

advertising for bids, but in that case the action of the board shall be recorded in its official proceedings.

Presented to the governor March 30, 1990

Signed by the governor April 3, 1990, 8:40 p.m.

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**CHAPTER 390—H.F.No. 2481**

**VETOED**

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**CHAPTER 391—S.F.No. 60**

*An act relating to water; recodifying, clarifying, and relocating provisions relating to water law; amending Minnesota Statutes 1988, sections 9.071; 16B.62, subdivision 1; 18.191; 40A.13, subdivision 1; 41.65, subdivision 3; 84.083, by adding subdivisions; 84.91, subdivision 4; 84.911, subdivisions 5 and 6; 85.33, subdivision 3; 86A.05, subdivision 10; 88.43, subdivision 2; 93.335, subdivision 1; 94.343, subdivision 4; 97A.015, subdivision 41; 97A.071, subdivision 4; 97A.101, subdivision 2; 97A.211, subdivisions 1 and 2; 116D.04, subdivision 1a; 116J.70, subdivision 2a; 144.95, subdivision 4; 161.28, subdivision 1; 163.17; 272.02, subdivision 6; 273.19, subdivision 5; 295.44, subdivision 1; 355.11, subdivisions 4 and 5; 375.471; 383A.602, subdivisions 3 and 5; 383A.604, subdivision 1; 394.25, subdivision 2; 459.20; 465.20; 469.141, subdivision 4; 469.174, subdivision 19; 471.345, subdivision 3; 471.591, subdivision 1; 471.98, subdivision 2; 473.191, subdivision 2; 500.24, subdivision 3b; 609.68; and 645.44, by adding a subdivision; Minnesota Statutes 1989 Supplement, sections 18B.07, subdivision 6; 84.95, subdivision 2; 357.021, subdivision 2; and 462.357, subdivision 1; Minnesota Statutes Second 1989 Supplement, sections 272.02, subdivision 1; and 444.075, subdivision 1a; Laws 1987, chapter 404, section 22, subdivision 7; proposing coding for new law in Minnesota Statutes, chapters 83A; 97C; and 383B; proposing coding for new law as Minnesota Statutes, chapters 86B; 103A; 103B; 103C; 103D; 103E; 103F; and 103G; repealing Minnesota Statutes 1988, sections 84.031; 84.032; 84.092; 84.158; 115.091 to 115.103; 116C.40; 465.18; 473.875; 473.876; 473.877, as amended; 473.8771; 473.878; 473.8785; 473.879; 473.881; 473.882, as amended; and 473.883, as amended; chapters 40, as amended; 104; 105, as amended; 106A; 110, as amended; 110B, as amended; 112, as amended; 114; 114B; 361, as amended; and 378; Minnesota Statutes 1989 Supplement, section 84.0921; Laws 1967, chapter 907; Laws 1969, chapter 272; Laws 1971, chapter 355; Laws 1974, chapter 111; Laws 1977, chapter 322; and Laws 1982, chapter 627.*

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

**New language is indicated by underline, deletions by ~~strikeout~~.**

## ARTICLE 1

## CHAPTER 103A

## WATER POLICY AND INFORMATION

## GENERAL PROVISIONS

## Section 1. [103A.001] EFFECT OF CHAPTER 103A ON WATER LAW.

Chapters 103A, 103B, 103C, 103D, 103E, 103F, and 103G constitute the water law of this state and may be cited as the water law.

## WATER POLICY

## Sec. 2. [103A.201] REGULATORY POLICY.

To conserve and use water resources of the state in the best interests of its people, and to promote the public health, safety, and welfare, it is the policy of the state that:

(1) subject to existing rights, public waters are subject to the control of the state;

(2) the state, to the extent provided by law, shall control the appropriation and use of waters of the state; and

(3) the state shall control and supervise activity that changes or will change the course, current, or cross section of public waters, including the construction, reconstruction, repair, removal, abandonment, alteration, or the transfer of ownership of dams, reservoirs, control structures, and waterway obstructions in public waters. [105.38]

## Sec. 3. [103A.202] WETLAND POLICY.

The legislature finds that it is in the public interest to preserve the wetlands of the state to conserve surface waters, maintain and improve water quality, preserve wildlife habitat, reduce runoff, provide for floodwater retention, reduce stream sedimentation, contribute to improved subsurface moisture, enhance the natural beauty of the landscape, and promote comprehensive and total water management planning. [105.392 s. 1]

## Sec. 4. [103A.203] HYDROPOWER POLICY.

The legislature finds that:

(1) the public health, safety, and welfare of the state are also promoted by the use of state waters to produce hydroelectric or hydromechanical power in a manner consistent with laws relating to dam construction, reconstruction, repair, and maintenance; and

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(2) the leasing of existing dams and potential dam sites primarily for power generation is a valid public purpose. [105.482 s. 8]

**Sec. 5. [103A.205] CONSERVATION POLICY FOR RAINWATER.**

It is the policy of the state to promote the retention and conservation of all water precipitated from the atmosphere in the areas where it falls, as far as practicable. Except as otherwise expressly provided, all officers, departments, and other agencies of the state or political subdivisions having any authority or means for constructing, maintaining, or operating dams or other works or engaging in other projects or operations affecting precipitated water shall use the authority, as far as practicable, to effectuate the policy in this section. [110.72]

**Sec. 6. [103A.206] SOIL AND WATER CONSERVATION POLICY.**

Improper land use practices have caused serious wind and water erosion of the land of this state, the runoff of polluting materials, increased costs to maintain agricultural productivity, increased energy costs and increased flood damage. Land occupiers have the responsibility to implement practices to correct these conditions and conserve the soil and water resources of the state. It is the policy of the state to encourage land occupiers to conserve soil and water resources through the implementation of practices that effectively reduce or prevent erosion, sedimentation, siltation and agriculturally related pollution in order to preserve natural resources, insure continued soil productivity, control floods, prevent impairment of dams and reservoirs, assist in maintaining the navigability of rivers and harbors, preserve wildlife, protect the tax base, and protect public lands. [40.02]

**Sec. 7. [103A.207] FLOODPLAIN MANAGEMENT POLICY.**

(a) It is the policy of this state to reduce flood damages through floodplain management, stressing nonstructural measures such as floodplain zoning and flood proofing, and flood warning practices.

(b) It is the policy of this state:

(1) not to prohibit but to guide development of the floodplains consistent with legislative findings;

(2) to provide state coordination and assistance to local governmental units in floodplain management;

(3) to encourage local governmental units to adopt, enforce, and administer sound floodplain management ordinances; and

(4) to provide the commissioner of natural resources with authority necessary to carry out a floodplain management program for the state and to coordinate federal, state, and local floodplain management activities in this state. [104.01 s. 3]

[Bracketed paragraph notes cite text sources]

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Sec. 8. [103A.208] SCENIC RIVER PROTECTION POLICY.

The legislature finds that certain of Minnesota's rivers and their adjacent lands possess outstanding scenic, recreational, natural, historical, scientific and similar values. It is in the interest of present and future generations to retain these values, and a policy of the state, and an authorized public purpose to preserve and protect these rivers. [104.32]

Sec. 9. [103A.209] MARGINAL, ERODIBLE LAND RETIREMENT POLICY.

It is state policy to encourage the retirement of marginal, highly erodible land, particularly land adjacent to public waters and drainage systems, from crop production and to reestablish a cover of perennial vegetation. [40.41]

Sec. 10. [103A.211] WATER LAW POLICY.

The water law of this state is contained in many statutes that must be considered as a whole to systematically administer water policy for the public welfare. Water law that seems contradictory as applied to a specific proceeding creates a need for a forum where the public interest conflicts involved can be presented and, by consideration of the whole body of water law, the controlling policy can be determined and apparent inconsistencies resolved. [105.72]

DETERMINATION OF WATER LAW AND POLICY

Sec. 11. [103A.301] DEFINITIONS.

Subdivision 1. APPLICABILITY. The definitions in this section apply to sections 11 to 19. [105.73 s. 1]

Subd. 2. AGENCY. "Agency" means a state officer, board, commission, bureau, division, or agency, other than a court, exercising duty or authority under laws listed in section 12. [105.73 s. 4]

Subd. 3. BOARD. "Board" means the board of water and soil resources. [105.73 s. 2]

Subd. 4. COURT. "Court" means the district court or a judge of the district court before whom the proceeding is pending. [105.73 s. 5]

Subd. 5. PROCEEDING. "Proceeding" means a procedure under any of the laws listed in section 12 that involves administrative discretion or duty. [105.73 s. 3]

Subd. 6. QUESTION OF WATER POLICY. "Question of water policy" means a question of water law and policy in which use, disposal, pollution, or conservation of water is a factor in a proceeding, including:

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(1) determination of the governing policy of state law in the proceeding and resolution of apparent inconsistencies between different statutes; or

(2) the proper application of the policy of state law to facts in the proceeding if application is a matter of administrative discretion. [105.73 s. 6]

Sec. 12. [103A.305] JURISDICTION.

Sections 11 to 19 apply if the decision of an agency in a proceeding involves a question of water policy in one or more of the areas of water conservation, water pollution, preservation and management of wildlife, drainage, soil conservation, public recreation, forest management, and municipal planning under section 22; article 5, sections 2 and 3; article 7, sections 22; 25; 27; 28; 29; 32, subdivisions 1 and 2; 33 to 36; 37, subdivisions 1, 10, 11, and 12; 38; 39; sections 84.57; 97A.135; 115.04; or 115.05. [105.74]

Sec. 13. [103A.311] PETITION FOR INTERVENTION.

Subdivision 1. AUTHORITY. The board may intervene in a proceeding if a petition is filed with the board for referral of a question of water policy involved in the proceeding. [105.75 s. 1]

Subd. 2. PETITION FOR INTERVENTION. A petition for intervention must identify the proceeding in which it is made and state the grounds for referral in a general manner with sufficient detail to inform interested parties of the nature of the questions proposed to be presented to the board and the public importance of the questions. [105.75 s. 1]

Subd. 3. PETITIONERS AND SIGNATURES. (a) A petition for intervention may be made by:

(1) the applicant in the proceeding;

(2) a party to the proceeding;

(3) the governor;

(4) the agency;

(5) the commissioner or director of a division in the department of natural resources;

(6) the head of another state department or agency;

(7) a bureau or division of the federal government with a concern in the proceeding;

(8) an organization or group of persons with appropriate purpose related to the proceedings; or

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(9) a person the board considers representative of a substantial segment of the state or peculiarly able to present evidence bearing on the public interest.

(b) The petition must be:

(1) signed and verified by the petitioner or an officer of the petitioner; or

(2) signed by the petitioner's attorney. [105.75 s. 2]

Subd. 4. FILING PETITION. The petition must be filed in duplicate, one copy with the board, the other with the agency. [105.75 s. 2]

Subd. 5. PERIOD FOR INTERVENTION BY BOARD. The petition shall allow intervention in a proceeding by the board if the petition is filed after the proceeding is initiated and before the agency's order is made. [105.75 s. 3]

#### **Sec. 14. [103A.315] COURT REFERRALS.**

The court may refer a proceeding under its jurisdiction involving a law listed in section 12 to the board by a petition of the court directed to the board. The referral may be made in original and appellate proceedings. A party to a proceeding may ask the court to refer a matter to the board. On receiving a petition for referral the board shall proceed under sections 11 to 19. [105.751]

#### **Sec. 15. [103A.321] PETITION ABATES PROCEEDING UNTIL BOARD ACTS.**

A petition for intervention filed with the board abates a proceeding until there is a recommendation by the board or until 60 days have passed after conclusion of hearing before the board, whichever is earlier, unless the agency makes a written finding stating reasons that the public interest requires the board to act immediately. [105.76]

#### **Sec. 16. [103A.325] BOARD DECISION TO INTERVENE.**

After receiving a petition, the board must decide whether the petition and the record made before the agency show an important question of water policy according to rules adopted by the board. If the board decides that there is not an important question of water policy, the board may not intervene and the proceeding continues in the agency as though the petition had not been made. If the board decides there is an important question of water policy and intervention in the public interest is justified, the board must issue a brief statement to the petitioner and the agency describing in general terms the questions of water policy it will consider. [105.76]

#### **Sec. 17. [103A.331] HEARING, DETERMINATION.**

Subdivision 1. HEARING. After a petition is filed the board must proceed expeditiously to hear, determine, and make its recommendations on the questions it has consented to consider. The hearings must be conducted to fully inform the board about all aspects of the public interest in the questions of

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water policy to be determined to make an impartial, scientific, and fully considered judgment.

Subd. 2. DETERMINATION. (a) The recommendation of the board is the board's decision on the question of water policy considered by it.

(b) The ultimate question to which the board's recommendation is directed is the proper course of action to be followed by the agency in the proceeding in relation to questions of water policy considered by the board.

(c) The decision of the board must be in the form of a written recommendation to the agency. The decision must state the controlling facts in sufficient detail to inform the parties, the agency, and a reviewing court of the basis and reason for the decision. [105.77]

Subd. 3. RECOMMENDATION AS EVIDENCE. In the proceeding and upon judicial review, the recommendation of the board is evidence. A certified copy is competent evidence of the recommendation of the board. [105.77]

#### Sec. 18. [103A.335] CONSENT, NOTICE AND PROCEDURE.

Subdivision 1. NOTICE. A consent, notice, or recommendation made by the board must be filed with the agency. The filing is notice of the board's action. The board's rules may provide for a notice, in addition to filing by mail, posting, publication, or otherwise, to inform parties and interested persons of the board's actions. [105.78]

Subd. 2. SUBPOENA. (a) To implement sections 11 to 19, the chair of the board or a board member may subpoena witnesses, administer oaths, and compel the production of books, records, and other evidence.

(b) Disobedience of a subpoena, refusal to be sworn, or refusal to answer as a witness, is punishable as a contempt of the district court. The board or a board member must file a complaint of the disobedience with the district court of the county where the disobedience occurred.

(c) Witnesses receive the same fees and mileage as in civil actions.

(d) Persons must be sworn before testifying and the right to examine or cross-examine is the same as in civil actions. [105.78]

Subd. 3. HEARINGS. Hearings must be public, conducted by the board or an authorized board member, and affected persons have the opportunity to be heard. The board must provide a stenographer to take the testimony, and proceedings at the hearings must be recorded and preserved. Hearings must be conducted as much as practicable in the same way as civil actions. [105.78]

Subd. 4. POSITION OF STATE AGENCIES. State agencies may adopt opposite positions on the matter before the board when full advocacy will assist in disclosing the public interest. [105.78]

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**Sec. 19. [103A.341] FINDINGS BY BOARD.**

Within 60 days of the close of a hearing the board must make findings and recommendations based solely on the evidence presented at the public hearing. [105.79]

**WATER INFORMATION****Sec. 20. [103A.401] STATEWIDE WATER INFORMATION SYSTEM.**

The commissioner of natural resources, in cooperation with other state agencies including the Minnesota geologic survey, shall establish and maintain a statewide water information system to gather, process, and distribute information on the availability, distribution, quality, and use of waters of the state. Local, regional, and state governmental units and their officers and employees shall cooperate with the commissioner to implement and maintain the statewide water information system. [105.39 s. 6]

**Sec. 21. [103A.405] DIRECTOR'S APPROVAL FOR FEDERAL WATER DATA AGREEMENTS.**

A contract or agreement may not be made by a department or agency of the state or a municipality, with the United States or an agency or department of the United States, for the collection of basic data pertaining to surface water or groundwater of the state without obtaining written approval of the director. [105.40 s. 10]

**Sec. 22. [103A.411] PUMPING TEST AND DATA ACQUISITION TRAINING PROGRAMS.**

The commissioner shall set up a statewide training program to provide training in the conduct of pumping tests and data acquisition programs. [105.41 s. 1]

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**ARTICLE 2****CHAPTER 103B****WATER PLANNING AND PROJECT IMPLEMENTATION****Section 1. [103B.001] EFFECT OF CHAPTER 103B ON WATER LAW.**

Chapters 103A, 103B, 103C, 103D, 103E, 103F, and 103G constitute the water law of this state and may be cited as the water law.

