

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 covenant as the institutional control. Environmental covenants may also be used to implement other institutional or technological controls. An environmental covenant must comply with the requirements of chapter 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.

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

6. An environmental covenant created pursuant to subsection 3 may be terminated or amended only in accordance with chapter 455L. The department may determine that any person who intentionally violates an environmental covenant or other technological or institutional control contained in a no further action letter loses any of the benefits provided by this chapter as to the affected area. In the event the technological or institutional controls fail to achieve compliance with the applicable standards, the participant shall undertake an additional response action sufficient to demonstrate to the department compliance with applicable standards. Failure to proceed in a timely manner in performing the additional response action may result in termination of the participant's enrollment in the land recycling program.

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, 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.

Approved MICHAEL E. MARSHALL
 Secretary of the Senate
 , 2005

THOMAS J. VILSACK
Governor /signed May 4, 2005