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SENATE FILE 375
BY COMMITTEE ON NATURAL
RESOURCES AND ENVIRONMENT

(SUCCESSOR TO SSB 1125)

Passed Senate, Date 3-22-05 Passed House, Date 4-25-05
Vote: Ayes 49 Nays 0 Vote: Ayes 99 Nays 1
Re-passed Approved 5/4/05
4-28-05 48-0

A BILL FOR

1 An Act creating the uniform environmental covenants Act.
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SF 375

1 Section 1. Section 455B.103, Code 2005, is amended by
2 adding the following new subsection:

3 NEW SUBSECTION. 7. At the discretion of the director,
4 enter into environmental covenants in accordance with chapter
5 455L and accept, maintain, or transfer such other real
6 property interests as shall be appropriate for the protection
7 of human health and safety or the environment.

8 Sec. 2. Section 455B.474, subsection 1, paragraph f,
9 subparagraph (4), subparagraph subdivision (f), Code 2005, is
10 amended to read as follows:

11 (f) Other relevant site specific factors such as the
12 feasibility of available technologies, existing background
13 contaminant levels, current and planned future uses,
14 ecological, aesthetic, and other relevant criteria, and the
15 applicability and availability of engineering and
16 institutional controls, including an environmental covenant as
17 established by chapter 455L.

18 Sec. 3. Section 455H.103, Code 2005, is amended by adding
19 the following new subsection:

20 NEW SUBSECTION. 7A. "Environmental covenant" means a
21 servitude arising under an environmental response project that
22 imposes activity and use limitations as defined in section
23 455L.2.

24 Sec. 4. Section 455H.206, subsections 2, 3, 4, 5, and 6,
25 Code 2005, are amended to read as follows:

26 2. An institutional or technological control includes any
27 of the following:

- 28 a. A state or federal law or regulation.
- 29 b. An ordinance of any political subdivision of the state.
- 30 c. A contractual obligation recorded and executed in a
31 manner satisfying chapter 558.
- 32 d. A control which the participant can demonstrate reduces
33 or manages the risk from a release through the period
34 necessary to comply with the applicable standards.
- 35 e. An environmental protection easement filed prior to the

1 effective date of this Act.

2 f. An environmental covenant created in accordance with
3 chapter 455L.

4 3. If the department's determination of compliance with
5 applicable standards pursuant to subchapter 3 is conditioned
6 on a restriction in the use of any real estate in the affected
7 area, the participant must utilize an institutional control.
8 If the restriction in use is to limit the use to
9 nonresidential use, the participant must use an environmental
10 protection-easement covenant as the institutional control.
11 Environmental protection-easements covenants may also be used
12 to implement other institutional or technological controls.
13 An environmental protection-easement-must-be-granted-by-the
14 fee-title-owners-of-the-relevant-real-estate.--The-participant
15 shall-furnish-to-the-department-abstracts-of-title-and-other
16 documents-sufficient-to-enable-the-department-to-determine
17 that-the-easements-will-be-enforceable.--An-environmental
18 protection-easement-shall-be-in-a-form-provided-by-rule-of-the
19 department.--An-environmental-protection-easement-must-provide
20 all-of-the-following:

21 a.--The-easement-names-the-state,acting-through-the
22 department,as-grantee.

23 b.--The-easement-identifies-the-activity-either-being
24 restricted-or-required-through-the-institutional-or
25 technological-control.

26 c.--The-easement-runs-with-the-land,--binding-the-owner-of
27 the-land-and-the-owner's-successors-and-assigns.

28 d.--The-easement-shall-include-an-acknowledgment-by-the
29 director-of-acceptance-of-the-easement-by-the-department.

30 e.--The-easement-is-filed-in-the-office-of-the-recorder-of
31 the-county-in-which-the-real-estate-is-located-and-in-any
32 central-registry-which-may-be-created-by-the-director covenant
33 must comply with the requirements of chapter 455L.

34 4. If the use of an institutional or technological control
35 is confirmed in a no further action letter issued pursuant to

1 section 455H.301, the institutional or technological control
2 may be enforced in district court by the department, a
3 political subdivision of this state, the participant, or any
4 successor in interest to the participant. ~~An environmental
5 protection easement granted pursuant to subsection 3 shall be
6 enforceable in perpetuity notwithstanding sections 614.24
7 through 614.38. After the recording of the easement, each
8 instrument transferring an interest in the area affected by
9 the easement shall include a specific reference to the
10 recorded easement. If a transfer instrument fails to include
11 a specific reference to the recorded easement, the transferor
12 may lose any of the benefits provided by this chapter.~~

13 5. An institutional or technological control, except for
14 an environmental ~~protection easement~~ covenant, may be removed,
15 discontinued, modified, or terminated by the participant or a
16 successor in interest to the participant upon a demonstration
17 that the control no longer is required to assure compliance
18 with the applicable standard. Upon review and approval by the
19 department, the department shall issue an amendment to its no
20 further action letter approving the removal, discontinuance,
21 modification, or termination of an institutional or
22 technological control which is no longer needed.

23 6. An environmental ~~protection easement granted~~ covenant
24 created pursuant to subsection 3 may be ~~released~~ terminated or
25 amended only ~~by a release or amendment of the easement~~
26 ~~executed by the director and filed with the county recorder~~ in
27 accordance with chapter 455L. The department may determine
28 that any person who intentionally violates an environmental
29 ~~protection easement~~ covenant or other technological or
30 institutional control contained in a no further action letter
31 loses any of the benefits provided by this chapter as to the
32 affected area. In the event the technological or
33 institutional controls fail to achieve compliance with the
34 applicable standards, the participant shall undertake an
35 additional response action sufficient to demonstrate to the

1 department compliance with applicable standards. Failure to
2 proceed in a timely manner in performing the additional
3 response action may result in termination of the participant's
4 enrollment in the land recycling program.

5 Sec. 5. NEW SECTION. 455L.1 TITLE.

6 This chapter shall be known and cited as the "Uniform
7 Environmental Covenants Act".

8 Sec. 6. NEW SECTION. 455L.2 DEFINITIONS.

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

11 1. "Activity and use limitations" means restrictions or
12 obligations created under this chapter with respect to real
13 property. "Activity and use limitations" may include, but is
14 not limited to, restrictions on installation of water wells
15 and other exposure receptors, construction of surface and
16 subsurface structures, disturbance of and maintenance of soil
17 caps and technological controls, and land use classifications
18 such as residential, nonresidential, or industrial.

19 2. "Agency" means the department of natural resources
20 created by section 455A.2 or any other state department or
21 federal agency that determines or approves the environmental
22 response project pursuant to which an environmental covenant
23 is created.

24 3. "Common interest community" means a condominium,
25 cooperative, or other real property with respect to which a
26 person, by virtue of the person's ownership of a parcel of
27 real property, is obligated to pay property taxes or insurance
28 premiums for, or for maintenance or improvement of, other real
29 property described in a recorded covenant that creates the
30 common interest community.

31 4. "Environmental covenant" means a servitude arising
32 under an environmental response project that imposes activity
33 and use limitations or the written document creating such
34 servitude.

35 5. "Environmental response project" means a plan or work

1 performed for environmental remediation affecting real
2 property or protecting ecological features associated with
3 real property and conducted under or by one of the following:

4 a. A federal or state program that is subject to the
5 jurisdiction of an agency, including but not limited to
6 programs established by chapters 455B and 445G, corrective or
7 response actions pursuant to 42 U.S.C. § 6901 et seq., and
8 remedial actions under 42 U.S.C. § 9601 et seq.

9 b. A federal or state program for the replacement or
10 protection of ecological features including wetlands.

11 c. A state voluntary cleanup program authorized in chapter
12 455H.

13 d. An incident to a closure conducted with approval of an
14 agency of a solid or hazardous waste management unit, a
15 sanitary disposal project, or an underground storage tank.

16 e. A person on real estate owned by that person.

17 6. "Grantor" means any person with sufficient fee title or
18 other property ownership interests necessary to create a valid
19 environmental covenant under Iowa law.

20 7. "Holder" means the grantee of an environmental covenant
21 as specified in section 455L.3, subsection 1.

22 8. "Person" means an individual, corporation, business
23 trust, estate, trust, partnership, limited liability company,
24 association, joint venture, public corporation, government,
25 governmental subdivision, agency, or instrumentality, or any
26 other legal or commercial entity.