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## BOARD OF WATER AND SOIL RESOURCES

## Sec. 2. [103B.101] BOARD OF WATER AND SOIL RESOURCES.

Subdivision 1. MEMBERSHIP. The board of water and soil resources is composed of 12 voting members knowledgeable of water and soil problems and conditions within the state and four ex officio nonvoting members. [110B.35 s. 1]

Subd. 2. VOTING MEMBERS. (a) The voting members are:

(1) three county commissioners;

(2) three soil and water conservation district supervisors;

(3) three watershed district or watershed management organization representatives; and

(4) three citizens who are not employed by, or the appointed or elected officials of, a governmental office, board, or agency.

(b) Voting members must be distributed across the state with at least three members but not more than five members from the metropolitan area, as defined by section 473.121, subdivision 2; and one from each of the current soil and water conservation administrative regions.

(c) Voting members are appointed by the governor. In making the appointments, the governor may consider persons recommended by the association of Minnesota counties, the Minnesota association of soil and water conservation districts, and the Minnesota association of watershed districts. The list submitted by an association must contain at least three nominees for each position to be filled.

(d) The membership terms, compensation, removal of members and filling of vacancies on the board for voting members are as provided in section 15.0575. [110B.35 s. 2]

Subd. 3. EX OFFICIO NONVOTING MEMBERS. The following shall each provide one nonvoting member to the board:

(1) department of agriculture;

(2) department of health;

(3) department of natural resources;

(4) pollution control agency; and

(5) University of Minnesota. [110B.35 s. 3]

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Subd. 4. EMPLOYEES. The board may employ an executive director in the unclassified service and other permanent and temporary employees in accordance with chapter 43A. The board may prescribe the powers and duties of its officers and employees and may authorize its employees and members of the board to act on behalf of the board. [110B.35 s. 4]

Subd. 5. OFFICERS. The governor shall appoint a chair from among the voting members of the board with the advice and consent of the senate. The board shall elect a vice-chair and any other officers that it considers necessary from its membership. [110B.35. s. 5]

Subd. 6. QUORUM. A majority of the board is a quorum. [110B.35 s. 5]

Subd. 7. HEARINGS AND RULEMAKING. The board may hold public hearings and adopt rules necessary to execute its duties. [110B.35 s. 5]

Subd. 8. ADMINISTRATIVE SERVICES. The commissioner of administration shall provide and make available within the department of agriculture suitable and adequate office facilities and space for the board. The commissioner of agriculture shall provide and make available administrative services required by the board in the administration of its functions. [110B.35 s. 6]

Subd. 9. DUTIES. In addition to the powers and duties prescribed elsewhere, the board shall:

(1) coordinate the water and soil resources planning activities of counties, soil and water conservation districts, watershed districts, watershed management organizations, and any other local units of government through its various authorities for approval of local plans, administration of state grants, and by other means as may be appropriate;

(2) facilitate communication and coordination among state agencies in cooperation with the environmental quality board, and between state and local units of government, in order to make the expertise and resources of state agencies involved in water and soil resources management available to the local units of government to the greatest extent possible;

(3) coordinate state and local interests with respect to the study in southwestern Minnesota under United States Code, title 16, section 1009;

(4) develop information and education programs designed to increase awareness of local water and soil resources problems and awareness of opportunities for local government involvement in preventing or solving them;

(5) provide a forum for the discussion of local issues and opportunities relating to water and soil resources management;

(6) adopt an annual budget and work program that integrate the various functions and responsibilities assigned to it by law; and

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(7) report to the governor and the legislature by October 15 of each even-numbered year with an assessment of board programs and recommendations for any program changes and board membership changes necessary to improve state and local efforts in water and soil resources management. [110B.35 s. 7]

**Subd. 10. COMMITTEE FOR DISPUTE RESOLUTION.** A committee of the board is established to hear and resolve disputes, appeals, and interventions under sections 11, subdivision 9, and 26; article 1, sections 11 to 19; and article 4, section 40. The committee consists of the three citizen members specified in subdivision 2, paragraph (a), clause (4), and two additional members appointed by the board chair. [110B.35 s. 8]

**Subd. 11. ENGINEERING WORK AND APPEARANCES AT HEARINGS BY DIRECTOR.** The director of the division of waters of the department of natural resources shall perform engineering work requested by the board of water and soil resources and shall appear in all hearings and proceedings before the board of water and soil resources affecting waters within the state. [105.40 s. 7]

## STATEWIDE WATER RESOURCE PLANNING

**Sec. 3. [103B.151] COORDINATION OF WATER RESOURCE PLANNING.**

**Subdivision 1. WATER PLANNING.** The environmental quality board shall:

(1) coordinate public water resource management and regulation activities among the state agencies having jurisdiction in the area;

(2) initiate, coordinate, and continue to develop comprehensive long-range water resources planning in furtherance of the plan adopted by the water planning board entitled "A Framework for a Water and Related Land Resources Strategy for Minnesota, 1979" including a new plan and strategy by November 15, 1990, and each five-year interval afterwards;

(3) coordinate water planning activities of local, regional, and federal bodies with state water planning and integrate these plans with state strategies;

(4) coordinate development of state water policy recommendations and priorities, and a recommended program for funding identified needs, including priorities for implementing the state water resources monitoring plan;

(5) in cooperation with state agencies participating in the monitoring of water resources, develop a plan for monitoring the state's water resources;

(6) administer federal water resources planning with multiagency interests;

(7) ensure that groundwater quality monitoring and related data is provided

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and integrated into the Minnesota land management information system according to published data compatibility guidelines. Costs of integrating the data in accordance with data compatibility standards must be borne by the agency generating the data;

(8) identify water resources information and education needs, priorities, and goals and prepare an implementation plan to guide state activities relating to water resources information and education;

(9) coordinate the development and evaluation of water information and education materials and resources; and

(10) coordinate the dissemination of water information and education through existing delivery systems. [116C.41 s. 1]

Subd. 2. GOVERNOR'S REPRESENTATIVE. The environmental quality board chair shall represent the governor on interstate water resources organizations. [116C.41 s. 3]

Subd. 3. CONSISTENCY OF STATE INFORMATION ACTIVITIES. State agency information and education activities must be consistent with the implementation plan required under subdivision 1, clause (8).

#### **Sec. 4. [103B.155] STATE WATER AND RELATED LAND RESOURCE PLAN.**

The commissioner of natural resources, in cooperation with other state and federal agencies, regional development commissions, the metropolitan council, local governmental units, and citizens, shall prepare a statewide framework and assessment water and related land resources plan for presentation to the legislature by November 15, 1975, for its review and approval or disapproval. This plan must relate each of the programs of the department of natural resources for specific aspects of water management to the others. The statewide plan must include:

(1) regulation of improvements and land development by abutting landowners of the beds, banks, and shores of lakes, streams, watercourses, and marshes by permit or otherwise to preserve them for beneficial use;

(2) regulation of construction of improvements on and prevention of encroachments in the flood plains of the rivers, streams, lakes, and marshes of the state;

(3) reclamation or filling of wet and overflowed lands;

(4) repair, improvement, relocation, modification or consolidation in whole or in part of previously established public drainage systems within the state;

(5) preservation of wetland areas;

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- (6) management of game and fish resources as related to water resources;
- (7) control of water weeds;
- (8) control or alleviation of damages by flood waters;
- (9) alteration of stream channels for conveyance of surface waters, navigation, and any other public purposes;
- (10) diversion or changing of watercourses in whole or in part;
- (11) regulation of the flow of streams and conservation of their waters;
- (12) regulation of lake water levels;
- (13) maintenance of water supply for municipal, domestic, industrial, recreational, agricultural, aesthetic, wildlife, fishery, or other public use;
- (14) sanitation and public health and regulation of uses of streams, ditches, or watercourses to dispose of waste and maintain water quality;
- (15) preventive or remedial measures to control or alleviate land and soil erosion and siltation of affected watercourses or bodies of water; and
- (16) regulation of uses of water surfaces. [105.403]

#### METROPOLITAN SURFACE WATER MANAGEMENT

##### Sec. 5. [103B.201] METROPOLITAN WATER MANAGEMENT PROGRAM PURPOSE.

The purpose of the water management programs required by sections 6 to 16 is to protect, preserve and use natural surface and ground water storage and retention systems in order to:

- (1) reduce to the greatest practical extent the public capital expenditures necessary to control excessive volumes and rates of runoff;
- (2) protect and improve surface and ground water quality;
- (3) prevent flooding and erosion from surface flows;
- (4) promote groundwater recharge;
- (5) protect and enhance fish and wildlife habitat and water recreational facilities; and
- (6) secure the other benefits associated with the proper management of surface and ground water. [473.875]

##### Sec. 6. [103B.205] DEFINITIONS.

[Bracketed paragraph notes cite text sources]

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Subdivision 1. APPLICABILITY. The definitions in this section apply to sections 7 to 16. [473.876 s. 1]

Subd. 2. BOARD. “Board” means the board of water and soil resources unless the context indicates otherwise. [473.876 s. 1a]

Subd. 3. CAPITAL IMPROVEMENT PROGRAM. “Capital improvement program” means an itemized program for at least a five year prospective period, and any amendments to it, subject to at least biennial review, setting forth the schedule, timing, and details of specific contemplated capital improvements by year, together with their estimated cost, the need for each improvement, financial sources, and the financial effect that the improvements will have on the local government unit or watershed management organization. [473.876 s. 2]

Subd. 4. GROUNDWATER PLAN. “Groundwater plan” means a county plan adopted under section 16. [473.876 s. 2a]

Subd. 5. GROUNDWATER SYSTEM. “Groundwater system” means one of the 14 principal aquifers of the state as defined by the United States Geological Survey in the Water-Resources Investigations 81-51, entitled “Designation of Principal Water Supply Aquifers in Minnesota” (August 1981), and its revisions. [473.876 s. 2b]

Subd. 6. LOCAL COMPREHENSIVE PLAN. “Local comprehensive plan” has the meaning given it in section 473.852, subdivision 5. [473.876 s. 3]

Subd. 7. LOCAL GOVERNMENT UNIT. “Local government unit” or “local unit” has the meaning given it in section 473.852. [473.876 s. 4]

Subd. 8. METROPOLITAN AREA. “Metropolitan area” has the meaning given in section 473.121, subdivision 2.

Subd. 9. MINOR WATERSHED UNITS. “Minor watershed units” means the drainage areas identified and delineated as such pursuant to Laws 1977, chapter 455, section 33, subdivision 7(a). [473.876 s. 5]

Subd. 10. OFFICIAL CONTROLS. “Official controls” has the meaning given it in section 473.852. [473.876 s. 6]

Subd. 11. WATERSHED. “Watershed” means a drainage area having boundaries which are substantially coterminous with those of an aggregation of contiguous minor watershed units possessing similar drainage patterns and which cross the borders of two or more local government units. [473.876 s. 7]

Subd. 12. WATERSHED DISTRICT. “Watershed district” means a district established under chapter 103D. [473.876 s. 8]

Subd. 13. WATERSHED MANAGEMENT ORGANIZATION. “Watershed management organization” or “organization” means a watershed district  
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wholly within the metropolitan area or a joint powers entity established wholly or partly within the metropolitan area by special law or by agreement that performs some or all of the functions of a watershed district for a watershed and that has the characteristics and the authority specified under section 7. Lake improvement or conservation districts are not watershed management organizations. [473.876 s. 9]

**Sec. 7. [103B.211] JOINT POWERS WATERSHED MANAGEMENT ORGANIZATION.**

Subdivision 1. AUTHORITY. Any agreement under section 471.59 to jointly or cooperatively manage or plan for the management of surface water in a watershed delineated pursuant to subdivision 2, as required by sections 6 to 16, may provide, in addition to other provisions authorized by section 471.59, for a joint board having:

(1) the authority to prepare, adopt, and implement a plan for the watershed meeting the requirements of section 11;

(2) the authority to review and approve local water management plans as provided in section 12;

(3) the authority of a watershed district under chapter 103D to regulate the use and development of land in the watershed when one or more of the following conditions exists:

(i) the local government unit exercising planning and zoning authority over the land under sections 366.10 to 366.19, 394.21 to 394.37, or 462.351 to 462.364, does not have a local water management plan approved and adopted in accordance with the requirements of section 12 or has not adopted the implementation program described in the plan;

(ii) an application to the local government unit for a permit for the use and development of land requires an amendment to or variance from the adopted local water management plan or implementation program of the local unit; or

(iii) the local government unit has authorized the organization to require permits for the use and development of land;

(4) the authority of a watershed district under article 4, section 49, to accept the transfer of drainage systems in the watershed, to repair, improve, and maintain the transferred drainage systems, and to construct all new drainage systems and improvements of existing drainage systems in the watershed, provided that projects may be carried out under the powers granted in chapters 103D, 103E, or sections 6 to 16, and that proceedings of the board with respect to the systems must be in conformance with the watershed plan adopted under section 11; and

(5) other powers necessary to exercise the authority under clauses (1) to (3), including the power to enter into contracts for the performance of functions with governmental units or persons. [473.877 s. 1]

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**Subd. 2. REVIEW OF WATERSHED BOUNDARIES.** Before commencing planning under section 11, a watershed management organization established pursuant to section 471.59 and this section shall submit a map delineating the boundaries of the watershed to the board of water and soil resources for review and comment on the conformance of the boundaries with the requirements of sections 6 to 16. The board shall have 60 days to comment. [473.877 s. 2]

**Subd. 3. JURISDICTION OVER NONMEMBERS.** (a) A watershed management organization established by agreement pursuant to subdivision 1 may exercise the authority provided in the agreement throughout the watershed delineated, including territory in statutory and home rule charter cities and towns that are not members of the organization, if the cities and towns that are not members consent to the exercise of authority within their jurisdictions and if the membership of the organization includes:

(1) the county or counties having jurisdiction over all of the territory of the watershed that is within the cities and towns that are not members of the organization; and

(2) either cities and towns having jurisdiction over at least 50 percent of the land area of the watershed and comprising at least three-quarters of all of the cities and towns having territory in the watershed, or cities and towns having jurisdiction over at least 75 percent of the land area of the watershed.

(b) The county or counties identified in paragraph (a), clause (1), are responsible for watershed management activities and may exercise authority under sections 6 to 16 in and for consenting cities and towns that are not members of the organization. [473.877 s. 3]

**Subd. 4. APPROPRIATIONS FROM SMALL WATERCOURSES.** (a) This subdivision applies in Hennepin and Ramsey counties to the following public waters:

(1) a public water basin or wetland wholly within the county that is less than 500 acres; or

(2) a protected watercourse that has a drainage area of less than 50 square miles.

(b) An appropriation of water that is below the minimum established in article 7, section 27, subdivision 4, for a nonessential use, as defined under article 7, section 31, is prohibited unless a permit is obtained from the watershed district or watershed management organization having jurisdiction over the public water basin, wetland, or watercourse. The watershed district or watershed management organization may impose a fee to cover the cost of issuing the permit. This subdivision must be enforced by the home rule charter or statutory city where the appropriation occurs. Violation of this subdivision is a

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petty misdemeanor, except that a second violation within a year is a misdemeanor. Affected cities shall mail notice of this law to affected riparian landowners. [473.877 s. 4]

Subd. 5. APPROPRIATIONS FROM SMALL WATERCOURSES. This subdivision applies in Hennepin and Ramsey counties to the following public waters:

(1) a public water basin or wetland wholly within the county that is less than 500 acres; or

(2) a protected watercourse that has a drainage area of less than 50 square miles.

