLIFE.** It shall be unlawful for any person to disturb, injure or kill any wildlife on park property.

**SEC. 104.7.03 VIOLATING PARK RULES.** Any person who commits any of the following prohibited actions in a Waverly city owned park, playground, golf course or cemetery shall be guilty of a misdemeanor:

1. Pick or destroy any flower, or walk, or run up on any flower beds.
2. Break or tear any limbs or branches from any shrub or tree.
3. Remove, damage, or destroy any sign erected under the authority of the City Council.
4. Build or light a fire in any area other than those areas or fixtures designated for fires unless approved by the leisure services director.
5. Remove any wood, living or dead, unless authorized to do so by the Leisure Services Director.

**SEC. 104.7.04 PARK CLOSING HOURS.** No person shall enter upon or remain upon the city parks of the City of Waverly between the hours of midnight (12:00) a.m. and 4:00 o'clock a.m. during which hours the parks shall be closed to the general public with exceptions approved by Golf Commission.

**SEC. 104.7.05 LITTERING.** It shall be unlawful for any person to litter park property.

**SEC. 104.7.06 DAMAGE BY PETS.** It shall be unlawful to allow pets to damage or destroy park property, or to disturb the use of the park by others or disturb, injure, or kill any wildlife.

**SEC. 104.7.07 COMMERCIAL ACTIVITY.** It shall be unlawful for any persons to conduct any promotional or commercial activity on any park property within the limits of the City of Waverly, Iowa, without first obtaining a written permit from the Park Commission.

**SEC. 104.7.08 MOTOR VEHICLES ON PARK ROADWAYS.** It shall be unlawful for any person to operate any motor vehicle on park property, other than on park roadways.

**SEC. 104.7.09 PARKING.** It shall be unlawful for any person to park any vehicle any where but designated parking areas on park property.

**SEC. 104.7.10 SNOWMOBILES.** The operation of snowmobiles is hereby prohibited on city park property, except as is set forth in the snowmobile chapter.

## **Section 104.7A Rail Trail Rules**

### **SEC. 104.7A Rail Trail Rules**

4. Definition. The Waverly Rail Trail is the trail constructed on the former Trains Unlimited railroad right-of-way consisting of an asphalt trail together with bridges, underpasses, road crossings and the entire right-of-way extending up to 50 feet on either side of the asphalt surface and shall include extensions to the system.
5. Part of Park System. The portion of the Waverly Rail Trail located within the Waverly City Limits is declared to be a part of the Waverly Park System and the Park rules contained at Waverly Code Section 104.7 shall apply except as modified in this Ordinance.
6. Use. This Waverly Rail Trail shall be used as a trail for: bicycling, cross-country skiing, rollerblading and foot traffic and other special event usage authorized by permit from the Waverly Director of Leisure Services or designee.
- 3a. Weapons and Hunting Prohibited. The use of firearms, explosives or weapons of any kind is prohibited on the Waverly Rail Trail. Hunting or trapping is prohibited. No bow or arrow or firearm shall be discharged on or across Rail Trail property.
1. Motorized Vehicles Prohibited. The use of motorized vehicles and snowmobiles is prohibited on the Waverly Rail Trail within the City of Waverly, Iowa, except for authorized emergency and maintenance vehicles and except for motorized wheelchairs and other similar vehicles used by handicapped persons.
2. Horses and Other Animals. No person shall permit a horse under their control to be on the Waverly Rail Trail. No person shall permit or allow an animal or pet on said Waverly Rail Trail unless said animal or pet is under the control of said person and is on a leash of six feet or less in length. Said person shall pick up and dispose of any feces from the animal or pet under that person's control. For the purposes of this article, horse is defined as any equine animal including horses, mules, burrow, donkeys, and all lamas or alpaca like animals. Animal is defined as all animals of the animal kingdom, male or female, whether altered or not.
3. Special Permits. Special permits may be issued by the Director Leisure Services or designee for special events on specific dates utilizing golf carts or similar motorized transportation upon the Waverly Rail Trail.
4. Official Signs. All Waverly Rail Trail users shall observe and obey all official rail trail signs posted along the trail. These signs shall be considered "Official Traffic Control Devices" as defined by the Code of Iowa.
5. Violation of Rules. Any person who fails to obey a rail trail sign, rule, or other provisions of this Ordinance shall be guilty of simple misdemeanor.

**SEC. 104.7.11** It shall be unlawful for any person to feed waterfowl in Kohlmann Park.