27 9. "Record", used as a noun, means information that is
28 inscribed on a tangible medium or that is stored in an
29 electronic or other medium and is retrievable in perceivable
30 form.

31 Sec. 7. NEW SECTION. 455L.3 NATURE OF RIGHTS --
32 SUBORDINATION OF INTERESTS.

33 1. Any person, including a person that owns an interest in
34 the real property, an agency, or a municipality or other unit
35 of local government, may be a holder. An environmental

1 covenant may identify more than one holder. The interest of a
2 holder is an interest in real property.

3 2. A right of an agency under this chapter or under an
4 environmental covenant, other than a right as a holder, is not
5 an interest in real property.

6 3. An agency is bound by any obligation it assumes in an
7 environmental covenant, but an agency does not assume
8 obligations merely by signing an environmental covenant. Any
9 other person that signs an environmental covenant is bound by
10 the obligations the person assumes in the environmental
11 covenant, but signing the environmental covenant does not
12 change obligations, rights, or protections granted or imposed
13 under law or administrative action other than this chapter
14 except as provided in the environmental covenant.

15 4. The following rules apply to interests in real property
16 in existence at the time an environmental covenant is created
17 or amended:

18 a. An interest that has priority under other law is not
19 affected by an environmental covenant unless the person that
20 owns the interest subordinates that interest to the
21 environmental covenant.

22 b. This chapter does not require a person that owns a
23 prior interest to subordinate that interest to an
24 environmental covenant or to agree to be bound by the
25 environmental covenant.

26 c. A subordination agreement may be contained in an
27 environmental covenant covering real property or in a separate
28 record. If the environmental covenant covers commonly owned
29 property in a common interest community, the covenant or
30 record may be signed by any person authorized by the governing
31 board of the owners' association.

32 d. An agreement by a person to subordinate a prior
33 interest to an environmental covenant affects the priority of
34 that person's interest but does not by itself impose any
35 affirmative obligation on the person with respect to the

1 environmental covenant.

2 Sec. 8. NEW SECTION. 455L.4 CONTENTS OF ENVIRONMENTAL
3 COVENANT.

4 1. An environmental covenant shall contain all of the
5 following:

6 a. A statement that the instrument is an environmental
7 covenant executed pursuant to this chapter.

8 b. A legally sufficient description of the real property
9 subject to the environmental covenant.

10 c. A description of the activity and use limitations on
11 the real property.

12 d. The identity of every holder and grantor.

13 e. A signature by the grantor, the agency unless it is an
14 environmental response project as defined in section 455L.2,
15 subsection 5, paragraph "e", every holder, and, unless waived
16 by the agency, every owner in fee simple of the real property
17 subject to the environmental covenant.

18 f. Identification of the name and location of any final
19 agency action decision documents for the environmental
20 response project reflected in the environmental covenant.

21 g. The rights of access to the real property granted in
22 connection with implementation or enforcement of the
23 environmental covenant.

24 2. In addition to the information required in this
25 section, an environmental covenant may contain other
26 information, restrictions, and requirements agreed to by the
27 persons who sign the environmental covenant, including any of
28 the following:

29 a. Requirements for periodic reporting describing
30 compliance with the environmental covenant.

31 b. Requirements for notice to an agency following transfer
32 of a specified interest in, or concerning proposed changes in
33 use of, applications for building permits for, or proposals
34 for any site work affecting the contamination on, the real
35 property subject to the environmental covenant.

1 c. A brief narrative description of the contamination and
2 remedy, including the contaminants of concern, the pathways of
3 exposure, limits on exposure, and the location and extent of
4 the contamination.

5 d. Limitations on amendment or termination of the
6 environmental covenant in addition to those contained in
7 sections 455L.9 and 455L.10.

8 e. Rights of the holder in addition to the holder's right
9 to enforce the environmental covenant pursuant to section
10 455L.11.

11 3. In addition to other conditions for its approval of an
12 environmental covenant authorized by law, an agency may
13 require those persons specified by the agency who have
14 interests in the real property to sign the environmental
15 covenant.

16 Sec. 9. NEW SECTION. 455L.5 VALIDITY -- EFFECT ON OTHER
17 INSTRUMENTS.

18 1. An environmental covenant that complies with this
19 chapter runs with the land.

20 2. An environmental covenant that is otherwise effective
21 is valid and enforceable even if any of the following applies
22 to the environmental covenant:

23 a. The environmental covenant is not appurtenant to an
24 interest in real property.

25 b. The environmental covenant can be or has been assigned
26 to a person other than the original holder.

27 c. The environmental covenant is not of a character that
28 has been recognized traditionally at common law.

29 d. The environmental covenant imposes a negative burden.

30 e. The environmental covenant imposes an affirmative
31 obligation on a person having an interest in the real property
32 or on the holder.

33 f. The benefit or burden does not touch or concern real
34 property.

35 g. There is no privity of estate or contract.

1 h. The holder dies, ceases to exist, resigns, or is
2 replaced.

3 i. The owner of an interest subject to the environmental
4 covenant and the holder are the same person.

5 3. An instrument that creates restrictions or obligations
6 with respect to real property that would qualify as activity
7 and use limitations except for the fact that the instrument
8 was recorded before the effective date of this chapter is
9 valid and enforceable and is not rendered invalid or
10 unenforceable based upon any of the potential limitations on
11 enforcement of interests described in subsection 2 or because
12 it was identified as an easement, servitude, deed restriction,
13 or other interest. This chapter does not apply in any other
14 respect to such an instrument.

15 4. This chapter does not invalidate or render
16 unenforceable any interest, whether designated as an
17 environmental covenant or other interest, that was created
18 prior to the enactment of this chapter or that is otherwise
19 enforceable under the laws of this state.

20 Sec. 10. NEW SECTION. 455L.6 RELATIONSHIP TO OTHER LAND-
21 USE LAW.

22 This chapter does not authorize a use of real property that
23 is otherwise prohibited by zoning, by law other than this
24 chapter regulating use of real property, or by a recorded
25 instrument that has priority over the environmental covenant.
26 An environmental covenant may prohibit or restrict uses of
27 real property which are authorized by zoning or by law other
28 than this chapter.

29 Sec. 11. NEW SECTION. 455L.7 NOTICE.

30 1. A copy of a recorded environmental covenant shall be
31 provided to each of the following in the manner required by an
32 agency unless it is an environmental response project as
33 defined in section 455L.2, subsection 5, paragraph "e":

- 34 a. Each person that signed the environmental covenant.
35 b. Each person holding a recorded interest in the real

1 property subject to the environmental covenant.

2 c. Each person in possession of the real property subject
3 to the environmental covenant.

4 d. Each municipality or other unit of local government in
5 which real property subject to the environmental covenant is
6 located.

7 e. Any other person the agency requires.

8 2. The validity of an environmental covenant is not
9 affected by failure to provide a copy of the environmental
10 covenant as required under this section.

11 Sec. 12. NEW SECTION. 455L.8 RECORDING.

12 1. An environmental covenant and any amendment or
13 termination of the environmental covenant shall be recorded in
14 every county in which any portion of the real property subject
15 to the environmental covenant is located. For purposes of
16 indexing, a holder shall be treated as a grantee.

17 2. Except as otherwise provided in section 455L.9,
18 subsection 4, an environmental covenant is subject to the laws
19 of this state governing recording and priority of interests in
20 real property.

21 Sec. 13. NEW SECTION. 455L.9 DURATION -- AMENDMENT BY
22 COURT OR DEPARTMENT ACTION.

23 1. An environmental covenant is perpetual unless any of
24 the following occurs:

25 a. The environmental covenant, by its terms, is limited to
26 a specific duration or terminated by the occurrence of a
27 specific event.

28 b. The environmental covenant is terminated by consent
29 pursuant to section 455L.10.

30 c. The environmental covenant is terminated pursuant to
31 subsection 2 or 3.

32 d. The environmental covenant is terminated by foreclosure
33 of an interest that has priority over the environmental
34 covenant.

35 e. The environmental covenant is terminated or modified in

1 an eminent domain proceeding, but only if all of the following
2 occur:

3 (1) The agency that signed the document, if any, is a
4 party to the proceeding.

5 (2) Each person that signed the environmental covenant and
6 the current property owner are given notice of the pendency of
7 the proceeding.

8 (3) The court determines, after hearing, that the
9 termination or modification will not adversely affect human
10 health and safety or the environment.