An appropriation of water that is below the minimum established in article 7, section 27, subdivision 4, for a nonessential use, as defined in article 7, section 31, is prohibited unless a permit is obtained from the watershed district or watershed management organization having jurisdiction over the public water basin, wetland, or watercourse. The watershed district or watershed management organization may impose a fee to cover the cost of issuing the permit. This subdivision must be enforced by the home rule charter or statutory city where the appropriation occurs. Violation of this subdivision is a petty misdemeanor, except that a second violation within a year is a misdemeanor. Affected cities shall mail notice of this law to adjoining landowners. [473.877 s. 5]

**Sec. 8. [103B.215] BOUNDARY CHANGE OF WATERSHED DISTRICTS.**

Subdivision 1. PROCEDURE. The boundaries of a watershed district wholly within the metropolitan area may be changed pursuant to this section or chapter 103D. [473.8771 s. 1]

Subd. 2. PETITION. (a) The governing board of a watershed management organization may petition the board of water and soil resources for an order changing the boundaries of a watershed district wholly within the metropolitan area, by adding new territory to the district or by transferring territory that is within the district to the jurisdiction of another watershed management organization.

(b) The petition must:

(1) describe with particularity the change in boundary requested, the territory affected, and the reasons for the change;

(2) show that the change is consistent with the purposes and requirements of sections 6 to 16; and

(3) identify property subject to section 10.

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(c) The petition must be accompanied by a written statement of concurrence in the petition from the governing body of each statutory or home rule charter city and town and each watershed management organization having jurisdiction over the territory proposed to be added or transferred. [473.8771 s. 1]

Subd. 3. NOTICE. (a) Upon the filing of a sufficient petition, the board shall give notice of the filing of the petition by publication once each week for two successive weeks in a legal newspaper in each county affected and by mail to the county auditor of each county affected and to the chief official of each statutory or home rule charter city and township affected.

(b) The notice must describe the action proposed by the petition and invite written comments on the petition for consideration by the board. The notice must announce that any person who objects to the action proposed in the petition may submit a written request for hearing to the board within 20 days of the last publication of the notice of the filing of the petition, and that if no timely request for hearing is received the board will make a decision on the petition pursuant to this subdivision without conducting the public hearing required under chapter 103D. [473.8771 s. 1]

Subd. 4. DECISION ON PETITION. (a) If a timely request for hearing is not received, the board shall make a decision on the petition without a hearing within 30 days after the last publication of the notice.

(b) If one or more timely requests for hearing are received the board shall hold a hearing on the petition and shall follow the procedures in chapter 103D regarding notice and conduct of hearings.

(c) After completing the procedures required by this subdivision, the board shall, by its findings and order, make the boundary change requested if the board determines that:

(1) the governing body of each statutory or home rule charter city and town and each watershed management organization having jurisdiction over the territory proposed to be added or transferred concurs in the petition;

(2) the change is consistent with the purposes and requirements of sections 6 to 16; and

(3) the change can be accomplished in conformance with section 10.

(d) The board shall file a certified copy of the findings and order with the secretary of state. The order making the change must conform to section 10. The order making the change may amend the order prescribing the distribution of managers of the district. [473.8771 s. 1]

#### Sec. 9. [103B.221] TERMINATION OF WATERSHED DISTRICT.

Subdivision 1. PROCEDURE. A watershed district wholly within the met-  
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ropolitan area may be terminated pursuant to this section or chapter 103D. [473.8771 s. 2]

Subd. 2. PETITION. Proceedings for termination under this subdivision must be initiated by a petition to the board of water and soil resources filed jointly by the governing bodies of all statutory and home rule charter cities and towns having jurisdiction over territory within the watershed. [473.8771 s. 2]

Subd. 3. HEARING. Upon the filing of a sufficient petition, the board shall hold a hearing in accordance with the procedures prescribed in chapter 103D, to take testimony on the determinations required to be made by the board. [473.8771 s. 2]

Subd. 4. DETERMINATION AND ORDER. (a) Following the hearing, the board shall, by its findings and order, terminate the district as requested if the board determines:

(1) that the local units of government having jurisdiction over territory within the watershed have formed a joint powers organization for the watershed pursuant to section 7;

(2) that upon termination of the district the members of the joint powers organization, jointly or severally, are willing and able to assume ownership of the district's assets and the responsibility for managing and maintaining the district's projects as necessary to accomplish the purposes of sections 6 to 16 and to implement the watershed plan of the joint powers organization to be developed pursuant to section 11; and

(3) that the termination can be accomplished in conformance with section 10.

(b) The board shall file a certified copy of the findings and order with the secretary of state. The order terminating the district must transfer the assets of the district to the joint powers organization or its members. The order must conform to section 10. [473.8771 s. 2]

**Sec. 10. [103B.225] BOUNDARY CHANGE AND TERMINATION EFFECT ON BENEFITS AND DAMAGES.**

(a) The addition or transfer of property or termination of a district under sections 8 and 9 must not affect the benefits or damages for any improvement previously constructed by the district having jurisdiction over the property before the board's order takes effect. The property affected is and remains liable for its proper share of any outstanding indebtedness of the watershed district applying to the property before the board's order, and levies and assessments for the indebtedness continue in force until the debt is fully paid.

(b) In order to satisfy the requirements of this section, the board may prescribe conditions on the boundary change or termination or may prescribe a

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later effective date for the termination of specified powers of a watershed district. [473.8771 s. 3]

Sec. 11. [103B.231] WATERSHED PLANS.

Subdivision 1. REQUIREMENT. A watershed management plan is required for watersheds comprising all minor watershed units within the metropolitan area. For the purposes of this section a minor watershed unit is considered within the metropolitan area if more than 90 percent of its area is within the metropolitan area. The watershed management plan must be prepared, adopted, and implemented in accordance with the requirements of sections 6 to 16. [473.878 s. 1]

Subd. 2. OPTIONAL PARTICIPATION. Local government units, within or outside of the metropolitan area, having territory that is not subject to the requirements of this section but that is within a watershed part of which is subject to the requirements of this section, may enter into an agreement under section 7. A local government unit that enters into an agreement under this subdivision has the duties imposed and the authority granted in sections 6 to 16. [473.878 s. 1a]

Subd. 3. RESPONSIBLE UNITS. (a) Where a watershed management organization exists, the plan for the watershed must be prepared and adopted by the organization.

(b) If a watershed management organization is not established by July 1, 1985, for any minor watershed unit located wholly outside of Hennepin and Ramsey counties, the county or counties containing the watershed unit shall prepare, adopt and implement the watershed plan and for this purpose the county or counties have the planning, review, permitting, and financing authority of a watershed management organization specified in sections 7 to 16.

(c) If a watershed management organization is not established by July 1, 1985, for any minor watershed unit within the metropolitan area and wholly or partly within Hennepin or Ramsey counties, the county or counties containing the watershed unit shall petition for the establishment of a watershed district under chapter 103D provided, however, that a district established pursuant to a petition:

(1) may not cross a primary river or a river forming the boundary between a metropolitan county and a county outside the metropolitan area;

(2) must have boundaries that are based upon negotiations among all local government units that may have territory within the district and adjacent watersheds; and

(3) may not cross county boundaries to include territory whose distinguishing characteristic is multiple drainage points into a primary river.

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(d) A watershed management organization may request a county to prepare all or part of a plan.

(e) A county may delegate the preparation of all or part of a plan to the county soil and water conservation district.

(f) Upon request of a statutory or home rule charter city or town, a county may delegate the preparation of all or part of a plan to the city or town. [473.878 s. 2]

Subd. 4. GENERAL STANDARDS. (a) The watershed management plan must extend through the year 1990 or any later year that is evenly divisible by five.

(b) The plan must be updated before the expiration of the period covered by the plan. The plan must be reviewed for consistency with an adopted county groundwater plan, and revised as necessary, whenever the watershed plan undergoes substantial revision or updating. In counties that adopt or amend groundwater plans within five years following August 1, 1987, watershed plans must be reviewed for consistency with the county groundwater plan, and revised as necessary, not later than six years following August 1, 1987. In counties that adopt or amend groundwater plans after five years following August 1, 1987, watershed plans must be reviewed for consistency with the county groundwater plan, and revised as necessary, not later than one year following the adoption or amendment of the groundwater plan. Upon the request of a watershed management organization, the county shall provide a written statement that:

(1) identifies any substantial inconsistencies between the watershed plan and the groundwater plan and any substantial adverse effects of the watershed plan on the groundwater plan; and

(2) evaluates, estimates the cost of, and recommends alternatives for amending the watershed plan to rectify any substantial inconsistencies and adverse effects.

(c) The plan shall contain the elements required by subdivision 6. Each element shall be set out in the degree of detail and prescription necessary to accomplish the purposes of sections 6 to 16, considering the character of existing and anticipated physical and hydrogeologic conditions, land use, and development and the severity of existing and anticipated water management problems in the watershed.

(d) The plan shall be prepared and submitted for review under subdivision 7 not later than December 31, 1986.

(e) Existing plans of a watershed management organization shall remain in force and effect until amended or superseded by plans adopted under sections 6 to 16. Existing or amended plans of a watershed management organization which meet the requirements of sections 6 to 16 may be submitted for review under subdivision 7. [473.878 s. 3]

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Subd. 5. ADDITIONAL ORGANIZATIONS. (a) Any portion of the metropolitan area that is not in a watershed management organization by July 1, 1985, as required by subdivision 3, has until July 1, 1986, to form an organization.

(b) Notwithstanding the requirements of subdivision 4, a watershed management organization formed under this subdivision has until December 31, 1987, to prepare and submit a plan for review. [473.878 s. 3a]

Subd. 6. CONTENTS. The plan shall:

(1) describe the existing physical environment, land use, and development in the area and the environment, land use, and development proposed in existing local and metropolitan comprehensive plans;

(2) present information on the hydrologic system and its components, including drainage systems previously constructed under chapter 103E, and existing and potential problems related thereto;

(3) state objectives and policies, including management principles, alternatives and modifications, water quality, and protection of natural characteristics;

(4) set forth a management plan, including the hydrologic and water quality conditions that will be sought and significant opportunities for improvement;

(5) describe the effect of the plan on existing drainage systems;

(6) describe conflicts between the watershed plan and existing plans of local government units;

(7) set forth an implementation program consistent with the management plan, which includes a capital improvement program and standards and schedules for amending the comprehensive plans and official controls of local government units in the watershed to bring about conformance with the watershed plan; and

(8) set out a procedure for amending the plan. [473.878 s. 4]

Subd. 7. LOCAL REVIEW. (a) Upon completion of the plan but before final adoption by the organization, the organization must submit the plan for review and comment to all counties, soil and water conservation districts, towns, and statutory and home rule charter cities having territory within the watershed. A local government unit that expects that substantial amendment of its local comprehensive plan will be necessary to bring local water management into conformance with the watershed plan must describe as specifically as possible, within its comments, the amendments to the local plan that it expects will be necessary. If the county has a groundwater plan, the county must review and comment on the consistency of the watershed plan with the county groundwater plan. Differences among local governmental agencies regarding the plan must be mediated.

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(b) Sixty days after the submission to local government units for comment, the organization shall submit the plan, any comments received, and any appropriate amendments to the plan, to the board of the county or counties having territory within the watershed. The county shall approve or disapprove projects in the capital improvement program which may require the provision of county funds pursuant to section 15 or article 4, section 68, subdivision 2. The county has 60 days to complete its review of the capital improvement program. If the county fails to complete its review within the prescribed period, unless an extension is agreed to by the organization the program shall be deemed approved. If the watershed extends into more than one county and one or more counties disapprove of all or part of a capital improvement program while the other county or counties approve, the program shall be submitted to the board of water and soil resources for review pursuant to subdivision 9. [473.878 s. 5]

Subd. 8. REVIEW BY METROPOLITAN COUNCIL. After completion of the review under subdivision 7, the plan and all comments received shall be submitted to the metropolitan council for review. Notwithstanding any provision to the contrary in article 4, sections 30 and 31, and section 473.165, the council shall review the plan in the same manner and with the same authority and effect as provided for the council's review of the comprehensive plans of local government units under section 473.175. The council shall comment on the apparent conformity with metropolitan system plans of any anticipated amendments to local comprehensive plans. The council may mediate and attempt to resolve differences among local governmental agencies regarding the plan. [473.878 s. 6]

Subd. 9. REVIEW BY STATE AGENCIES. After completion of the review under subdivision 8, the plan and all comments received shall be submitted to the commissioners of natural resources, health, and the pollution control agency for review and comment on the consistency of the plan with state laws and rules relating to water and related land resources, and to the board of water and soil resources for review under article 4, sections 30 and 31. Except as otherwise provided in this subdivision, the board of water and soil resources shall review the plan as provided in article 4, sections 30 and 31. The board shall review the plan for conformance with the requirements of chapter 103D and sections 6 to 16. The board shall not prescribe a plan, but may disapprove all or parts of a plan which it determines is not in conformance with the requirements of chapter 103D and sections 6 to 16. If the capital improvement program is the subject of a dispute between counties, the board of water and soil resources shall make a final decision on the issue. The decision shall be binding on the organization and the counties involved. [473.878 s. 7]

Subd. 10. ADOPTION AND IMPLEMENTATION. The organization shall adopt and implement its plan within 120 days after compliance with the provisions of subdivision 9 and approval of the plan by the board of water and soil resources. A watershed district may implement its approved plan and approved capital improvement program by resolution of the majority of the board of managers and without respect to the provisions of chapter 103D requiring the managers to wait upon petitions for projects, to submit projects for review by

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the board of water and soil resources, and to limit the cost and purposes of projects. [473.878 s. 8]

Subd. 11. AMENDMENTS. To the extent and in the manner required by the adopted plan, all amendments to the adopted plan shall be submitted to the towns, cities, county, and other agencies for review in accordance with the provisions of subdivisions 7, 8, and 9. Amendments necessary to revise the plan to be consistent with the county groundwater plan, as required by subdivision 4, must be submitted for review in accordance with subdivisions 7, 8, and 9. [473.878 s. 9]

#### Sec. 12. [103B.235] LOCAL WATER MANAGEMENT PLANS.

Subdivision 1. REQUIREMENT. (a) After the watershed plan is approved and adopted, or amended, pursuant to section 11, the local government units having land use planning and regulatory responsibility for territory within the watershed shall prepare or cause to be prepared a local water management plan, capital improvement program, and official controls as necessary to bring local water management into conformance with the watershed plan within the time period prescribed in the implementation program of the watershed plan and, as necessary, shall prepare or cause to be prepared amendments to the local comprehensive plan.

(b) Each town within the counties of Anoka, Carver, Dakota, Scott, and Washington authorized by general or special law to plan and regulate the use of land under sections 462.351 to 462.364 shall by resolution determine whether to prepare the local water management plan itself or to delegate all or part of the preparation of the plan to the county.

