

house environment and natural resources committees with any recommendations for legislative changes by January 15, 1997.

Sec. 6. EFFECTIVE DATE.

Sections 2, paragraph (b), 4, and 5 are effective May 1, 1996. The remainder of this act is effective January 1, 1997.

Presented to the governor March 29, 1996

Signed by the governor April 1, 1996, 11:03 a.m.

CHAPTER 397—H.F.No. 2519

An act relating to the environment; increasing the amount of reimbursement available for cleanup of petroleum releases by certain responsible persons; requiring corrective action performance audits in certain circumstances; exempting petroleum tank cleanup contracts from certain spending limitations; amending Minnesota Statutes 1995 Supplement, sections 115C.08, subdivision 4; and 115C.09, subdivision 3; Laws 1995, chapter 254, article 1, section 93; proposing coding for new law in Minnesota Statutes, chapter 115C.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1995 Supplement, section 115C.08, subdivision 4, is amended to read:

Subd. 4. **EXPENDITURES.** (a) Money in the fund may only be spent:

(1) to administer the petroleum tank release cleanup program established in this chapter;

(2) for agency administrative costs under sections 116.46 to 116.50, sections 115C.03 to 115C.06, and costs of corrective action taken by the agency under section 115C.03, including investigations;

(3) for costs of recovering expenses of corrective actions under section 115C.04;

(4) for training, certification, and rulemaking under sections 116.46 to 116.50;

(5) for agency administrative costs of enforcing rules governing the construction, installation, operation, and closure of aboveground and underground petroleum storage tanks;

(6) for reimbursement of the harmful substance compensation account under subdivision 5 and section 115B.26, subdivision 4; and

(7) for administrative and staff costs as set by the board to administer the petroleum tank release program established in this chapter; and

(8) for corrective action performance audits under section 115C.093.

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(b) Money in the fund is appropriated to the board to make reimbursements or payments under this section.

Sec. 2. Minnesota Statutes 1995 Supplement, section 115C.09, subdivision 3, is amended to read:

Subd. 3. **REIMBURSEMENTS; SUBROGATION; APPROPRIATION.** (a) The board shall reimburse a responsible person who is eligible under subdivision 2 from the fund in the following amounts:

(1) 90 percent of the total reimbursable costs on the first \$250,000 and 75 percent on any remaining costs in excess of \$250,000 on a site; or

(2) for corrective actions at a residential site used as a permanent residence at the time the release was discovered, 92.5 percent of the total reimbursable costs on the first \$100,000 and 100 percent of any remaining costs in excess of \$100,000; or

(3) 90 percent of the total reimbursable costs on the first \$250,000 and 100 percent of the cumulative total reimbursable costs in excess of \$250,000 at all sites in which the responsible person had interest, and for which the commissioner has not issued a closure letter as of the effective date of this clause, if the responsible person dispensed less than 1,000,000 gallons of petroleum at each location in each of the last three calendar years that the responsible person dispensed petroleum at the location and:

(i) has owned no more than three locations in the state at which motor fuel was dispensed into motor vehicles and has discontinued operation of all petroleum retail operations; or

(ii) has owned no more than one location in the state at which motor fuel was dispensed into motor vehicles.

Not more than \$1,000,000 may be reimbursed for costs associated with a single release, regardless of the number of persons eligible for reimbursement, and not more than \$2,000,000 may be reimbursed for costs associated with a single tank facility.

(b) A reimbursement may not be made from the fund under this subdivision until the board has determined that the costs for which reimbursement is requested were actually incurred and were reasonable.

(c) When an applicant has obtained responsible competitive bids or proposals according to rules promulgated under this chapter prior to June 1, 1995, the eligible costs for the tasks, procedures, services, materials, equipment, and tests of the low bid or proposal are presumed to be reasonable by the board, unless the costs of the low bid or proposal are substantially in excess of the average costs charged for similar tasks, procedures, services, materials, equipment, and tests in the same geographical area during the same time period.

(d) When an applicant has obtained a minimum of two responsible competitive bids or proposals on forms prescribed by the board and where the rules promulgated under this chapter after June 1, 1995, designate maximum costs for specific tasks, procedures, services, materials, equipment and tests, the eligible costs of the low bid or proposal are deemed reasonable if the costs are at or below the maximums set forth in the rules.