11 2. If the agency that signed an environmental covenant is
12 a state agency and has determined that the intended purposes
13 can no longer be realized, the agency may terminate the
14 environmental covenant or reduce its burden on the real
15 property subject to the environmental covenant. Notice shall
16 be provided to each person that signed the covenant or their
17 assignee, to the current property owner, and to any other
18 persons identified in section 455L.10, subsection 1. The
19 agency's determination or failure to make a determination upon
20 request shall constitute final agency action. Failure by the
21 agency to make a determination within sixty days upon request
22 shall constitute final agency action. Any person entitled to
23 notice by the agency shall be entitled to judicial review
24 pursuant to section 17A.19 with the following exceptions:

25 a. Proceedings for judicial review shall be filed in the
26 county in which the environmental covenant was recorded.

27 b. Notwithstanding section 17A.19, subsection 2, service
28 of process shall not be jurisdictional and shall be as
29 provided in the Iowa rules of civil procedure.

30 c. Notwithstanding section 17A.19, subsection 3, a
31 petition for judicial review shall be filed within thirty days
32 of the written decision by the agency. Such filing shall be
33 jurisdictional.

34 d. The district court shall hear and consider relevant
35 evidence, including testimony or other evidence not considered

1 by the agency, regarding the question of whether the
2 environmental covenant should be terminated or the burden on
3 the real estate reduced if, based on changed circumstances,
4 the court determines the intended purposes of the
5 environmental covenant can no longer be realized.

6 3. If the agency that signed an environmental covenant is
7 a federal agency, the agency's determination or failure to
8 make a determination as provided in subsection 2 shall be
9 reviewable in accordance with applicable federal law.

10 4. Except as otherwise provided in subsections 1, 2, and
11 3, an environmental covenant may not be extinguished, limited,
12 or impaired through issuance of a tax deed, foreclosure of a
13 tax lien, or application of the doctrine of adverse
14 possession, prescription, abandonment, waiver, lack of
15 enforcement, or acquiescence, or a similar doctrine.

16 5. An environmental covenant may not be extinguished,
17 limited, or impaired by application of section 558.68 or
18 sections 614.24 through 614.38.

19 Sec. 14. NEW SECTION. 455L.10 AMENDMENT OR TERMINATION
20 BY CONSENT.

21 1. An environmental covenant may be amended or terminated
22 by consent only if the amendment or termination is signed by
23 all of the following:

24 a. The agency, unless it is an environmental response
25 project as defined in section 455L.2, subsection 5, paragraph
26 "e".

27 b. The current owner in fee simple of the real property
28 subject to the environmental covenant.

29 c. Each person that originally signed the environmental
30 covenant or an assignee of an original signatory, unless the
31 person waived in a recorded document the right to consent or
32 the agency finds that the person no longer exists or cannot be
33 located or identified with the exercise of reasonable
34 diligence.

35 d. Except as otherwise provided in subsection 4, paragraph

1 "b", the holder.

2 2. If an interest in real property is subject to an
3 environmental covenant, the interest is not affected by an
4 amendment to the environmental covenant unless the current
5 owner of the interest consents to the amendment or has waived
6 in a recorded document the right to consent to amendments.

7 3. Except for an assignment undertaken pursuant to a
8 governmental reorganization, assignment of an environmental
9 covenant to a new holder is an amendment.

10 4. Except as otherwise provided in an environmental
11 covenant, all of the following apply:

12 a. A holder may not assign its interest without consent of
13 the other parties as provided in subsection 1.

14 b. A holder may be removed and replaced by agreement of
15 the other parties specified in subsection 1.

16 c. A court of competent jurisdiction may fill a vacancy in
17 the position of holder.

18 Sec. 15. NEW SECTION. 455L.11 ENFORCEMENT OF
19 ENVIRONMENTAL COVENANT.

20 1. A civil action for injunctive or other equitable relief
21 for violation of an environmental covenant may be maintained
22 by any of the following:

23 a. A holder or grantor.

24 b. Except for environmental covenants created under
25 section 455L.2, subsection 5, paragraph "e", the agency or, if
26 it is not the agency with authority to determine or approve
27 the environmental response project, the department of natural
28 resources.

29 c. Any person to whom the environmental covenant expressly
30 grants power to enforce the environmental covenant.

31 d. A person whose interest in the real property or whose
32 collateral or liability may be affected by the alleged
33 violation of the environmental covenant.

34 e. A municipality or other unit of local government in
35 which the real property subject to the environmental covenant

1 is located.

2 2. This chapter does not limit the regulatory authority of
3 an agency under law other than this chapter with respect to an
4 environmental response project.

5 3. A person is not responsible for or subject to liability
6 for environmental remediation solely because it has the right
7 to enforce an environmental covenant.

8 Sec. 16. NEW SECTION. 455L.12 RELATION TO ELECTRONIC
9 SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.

10 This chapter modifies, limits, or supersedes the federal
11 Electronic Signatures in Global and National Commerce Act, 15
12 U.S.C. § 7001 et seq., but does not modify, limit, or
13 supersede section 101(a) of that Act, 15 U.S.C. § 7001(a), or
14 authorize electronic delivery of any of the notices described
15 in section 103(b) of that Act, 15 U.S.C. § 7003(b).

16 Sec. 17. Section 558.68, Code 2005, is amended by adding
17 the following new subsection:

18 NEW SUBSECTION. 5. This section shall not impair the
19 validity of an environmental covenant established pursuant to
20 chapter 455L.

21 Sec. 18. Section 614.24, Code 2005, is amended by adding
22 the following new unnumbered paragraph:

23 NEW UNNUMBERED PARAGRAPH. This section shall not impair
24 the validity of an environmental covenant established pursuant
25 to chapter 455L.

26 Sec. 19. Section 614.32, Code 2005, is amended by adding
27 the following new subsection:

28 NEW SUBSECTION. 6. All interests created by an
29 environmental covenant established pursuant to chapter 455L.

30 EXPLANATION

31 This bill creates the uniform environmental covenants Act
32 in new Code chapter 455L.

33 The bill provides that any person may be a holder of an
34 environmental covenant, that an environmental covenant may
35 identify more than one holder, and that the interest of a

1 holder is an interest in real property. The bill provides
2 that a state or federal agency is bound by any obligation it
3 assumes in an environmental covenant, but the agency does not
4 assume obligations merely by signing an environmental
5 covenant, and that any other person that signs an
6 environmental covenant is bound by the obligations the person
7 assumes in the environmental covenant, but signing the
8 environmental covenant does not change obligations, rights, or
9 protections granted or imposed under law other than this bill
10 except as provided in the environmental covenant. The bill
11 provides rules regarding the subordination of interests in
12 real property in relation to environmental covenants.

13 The bill provides the requirements for what must be
14 contained in an environmental covenant and provides that an
15 environmental covenant may contain other information,
16 restrictions, and requirements agreed to by the persons who
17 sign the environmental covenant. The bill provides that an
18 agency may require those persons specified by the agency who
19 have interests in the real property to sign the environmental
20 covenant.

21 The bill provides that an environmental covenant that
22 complies with the new Code chapter runs with the land and that
23 an environmental covenant that is otherwise effective is valid
24 and enforceable even if the environmental covenant has certain
25 characteristics or effects or certain events occur. The bill
26 provides that an instrument that creates restrictions or
27 obligations with respect to real property that was recorded
28 before the effective date of this bill is valid and
29 enforceable. The bill does not apply in any other respect to
30 such an instrument. The bill does not invalidate or render
31 unenforceable any interest that was created prior to the
32 enactment of this bill or that is otherwise enforceable under
33 the law of this state.

34 The bill does not authorize a use of real property that is
35 otherwise prohibited by zoning, by other law, or by a recorded

1 instrument that has priority over the environmental covenant.
2 The bill provides that an environmental covenant may prohibit
3 or restrict uses of real property which are authorized by
4 zoning or by law other than the new Code chapter.

5 The bill provides notice requirements regarding who should
6 receive a copy of the environmental covenant, but the validity
7 of an environmental covenant is not affected by failure to
8 provide a copy as required.

9 The bill provides that an environmental covenant and any
10 amendment or termination of the environmental covenant must be
11 recorded in every county in which any portion of the real
12 property subject to the environmental covenant is located.