(c) Towns within counties that have adopted comprehensive plans applicable to the town must use county preparation of their plan to the maximum extent possible. [473.879 s. 1]

Subd. 2. CONTENTS. Each local plan, in the degree of detail required in the watershed plan, shall:

- (1) describe existing and proposed physical environment and land use;
- (2) define drainage areas and the volumes, rates, and paths of stormwater runoff;
- (3) identify areas and elevations for stormwater storage adequate to meet performance standards established in the watershed plan;
- (4) define water quality and water quality protection methods adequate to meet performance standards established in the watershed plan;
- (5) identify regulated areas; and

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(6) set forth an implementation program, including a description of official controls and, as appropriate, a capital improvement program. [473.879 s. 2]

Subd. 3. REVIEW. After consideration but before adoption by the governing body, each local unit shall submit its water management plan to the watershed management organization for review for consistency with the watershed plan adopted pursuant to section 11. The organization shall approve or disapprove the local plan or parts of the plan. The organization shall have 60 days to complete its review. If the organization fails to complete its review within the prescribed period, the local plan shall be deemed approved unless an extension is agreed to by the local unit. [473.879 s. 3]

Subd. 4. ADOPTION AND IMPLEMENTATION. After approval of the local plan by the organization, the local government unit shall adopt and implement its plan within 120 days and shall amend its official controls accordingly within 180 days. [473.879 s. 4]

Subd. 5. AMENDMENTS. To the extent and in the manner required by the organization, all amendments to local water management plans shall be submitted to the organization for review and approval in accordance with the provisions of subdivision 3 for the review of plans. [473.879 s. 5]

#### Sec. 13. [103B.241] LEVY.

A levy to pay the increased costs to a local government unit or watershed management organization of implementing sections 11 and 12 or to pay costs of improvements and maintenance of improvements identified in an approved and adopted plan shall be in addition to any other taxes authorized by law and shall be disregarded in the calculation of per capita limits on taxes imposed by section 275.11, except levies pursuant to section 15, subdivision 9. Notwithstanding any provision to the contrary in chapter 103D, a watershed district may levy a tax sufficient to pay the increased costs to the district of implementing sections 11 and 12. The proceeds of any tax levied under this section shall be deposited in a separate fund and expended only for the purposes authorized by this section. [473.881]

#### Sec. 14. [103B.245] SPECIAL TAX DISTRICT.

Subdivision 1. WATERSHED MANAGEMENT TAX DISTRICT. Any local government unit planning for water management under sections 11 and 12 may establish a watershed management tax district in the territory within the watershed, for the purpose of paying the costs of the planning required under sections 11 and 12. Any local government unit which has part of its territory within a watershed for which a plan has been adopted in accordance with section 11 and which has a local water management plan adopted in accordance with section 12 may establish a watershed management tax district in the territory within the watershed or a minor watershed unit in the watershed, for the purpose of paying capital costs of the water management facilities described in

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the capital improvement program of the plans and for the purpose of paying for normal and routine maintenance of the facilities. A county or counties required by section 11, subdivision 3, to prepare, adopt, and implement a watershed plan shall apportion the costs of planning, capital improvements, and maintenance proportionate to benefits. The county may apportion the costs among the minor watershed units in the watershed, or among the statutory and home rule charter cities and towns having territory in the watershed, and for this purpose may establish more than one watershed management tax district in the watershed. [473.882 s. 1]

Subd. 2. PROCEDURE. The district shall be established by ordinance adopted after a hearing. Notice of the time, place, and purpose of the hearing shall be published for two successive weeks in the official newspaper of the local government unit, ending at least seven days before the day of the hearing. The ordinance shall describe with particularity the territory or area to be included in the district. After adoption, the ordinance shall be filed with the county auditor and county recorder. The district may be dissolved by following the procedures prescribed for the establishment of the district. [473.882 s. 2]

Subd. 3. TAX. After adoption of the ordinance under subdivision 2, a local government unit may annually levy a tax on all taxable property in the district for the purposes for which the tax district is established. The tax may not exceed 0.02418 percent of market value on taxable property located in rural towns other than urban towns, unless allowed by resolution of the town electors. The proceeds of the tax shall be paid into a fund reserved for these purposes. Any proceeds remaining in the reserve fund at the time the tax is terminated or the district is dissolved shall be transferred and irrevocably pledged to the debt service fund of the local unit to be used solely to reduce tax levies for bonded indebtedness of taxable property in the district. [473.882 s. 3]

Subd. 4. BONDS. After adoption of the ordinance under subdivision 2, and after a contract for the construction of all or part of an improvement has been entered into or the work has been ordered done by day labor, the local government unit may issue obligations in the amount it deems necessary to pay in whole or in part the capital cost incurred and estimated to be incurred in making the improvement. The obligations shall be payable out of the proceeds of the tax levied pursuant to subdivision 3. The local unit may by resolution of its governing body adopted prior to the sale of obligations pledge the full faith, credit and taxing power of the local unit to assure payment of the principal and interest in the event the proceeds of the tax levy in the district are insufficient to pay principal and interest. The amount of any taxes which are required to be levied outside of the territory of the tax district or taken from the general funds of the local unit to pay principal and interest on the obligations shall be reimbursed to the local unit from taxes levied within the territory of the tax district. Obligations shall be issued in accordance with chapter 475, except that an election is not required and the amount of any obligations shall not be included in determining the net indebtedness of the local unit under the provisions of any law or charter limiting indebtedness. [473.882 s. 4]

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**Sec. 15. [103B.251] CAPITAL IMPROVEMENTS BY WATERSHED MANAGEMENT ORGANIZATIONS.**

Subdivision 1. GENERAL AUTHORITY. The authority provided to watershed districts in this section is in addition to the authority provided in chapter 103D. A watershed management organization which has adopted a watershed plan in accordance with section 11 may certify for payment by the county as provided in this section all or any part of the cost of a capital improvement contained in the capital improvement program of the plan. [473.883 s. 1]

Subd. 2. COUNTY BOARD TO RECEIVE PLAN FOR IMPROVEMENT. A copy of the plan for the improvement shall be forwarded to the county board. [473.883 s. 2]

Subd. 3. IMPROVEMENT HEARING NOTICE. (a) The organization shall then hold a public hearing on the proposed improvement, following publication once each week for two successive weeks before the date of the hearing in a legal newspaper published in the county or counties in which a part or all of the affected waters and lands are located. The last publication shall occur not more than 30 days nor less than ten days before the hearing.

(b) The notice shall state the time and place of hearing, the general nature of the proposed improvement, the estimated cost, and the method by which the cost of the improvement is to be paid, including the cost to be allocated to each county or minor watershed unit under subdivision 5. The cost must be apportioned according to the benefits received by property in the county.

(c) At least ten days before the hearing, notice by mail shall be given to the counties and to each home rule charter or statutory city or town located wholly or partly within the territory of the watershed management organization.

(d) Failure to give mailed notice or defects in the notice shall not invalidate the proceedings. [473.883 s. 2]

Subd. 4. IMPROVEMENT HEARING. At the time and place specified in the notice the organization shall hear all parties interested in the proposed improvement. If upon full hearing the organization finds that the improvement will be conducive to public health and promote the general welfare, and is in compliance with sections 6 to 16 and the plan adopted pursuant to section 11, it shall make findings accordingly, determine the cost of the improvement, and certify the cost before October 1 to the county or counties for payment. [473.883 s. 2]

Subd. 5. APPORTIONMENT OF COSTS. If the territory of the watershed management organization extends into more than one county, the cost of the improvement shall be certified to the respective county boards in the proportions prescribed in the capital improvement program of the organization. The certification of the watershed management organization may apportion the cost among some or all of the minor watershed units in the watershed and for this

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purpose may require the establishment of more than one tax district in the watershed. [473.883 s. 3]

Subd. 6. COUNTY PAYMENT. Each county receiving certifications for payment from watershed management organizations under this section shall promptly after September 30 of each year provide funds to meet its proportionate share of the cost of the improvements as shown in the certifications by organizations received during the prior 12 months. In an emergency and after receipt of certification the county shall provide funds at other times. When an organization anticipates an emergency it shall promptly inform the county and provide it with appropriate information. [473.883 s. 4]

Subd. 7. BONDS. In order to make the payment required by subdivision 6, the county board of each county may issue general obligation bonds of the county in the amount necessary to pay all or part of the cost of improvements certified to the county board or to refund general obligation bonds issued for this purpose. The bonds shall be sold, issued, and secured in accordance with the provisions of chapter 475 for general obligation bonds, except as otherwise provided in this subdivision. No election shall be required. [473.883 s. 5]

Subd. 8. TAX. (a) For the payment of principal and interest on the bonds issued under subdivision 7 and the payment required under subdivision 6, the county shall irrevocably pledge and appropriate the proceeds of a tax levied on all taxable property located within the territory of the watershed management organization or minor watershed unit for which the bonds are issued. Each year until the reserve for payment of the bonds is sufficient to retire the bonds, the county shall levy on all taxable property in the territory of the organization or unit, without respect to any statutory or other limitation on taxes, an amount of taxes sufficient to pay principal and interest on the bonds and to restore any deficiencies in reserves required to be maintained for payment of the bonds.

(b) The tax levied on rural towns other than urban towns may not exceed 0.02418 percent of taxable market value, unless approved by resolution of the town electors.

(c) If at any time the amounts available from the levy on property in the territory of the organization are insufficient to pay principal and interest on the bonds when due, the county shall make payment from any available funds in the county treasury.

(d) The amount of any taxes which are required to be levied outside of the territory of the watershed management organization or unit or taken from the general funds of the county to pay principal or interest on the bonds shall be reimbursed to the county from taxes levied within the territory of the watershed management organization or unit. [473.883 s. 6]

Subd. 9. MAINTENANCE LEVY. For the purpose of creating a maintenance fund to be used for normal and routine maintenance of a work of improve-

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ment constructed in whole or part with money provided by the county pursuant to subdivision 6, the board of managers of a watershed district, with the approval of the county, may impose an ad valorem levy on all property located within the territory of the watershed district or minor watershed unit. The levy shall be certified, levied, collected, and distributed as provided in article 4, sections 71 and 72, and shall be in addition to any other money levied and distributed to the district. The proceeds of the levy shall be deposited in a separate maintenance and repair account to be used only for the purpose for which the levy was made. [473.883 s. 7]

#### METROPOLITAN GROUNDWATER MANAGEMENT

##### Sec. 16. [103B.255] GROUNDWATER PLANS.

Subdivision 1. AUTHORITY. A metropolitan county may prepare and adopt groundwater plans in accordance with this section. [473.8785 s. 1]

Subd. 2. RESPONSIBLE UNITS. The county may prepare and adopt the plan or, upon request of a soil and water conservation district, the county may delegate to the soil and water conservation district the preparation and adoption of all or part of a plan and the performance of other county responsibilities regarding the plan under this section and section 11. [473.8785 s. 2]

Subd. 3. LOCAL COORDINATION. To assure the coordination of efforts of all units of government during the preparation and implementation of watershed and groundwater plans, the county shall conduct meetings with local units of government and watershed management organizations, and may enter into agreements with local units of government and watershed management organizations establishing the responsibilities during the preparation and implementation of the water plans. [473.8785 s. 3]

Subd. 4. ASSISTANCE. The county may contract with the Minnesota geological survey, the United States Geological Survey, a soil and water conservation district, or other public or private agencies or persons for services in performing the county's responsibilities regarding the plan under this section and section 11. Counties may enter into agreements with other counties or local units of government under section 471.59 for the performance of these responsibilities. To assist in the development of the groundwater plan, the county shall seek the advice of the advisory committee, the Minnesota geological survey, the departments of health and natural resources, the pollution control agency, and other appropriate local, state, and federal agencies. [473.8785 s. 4]

Subd. 5. ADVISORY COMMITTEES. (a) The county shall name an advisory committee of 15 members. The committee must include representatives of various interests, including construction, agriculture, hydrogeology, and well drilling. At least four members of the committee must be from the public at large with no direct pecuniary interest in any project involving groundwater protection. At least seven members must be appointed from watershed manage-

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ment organizations, statutory and home rule charter cities, and towns, and these local government representatives must be geographically distributed so that at least one is appointed from each county commissioner district.

(b) The county shall consult the advisory committee on the development, content, and implementation of the plan, including the relationship of the groundwater plan and existing watershed and local water management plans, the effect of the groundwater plan on the other plans, and the allocation of costs and governmental authority and responsibilities during implementation. [473.8785 s. 4]

Subd. 6. GENERAL STANDARDS. (a) The groundwater plan must extend through the year 1995 or any later year that is evenly divisible by five. The plan must contain the elements required by subdivision 7. Each element must be set out in the degree of detail and prescription necessary to accomplish the purposes of sections 6 to 16, considering the character of existing and anticipated physical and hydrogeologic conditions, land use, and development and the severity of existing and anticipated groundwater management problems in the county.

(b) To the fullest extent possible in a manner consistent with groundwater protection, a county shall make maximum use of existing and available data and studies in preparing the groundwater plan and incorporate into its groundwater plan relevant data from existing plans and studies and the relevant provisions of existing plans adopted by watershed management organizations having jurisdiction wholly or partly within the county. [473.8785 s. 5]

Subd. 7. CONTENTS. A groundwater plan must:

(1) cover the entire area within the county;

(2) describe existing and expected changes to the physical environment, land use, and development in the county;

(3) summarize available information about the groundwater and related resources in the county, including existing and potential distribution, availability, quality, and use;

(4) state the goals, objectives, scope, and priorities of groundwater protection in the county;

(5) contain standards, criteria, and guidelines for the protection of groundwater from pollution and for various types of land uses in environmentally sensitive areas, critical areas, or previously contaminated areas;

(6) describe relationships and possible conflicts between the groundwater plan and the plans of other counties, local government units, and watershed management organizations in the affected groundwater system;

(7) set forth standards and guidelines for implementation of the plan by watershed management organizations and local units of government; and

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(8) include a procedure for amending the groundwater plan. [473.8785 s. 6]

**Subd. 8. LOCAL REVIEW AND COMMENT.** Upon completion of the groundwater plan but before final adoption by the county, the county shall submit the plan for review and comment to each soil and water conservation district, town, statutory and home rule charter city, and watershed management organization having territory within the county. The county also shall submit the plan to any other county or watershed management organization or district in the affected groundwater system that could affect or be affected by implementation of the plan. Any political subdivision or watershed management organization that expects that substantial amendment of its plans would be necessary in order to bring them into conformance with the county groundwater plan shall describe as specifically as possible, within its comments, the amendments that it expects would be necessary and the cost of amendment and implementation. Reviewing entities have 60 days to review and comment. Differences among local governmental agencies regarding the plan must be mediated. [473.8785 s. 7]

**Subd. 9. REVIEW BY METROPOLITAN COUNCIL.** After completion of the review under subdivision 8, the plan and all comments received must be submitted to the metropolitan council for review. Notwithstanding any provision to the contrary in article 4, sections 30 and 31, and section 473.165, the council shall review the plan in the same manner and with the same authority and effect as provided for the council's review of the comprehensive plans of local government units under section 473.175. The council shall comment on the apparent conformity with metropolitan system plans of any anticipated amendments to watershed plans and local comprehensive plans. The council shall summarize and evaluate the cost of rectifying inconsistencies between the groundwater plan and watershed plans. If the council finds that significant funding problems, needs, or inequities will result from the groundwater plan, the council shall report to the legislature on the matter and on appropriate means of allocating and paying costs. The council may mediate and attempt to resolve differences among local governmental agencies regarding the plan. [473.8785 s. 8]

**Subd. 10. REVIEW BY STATE AGENCIES.** (a) After completion of the review under subdivision 9, the plan and all comments received must be submitted to the commissioners of natural resources, health, and the pollution control agency for review and comment on the consistency of the plan with state laws and rules relating to water and related land resources, and to the board of water and soil resources for review under article 4, sections 30 and 31.