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(e) Costs incurred for change orders executed as prescribed in rules promulgated under this chapter after June 1, 1995, are presumed reasonable if the costs are at or below the maximums set forth in the rules, unless the costs in the change order are above those in the original bid or proposal or are unsubstantiated and inconsistent with the process and standards required by the rules.

(f) A reimbursement may not be made from the fund under this subdivision in response to either an initial or supplemental application for costs incurred after June 4, 1987, that are payable under an applicable insurance policy, except that if the board finds that the responsible person has made reasonable efforts to collect from an insurer and failed, the board shall reimburse the responsible person under this subdivision.

(g) If the board reimburses a responsible person for costs for which the responsible person has petroleum tank leakage or spill insurance coverage, the board is subrogated to the rights of the responsible person with respect to that insurance coverage, to the extent of the reimbursement by the board. The board may request the attorney general to bring an action in district court against the insurer to enforce the board's subrogation rights. Acceptance by a responsible person of reimbursement constitutes an assignment by the responsible person to the board of any rights of the responsible person with respect to any insurance coverage applicable to the costs that are reimbursed. Notwithstanding this paragraph, the board may instead request a return of the reimbursement under subdivision 5 and may employ against the responsible party the remedies provided in that subdivision, except where the board has knowingly provided reimbursement because the responsible person was denied coverage by the insurer.

(h) Money in the fund is appropriated to the board to make reimbursements under this section. A reimbursement to a state agency must be credited to the appropriation account or accounts from which the reimbursed costs were paid.

(i) The board may reduce the amount of reimbursement to be made under this section if it finds that the responsible person has not complied with a provision of this chapter, a rule or order issued under this chapter, or one or more of the following requirements:

- (1) the agency was given notice of the release as required by section 115.061;
- (2) the responsible person, to the extent possible, fully cooperated with the agency in responding to the release; and
- (3) the state and federal rules and regulations applicable to the condition or operation of the tank when the noncompliance caused or failed to mitigate the release.

(j) The reimbursement may be reduced as much as 100 percent for failure by the responsible person to comply with the requirements in paragraph (i), clauses (1) to (3). In determining the amount of the reimbursement reduction, the board shall consider:

- (1) the reasonable determination by the agency of the environmental impact of the noncompliance;
- (2) whether the noncompliance was negligent, knowing, or willful;
- (3) the deterrent effect of the award reduction on other tank owners and operators; and
- (4) the amount of reimbursement reduction recommended by the commissioner.

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(k) A person may assign the right to receive reimbursement to each lender who advanced funds to pay the costs of the corrective action or to each contractor or consultant who provided corrective action services. An assignment must be made by filing with the board a document, in a form prescribed by the board, indicating the identity of the responsible person, the identity of the assignee, the dollar amount of the assignment, and the location of the corrective action. An assignment signed by the responsible person is valid unless terminated by filing a termination with the board, in a form prescribed by the board, which must include the written concurrence of the assignee. The board shall maintain an index of assignments filed under this paragraph. The board shall pay the reimbursement to the responsible person and to one or more assignees by a multiparty check. The board has no liability to a responsible person for a payment under an assignment meeting the requirements of this paragraph.

Sec. 3. **[115C.093] CORRECTIVE ACTION PERFORMANCE AUDITS.**

(a) The board shall contract for performance audits of corrective actions for which reimbursement is sought under section 115C.09, subdivision 3, paragraph (a), clause (3), and may contract for audits of other corrective actions.

(b) A responsible person may request a performance audit under this section. If the board denies the request, it must provide the requester with the reasons for the denial.

(c) A performance audit conducted under this section must evaluate the adequacy of the corrective actions, the validity of the corrective action costs, and whether alternative methods or technologies could have been used to carry out the corrective actions at a lower cost. The board shall report the results of audits conducted under this section to the chairs of the senate committees on environment and natural resources and commerce and consumer protection, the finance division of the senate committee on environment and natural resources, and the house of representatives committees on environment and natural resources, environment and natural resources finance, and commerce, tourism, and consumer affairs. Money in the fund is appropriated to the board for the purposes of this section.