13 The bill provides that an environmental covenant is
14 perpetual unless the environmental covenant is limited to a
15 specific duration or terminated by the occurrence of a
16 specific event, by consent, by foreclosure of an interest that
17 has priority over the environmental covenant, by an eminent
18 domain proceeding, or through other means allowed under the
19 bill. The bill provides that if a state agency determines
20 that the purposes of the restrictions contained in an
21 environmental covenant can no longer be realized, the agency
22 may terminate the environmental covenant or reduce its burden
23 on the real property after providing notice to each person
24 that signed the environmental covenant and the current
25 property owner. The bill provides that a person that signed
26 an environmental covenant or a current property owner may seek
27 approval from the agency for the termination or modification
28 of an environmental covenant and may seek judicial review of
29 an adverse determination. If a federal agency has regulatory
30 authority over the environmental response project, applicable
31 federal law will apply to judicial review of an adverse
32 determination. The bill provides that, except as otherwise
33 provided, an environmental covenant may not be extinguished,
34 limited, or impaired through issuance of a tax deed,
35 foreclosure of a tax lien, or application of certain real

1 property doctrines.

2 The bill provides that an environmental covenant may be
3 amended or terminated by consent only if the amendment or
4 termination is signed by the agency, unless the project is
5 conducted by a person on the person's own land; the current
6 owner in fee simple of the real property subject to the
7 environmental covenant; each person that originally signed the
8 environmental covenant, unless the person waived in a signed
9 record the right to consent or the agency finds that the
10 person no longer exists or cannot be located or identified;
11 and except as otherwise provided, the holder. The bill
12 provides that if an interest in real property is subject to an
13 environmental covenant, the interest is not affected by an
14 amendment to the environmental covenant unless the current
15 owner of the interest consents to the amendment or has waived
16 in a signed record the right to consent to amendments. The
17 bill provides that, except for an assignment undertaken
18 pursuant to a governmental reorganization, assignment of an
19 environmental covenant to a new holder is an amendment. The
20 bill provides that, except as otherwise provided in an
21 environmental covenant, a holder may not assign its interest
22 without consent of the other parties, a holder may be removed
23 and replaced by consent and agreement of the other parties,
24 and a court of competent jurisdiction may fill a vacancy in
25 the position of holder.

26 The bill provides that a civil action for injunctive or
27 other equitable relief for violation of an environmental
28 covenant may be maintained by the holder or grantor of the
29 environmental covenant, the applicable agency or the
30 department of natural resources, any person to whom the
31 environmental covenant expressly grants power to enforce, a
32 person whose interest in the real property or whose collateral
33 or liability may be affected by the alleged violation of the
34 environmental covenant, or a unit of local government in which
35 the real property subject to the environmental covenant is

1 located. The bill provides that a person is not responsible
2 for or subject to liability for environmental remediation
3 solely because the person has the right to enforce an
4 environmental covenant.

5 The bill provides for the applicability of certain
6 provisions of the federal Electronic Signatures in Global and
7 National Commerce Act.

8 The bill makes certain amendments to the Code due to the
9 adoption of the uniform environmental covenants Act. The bill
10 requires the director of the department of natural resources,
11 at the discretion of the director, to enter into environmental
12 covenants. The bill includes environmental covenants as a
13 factor in the rulemaking process for corrective action
14 response requirements for releases of a regulated substance in
15 connection with an underground storage tank.

16 The bill makes amendments to the land recycling and
17 environmental remediation standards Act in Code chapter 455H
18 by including a definition of an environmental covenant. The
19 bill provides that an institutional or technological control
20 includes an environmental protection easement filed prior to
21 the effective date of the bill or an environmental covenant.
22 The bill makes conforming amendments to Code chapter 455H in
23 relation to allowing environmental covenants to take the place
24 of environmental protection easements as one possible
25 institutional or technological control under the Code chapter.

26 The bill provides that the rule against perpetuities and
27 certain provisions relating to reversion or use restrictions
28 on land shall not impair the validity of an environmental
29 covenant. The bill provides that marketable record title is
30 subject to all interests created by an environmental covenant.

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HOUSE AMENDMENT TO
SENATE FILE 375

S-3168

1 Amend Senate File 375, as passed by the Senate, as
2 follows:

3 1. Page 1, by striking line 5 and inserting the
4 following: "455L and accept or maintain such other
5 real".

6 2. Page 5, lines 2 and 3, by striking the words
7 "or protecting ecological features associated with
8 real property".

9 3. Page 5, by striking line 16.

10 4. Page 7, by striking lines 13 through 15 and
11 inserting the following:

12 "e. A signature by the grantor, the agency, every
13 holder, and, unless waived".

14 5. Page 9, by striking lines 32 and 33 and
15 inserting the following: "agency:"

16 6. Page 11, line 5, by inserting after the word
17 "covenant" the following: ", unless the person waived
18 in a signed record the right to consent or a court
19 finds that the person no longer exists or cannot be
20 located or identified with the exercise of reasonable
21 diligence,".

22 7. Page 12, by striking lines 24 through 26 and
23 inserting the following:

24 "a. The agency."

25 8. Page 13, by striking lines 24 and 25 and
26 inserting the following:

27 "b. The agency or, if".

28 9. By renumbering as necessary.

RECEIVED FROM THE HOUSE

S-3168 FILED APRIL 26, 2005

SENATE FILE 375

H-1340

- 1 Amend Senate File 375, as passed by the Senate, as
2 follows:
- 3 1. Page 1, by striking line 5 and inserting the
4 following: "455L and accept or maintain such other
5 real".
- 6 2. Page 5, lines 2 and 3, by striking the words
7 "or protecting ecological features associated with
8 real property".
- 9 3. Page 5, by striking line 16.
- 10 4. Page 7, by striking lines 13 through 15 and
11 inserting the following:
12 "e. A signature by the grantor, the agency, every
13 holder, and, unless waived".
- 14 5. Page 9, by striking lines 32 and 33 and
15 inserting the following: "agency:"
- 16 6. Page 11, line 5, by inserting after the word
17 "covenant" the following: ", unless the person waived
18 in a signed record the right to consent or a court
19 finds that the person no longer exists or cannot be
20 located or identified with the exercise of reasonable
21 diligence,".
- 22 7. Page 12, by striking lines 24 through 26 and
23 inserting the following:
24 "a. The agency."
- 25 8. Page 13, by striking lines 24 and 25 and
26 inserting the following:
27 "b. The agency or, if".
- 28 9. By renumbering as necessary.

COMMITTEE ON ENVIRONMENTAL PROTECTION
GREINER of Washington, CHAIRPERSON

H-1340 FILED APRIL 7, 2005

Seng Co-chair
Lundby Co-chair
Kettering
Schoenjahn

Succeeded By
HF 375
SF

SSB# 1125
Natural Resource

SENATE/HOUSE FILE _____
BY (PROPOSED DEPARTMENT OF
NATURAL RESOURCES BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act creating the uniform environmental covenants Act.
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section 455B.103, Code 2005, is amended by
2 adding the following new subsection:

3 NEW SUBSECTION. 7. At the discretion of the director,
4 enter into environmental covenants in accordance with chapter
5 455L and accept, maintain, or transfer such other real
6 property interests as shall be appropriate for the protection
7 of human health and safety or the environment.

8 Sec. 2. Section 455B.474, subsection 1, paragraph f,
9 subparagraph (4), subparagraph subdivision (f), Code 2005, is
10 amended to read as follows:

11 (f) Other relevant site specific factors such as the
12 feasibility of available technologies, existing background
13 contaminant levels, current and planned future uses,
14 ecological, aesthetic, and other relevant criteria, and the
15 applicability and availability of engineering and
16 institutional controls, including an environmental covenant as
17 established by chapter 455L.

18 Sec. 3. Section 455H.103, Code 2005, is amended by adding
19 the following new subsection:

20 NEW SUBSECTION. 7A. "Environmental covenant" means a
21 servitude arising under an environmental response project that
22 imposes activity and use limitations as defined in section
23 455L.2.

24 Sec. 4. Section 455H.206, subsections 2, 3, 4, 5, and 6,
25 Code 2005, are amended to read as follows:

26 2. An institutional or technological control includes any
27 of the following:

28 a. A state or federal law or regulation.

29 b. An ordinance of any political subdivision of the state.

30 c. A contractual obligation recorded and executed in a
31 manner satisfying chapter 558.

32 d. A control which the participant can demonstrate reduces
33 or manages the risk from a release through the period
34 necessary to comply with the applicable standards.

35 e. An environmental protection easement filed prior to the

1 effective date of this Act.

2 f. An environmental covenant created in accordance with
3 chapter 455L.