(b) Except as otherwise provided in this subdivision, the board of water and soil resources shall review the plan as provided in article 4, section 30. The board shall review the plan for conformance with the requirements of chapter 103D and sections 6 to 16. The board may not prescribe a plan but may disapprove all or parts of a plan which it determines is not in conformance with the requirements of chapter 103D and sections 6 to 16. [473.8785 s. 9]

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**Subd. 11. ADOPTION AND IMPLEMENTATION.** The county shall adopt and implement its groundwater plan within 120 days after approval of the plan by the board of water and soil resources. [473.8785 s. 10]

**Subd. 12. AMENDMENTS.** To the extent and in the manner required by the adopted plan, all amendments to the adopted plan must be submitted to the towns, cities, counties, and other agencies for review in accordance with the provisions of subdivisions 8 to 10. [473.8785 s. 11]

#### LOCAL WATER PLANNING

##### Sec. 17. [103B.301] TITLE.

Sections 17 to 28 may be cited as the "comprehensive local water management act." [110B.01]

##### Sec. 18. [103B.305] DEFINITIONS.

**Subdivision 1. APPLICABILITY.** The definitions in this section apply to sections 17 to 28. [110B.02 s. 1]

**Subd. 2. BOARD.** "Board" means the board of water and soil resources. [110B.02 s. 2]

**Subd. 3. COMPREHENSIVE WATER PLAN.** "Comprehensive water plan" means the plan adopted by a county under sections 19 and 20. [110B.02 s. 3]

**Subd. 4. GROUNDWATER SYSTEMS.** "Groundwater systems" means the 14 principal aquifers of the state as defined by the United States Geological Survey in the Water-Resources Investigations 81-51, entitled "Designation of Principal Water Supply Aquifers in Minnesota" (August 1981), and its revisions. [110B.02 s. 4]

**Subd. 5. LOCAL UNITS OF GOVERNMENT.** "Local units of government" means municipalities, towns, counties, soil and water conservation districts, watershed districts, organizations formed for the joint exercise of powers under section 471.59, and other special purpose districts or authorities exercising authority in water and related land resources management at the local level. [110B.02 s. 5]

**Subd. 6. MUNICIPALITY.** "Municipality" means a statutory or home rule charter city. [110B.02 s. 6]

**Subd. 7. OFFICIAL CONTROLS.** "Official controls" means ordinances and regulations that control the physical development of the whole or part of a local government unit or that implement the general objectives of the local government unit. [110B.02 s. 7]

**Subd. 8. RELATED LAND RESOURCES.** "Related land resources" means  
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land affected by present or projected management practices that have significant effects on the quantity and quality, or use of groundwater or surface water. [110B.02 s. 8]

**Subd. 9. WATERSHED MANAGEMENT ORGANIZATION.** “Watershed management organization” has the meaning given in section 6, subdivision 13. [110B.02 s. 9]

**Subd. 10. WATERSHED UNITS.** “Watershed units” means each of the 81 major watershed units identified in the state watershed boundaries map prepared pursuant to the requirements of Laws 1977, chapter 455, section 33, subdivision 7, paragraph (a) and the accompanying data base, and the revisions of that data base. [110B.02 s. 10]

**Sec. 19. [103B.311] COUNTY WATER PLANNING AND MANAGEMENT.**

**Subdivision 1. COUNTY DUTIES.** Each county is encouraged to develop and implement a comprehensive water plan. Each county that develops and implements a plan has the duty and authority to:

(1) prepare and adopt a comprehensive water plan that meets the requirements of this section and section 20;

(2) review water and related land resources plans and official controls submitted by local units of government to assure consistency with the comprehensive water plan; and

(3) exercise any and all powers necessary to assure implementation of comprehensive water plans. [110B.04 s. 1]

**Subd. 2. DELEGATION.** The county is responsible for preparing, adopting, and assuring implementation of the comprehensive water plan, but may delegate all or part of the preparation of the plan to a local unit of government, a regional development commission, or a resource conservation and development committee. The county may not delegate authority for the exercise of eminent domain, taxation, or assessment to a local unit of government that does not possess those powers. [110B.04 s. 2]

**Subd. 3. COORDINATION.** (a) To assure the coordination of efforts of all local units of government within a county during the preparation and implementation of a comprehensive water plan, each county intending to adopt a plan shall conduct meetings with other local units of government and may execute agreements with other local units of government establishing the responsibilities of each unit during the preparation and implementation of the comprehensive water plan.

(b) Each county intending to adopt a plan shall coordinate its planning program with contiguous counties. Before meeting with local units of government, a county board shall notify the county boards of each county contiguous to it that the county is about to begin preparing its comprehensive water plan and is encouraged to request and hold a joint meeting with the contiguous county boards to consider the planning process. [110B.04 s. 3]

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**Subd. 4. WATER PLAN REQUIREMENTS.** (a) A comprehensive water plan must:

- (1) cover the entire area within a county;
- (2) address water problems in the context of watershed units and groundwater systems;
- (3) be based upon principles of sound hydrologic management of water, effective environmental protection, and efficient management;
- (4) be consistent with comprehensive water plans prepared by counties and watershed management organizations wholly or partially within a single watershed unit or groundwater system; and
- (5) apply to every year through the year 1995 or any later year that is evenly divisible by five, and be updated before the period covered expires.

(b) Existing water and related land resources plans, including plans related to agricultural land preservation programs developed pursuant to chapter 40A, must be fully utilized in preparing the comprehensive water plan. Duplication of the existing plans is not required. [110B.04 s. 4]

**Subd. 5. WATERSHED DISTRICT AND INTERCOUNTY JOINT POWERS BOARD PLANS AND RULES.** A county must incorporate into its comprehensive water plan any existing plans and rules adopted by a watershed district or intercounty joint powers board having jurisdiction wholly or partly within the county. A county may change the plans and rules it incorporates if the county demonstrates in its comprehensive water plan why the changes are necessary and if the changes are agreed to by each county that is:

- (1) responsible for the appointment of a manager serving on the watershed board; or
- (2) represented on the joint powers board. [110B.04 s. 5]

**Subd. 6. SCOPE OF PLANS.** Comprehensive water plans must include:

- (1) a description of the existing and expected changes to physical environment, land use, and development in the county;
- (2) available information about the surface water, groundwater, and related land resources in the county, including existing and potential distribution, availability, quality, and use;
- (3) objectives for future development, use, and conservation of water and related land resources, including objectives that concern water quality and quantity, and sensitive areas, wellhead protection areas, and related land use conditions, and a description of actions that will be taken in affected watersheds or groundwater systems to achieve the objectives;

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(4) a description of potential changes in state programs, policies, and requirements considered important by the county to management of water resources in the county;

(5) a description of conflicts between the comprehensive water plan and existing plans of other local units of government;

(6) a description of possible conflicts between the comprehensive water plan and existing or proposed comprehensive water plans of other counties in the affected watershed units or groundwater systems;

(7) a program for implementation of the plan that is consistent with the plan's management objectives and includes schedules for amending official controls and water and related land resources plans of local units of government to conform with the comprehensive water plan, and the schedule, components, and expected state and local costs of any projects to implement the comprehensive water plan that may be proposed, although this does not mean that projects are required by this section; and

(8) a procedure for amending the comprehensive water plan. [110B.04 s. 6]

Subd. 7. DATA ACQUISITION. The data collected under this section that has common value as determined by the state planning agency for natural resources planning must be provided and integrated into the Minnesota land management information systems geographic and summary data bases according to published data compatibility guidelines. [110B.04 s. 7]

#### **Sec. 20. [103B.315] COMPREHENSIVE WATER PLAN REVIEW AND ADOPTION.**

Subdivision 1. LOCAL REVIEW. When the comprehensive water plan is completed, but before its final adoption by the county board, the county board shall submit the comprehensive water plan for review and comment to:

(1) all local units of government wholly or partly within the county;

(2) the applicable regional development commission, if any;

(3) each contiguous county and watershed management organization; and

(4) other counties or watershed management organizations within the same watershed unit and groundwater system that may be affected by proposals in the comprehensive water plan. [110B.08 s. 1]

Subd. 2. COMMENTS TO COUNTY BOARD. (a) A local unit of government must review the comprehensive water plan and existing water and related land resources plans or official controls and in its comments describe in a general way possible amendments to its existing plans or official controls, and an estimate of the fiscal or policy effects that would be associated with those amendments, to bring them into conformance with the comprehensive water plan.

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(b) A county or watershed management organization within the same watershed unit or groundwater system must review comprehensive water plans received and describe in its comments possible conflicts with its existing or proposed comprehensive water plan and suggest measures to resolve the conflicts.

(c) The regional development commission shall review the plan under section 462.391, subdivision 1. [110B.08 s. 2]

Subd. 3. LOCAL REVIEW PERIOD. Comments under subdivision 2 must be submitted to the county board within 60 days after receiving a comprehensive water plan for comment, unless the county board of the county that prepared the plan determines that good cause exists for an extension of this period and grants an extension. [110B.08 s. 3]

Subd. 4. PUBLIC HEARING. The county board shall conduct a public hearing on the comprehensive water plan pursuant to section 375.51 after the 60-day period for local review and comment is completed, but before submitting it to the state for review. [110B.08 s. 4]

Subd. 5. STATE REVIEW. (a) After conducting the public hearing but before final adoption, the county board must submit its comprehensive water plan, all written comments received on the plan, a record of the public hearing under subdivision 4, and a summary of changes incorporated as a result of the review process to the board for review. The board shall complete the review within 90 days after receiving a comprehensive water plan and supporting documents. The board shall consult with the departments of agriculture, health, and natural resources; the pollution control agency; the state planning agency; the environmental quality board; and other appropriate state agencies during the review.

(b) The board may disapprove a comprehensive water plan if the board determines the plan is not consistent with state law. If a plan is disapproved, the board shall provide a written statement of its reasons for disapproval. A disapproved comprehensive water plan must be revised by the county board and resubmitted for approval by the board within 120 days after receiving notice of disapproval of the comprehensive water plan, unless the board extends the period for good cause. The decision of the board to disapprove the plan may be appealed by the county to district court. [110B.08 s. 5]

Subd. 6. ADOPTION AND IMPLEMENTATION. A county board shall adopt and begin implementation of its comprehensive water plan within 120 days after receiving notice of approval of the plan from the board. [110B.08 s. 6]

Subd. 7. AMENDMENTS. Amendments to a comprehensive water plan must be submitted to local units of government and to the board in the same manner as a comprehensive water plan. [110B.08 s. 7]

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**Sec. 21. [103B.321] DUTIES OF THE BOARD.****Subdivision 1. GENERAL. The board shall:**

(1) develop guidelines for the contents of comprehensive water plans that provide for a flexible approach to meeting the different water and related land resources needs of counties and watersheds across the state;

(2) coordinate assistance of state agencies to counties and other local units of government involved in preparation of comprehensive water plans, including identification of pertinent data and studies available from the state and federal government;

(3) conduct an active program of information and education concerning the requirements and purposes of sections 17 to 28 in conjunction with the association of Minnesota counties;

(4) determine contested cases under section 26;

(5) establish a process for review of comprehensive water plans that assures the plans are consistent with state law; and

(6) report to the legislative commission on Minnesota resources as required by section 27. [110B.10 s. 1]

**Subd. 2. RULEMAKING. The board shall adopt rules to implement sections 17 to 28. [110B.10 s. 2]**

**Subd. 3. LOCAL ADVISORY COMMITTEE. The board shall use a committee, consisting of persons representing counties, soil and water conservation districts, municipalities, and townships and persons interested in water planning, to assist the board in the water planning process. Members must be appointed, serve, and be paid their expenses but may not receive other compensation, pursuant to section 15.014. [110B.10 s. 3]**

**Sec. 22. [103B.325] CONSISTENCY OF LOCAL PLANS AND CONTROLS WITH THE COMPREHENSIVE WATER PLAN.**

**Subdivision 1. REQUIREMENT. Local units of government shall amend existing water and related land resources plans and official controls as necessary to conform them to the applicable, approved comprehensive water plan following the procedures in this section. [110B.12 s. 1]**

**Subd. 2. PROCEDURE. Within 90 days after local units of government are notified by the county board of the adoption of a comprehensive water plan or of adoption of an amendment to a comprehensive water plan, the local units of government exercising water and related land resources planning and regulatory responsibility for areas within the county must submit existing water and related land resources plans and official controls to the county board for review. The county board shall identify any inconsistency between the plans and controls**

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and the comprehensive water plan and shall recommend the amendments necessary to bring local plans and official controls into conformance with the comprehensive water plan. [110B.12 s. 2]

**Subd. 3. REVISION AND IMPLEMENTATION.** Local units of government shall revise existing plans and official controls to conform them to the recommendations of the county board and shall initiate implementation of the revised plans and controls within 180 days after receiving the recommendations of the county board, or 180 days after resolution of an appeal, whichever is later. [110B.12 s. 3]

**Subd. 4. APPEALS.** A local unit of government may, within 60 days after receiving the recommendations of the county board, appeal any recommendation to the board of water and soil resources for a hearing as provided in section 26. [110B.12 s. 4]

**Subd. 5. NEW PLANS AND CONTROLS.** New or amended water and related land resources plans and official controls proposed by local units of government for their adoption following adoption of the comprehensive water plan shall be submitted to the county board for review and recommendation as provided under this section. [110B.12 s. 5]

**Sec. 23. [103B.331] AUTHORITY UNDER APPROVED COMPREHENSIVE WATER PLANS.**

**Subdivision 1. AUTHORITY.** When an approved comprehensive water plan is adopted the county has the authority specified in this section. [110B.15 s. 1]

**Subd. 2. REGULATION OF WATER AND LAND RESOURCES.** The county may regulate the use and development of water and related land resources within incorporated areas when one or more of the following conditions exists:

(1) the municipality does not have a local water and related land resources plan or official controls consistent with the comprehensive water plan;

(2) a municipal action granting a variance or conditional use would result in an action inconsistent with the comprehensive water plan;

(3) the municipality has authorized the county to require permits for the use and development of water and related land resources; or

(4) a state agency has delegated the administration of a state permit program to the county. [110B.15 s. 2]

**Subd. 3. ACQUISITION OF PROPERTY; ASSESSMENT OF COSTS.** A county may:

(1) acquire in the name of the county, by condemnation under chapter 117, real and personal property found by the county board to be necessary for the implementation of an approved comprehensive water plan;

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(2) assess the costs of projects necessary to implement the comprehensive water plan undertaken under sections 17 to 28 upon the property benefited within the county in the manner provided for municipalities by chapter 429;

(3) charge users for services provided by the county necessary to implement the comprehensive water plan; and

(4) establish one or more special taxing districts within the county and issue bonds for the purpose of financing capital improvements under sections 17 to 28. [110B.15 s. 3]

Subd. 4. SPECIAL TAXING DISTRICT. (a) A tax district authorized under subdivision 3, clause (4), must be established by resolution adopted by the county board after a hearing. Notice of the time, place, and purpose of the hearing must be published for two successive weeks in the official newspaper of the county, ending at least seven days before the day of the hearing. The resolution must describe with particularity the territory or area to be included in the tax district. After adoption, the resolution must be filed with the county auditor and county recorder. The district may be dissolved by following the procedures prescribed for the establishment of the district.

(b) After adoption of the resolution under paragraph (a), a county may annually levy a tax on all taxable property in the district for the purposes for which the tax district was established. The proceeds of the tax must be paid into a fund reserved for these purposes. Any proceeds remaining in the reserve fund at the time the tax is terminated or the district is dissolved must be transferred and irrevocably pledged to the debt service fund of the county to be used only to reduce tax levies for bonded indebtedness of taxable property in the district.