Sec. 4, Laws 1995, chapter 254, article 1, section 93, is amended to read:

Sec. 93. **SPENDING LIMITATION ON CONTRACTS.**

(a) During the biennium ending June 30, 1997, the aggregate amount spent by all departments or agencies defined in Minnesota Statutes, section 15.91, subdivision 1, on professional or technical service contracts may not exceed 95 percent of the aggregate amount these departments or agencies spent on these contracts during the biennium from July 1, 1993, to June 30, 1995. For purposes of this section, professional or technical service contracts are as defined in Minnesota Statutes, section 16B.17, but do not include contracts for highway construction or maintenance, contracts between state agencies, contracts paid for from insurance trust funds, gift and deposit funds, capital projects funds, or federal funds, contracts with private collection agencies, contracts that are entered into in connection with the agency's distribution of grant funds, or contracts entered into under Minnesota Statutes, section 16B.35 or 115C.093. The governor or a designated official must limit or disapprove proposed contracts as necessary to comply with this section.

(b) During the biennium ending June 30, 1997, the amount spent by (1) the house of representatives; (2) the senate; and (3) the legislative coordinating commission and all

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groups under its jurisdiction, from direct-appropriated funds on professional or technical service contracts may not exceed 95 percent of the amount spent on these contracts from direct-appropriated funds during the biennium from July 1, 1993, to June 30, 1995. Each entity listed in clauses (1), (2), and (3) of this paragraph must be treated separately for purposes of determining compliance with this paragraph, except that the legislative coordinating commission and all groups under its jurisdiction must be treated as one unit. For purposes of this paragraph, "professional or technical service contract" has the meaning defined in section 16B.17, but does not include contracts for actuarial services entered into by the legislative commission on pensions and retirement, or contracts with other legislative or state executive agencies. The house of representatives committee on rules and legislative administration, the senate committee on rules and administration, and the legislative coordinating commission must each determine the amount of the reduction to be made under this paragraph.

Sec. 5. **EFFECTIVE DATE.**

Sections 1 to 4 are effective the day following final enactment.

Presented to the governor March 29, 1996

Signed by the governor April 2, 1996, 10:02 a.m.

CHAPTER 398—H.F.No. 2206

An act relating to education; removing mandates from higher education; requiring increased accountability and performance for funding; allowing higher education greater flexibility in conducting its business; amending Minnesota Statutes 1994, sections 15.43, subdivisions 2 and 3; 16B.01, subdivision 2; 16B.21, subdivisions 1 and 3; 16B.33, subdivisions 1, 3, 4, and by adding a subdivision; 16B.35, by adding a subdivision; 16B.36, subdivision 1; 16B.37, subdivision 1; 16B.41, subdivision 2; 16B.482; 16B.49; 16B.531; 16B.54, subdivision 1; 16B.85, subdivision 2; 43A.05, subdivision 4; 43A.10, subdivision 3; 123.70, subdivision 10; 135A.033; 135A.14, as amended; 137.37; 169.448, subdivision 2; 201.1611; and 248.07, subdivision 7; Minnesota Statutes 1995 Supplement, sections 16B.17, subdivision 6; 16B.465, subdivision 4; 43A.06, subdivision 1; 135A.181, subdivision 2; 136A.101, subdivision 10; 136F.06, subdivisions 1 and 2; 136F.12; 136F.16, subdivision 3; 136F.18; 136F.30; 136F.36, subdivision 2; 136F.44; 136F.50; 136F.53, subdivisions 1 and 3; 136F.58; 136F.71, by adding a subdivision; 136F.72, subdivision 3; 136F.80, subdivision 2; and 169.441, subdivision 5; Laws 1995, chapter 212, article 2, sections 15; and 20, subdivisions 1 and 2; proposing coding for new law in Minnesota Statutes, chapters 16B; 135A; 136A; and 136F; repealing Minnesota Statutes 1994, sections 137.03; 137.05; 137.06; 137.07; 137.08; 137.11; 137.14; 137.15; and 137.33; Minnesota Statutes 1995 Supplement, section 136F.59, subdivision 1.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1994, section 15.43, subdivision 2, is amended to read:

Subd. 2. **TEXTBOOKS EXEMPTED.** Textbooks, software, and other course materials authored by an employee of the state's education systems Minnesota state colleges

New language is indicated by underline, deletions by strikeout.