4 3. If the department's determination of compliance with
5 applicable standards pursuant to subchapter 3 is conditioned
6 on a restriction in the use of any real estate in the affected
7 area, the participant must utilize an institutional control.
8 If the restriction in use is to limit the use to
9 nonresidential use, the participant must use an environmental
10 protection-easement covenant as the institutional control.
11 Environmental protection-easements covenants may also be used
12 to implement other institutional or technological controls.
13 An environmental ~~protection-easement-must-be-granted-by-the~~
14 ~~fee-title-owners-of-the-relevant-real-estate.--The-participant~~
15 ~~shall-furnish-to-the-department-abstracts-of-title-and-other~~
16 ~~documents-sufficient-to-enable-the-department-to-determine~~
17 ~~that-the-easements-will-be-enforceable.--An-environmental~~
18 ~~protection-easement-shall-be-in-a-form-provided-by-rule-of-the~~
19 ~~department.--An-environmental-protection-easement-must-provide~~
20 ~~all-of-the-following:~~

21 ~~a.--The-easement-names-the-state,acting-through-the~~
22 ~~department,as-grantee.~~

23 ~~b.--The-easement-identifies-the-activity-either-being~~
24 ~~restricted-or-required-through-the-institutional-or~~
25 ~~technological-control.~~

26 ~~c.--The-easement-runs-with-the-land,binding-the-owner-of~~
27 ~~the-land-and-the-owner's-successors-and-assigns.~~

28 ~~d.--The-easement-shall-include-an-acknowledgment-by-the~~
29 ~~director-of-acceptance-of-the-easement-by-the-department.~~

30 ~~e.--The-easement-is-filed-in-the-office-of-the-recorder-of~~
31 ~~the-county-in-which-the-real-estate-is-located-and-in-any~~
32 ~~central-registry-which-may-be-created-by-the-director~~ covenant
33 must comply with the requirements of chapter 455L.

34 4. If the use of an institutional or technological control
35 is confirmed in a no further action letter issued pursuant to

1 section 455H.301, the institutional or technological control
2 may be enforced in district court by the department, a
3 political subdivision of this state, the participant, or any
4 successor in interest to the participant. ~~An environmental
5 protection-easement-granted-pursuant-to-subsection-3-shall-be
6 enforceable-in-perpetuity-notwithstanding-sections-614-24
7 through-614-38.--After-the-recording-of-the-easement, each
8 instrument-transferring-an-interest-in-the-area-affected-by
9 the-easement-shall-include-a-specific-reference-to-the
10 recorded-easement.--If-a-transfer-instrument-fails-to-include
11 a-specific-reference-to-the-recorded-easement, the transferor
12 may lose any of the benefits provided by this chapter.~~

13 5. An institutional or technological control, except for
14 an environmental protection-easement covenant, may be removed,
15 discontinued, modified, or terminated by the participant or a
16 successor in interest to the participant upon a demonstration
17 that the control no longer is required to assure compliance
18 with the applicable standard. Upon review and approval by the
19 department, the department shall issue an amendment to its no
20 further action letter approving the removal, discontinuance,
21 modification, or termination of an institutional or
22 technological control which is no longer needed.

23 6. An environmental protection-easement-granted covenant
24 created pursuant to subsection 3 may be released terminated or
25 amended only by a release or amendment of the easement
26 executed by the director and filed with the county recorder in
27 accordance with chapter 455L. The department may determine
28 that any person who intentionally violates an environmental
29 protection-easement covenant or other technological or
30 institutional control contained in a no further action letter
31 loses any of the benefits provided by this chapter as to the
32 affected area. In the event the technological or
33 institutional controls fail to achieve compliance with the
34 applicable standards, the participant shall undertake an
35 additional response action sufficient to demonstrate to the

1 department compliance with applicable standards. Failure to
2 proceed in a timely manner in performing the additional
3 response action may result in termination of the participant's
4 enrollment in the land recycling program.

5 Sec. 5. NEW SECTION. 455L.1 TITLE.

6 This chapter shall be known and cited as the "Uniform
7 Environmental Covenants Act".

8 Sec. 6. NEW SECTION. 455L.2 DEFINITIONS.

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

11 1. "Activity and use limitations" means restrictions or
12 obligations created under this chapter with respect to real
13 property. "Activity and use limitations" may include, but is
14 not limited to, restrictions on installation of water wells
15 and other exposure receptors, construction of surface and
16 subsurface structures, disturbance of and maintenance of soil
17 caps and technological controls, and land use classifications
18 such as residential, nonresidential, or industrial.

19 2. "Agency" means the department of natural resources
20 created by section 455A.2 or any other state department or
21 federal agency that determines or approves the environmental
22 response project pursuant to which an environmental covenant
23 is created.

24 3. "Common interest community" means a condominium,
25 cooperative, or other real property with respect to which a
26 person, by virtue of the person's ownership of a parcel of
27 real property, is obligated to pay property taxes or insurance
28 premiums for, or for maintenance or improvement of, other real
29 property described in a recorded covenant that creates the
30 common interest community.

31 4. "Environmental covenant" means a servitude arising
32 under an environmental response project that imposes activity
33 and use limitations or the written document creating such
34 servitude.

35 5. "Environmental response project" means a plan or work

1 performed for environmental remediation affecting real
2 property or protecting ecological features associated with
3 real property and conducted under or by one of the following:

4 a. A federal or state program that is subject to the
5 jurisdiction of an agency, including but not limited to
6 programs established by chapters 455B and 445G, corrective or
7 response actions pursuant to 42 U.S.C. § 6901 et seq., and
8 remedial actions under 42 U.S.C. § 9601 et seq.

9 b. A federal or state program for the replacement or
10 protection of ecological features including wetlands.

11 c. A state voluntary cleanup program authorized in chapter
12 455H.

13 d. An incident to a closure conducted with approval of an
14 agency of a solid or hazardous waste management unit, a
15 sanitary disposal project, or an underground storage tank.

16 e. A person on real estate owned by that person.

17 6. "Grantor" means any person with sufficient fee title
18 and other property ownership interests necessary to create a
19 valid environmental covenant under Iowa law.

20 7. "Holder" means the grantee of an environmental covenant
21 as specified in section 455L.3, subsection 1.

22 8. "Person" means an individual, corporation, business
23 trust, estate, trust, partnership, limited liability company,
24 association, joint venture, public corporation, government,
25 governmental subdivision, agency, or instrumentality, or any
26 other legal or commercial entity.

27 9. "Record", used as a noun, means information that is
28 inscribed on a tangible medium or that is stored in an
29 electronic or other medium and is retrievable in perceivable
30 form.

31 Sec. 7. NEW SECTION. 455L.3 NATURE OF RIGHTS --
32 SUBORDINATION OF INTERESTS.

33 1. Any person, including a person that owns an interest in
34 the real property, an agency, or a municipality or other unit
35 of local government, may be a holder. An environmental

1 covenant may identify more than one holder. The interest of a
2 holder is an interest in real property.

3 2. A right of an agency under this chapter or under an
4 environmental covenant, other than a right as a holder, is not
5 an interest in real property.

6 3. An agency is bound by any obligation it assumes in an
7 environmental covenant, but an agency does not assume
8 obligations merely by signing an environmental covenant. Any
9 other person that signs an environmental covenant is bound by
10 the obligations the person assumes in the environmental
11 covenant, but signing the environmental covenant does not
12 change obligations, rights, or protections granted or imposed
13 under law or administrative action other than this chapter
14 except as provided in the environmental covenant.

15 4. The following rules apply to interests in real property
16 in existence at the time an environmental covenant is created
17 or amended:

18 a. An interest that has priority under other law is not
19 affected by an environmental covenant unless the person that
20 owns the interest subordinates that interest to the
21 environmental covenant.

22 b. This chapter does not require a person that owns a
23 prior interest to subordinate that interest to an
24 environmental covenant or to agree to be bound by the
25 environmental covenant.

26 c. A subordination agreement may be contained in an
27 environmental covenant covering real property or in a separate
28 record. If the environmental covenant covers commonly owned
29 property in a common interest community, the covenant or
30 record may be signed by any person authorized by the governing
31 board of the owners' association.

32 d. An agreement by a person to subordinate a prior
33 interest to an environmental covenant affects the priority of
34 that person's interest but does not by itself impose any
35 affirmative obligation on the person with respect to the

1 environmental covenant.