(c) After adoption of the resolution under paragraph (a), and after a contract for the construction of all or part of an improvement has been entered into or the work has been ordered to be done by hired labor, the county may issue obligations in the amount determined by the county board to be necessary to pay in whole or in part the capital cost incurred and estimated to be incurred in making the improvement. The obligations are payable out of the proceeds of the tax levied under this subdivision. The county board may, by resolution adopted prior to the sale of obligations, pledge the full faith, credit, and taxing power of the county to assure payment of the principal and interest in the event the proceeds of the tax levy in the district are insufficient to pay principal and interest. The amount of any taxes that are required to be levied outside of the territory of the tax district or taken from the general funds of the county to pay principal and interest on the obligations must be reimbursed to the county from taxes levied within the territory of the tax district. Obligations must be issued in accordance with chapter 475, except that an election is not required and the amount of any obligations must not be included in determining the net indebtedness of the county under the provisions of any law or charter limiting indebtedness. [110B.15 s. 4]

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**Sec. 24. [103B.335] TAX; EXEMPTION FROM PER CAPITA LEVY LIMIT.**

The governing body of any county, municipality, or township may levy a tax in an amount required to implement sections 17 to 28. The amount of the levy up to 0.01813 percent of taxable market value is exempt from the per capita levy limit under section 275.11. [110B.20]

**Sec. 25. [103B.341] PUBLIC DRAINAGE.**

Projects necessary to implement the comprehensive water plan that are intended for the purpose of improving drainage must be established, repaired, and improved under chapter 103E and not sections 17 to 28. [110B.22]

**Sec. 26. [103B.345] RESOLUTION OF DISPUTES.**

Subdivision 1. INFORMAL RESOLUTION. The county or other local unit of government may request a meeting with the chair of the board of water and soil resources to informally resolve a dispute before initiating a contested case procedure under this section. [110B.25 s. 1]

Subd. 2. PETITION FOR HEARING. A county or other local unit of government may petition for a contested case hearing by the board under this section if:

(1) the interpretation and implementation of a comprehensive water plan is challenged by a local unit of government aggrieved by the plan;

(2) two or more counties disagree about the apportionment of the costs of a project implementing a comprehensive water plan; or

(3) a county and another local unit of government disagree about a change in a local water and related land resources plan or official control recommended by the county under section 22. [110B.25 s. 2]

Subd. 3. TIME FOR PETITION. The county or other local unit of government must file the petition by 60 days after:

(1) the date of the adoption or approval of the disputed ordinance or other decision required to be made to implement the comprehensive water plan; or

(2) the date a local unit of government receives a recommendation of the county board under section 22. [110B.25 s. 3]

Subd. 4. HEARING. If the aggrieved county or other local unit of government files a petition for a hearing, a hearing must be conducted by the state office of administrative hearings under the contested case procedure of chapter 14 within 60 days of the request. The subject of the hearing may not extend to questions concerning the need for a comprehensive water plan. In the report of

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the administrative law judge, the fees of the office of administrative hearings and transcript fees must be equally apportioned among the parties to the proceeding. Within 60 days after receiving the report of the administrative law judge, the board shall, by resolution containing findings of fact and conclusions of law, make a final decision with respect to the issue before it. [110B.25 s. 4]

Subd. 5. APPEAL. Any local unit of government or state agency aggrieved by the final decision of the board may appeal the decision to the court of appeals in the manner provided by sections 14.63 to 14.69. [110B.25 s. 5]

**Sec. 27. [103B.351] COMMISSION OVERSIGHT; REPORT REQUIRED.**

The board shall, on or before January 15 of each year, submit to the legislative commission on Minnesota resources a written report on the board's functions and the implementation of sections 17 to 28 since the previous report under this section was submitted. The report to the commission must include the board's recommendations for changes to sections 17 to 28 and any recommendations for funding. The board shall also report to the commission at other times requested by the commission. The commission may make recommendations to the legislature concerning the funding, implementation, and amendment of the act. [110B.28]

**Sec. 28. [103B.355] APPLICATION.**

Sections 17 to 28 do not apply in areas subject to the requirements of section 11, subdivision 1, and in areas covered by an agreement entered into by December 31, 1985, under section 11, subdivision 2, except as otherwise provided in sections 19, subdivision 4, clause (4); and 20, subdivision 1, clauses (3) and (4), and subdivision 2, clause (b). [110B.30]

**SOUTH DAKOTA - MINNESOTA BOUNDARY WATERS COMMISSION**

**Sec. 29. [103B.451] SOUTH DAKOTA-MINNESOTA BOUNDARY WATERS COMMISSION.**

Subdivision 1. ESTABLISHMENT. An interstate commission known as the South Dakota-Minnesota boundary waters commission is established. The members of the commission shall be the secretaries of the department of water and natural resources and the department of game, fish and parks of South Dakota and the commissioners of natural resources and the pollution control agency of Minnesota. The fifth member shall be a qualified engineer appointed for a four year term by the mutual consent of the governors of Minnesota and South Dakota. [114.13 s. 1]

Subd. 2. AUTHORITY. (a) The commission shall have power and authority:

(1) to investigate and determine the most desirable and beneficial levels of boundary waters artificially controlled and to prescribe a plan for controlling and regulating water levels;

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(2) to hold hearings and take evidence as may be presented, either after complaint or upon its own initiative, as to the desirability of any water level and plan of regulation, and to issue orders concerning the same which in its opinion are for the best interests of the public;

(3) to plan, propose, coordinate and hold hearings on lake protection and rehabilitation projects for boundary waters; and

(4) to accept and distribute grants from any source for the purposes set forth in this section. [114.13 s. 1]

(b) The commission shall seek the advice of local units of government and encourage them to implement projects voluntarily and to enter into agreements with one another for that purpose. The commission itself has no authority to implement lake protection or rehabilitation projects. [114.13 s. 2]

**Subd. 3. ADVISORY COMMITTEE.** The commission shall establish one local advisory committee for all commission activities. A majority of the members of the committee shall be elected officials of local governmental units, including tribal governments, within the boundary waters watershed with an equal number of representatives from each state. The advisory committee shall be consulted prior to any activity conducted by the commission. [114.13 s. 2a]

**Subd. 4. HEARINGS.** (a) Hearings must be held at a time and place designated by the commission in counties affected by the subject matter.

(b) At least two weeks' published notice of the hearings must be given by publication of the notice in a legal newspaper in each county bordering on the boundary waters that may be affected by the subject matter of the hearing.

(c) All final orders of the commission must be published once each week for two consecutive weeks in a legal newspaper in each county bordering on the boundary waters that may be affected. The printer's affidavit of publication of all notices and orders must be filed with the commission. Hearings held pursuant to this section shall not be subject to the requirements of chapter 14. [114.13 s. 2]

**Subd. 5. APPEALS.** Any party aggrieved by any order or any determination of the commission under this section may appeal to the district court or to the circuit court, as the case may be, of a county in either state where the subject matter of the order or the determination is wholly or partially located, or to the district court of the county in either state where its capitol is located. Notice of appeal must be served upon the commission within 30 days from the last date of publication of the order appealed from. Appeals may likewise be taken from the judgments of the district court or the circuit court, as the case may be, to the appellate courts of their respective states as in other civil cases. [114.13 s. 4]

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## LAKE IMPROVEMENT DISTRICTS

## Sec. 30. [103B.501] LAKE IMPROVEMENT DISTRICTS.

Sections 30 to 46 may be cited as the lake improvement district law. [378.401]

## Sec. 31. [103B.505] DEFINITIONS.

Subdivision 1. APPLICABILITY. The definitions in this section apply to sections 31 to 46. [378.405 s. 1]

Subd. 2. BOARD. "Board" means county board. [378.405 s. 2]

Subd. 3. COMMISSIONER. "Commissioner" means the commissioner of natural resources. [378.405 s. 3]

Subd. 4. DISTRICT. "District" means a lake improvement district. [378.405 s. 4]

Subd. 5. JOINT COUNTY AUTHORITY. "Joint county authority" means a joint county authority formed by county boards under section 35. [378.405 s. 5]

Subd. 6. PROPERTY OWNER. "Property owner" means the owner of real property within the district or the buyer under contract for deed of property in the district. [378.405 s. 6]

## Sec. 32. [103B.511] ADMINISTRATION BY COMMISSIONER.

Subdivision 1. PURPOSE. (a) To preserve and protect the lakes of the state and to increase and enhance the use and enjoyment of the lakes it is in the public interest that a statewide lake improvement program is established to: preserve the natural character of lakes and their shoreland environment where feasible and practical; improve the quality of water in lakes; provide for reasonable assurance of water quantity in lakes, where feasible and practicable; and to assure protection of the lakes from the detrimental effects of human activities and certain natural processes. The commissioner shall coordinate and supervise a local-state program for the establishment of lake improvement districts by counties for lakes located within their boundaries, based on state guidelines and rules and compatible with all state, regional, and local plans where the plans exist. [378.31 s. 1; 378.41 s. 1]

(b) In administration of this program the commissioner of natural resources shall consult with and obtain advice from other state agencies on the aspects of the program over which the agencies have specific legislative authority, including the department of health and the pollution control agency. [378.41 s. 1]

Subd. 2. RULES. The commissioner shall adopt permanent and emergency rules to provide guidelines, criteria and standards for the establishment of lake improvement districts by counties. [378.41 s. 2]

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**Sec. 33. [103B.515] INITIATION AND ESTABLISHMENT BY COUNTY BOARD.**

Subdivision 1. RESOLUTION OF INTENT. The county board may initiate the establishment of a lake improvement district in a portion of the county under this section. The board must adopt a resolution declaring the intent of the board to establish a lake improvement district. The resolution must:

(1) specify the boundaries of the district, which shall be encouraged to be as consistent as practical with natural hydrologic boundaries;

(2) prescribe the water and related land resource management programs to be undertaken in the district;

(3) state how the programs will be financed;

(4) designate the county officer or agency that will be responsible for supervising the programs; and

(5) set a date for a hearing on the resolution. [378.42 s. 1]

Subd. 2. NOTICE TO TOWN BOARD. The county board shall, at least 30 days before making an order establishing a lake improvement district, send the town board of a town wholly or partially within the boundaries of the proposed district a copy of the resolution and encourage the town board to respond to the proposed creation of the district. [378.42 s. 1a]

Subd. 3. HEARING. The county board must hold a public hearing on whether a lake improvement district should be established. Before the date set for the hearing, any interested person may file objections to the formation of the district with the county auditor. At the hearing, any interested person may offer objections, criticisms, or suggestions about the necessity of the proposed district and how the person's property will be benefited or affected by the establishment of the district. [378.42 s. 2]

Subd. 4. ESTABLISHMENT. (a) The county board may establish a lake improvement district, by order, after making findings, if the board determines that the:

(1) proposed district is necessary or that the public welfare will be promoted by the establishment of the district;

(2) property to be included in the district will be benefited by establishing the district; and

(3) formation of the district will not cause or contribute to long-range environmental pollution.

(b) The order establishing the district must state the board's findings and  
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specify or prescribe the items contained in subdivision 1, clauses (1) to (4).  
[378.42 s. 3]

**Sec. 34. [103B.521] INITIATION BY PETITION AND ESTABLISHMENT BY COUNTY BOARD.**

Subdivision 1. PETITION. (a) A lake improvement district may be initiated by a petition to the county board. The petition must state:

- (1) the name of the proposed lake improvement district;
- (2) the necessity of the proposed district to promote public health or public welfare;
- (3) the benefits to property from the establishment of the lake improvement district;
- (4) the boundaries of the proposed district which shall be encouraged to be as consistent as possible with natural hydrologic boundaries;
- (5) a map of the proposed district;
- (6) the number, from five to nine, of directors proposed for the district; and
- (7) a request for establishing the district as proposed.

(b) A petition must be signed by 26 percent of the property owners within the proposed lake improvement district described in the petition. Governmental subdivisions, other than the state or federal governments, owning lands within the proposed district are eligible to sign the petition.

(c) The petition must be filed with the county auditor and addressed to the board, requesting the board to establish a lake improvement district to develop and provide a program of water and related land resources management.

(d) The county board shall, at least 30 days before it acts on a petition, send the town board of a town wholly or partially within the boundaries of a proposed district a copy of the petition submitted under this subdivision and encourage the town board to respond to the proposed creation of the district.  
[378.43 s. 1]

Subd. 2. HEARING. After receiving the petition, the county auditor must verify the signatures and notify the county board. Within 30 days after being notified of the petition, the county board must hold a public hearing on whether the requested lake improvement district should be established. [378.43 s. 2]

Subd. 3. ESTABLISHMENT. Within 30 days after holding the public hearing, the county board shall, by order, establish or deny the establishment of the petitioned lake improvement district. An order establishing a district must conform to section 37 and may modify the petition relating to the district's boundaries, functions, financing, or organization. [378.43 s. 3]

[Bracketed paragraph notes cite text sources]

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**Sec. 35. [103B.525] ESTABLISHMENT OF A DISTRICT IN MORE THAN ONE COUNTY.**

Where the natural hydrologic boundaries of a proposed district extend into more than one county, the county boards of the counties affected may form a joint county authority and establish and maintain a lake improvement district jointly or cooperatively as provided in section 471.59. The district may be initiated by the joint county authority in the same manner as by a county board under section 33 by petition to the affected county boards. [378.44]

**Sec. 36. [103B.531] CREATION BY COMMISSIONER OF NATURAL RESOURCES.**

Subdivision 1. PETITION TO COMMISSIONER. If the county board of one or more of the counties affected has disapproved a petition for creation of a lake improvement district for an area, a petition for creation of a lake improvement district containing information required by section 34, subdivision 1, may be submitted to the commissioner of natural resources. [378.45 s. 1]

Subd. 2. DETERMINATION TO HOLD HEARING. Upon receipt of the petition by the commissioner and verification of the signatures on the petition by the county, the commissioner may, within 30 days following verification, hold a public hearing at the expense of the county board on the question of whether the requested lake improvement district shall be established. The commissioner, in determining whether to hold a public hearing, shall examine all facts relating to the petition, including the reasons why the petition was disapproved by the county. [378.45 s. 2]

Subd. 3. APPROVAL OR DENIAL OF PETITION. (a) If a hearing is not to be held, within 30 days following the receipt of verification by the county, or within 30 days following the holding of a hearing, the commissioner shall, by order, approve or disapprove the establishment of the requested lake improvement district.

(b) If the commissioner determines that the establishment of the lake improvement district as requested in the petition would be for the public welfare and public interest, and that the purposes of section 32, subdivision 1, would be served by the establishment of a lake improvement district, the commissioner shall by order approve the establishment of the lake improvement district. If the commissioner does not approve the establishment of the district, the commissioner shall by order disapprove the establishment.

(c) An order approving creation may contain modifications of the area's boundaries, functions, financing, or organization from what was stated in the petition. [378.45 s. 3]

**Sec. 37. [103B.535] ORDER ESTABLISHING DISTRICT.**

[Bracketed paragraph notes cite text sources]

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An order by the county board or joint county authority establishing a district must state the:

(1) name of the district;

(2) boundaries of the district, which are encouraged to be as consistent as practical with natural hydrologic boundaries;

(3) water and related land resources management programs and services to be undertaken;

(4) manner of financing programs and services; and

(5) number, qualifications, terms of office, removal, and filling of vacancies of the board of directors. [378.455]

**Sec. 38. [103B.541] PUBLICATION AND EFFECTIVE DATE.**

Subdivision 1. PUBLICATION OF ESTABLISHMENT ORDER. If a lake improvement district is established, the county board, or joint county authority issuing the order establishing the district, shall publish the order once in the official newspapers of counties where the district is located and file the order with the secretary of state, the pollution control agency, and the commissioner of natural resources. [378.46 s. 1]

Subd. 2. EFFECTIVE DATE. Establishment of the lake improvement district is effective 30 days after publication or at a later date, if specified in the establishment order. [378.46 s. 2]

**Sec. 39. [103B.545] REFERENDUM ON ESTABLISHMENT.**

Subdivision 1. PETITION. Twenty-six percent of the property owners within the lake improvement district established by the board or a joint county authority on its own initiative under section 33 may petition for a referendum on establishing the district before the effective date of its establishment. After receiving the petition, the county board or joint county authority must issue an order staying the establishment until a referendum vote is taken of all qualified voters and property owners within the proposed lake improvement district. [378.47 s. 1]

Subd. 2. ELECTION. The county board or joint county authority shall conduct a special election in July or August after receiving the referendum petition. The special election must be held within the proposed lake improvement district. The county auditor shall administer the special election. [378.47 s. 2]

Subd. 3. QUESTION SUBMITTED TO VOTERS. The question to be submitted and voted upon by the qualified voters and property owners within the proposed lake improvement district must be stated substantially as follows:

[Bracketed paragraph notes cite text sources]

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"Should a lake improvement district be established to provide (description of intended water and related land resources improvements) and financed by (description of revenue sources)?" [378.47 s. 3]

Subd. 4. CERTIFICATION OF VOTE AND ESTABLISHMENT. The county auditor must certify the vote on the question submitted. If a majority of those voting on the question favor establishing the proposed lake improvement district, the stay on establishing the district is lifted. If a majority of those voting on the question do not favor establishing the proposed lake improvement district, the establishment is denied. [378.47 s. 4]

Sec. 40. [103B.551] BOARD OF DIRECTORS.