2 Sec. 8. NEW SECTION. 455L.4 CONTENTS OF ENVIRONMENTAL
3 COVENANT.

4 1. An environmental covenant shall contain all of the
5 following:

6 a. A statement that the instrument is an environmental
7 covenant executed pursuant to this chapter.

8 b. A legally sufficient description of the real property
9 subject to the environmental covenant.

10 c. A description of the activity and use limitations on
11 the real property.

12 d. The identity of every holder and grantor.

13 e. A signature by the grantor, the agency unless it is an
14 environmental response project as defined in section 455L.2,
15 subsection 5, paragraph "e", every holder, and, unless waived
16 by the agency, every owner in fee simple of the real property
17 subject to the environmental covenant.

18 f. Identification of the name and location of any final
19 agency action decision documents for the environmental
20 response project reflected in the environmental covenant.

21 g. The rights of access to the real property granted in
22 connection with implementation or enforcement of the
23 environmental covenant.

24 2. In addition to the information required in this
25 section, an environmental covenant may contain other
26 information, restrictions, and requirements agreed to by the
27 persons who sign the environmental covenant, including any of
28 the following:

29 a. Requirements for periodic reporting describing
30 compliance with the environmental covenant.

31 b. Requirements for notice to an agency following transfer
32 of a specified interest in, or concerning proposed changes in
33 use of, applications for building permits for, or proposals
34 for any site work affecting the contamination on, the real
35 property subject to the environmental covenant.

1 c. A brief narrative description of the contamination and
2 remedy, including the contaminants of concern, the pathways of
3 exposure, limits on exposure, and the location and extent of
4 the contamination.

5 d. Limitations on amendment or termination of the
6 environmental covenant in addition to those contained in
7 sections 455L.9 and 455L.10.

8 e. Rights of the holder in addition to the holder's right
9 to enforce the environmental covenant pursuant to section
10 455L.11.

11 3. In addition to other conditions for its approval of an
12 environmental covenant authorized by law, an agency may
13 require those persons specified by the agency who have
14 interests in the real property to sign the environmental
15 covenant.

16 Sec. 9. NEW SECTION. 455L.5 VALIDITY -- EFFECT ON OTHER
17 INSTRUMENTS.

18 1. An environmental covenant that complies with this
19 chapter runs with the land.

20 2. An environmental covenant that is otherwise effective
21 is valid and enforceable even if any of the following applies
22 to the environmental covenant:

23 a. The environmental covenant is not appurtenant to an
24 interest in real property.

25 b. The environmental covenant can be or has been assigned
26 to a person other than the original holder.

27 c. The environmental covenant is not of a character that
28 has been recognized traditionally at common law.

29 d. The environmental covenant imposes a negative burden.

30 e. The environmental covenant imposes an affirmative
31 obligation on a person having an interest in the real property
32 or on the holder.

33 f. The benefit or burden does not touch or concern real
34 property.

35 g. There is no privity of estate or contract.

1 h. The holder dies, ceases to exist, resigns, or is
2 replaced.

3 i. The owner of an interest subject to the environmental
4 covenant and the holder are the same person.

5 3. An instrument that creates restrictions or obligations
6 with respect to real property that would qualify as activity
7 and use limitations except for the fact that the instrument
8 was recorded before the effective date of this chapter is
9 valid and enforceable and is not rendered invalid or
10 unenforceable based upon any of the potential limitations on
11 enforcement of interests described in subsection 2 or because
12 it was identified as an easement, servitude, deed restriction,
13 or other interest. This chapter does not apply in any other
14 respect to such an instrument.

15 4. This chapter does not invalidate or render
16 unenforceable any interest, whether designated as an
17 environmental covenant or other interest, that was created
18 prior to the enactment of this chapter or that is otherwise
19 enforceable under the laws of this state.

20 Sec. 10. NEW SECTION. 455L.6 RELATIONSHIP TO OTHER LAND-
21 USE LAW.

22 This chapter does not authorize a use of real property that
23 is otherwise prohibited by zoning, by law other than this
24 chapter regulating use of real property, or by a recorded
25 instrument that has priority over the environmental covenant.
26 An environmental covenant may prohibit or restrict uses of
27 real property which are authorized by zoning or by law other
28 than this chapter.

29 Sec. 11. NEW SECTION. 455L.7 NOTICE.

30 1. A copy of a recorded environmental covenant shall be
31 provided to each of the following in the manner required by an
32 agency unless it is an environmental response project as
33 defined in section 455L.2, subsection 5, paragraph "e":

34 a. Each person that signed the environmental covenant.

35 b. Each person holding a recorded interest in the real

1 property subject to the environmental covenant.

2 c. Each person in possession of the real property subject
3 to the environmental covenant.

4 d. Each municipality or other unit of local government in
5 which real property subject to the environmental covenant is
6 located.

7 e. Any other person the agency requires.

8 2. The validity of an environmental covenant is not
9 affected by failure to provide a copy of the environmental
10 covenant as required under this section.

11 Sec. 12. NEW SECTION. 455L.8 RECORDING.

12 1. An environmental covenant and any amendment or
13 termination of the environmental covenant shall be recorded in
14 every county in which any portion of the real property subject
15 to the environmental covenant is located. For purposes of
16 indexing, a holder shall be treated as a grantee.

17 2. Except as otherwise provided in section 455L.9,
18 subsection 4, an environmental covenant is subject to the laws
19 of this state governing recording and priority of interests in
20 real property.

21 3. After the recording of the environmental covenant, each
22 instrument transferring an interest in the area affected by
23 the environmental covenant shall include a specific reference
24 to the recorded environmental covenant.

25 Sec. 13. NEW SECTION. 455L.9 DURATION -- AMENDMENT BY
26 COURT OR DEPARTMENT ACTION.

27 1. An environmental covenant is perpetual unless any of
28 the following occurs:

29 a. The environmental covenant, by its terms, is limited to
30 a specific duration or terminated by the occurrence of a
31 specific event.

32 b. The environmental covenant is terminated by consent
33 pursuant to section 455L.10.

34 c. The environmental covenant is terminated pursuant to
35 subsection 2 or 3.

1 d. The environmental covenant is terminated by foreclosure
2 of an interest that has priority over the environmental
3 covenant.

4 e. The environmental covenant is terminated or modified in
5 an eminent domain proceeding, but only if all of the following
6 occur:

7 (1) The agency that signed the document, if any, is a
8 party to the proceeding.

9 (2) Each person that signed the environmental covenant and
10 the current property owner are given notice of the pendency of
11 the proceeding.

12 (3) The court determines, after hearing, that the
13 termination or modification will not adversely affect human
14 health and safety or the environment.

15 2. If the agency that signed an environmental covenant is
16 a state agency and has determined that the intended benefits
17 can no longer be realized and the underlying regulatory
18 purpose is no longer necessary to protect human health,
19 safety, and the environment, the agency may terminate the
20 environmental covenant or reduce its burden on the real
21 property subject to the environmental covenant. Notice shall
22 be provided to each person that signed the covenant or their
23 assignee, to the current property owner, and to any other
24 persons identified in section 455L.10, subsection 1. The
25 agency's determination or failure to make a determination upon
26 request shall constitute final agency action. Any person
27 entitled to notice by the agency shall be entitled to judicial
28 review pursuant to section 17A.19 with the following
29 exceptions:

30 a. Proceedings for judicial review shall be filed in the
31 county in which the environmental covenant was recorded.

32 b. Notwithstanding section 17A.19, subsection 2, service
33 of process shall not be jurisdictional and shall be as
34 provided in the Iowa rules of civil procedure.

35 c. Notwithstanding section 17A.19, subsection 3, a

1 petition for judicial review shall be filed within thirty days
2 of the written decision by the agency. Such filing shall be
3 jurisdictional.

4 d. The district court shall hear and consider relevant
5 evidence, including testimony or other evidence not considered
6 by the agency, regarding the question of whether the
7 environmental covenant should be terminated or the burden on
8 the real estate reduced if, based on changed circumstances,
9 the court determines the intended benefits of the
10 environmental covenant can no longer be realized and the
11 underlying regulatory purpose is no longer necessary to
12 protect human health, safety, and the environment.

13 3. If the agency that signed an environmental covenant is
14 a federal agency, the agency's determination or failure to
15 make a determination as provided in subsection 2 shall be
16 reviewable in accordance with applicable federal law.

17 4. Except as otherwise provided in subsections 1, 2, and
18 3, an environmental covenant may not be extinguished, limited,
19 or impaired through issuance of a tax deed, foreclosure of a
20 tax lien, or application of the doctrine of adverse
21 possession, prescription, abandonment, waiver, lack of
22 enforcement, or acquiescence, or a similar doctrine.