Subdivision 1. MEMBERSHIP. After a lake improvement district is established, the county board or joint county authority shall appoint persons to serve as an initial board of directors for the district. The number, qualifications, terms of office, removal, and filling of vacancies of directors shall be as provided in the order creating the board of directors. The initial and all subsequent boards of directors must include persons owning property within the district, and a majority of the directors must be residents of the district. [378.51 s. 1]

Subd. 2. COMPENSATION. The directors shall serve with compensation as determined by the property owners at the annual meeting and may be reimbursed for their actual expenses necessarily incurred in the performance of their duties in the manner provided for county employees. [378.51 s. 2]

Subd. 3. POWERS. County boards, joint county authorities, statutory and home rule cities, and towns may, by order, delegate the powers in this section to the board of directors of a district to be exercised within the district. Programs and services undertaken must be consistent with the statewide water and related land resources plan prepared by the commissioner of natural resources, and with regional water and related land resources plans. A body of water may not be improved by using authority granted under this section unless the public has access to some portion of the shoreline. County boards, joint county authorities, statutory and home rule cities, and towns may delegate their authority to a district board of directors to:

(1) acquire by gift or purchase an existing dam or control works that affects the level of waters in the district;

(2) construct and operate water control structures that are approved by the commissioner of natural resources under article 7, section 22;

(3) undertake projects to change the course current or cross section of public waters that are approved by the commissioner of natural resources under article 7, section 22;

(4) acquire property, equipment, or other facilities, by gift or purchase to improve navigation;

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(5) contract with a board of managers of a watershed district within the lake improvement district or the board of supervisors of a soil and water conservation district within the district for improvements under chapters 103C and 103D;

(6) undertake research to determine the condition and development of the body of water and the water entering it and to transmit the results of the studies to the pollution control agency and other interested authorities;

(7) develop and implement a comprehensive plan to eliminate water pollution;

(8) conduct a program of water improvement and conservation;

(9) construct a water, sewer, or water and sewer system in the manner provided by section 444.075 or other applicable laws;

(10) receive financial assistance from and participate in projects or enter into contracts with federal and state agencies for the study and treatment of pollution problems and related demonstration programs;

(11) make cooperative agreements with the United States or state government or other counties or cities to effectuate water and related land resource programs;

(12) maintain public beaches, public docks, and other public facilities for access to the body of water;

(13) provide and finance a government service of the county or statutory or home rule city that is not provided throughout the county or, if the government service is provided, the service is at an increased level within the district; and

(14) regulate water surface use as provided in article 7, sections 60 and 63, and article 9, section 10. [378.51 s. 3]

Sec. 41. **[103B.555] FINANCING.**

Subdivision 1. REVENUE. The county board or joint county authority may undertake projects of improvement consistent with purposes of the district. To finance projects and services of the district, the county board or joint county authority may:

(1) assess the costs of the projects upon benefited property within the district in the manner provided under chapter 429;

(2) impose service charges on the users of lake improvement district services within the district;

(3) issue obligations as provided in section 429.091;

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(4) levy an ad valorem tax solely on property within the lake improvement district, to be appropriated and expended solely on projects of special benefit to the district; or

(5) impose or issue any combination of service charges, special assessments, obligations, and taxes. [378.52 s. 1]

Subd. 2. TAX ADDITIONAL TO OTHER LEVIES. A tax under subdivision 1 may be in addition to amounts levied on all taxable property in the county for the same or similar purposes. [378.52 s. 2]

Subd. 3. BUDGETING FOR OPERATIONS. The county board or county boards forming the joint county authority shall include appropriate provisions in their budget for the operation of a lake improvement district. [378.52 s. 3]

#### Sec. 42. [103B.561] VOTING BY JOINT COUNTY BOARDS.

If a lake improvement district has been established by order of the commissioner of natural resources under section 36, voting by county boards on joint actions of the lake improvement district shall be based on proportional representation for each county according to the proportion of the population of the lake improvement district residing within each county, and not on the basis of one vote per county or one vote per county board member unless each county or each board member represents substantially the same number of persons residing within the lake improvement district. [378.53]

#### Sec. 43. [103B.565] ENFORCEMENT OF ORDINANCES.

If a lake improvement district has been established by joint county action under section 35 or order of the commissioner of natural resources under section 36, ordinances and regulations adopted by joint action of the affected county boards may be enforced in any part of the lake improvement district by personnel of any of the affected counties. [378.54]

#### Sec. 44. [103B.571] ANNUAL MEETING OF DISTRICT.

Subdivision 1. TIME. A district must have an annual meeting. The first annual meeting shall be scheduled during the month of July or August, and be held annually in that period unless changed by vote of the previous annual meeting. [378.545 s. 1]

Subd. 2. NOTICE. The annual meeting shall be preceded by two weeks' published notice and written notice mailed at least ten days in advance of the meeting to the county board or joint county authority, town boards and statutory and home rule charter cities wholly or partially within the district, the pollution control agency, commissioner of natural resources, and if there is a proposed project by the district having a cost in excess of \$5,000, all property owners within the assessment area. [378.545 s. 2]

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Subd. 3. AGENDA. At the annual meeting the district property owners present shall:

- (1) elect one or more directors to fill vacancies in the board of directors;
- (2) approve a budget for the fiscal year;
- (3) approve or disapprove proposed projects by the district having a cost to the district in excess of \$5,000; and
- (4) take up and consider other business that comes before them. [378.545 s. 3]

Subd. 4. ANNUAL REPORT. Each year the board of directors shall prepare and file a report of the financial conditions of the district, the status of all projects in the district, the business transacted by the district, other matters affecting the interests of the district, and a discussion of the directors' intentions for the succeeding years. Copies of the report shall be transmitted to the county board or joint county authority, town boards and city councils of statutory and home rule charter cities wholly or partially within the district, the commissioner of natural resources, and the pollution control agency by four months after the annual meeting. [378.57]

**Sec. 45. [103B.575] EXPANSION OF THE BOUNDARIES OF A LAKE IMPROVEMENT DISTRICT.**

The boundary of a district may be enlarged by complying with the procedures to establish a district under sections 32 to 38. [378.55]

**Sec. 46. [103B.581] TERMINATION.**

Subdivision 1. PETITION. Termination of a district may be initiated by petition requesting the termination of the district. The petition must be signed by 26 percent of the property owners in a district within 30 days after receiving a petition. The county board or joint county authority must set a time and place for a hearing on terminating the district. [378.56 s. 1]

Subd. 2. FINDINGS AND ORDER. If the board or joint county authority determines that the existence of the district is no longer in the public welfare or public interest and it is not needed to accomplish the purpose of the lake improvement district act, the board or joint county authority shall make the findings and terminate the district by order. On filing a certified copy of the findings and order with the secretary of state, pollution control agency, and commissioner of natural resources the district is terminated and ceases to be a political subdivision of the state. [378.56 s. 1a]

Subd. 3. TERMINATION OF FINANCING. If a district is terminated under subdivision 2, additional water and related land resource management programs may not be undertaken with money raised by a special tax within the district, and additional special water and related land resource management

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taxes may not be levied within the district. If money raised by past special tax levies within the district has been exhausted, further operation and maintenance of existing programs may be financed by appropriations from the general revenue fund of an affected county. [378.56 s. 2]

#### LAKE MINNETONKA CONSERVATION DISTRICT

##### Sec. .47. [103B.601] DEFINITIONS.

Subdivision 1. APPLICABILITY. The definitions in this section apply to sections 47 to 56.

Subd. 2. BOARD. "Board" means the governing board of the directors of the district.

Subd. 3. DISTRICT. "District" means the Lake Minnetonka conservation district.

Subd. 4. MUNICIPALITY. "Municipality" means the home rule charter or statutory city of Minnetrista, Mound, Spring Park, Orono, Minnetonka Beach, Wayzata, Minnetonka, Woodland, Deephaven, Shorewood, Greenwood, Excelsior, Tonka Bay, or Victoria. [MN L 1967, c 907, sec 1, 12]

##### Sec. 48. [103B.605] DISTRICT.

Subdivision 1. ESTABLISHMENT. The Lake Minnetonka conservation district established under Laws 1967, chapter 907, and Laws 1969, chapter 272, is a corporate and political body and a political subdivision of this state, and may sue and be sued, enter into contracts, and hold real and personal property for its purposes. [MN L 1967, c 907, sec 6; MN L 1969, c 272, sec 5]

Subd. 2. DISTRICT IS AN EMPLOYER. The district is an employer within the definition of section 176.011, subdivision 10, and is included in the provisions of chapter 176. [MN L 1967, c 907, sec 9]

Subd. 3. DISTRICT IS PUBLIC CORPORATION. The district is a public corporation within the definition of section 466.01 and is included in the provisions of chapter 466. [MN L 1967, c 907, sec 10]

Subd. 4. DISSOLUTION. The district may be dissolved by the decision of the governing bodies of three-quarters of the municipalities in the district. The decision of a town shall be made by the board of supervisors of the town. [MN L 1967, c 907, sec 11]

##### Sec. 49. [103B.611] BOARD.

Subdivision 1. COMPOSITION. The district is governed by a board composed of members elected by the governing bodies of the municipalities included in the district. Each municipality shall elect one member. [MN L 1967, c 907, sec 2, subd 2; MN L 1969, c 272, sec 1]

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Subd. 2. TERM. The term of office of each board member is three years.  
[MN L 1967, c 907, sec 2, subd 2]

Subd. 3. POWERS. Subject to the provisions of chapters 97A, 103D, 103E, 103G, and 115, and the rules and regulations of the respective agencies and governing bodies vested with jurisdiction and authority under those chapters, the district has the following powers:

(1) to regulate the types of boats permitted to use the lake and set service fees;

(2) to regulate, maintain, and police public beaches, public docks, and other public facilities for access to the lake within the territory of the municipalities, provided that a municipality may supersede the district's action under this clause by adopting an ordinance specifically referring to the district's action by one year after the district's action;

(3) to limit by rule the use of the lake at various times and the use of various parts of the lake;

(4) to regulate the speed of boats on the lake and the conduct of other activities on the lake to secure the safety of the public and the most general public use;

(5) to contract with other law enforcement agencies to police the lake and its shore;

(6) to regulate the construction, installation, and maintenance of permanent and temporary docks and moorings consistent with federal and state law;

(7) to regulate the construction and use of mechanical and chemical means of deicing the lake and to regulate mechanical and chemical means of removal of weeds and algae from the lake;

(8) to regulate the construction, configuration, size, location, and maintenance of commercial marinas and their related facilities including parking areas and sanitary facilities. The regulation shall be consistent with the applicable municipal building codes and zoning ordinances where the marinas are located;

(9) to contract with other governmental bodies to perform any of the functions of the district;

(10) to undertake research to determine the condition and development of the lake and the water entering it and to transmit their studies to the pollution control agency and other interested authorities, and to develop a comprehensive program to eliminate pollution;

(11) to receive financial assistance from and join in projects or enter into contracts with federal and state agencies for the study and treatment of pollution problems and demonstration programs related to them; and

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(12) to petition the board of managers of a watershed district in which the lake conservation district is located for improvements under article 4, section 54; a bond is not required of the lake conservation district. [MN L 1967, c 907, sec 3; MN L 1969, c 272, sec 2]

Subd. 4. BYLAWS AND BOARD PROCEDURES. The board shall adopt a seal, bylaws for the regulation of the affairs of the district, and rules of procedure to govern the board's actions that are consistent with law. [MN L 1967, c 907, sec 7]

Sec. 50. [103B.615] DISTRICT OFFICERS.

Subdivision 1. ELECTION AND TERMS. (a) The board shall elect from its membership a chairperson to serve for a period of one year and shall also elect a secretary and a treasurer.

(b) The officers hold office at the pleasure of the board. [MN L 1967, c 907, sec 8, subd 1]

Subd. 2. COMPENSATION. The board shall fix the compensation of the officers. [MN L 1967, c 907, sec 8, subd 1]

Subd. 3. OTHER OFFICERS AND EMPLOYEES. The board may appoint other officers, agents, and employees who shall perform duties and receive compensation as the board determines and are removable at the pleasure of the board. [MN L 1967, c 907, sec 8, subd 4]

Sec. 51. [103B.621] TREASURER.

Subdivision 1. BOND. Before taking office, the treasurer shall give bond to the district in an amount to be determined by the board. [MN L 1967, c 907, sec 8, subd 2]

Subd. 2. DUTIES. (a) The treasurer shall receive and is responsible for all money of the district. The money of the district shall be considered public funds.

(b) The treasurer shall disburse the funds of the district in accordance with rules of the board. [MN L 1967, c 907, sec 8, subd 2]

Subd. 3. INVESTMENTS. (a) If there are funds not currently needed, the treasurer may invest the funds in treasury bonds, certificates of indebtedness, bonds or notes of the United States of America, or bonds, notes or certificates of indebtedness of the state of Minnesota. The bonds, certificates, or notes must mature by three years from the date of purchase. If the board determines that invested funds are needed for current purposes before the maturity dates of the bonds, certificates, or notes, the board shall notify the treasurer and the treasurer shall order the sale or convert the bonds, certificates, or notes into cash in the amount determined by the board.