23 5. An environmental covenant may not be extinguished,
24 limited, or impaired by application of section 558.68 or
25 sections 614.24 through 614.38.

26 Sec. 14. NEW SECTION. 455L.10 **AMENDMENT OR TERMINATION**
27 **BY CONSENT.**

28 1. An environmental covenant may be amended or terminated
29 by consent only if the amendment or termination is signed by
30 all of the following:

31 a. The agency, unless it is an environmental response
32 project as defined in section 455L.2, subsection 5, paragraph
33 "e".

34 b. The current owner in fee simple of the real property
35 subject to the environmental covenant.

1 c. Each person that originally signed the environmental
2 covenant or an assignee of an original signatory, unless the
3 person waived in a recorded document the right to consent or
4 the agency finds that the person no longer exists or cannot be
5 located or identified with the exercise of reasonable
6 diligence.

7 d. Except as otherwise provided in subsection 4, paragraph
8 "b", the holder.

9 2. If an interest in real property is subject to an
10 environmental covenant, the interest is not affected by an
11 amendment to the environmental covenant unless the current
12 owner of the interest consents to the amendment or has waived
13 in a recorded document the right to consent to amendments.

14 3. Except for an assignment undertaken pursuant to a
15 governmental reorganization, assignment of an environmental
16 covenant to a new holder is an amendment.

17 4. Except as otherwise provided in an environmental
18 covenant, all of the following apply:

19 a. A holder may not assign its interest without consent of
20 the other parties as provided in subsection 1.

21 b. A holder may be removed and replaced by agreement of
22 the other parties specified in subsection 1.

23 c. A court of competent jurisdiction may fill a vacancy in
24 the position of holder.

25 **Sec. 15. NEW SECTION. 455L.11 ENFORCEMENT OF**
26 **ENVIRONMENTAL COVENANT.**

27 1. A civil action for injunctive or other equitable relief
28 for violation of an environmental covenant may be maintained
29 by any of the following:

30 a. A holder or grantor.

31 b. Except for environmental covenants created under
32 section 455L.2, subsection 5, paragraph "e", the agency or, if
33 it is not the agency with authority to determine or approve
34 the environmental response project, the department of natural
35 resources.

1 c. Any person to whom the environmental covenant expressly
2 grants power to enforce the environmental covenant.

3 d. A person whose interest in the real property or whose
4 collateral or liability may be affected by the alleged
5 violation of the environmental covenant.

6 e. A municipality or other unit of local government in
7 which the real property subject to the environmental covenant
8 is located.

9 2. This chapter does not limit the regulatory authority of
10 an agency under law other than this chapter with respect to an
11 environmental response project.

12 3. A person is not responsible for or subject to liability
13 for environmental remediation solely because it has the right
14 to enforce an environmental covenant.

15 Sec. 16. NEW SECTION. 455L.12 RELATION TO ELECTRONIC
16 SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.

17 This chapter modifies, limits, or supersedes the federal
18 Electronic Signatures in Global and National Commerce Act, 15
19 U.S.C. § 7001 et seq., but does not modify, limit, or
20 supersede section 101(a) of that Act, 15 U.S.C. § 7001(a), or
21 authorize electronic delivery of any of the notices described
22 in section 103(b) of that Act, 15 U.S.C. § 7003(b).

23 EXPLANATION

24 This bill creates the uniform environmental covenants Act
25 in new Code chapter 455L.

26 The bill provides that any person may be a holder of an
27 environmental covenant, that an environmental covenant may
28 identify more than one holder, and that the interest of a
29 holder is an interest in real property. The bill provides
30 that a state or federal agency is bound by any obligation it
31 assumes in an environmental covenant, but the agency does not
32 assume obligations merely by signing an environmental
33 covenant, and that any other person that signs an
34 environmental covenant is bound by the obligations the person
35 assumes in the environmental covenant, but signing the

1 environmental covenant does not change obligations, rights, or
2 protections granted or imposed under law other than this bill
3 except as provided in the environmental covenant. The bill
4 provides rules regarding the subordination of interests in
5 real property in relation to environmental covenants.

6 The bill provides the requirements for what must be
7 contained in an environmental covenant and provides that an
8 environmental covenant may contain other information,
9 restrictions, and requirements agreed to by the persons who
10 sign the environmental covenant. The bill provides that an
11 agency may require those persons specified by the agency who
12 have interests in the real property to sign the environmental
13 covenant.

14 The bill provides that an environmental covenant that
15 complies with the new Code chapter runs with the land and that
16 an environmental covenant that is otherwise effective is valid
17 and enforceable even if the environmental covenant has certain
18 characteristics or effects or certain events occur. The bill
19 provides that an instrument that creates restrictions or
20 obligations with respect to real property that was recorded
21 before the effective date of this bill is valid and
22 enforceable. The bill does not apply in any other respect to
23 such an instrument. The bill does not invalidate or render
24 unenforceable any interest that was created prior to the
25 enactment of this bill or that is otherwise enforceable under
26 the law of this state.

27 The bill does not authorize a use of real property that is
28 otherwise prohibited by zoning, by other law, or by a recorded
29 instrument that has priority over the environmental covenant.
30 The bill provides that an environmental covenant may prohibit
31 or restrict uses of real property which are authorized by
32 zoning or by law other than the new Code chapter.

33 The bill provides notice requirements regarding who should
34 receive a copy of the environmental covenant, but the validity
35 of an environmental covenant is not affected by failure to

1 provide a copy as required.

2 The bill provides that an environmental covenant and any
3 amendment or termination of the environmental covenant must be
4 recorded in every county in which any portion of the real
5 property subject to the environmental covenant is located.

6 The bill provides that an environmental covenant is
7 perpetual unless the environmental covenant is limited to a
8 specific duration or terminated by the occurrence of a
9 specific event, by consent, by foreclosure of an interest that
10 has priority over the environmental covenant, by an eminent
11 domain proceeding, or through other means allowed under the
12 bill. The bill provides that if a state agency determines
13 that the restrictions contained in an environmental covenant
14 are no longer necessary, the agency may terminate the
15 environmental covenant or reduce its burden on the real
16 property after providing notice to each person that signed the
17 environmental covenant and the current property owner. The
18 bill provides that a person that signed an environmental
19 covenant or a current property owner may seek approval from
20 the agency for the termination or modification of an
21 environmental covenant and may seek judicial review of an
22 adverse determination. If a federal agency has regulatory
23 authority over the environmental response project, applicable
24 federal law will apply to judicial review of an adverse
25 determination. The bill provides that, except as otherwise
26 provided, an environmental covenant may not be extinguished,
27 limited, or impaired through issuance of a tax deed,
28 foreclosure of a tax lien, or application of certain real
29 property doctrines.

30 The bill provides that an environmental covenant may be
31 amended or terminated by consent only if the amendment or
32 termination is signed by the agency, unless the project is
33 conducted by a person on the person's own land; the current
34 owner in fee simple of the real property subject to the
35 environmental covenant; each person that originally signed the

1 environmental covenant, unless the person waived in a signed
2 record the right to consent or the agency finds that the
3 person no longer exists or cannot be located or identified;
4 and except as otherwise provided, the holder. The bill
5 provides that if an interest in real property is subject to an
6 environmental covenant, the interest is not affected by an
7 amendment to the environmental covenant unless the current
8 owner of the interest consents to the amendment or has waived
9 in a signed record the right to consent to amendments. The
10 bill provides that, except for an assignment undertaken
11 pursuant to a governmental reorganization, assignment of an
12 environmental covenant to a new holder is an amendment. The
13 bill provides that, except as otherwise provided in an
14 environmental covenant, a holder may not assign its interest
15 without consent of the other parties, a holder may be removed
16 and replaced by consent and agreement of the other parties,
17 and a court of competent jurisdiction may fill a vacancy in
18 the position of holder.

19 The bill provides that a civil action for injunctive or
20 other equitable relief for violation of an environmental
21 covenant may be maintained by the holder or grantor of the
22 environmental covenant, the applicable agency or the
23 department of natural resources, any person to whom the
24 environmental covenant expressly grants power to enforce, a
25 person whose interest in the real property or whose collateral
26 or liability may be affected by the alleged violation of the
27 environmental covenant, or a unit of local government in which
28 the real property subject to the environmental covenant is
29 located. The bill provides that a person is not responsible
30 for or subject to liability for environmental remediation
31 solely because the person has the right to enforce an
32 environmental covenant.

33 The bill provides for the applicability of certain
34 provisions of the federal Electronic Signatures in Global and
35 National Commerce Act.

1 The bill makes certain amendments to the Code due to the
2 adoption of the uniform environmental covenants Act. The bill
3 requires the director of the department of natural resources,
4 at the discretion of the director, to enter into environmental
5 covenants. The bill includes environmental covenants as a
6 factor in the rulemaking process for corrective action
7 response requirements for releases of a regulated substance in
8 connection with an underground storage tank.

9 The bill makes amendments to the land recycling and
10 environmental remediation standards Act in Code chapter 455H
11 by including a definition of an environmental covenant. The
12 bill provides that an institutional or technological control
13 includes an environmental protection easement filed prior to
14 the effective date of the bill or an environmental covenant.
15 The bill makes conforming amendments to Code chapter 455H in
16 relation to allowing environmental covenants to take the place
17 of environmental protection easements as one possible
18 institutional or technological control under the Code chapter.

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STATE OF IOWA

THOMAS J. VILSACK, GOVERNOR
SALLY J. PEDERSON, LT. GOVERNOR

DEPARTMENT OF NATURAL RESOURCES
JEFFREY R. VONK, DIRECTOR

To: **General Assembly**

From: **Jeffrey R. Vonk, Director**
Jeffrey R. Vonk
Iowa Department of Natural Resources

Date: **February 4, 2005**

Re: **Uniform Environmental Covenants Act**

The department proposes to adopt the "Uniform Environmental Covenants Act" in a new chapter of the Iowa Code – Iowa Code Chapter 455L. The "Uniform Environmental Covenants Act" is a uniform state law developed by the National Conference of Commissioners on Uniform State Laws (Commission). This law creates by statute the authority to place use restrictions on contaminated property and eliminates ambiguities as to the validity and enforcement of these restrictions under common law rules. The statutory legal mechanism it creates is called an "environmental covenant."

Currently, under programs such as IDNR's contaminated sites and underground storage tanks programs and the federal Resource Conservation and Recovery Act and Comprehensive Environmental Response, Compensation and Liability Act programs, there is ambiguity over the creation and enforceability of use restrictions entered into between the government and property owners. This has delayed cleanups and caused uncertainty as to the long-term viability of such controls. This Act ensures that land use restrictions, mandated environmental monitoring requirements, and a wide range of common engineering controls designed to control the potential environmental risk of residual contamination will be recorded in the land records and effectively enforced over time. This Act reverses the variety of common law doctrines that limit such enforceability.

Because these use restrictions can be effectively enforced against any future landowner that violates a condition of the environmental covenant, current landowners that have complied with the terms and conditions of the covenant can be assured that their liability ends once they sell their property. This clarification on the issue of liability should encourage additional entities to purchase and redevelop contaminated properties.

This Act will also amend existing provisions of the Iowa Code including eliminating the use of the "environmental easement" concept created in the land recycling program. This legislation will make clear that "environmental covenants" will be the mechanism used for all use restrictions created during environmental remediation of real property in the state of Iowa.

A number of states have introduced legislation to adopt the Uniform Environmental Covenants Act (e.g., Ohio, Nebraska, Pennsylvania). The Iowa commissioners who serve on the Commission will be recommending the adoption of this Act in their upcoming report to the Iowa General Assembly. See Iowa Code Chapter 5, Uniform State Laws.

SENATE FILE 375

AN ACT

CREATING THE UNIFORM ENVIRONMENTAL COVENANTS ACT.

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

Section 1. Section 455B.103, Code 2005, is amended by adding the following new subsection:

NEW SUBSECTION. 7. At the discretion of the director, enter into environmental covenants in accordance with chapter 455L and accept or maintain such other real property interests as shall be appropriate for the protection of human health and safety or the environment.

Sec. 2. Section 455B.474, subsection 1, paragraph f, subparagraph (4), subparagraph subdivision (f), Code 2005, is amended to read as follows:

(f) Other relevant site specific factors such as the feasibility of available technologies, existing background contaminant levels, current and planned future uses, ecological, aesthetic, and other relevant criteria, and the applicability and availability of engineering and institutional controls, including an environmental covenant as established by chapter 455L.

Sec. 3. Section 455H.103, Code 2005, is amended by adding the following new subsection:

NEW SUBSECTION. 7A. "Environmental covenant" means a servitude arising under an environmental response project that

imposes activity and use limitations as defined in section 455L.2.

Sec. 4. Section 455H.206, subsections 2, 3, 4, 5, and 6, Code 2005, are amended to read as follows:

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 the effective date of this Act.
- f. An environmental covenant created in accordance with chapter 455L.

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 protection-easement covenant as the institutional control. Environmental protection-easements covenants may also be used to implement other institutional or technological controls. ~~An environmental protection-easement-must-be-granted-by-the fee-title-owners-of-the-relevant-real-estate.--The-participant shall-furnish-to-the-department-abstracts-of-title-and-other documents-sufficient-to-enable-the-department-to-determine that-the-easements-will-be-enforceable.--An-environmental protection-easement-shall-be-in-a-form-provided-by-rule-of-the department.--An-environmental-protection-easement-must-provide all-of-the-following:~~

~~a. The easement names the state, acting through the department, as grantee.~~

~~b. The easement identifies the activity either being restricted or required through the institutional or technological control.~~

~~c. The easement runs with the land, binding the owner of the land and the owner's successors and assigns.~~

~~d. The easement shall include an acknowledgment by the director of acceptance of the easement by the department.~~

~~e. The easement is filed in the office of the recorder of the county in which the real estate is located and in any central registry which may be created by the director. covenant must comply with the requirements of chapter 455L.~~

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. ~~An environmental protection easement granted pursuant to subsection 3 shall be enforceable in perpetuity notwithstanding sections 614.24 through 614.38. After the recording of the easement, each instrument transferring an interest in the area affected by the easement shall include a specific reference to the recorded easement. If a transfer instrument fails to include a specific reference to the recorded easement, the transferor may lose any of the benefits provided by this chapter.~~

5. An institutional or technological control, except for an environmental protection easement 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 protection easement granted covenant created pursuant to subsection 3 may be released terminated or amended only by a release or amendment of the easement executed by the director and filed with the county recorder in accordance with chapter 455L. The department may determine that any person who intentionally violates an environmental protection easement 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.

Sec. 5. NEW SECTION. 455L.1 TITLE.

This chapter shall be known and cited as the "Uniform Environmental Covenants Act".

Sec. 6. NEW SECTION. 455L.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 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 445G, 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 455L.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.

Sec. 7. NEW SECTION. 455L.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.

Sec. 8. NEW SECTION. 455L.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 455L.9 and 455L.10.

e. Rights of the holder in addition to the holder's right to enforce the environmental covenant pursuant to section 455L.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.

Sec. 9. NEW SECTION. 455L.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 the effective date of this chapter 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 the enactment of this chapter or that is otherwise enforceable under the laws of this state.

Sec. 10. NEW SECTION. 455L.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.

Sec. 11. NEW SECTION. 455L.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.

Sec. 12. NEW SECTION. 455L.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 455L.9, subsection 4, an environmental covenant is subject to the laws of this state governing recording and priority of interests in real property.

Sec. 13. NEW SECTION. 455L.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 455L.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 455L.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.

Sec. 14. NEW SECTION. 455L.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.

Sec. 15. NEW SECTION. 455L.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 it 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 solely because it has the right to enforce an environmental covenant.

Sec. 16. NEW SECTION. 455L.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).

Sec. 17. Section 558.68, Code 2005, is amended by adding the following new subsection:

NEW SUBSECTION. 5. This section shall not impair the validity of an environmental covenant established pursuant to chapter 455L.

Sec. 18. Section 614.24, Code 2005, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. This section shall not impair the validity of an environmental covenant established pursuant to chapter 455L.

Sec. 19. Section 614.32, Code 2005, is amended by adding the following new subsection:

NEW SUBSECTION. 6. All interests created by an environmental covenant established pursuant to chapter 455L.

JOHN P. KIBBIE
President of the Senate

CHRISTOPHER C. RANTS
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 375, Eighty-first General Assembly.

MICHAEL E. MARSHALL
Secretary of the Senate

Approved 5/4, 2005

THOMAS J. VILSACK
Governor