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(b) The interest and profit on investments shall be credited to and constitute a part of the funds of the district. [MN L 1967, c 907, sec 8, subd 2]

Subd. 4. FINANCIAL STATEMENT. The treasurer shall keep an account of the funds received and disbursed. At least once a year at times designated by the board, the treasurer must file a financial statement with the municipalities forming the district showing in appropriate and identifiable groupings:

(1) the receipts and disbursements since the last approved financial statement;

(2) the money on hand;

(3) the purposes for which the money of the district is appropriated;

(4) an account of all bonds, certificates, or notes purchased and the funds from which they were purchased; and

(5) the interest and profit that has accrued from investments. [MN L 1967, c 907, sec 8, subd 2]

Subd. 5. COMPENSATION FOR CLERKS. The district may pay to the treasurer compensation to cover hiring clerks to carry out the treasurer's duties. [MN L 1967, c 907, sec 8, subd 2]

#### Sec. 52. [103B.625] EXECUTIVE DIRECTOR.

Subdivision 1. APPOINTMENT. The board may appoint an executive director for the district. The executive director shall serve at the pleasure of the board and shall receive compensation as determined by the board. [MN L 1967, c 907, sec 8, subd 3]

Subd. 2. DUTIES AND POWERS. Under the supervision of the board, the executive director:

(1) is the executive and operating officer of the district;

(2) is responsible for the operation, management, and promotion of all activities with which the district is charged and other duties prescribed by the board; and

(3) has the powers necessarily incident to the performance of the duties of the executive director and other powers granted by the board, but without authority to incur liability or make expenditures on behalf of the district without general or specific directions by the board, as shown by the bylaws or minutes of its meetings. [MN L 1967, c 907, sec 8, subd 3]

#### Sec. 53. [103B.631] PERFORMANCE OF DUTIES AND EXPENSES.

Subdivision 1. DUTIES MAY BE PERFORMED BY MUNICIPAL

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**EMPLOYEES.** The duties of the district may be executed by employees of the municipalities. [MN L 1967, c 907, sec 4]

**Subd. 2. EXPENSES.** The expenses of the district shall be borne by the municipalities. The portion of the expenses of the district borne by each municipality must be in proportion to its net tax capacity provided that the portion of any one municipality may not be more than 20 percent of the total expense or less than \$200. [MN L 1967, c 907, sec 4; MN L 1969, c 272, sec 3]

**Sec. 54. [103B.635] FUNDING OF DISTRICT.**

**Subdivision 1. BUDGET.** The board must, on or before July 1 each year, prepare and submit a detailed budget of the district's needs for the next calendar year to the governing body of each municipality in the district with a statement of the proportion of the budget to be provided by each municipality. The governing body of each municipality in the district shall review the budget and the board, upon notice from a municipality, must hear objections to the budget. After the hearing, the board may modify or amend the budget. Notice must be given to the municipalities of modifications or amendments. [MN L 1967, c 907, sec 5]

**Subd. 2. MUNICIPAL FUNDING OF DISTRICT.** (a) The governing body or board of supervisors of each municipality in the district must provide the funds necessary to meet its proportion of the total cost determined by the board.

(b) A municipality may raise the funds by any means that the municipality has to raise funds. The municipalities may each levy a tax not to exceed .00242 percent of taxable market value on the taxable property located in the district for funding the district. The levy must be within all other limitations provided by law.

(c) The funds must be deposited in the treasury of the district in amounts and at times as the treasurer of the district requires. [MN L 1967, c 907, sec 5; MN L 1969, c 272, sec 4]

**Sec. 55. [103B.641] REGULATIONS OF DISTRICT.**

**Subdivision 1. AUTHORITY AND EFFECT.** (a) The district may adopt rules and regulations to effectuate the purpose of its establishment and the powers granted to the district.

(b) The rules and regulations have the effect of an ordinance if declared by the board of directors of the district and stated in the rule or regulation.

(c) The rules and regulations of the district may be enforced by the district by injunction in addition to penalties under this section. [MN L 1969, c 272, sec 6]

**Subd. 2. ADOPTION PROCEDURE.** (a) A rule or regulation must be suitably titled.

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(b) A rule or regulation must be adopted by a majority vote of all of the members of the board of directors. The adopted rule or regulation must be signed by the chair, attested by the secretary of the board, and published once in an official newspaper.

(c) Proof of publication must be attached to and filed with the rule or regulation. Each rule and regulation must be recorded in the rule and regulation book by 20 days after its publication.

Subd. 3. PENALTY. A person who violates a rule or regulation that has the force and effect of an ordinance is guilty of a misdemeanor and subject to a sentence of not more than 90 days plus costs or a fine of not more than \$100 plus costs. [MN L 1969, c 272, sec 6]

Sec. 56. [103B.645] PROSECUTION OF VIOLATIONS.

Subdivision 1. COMPLAINT FOR VIOLATION. A prosecution for a violation of a rule or regulation shall be brought in the name of the district upon complaint and warrant as in other criminal cases. If the accused is arrested without a warrant, a written complaint shall be made, to which the accused shall be required to plead, and a warrant shall issue on the complaint. The warrant and all other process in such cases shall be directed for service to a police officer, court officer, marshal, constable, or sheriff of any of the municipalities in the district. [MN L 1969, c 272, sec 7]

Subd. 2. COMPLAINT. It is a sufficient pleading of the rules and regulations of the district to refer to them by section and number or chapter, or any other way that clearly reflects the rules and regulations that are the subject of the pleading. The rules and regulations shall have the effect of general laws within the district and need not be given in evidence upon the trial of an action.

Subd. 3. APPEAL TO DISTRICT COURT. Appeals may be taken from the district court in the same manner as from judgments in civil actions. [MN L 1969, c 272, sec 7]

WHITE BEAR LAKE CONSERVATION DISTRICT

Sec. 57. [103B.651] DEFINITIONS.

Subdivision 1. APPLICABILITY. The definitions in this section apply to sections 55 to 63.

Subd. 2. BOARD. "Board" means the governing board of the district.

Subd. 3. DISTRICT. "District" means the White Bear Lake conservation district.

Subd. 4. MUNICIPALITY. "Municipality" means the city of White Bear Lake, the town of White Bear, the city of Birchwood, the city of Mahtomedi, or the city of Dellwood. [MN L 1971, c 355, sec 1]

[Bracketed paragraph notes cite text sources]

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Sec. 58. [103B.655] DISTRICT.

Subdivision 1. ESTABLISHMENT. The White Bear Lake conservation district established under Laws 1971, chapter 355, as amended by Laws 1974, chapter 111, and Laws 1977, chapter 322, is a corporate and political body, and may sue and be sued, enter into contracts, and hold real and personal property for its purposes. [MN L 1971, c 355, sec 6]

Subd. 2. DISTRICT IS EMPLOYER. The district is an employer within the definition of section 176.011, subdivision 10, and is included in the provisions of chapter 176. [MN L 1971, c 355, sec 9]

Subd. 3. DISTRICT IS POLITICAL AND CORPORATE BODY. The district is a public corporation and a political subdivision of the state. The district is also within the definition of section 466.01, and is included in the provisions of chapter 466. [MN L 1971, c 355, sec 10]

Subd. 4. DISSOLUTION. The district may be dissolved by the decision of the governing bodies of four of the municipalities in the district. The decision of a town shall be made by the board of supervisors of the town. [MN L 1971, c 355, sec 11]

Sec. 59. [103B.661] BOARD.

Subdivision 1. MEMBERSHIP. (a) The district shall be governed by the board composed of members elected by the governing bodies of the municipalities included in the district. Each municipality shall elect two members.

(b) The term of office of each member shall be three years. [MN L 1971, c 355, sec 2, subd 2; MN L 1977, c 322, sec 2]

Subd. 2. POWERS. Subject to the provisions of chapters 97A, 103D, 103E, 103G, and 115, and the rules and regulations of the respective agencies and governing bodies vested with jurisdiction and authority under those chapters, the district has the following powers to:

- (1) regulate the types of boats permitted to use the lake;
- (2) limit the use of motors, including their types and horsepower, on the lake;
- (3) regulate, maintain, and police public beaches, public docks, and other public facilities for access to the lake within the territory of the municipalities;
- (4) limit by rule the use of the lake at various times and the use of various parts of the lake;
- (5) regulate the speed of boats on the lake and the conduct of other activities on the lake to secure the safety of the public and the most general public use;

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(6) contract with other law enforcement agencies to police the lake and its shores;

(7) regulate the construction, installation, and maintenance of permanent and temporary docks and moorings consistent with federal and state law;

(8) regulate the construction and use of mechanical and chemical means of deicing the lake and to regulate the mechanical and chemical means of removal of weeds and algae from the lake;

(9) regulate the construction, configuration, size, location, and maintenance of commercial marinas and their related facilities including parking areas and sanitary facilities. The regulation shall be consistent with the applicable municipal building codes and zoning ordinances where said marinas are situated;

(10) contract with other governmental bodies to perform any of the functions of the district;

(11) undertake research to determine the condition and development of the lake and the water entering it and to transmit their studies to the pollution control agency and other interested authorities; and to develop a comprehensive program to eliminate pollution;

(12) receive financial assistance from and join in projects or enter into contracts with federal and state agencies for the study and treatment of pollution problems and demonstration programs related to them;

(13) petition the board of managers of a watershed district where the White Bear Lake conservation district is located for improvements under article 4, section 54, for which a bond may not be required of the district; and

(14) to require the submission of all plans pertaining to or affecting construction or other lakeshore use on any lot or parcel of land abutting the shoreline including: length of setback from the shoreline, adjoining property, or any street or highway; problems of population density; possible water, air or visual pollution; or height of construction. The board shall have 60 days after submission of plans or any part thereof for review. If, within 60 days of submission the board finds the plan or any part is inconsistent with its plans or ordinances, it may recommend that the plan or any part be revised and resubmitted. [MN L 1971, c 355, sec 3; MN L 1974, c 111, sec 1]

Subd. 3. BYLAWS AND BOARD PROCEDURES. The board shall adopt a seal, bylaws for the regulation of the affairs of the district, and rules of procedure to govern the board's actions that are consistent with law. [MN L 1971, c 355, sec 7]

#### **Sec. 60. [103B.665] DISTRICT OFFICERS AND EMPLOYEES.**

Subdivision 1. ELECTION AND TERMS. (a) The board shall elect from its membership the following officers to serve for a period of one year: chair, vice-chair, secretary, and treasurer. The offices of secretary and treasurer shall  
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be combined unless a resolution is adopted to the contrary by the board prior to the election.

(b) The officers shall hold office at the pleasure of the board. [MN L 1971, c 355, sec 8, subd 1; MN L 1977, c 322, sec 3]

Subd. 2. **COMPENSATION.** The board shall set the compensation of the officers. [MN L 1971, c 355, sec 8, subd 1]

Subd. 3. **EMPLOYEES.** The board may appoint other officers, agents, and employees who shall perform duties and receive compensation as the board determines and are removable at the pleasure of the board. [MN L 1971, c 355, sec 8, subd 4]

Sec. 61. [103B.671] **TREASURER.**

Subdivision 1. **BOND.** Before taking office, the treasurer shall give bond to the district in an amount to be determined by the board. [MN L 1971, c 355, sec 8, subd 2]

Subd. 2. **DUTIES.** (a) The treasurer shall receive and is responsible for the money of the district. The money of the district shall be considered public funds.

(b) The treasurer shall disburse the funds of the district in accordance with rules of the board. [MN L 1971, c 355, sec 8, subd 2]

Subd. 3. **INVESTMENTS.** (a) If funds are not currently needed, the treasurer may invest the funds in treasury bonds, certificates of indebtedness, bonds or notes of the United States of America, or bonds, notes, or certificates of indebtedness of the state of Minnesota. The bonds, notes, or certificates must mature by three years from the date of purchase.

(b) If the board determines that invested funds are needed for current purposes before the maturity dates of the securities held, the board shall certify to the treasurer and the treasurer shall order the sale or conversion of the bonds, notes, or certificates needed into cash.

(c) The interest and profit on investments shall be credited to and constitute a part of the funds of the district. [MN L 1971, c 355, sec 8, subd 2]

Subd. 4. **ACCOUNTING AND RECORDS.** The treasurer shall keep an account of the funds received and disbursed. At least once a year, at times designated by the board, the treasurer must file with the municipalities forming the district a financial statement of the district showing in appropriate and identifiable groupings:

(1) the receipts and disbursements since the last approved statements;

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(2) the money on hand and the purposes for which the money is appropriated; and

(3) an account of bonds, notes, and certificates purchased, the funds from which they were purchased, and the interest and profit accrued on the investment. [MN L 1971, c 355, sec 8, subd 2]

Subd. 5. COMPENSATION FOR CLERKS. The district may pay to the treasurer compensation to cover hiring clerks and to carry out the treasurer's duties. [MN L 1971, c 355, sec 8, subd 2]

#### Sec. 62. [103B.675] EXECUTIVE DIRECTOR.

Subdivision 1. APPOINTMENT. (a) The board may appoint an executive director.

(b) The executive director is the executive and operating officer of the district, shall serve at the pleasure of the board, and shall receive compensation set by the board. [MN L 1971, c 355, sec 8, subd 3]

Subd. 2. DUTIES AND POWERS. (a) Under the supervision of the board, the executive director is responsible for the operation, management, and promotion of all activities of the district and other duties prescribed by the governing board.

(b) The executive director has the powers necessarily incident to the performance of the executive director's duties and other powers granted by the board, except the director does not have authority to incur liability or make expenditures on behalf of the district without general or specific directions by the board as shown by the bylaws or minutes of the board's meetings. [MN L 1971, c 355, sec 8, subd 3]

#### Sec. 63. [103B.681] RULES.

Subdivision 1. AUTHORITY. The district may adopt rules to effectuate the purposes of its establishment and the powers granted to the district. All rules must be suitably entitled. [MN L 1971, c 355, sec 12, subd 1]

Subd. 2. EFFECT OF RULES. The rules have the force and effect of an ordinance if declared by the board and stated in the rules. [MN L 1971, c 355, sec 12, subd 1]

Subd. 3. PROCEDURE. (a) A rule must be enacted by a majority vote of all the members of the board. The rule must be signed by the chairperson and attested by the secretary.

(b) The rule must be published once in official newspapers of Washington and Ramsey counties. Proof of publication shall be attached to and filed with the rule.

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New language is indicated by underline, deletions by ~~strikeout~~.

(c) A rule must be recorded in the rule book within 20 days after its publication. [MN L 1971, c 355, sec 12, subd 2]

Subd. 4. CRIMINAL PENALTY. (a) A violation of rule is a misdemeanor and punishable by a sentence of not more than 90 days plus costs or a fine of not more than \$300 plus costs. [MN L 1971, c 355, sec 12, subd 2]

(b) All prosecutions for violations of rules shall be brought in the name of the district upon complaint and warrant as in other criminal cases. [MN L 1971, c 355, sec 13, subd 1]

Subd. 5. INJUNCTION. The rules may be enforced by the district by injunction in addition to other penalties provided. [MN L 1971, c 355, sec 12, subd 1]

#### Sec. 64. [103B.683] PROSECUTION OF VIOLATIONS.

Subdivision 1. COMPLAINT FOR VIOLATION. A prosecution for a violation of a rule or regulation shall be brought in the name of the district upon complaint and warrant as in other criminal cases. If the accused is arrested without a warrant, a written complaint shall be made, to which the accused shall be required to plead, and a warrant shall issue on the complaint. The warrant and all other process in such cases shall be directed for service to a police officer, court officer, marshal, constable, or sheriff of any of the municipalities in the district. [MN L 1971, c 355, sec 13]

Subd. 2. COMPLAINT. It is a sufficient pleading of the rules and regulations of the district to refer to them by section and number or chapter, or any other way that clearly reflects the rules and regulations that are the subject of the pleading. The rules and regulations shall have the effect of general laws within the district and need not be given in evidence upon the trial of an action.

Subd. 3. APPEAL TO DISTRICT COURT. Appeals may be taken from the district court in the same manner as from judgments in civil actions. [MN L 1971, c 355, sec 13]

#### Sec. 65. [103B.685] PERFORMANCE OF DUTIES AND EXPENSES.

Subdivision 1. DUTIES. The duties of the district may be executed by employees of the municipalities. [MN L 1971, c 355, sec 4]

Subd. 2. EXPENSES. The expenses of the district shall be borne by the municipalities. The portion of the expenses of the district borne by each municipality must be in proportion to its net tax capacity, except a municipality's portion may not be less than \$200 per year. [MN L 1971, c 355, sec 4; MN L 1974, c 111, sec 2]

#### Sec. 66. [103B.691] FUNDING OF DISTRICT.

[Bracketed paragraph notes cite text sources]

New language is indicated by underline, deletions by ~~strikeout~~.

Subdivision 1. BUDGET. The board must, on or before July 1 each year, prepare and submit a detailed budget of the district's needs for the next calendar year to the governing body of each municipality in the district with a statement of the proportion of the budget to be provided by each municipality. The governing body of each municipality in the district shall review the budget and the board upon notice from a municipality must hear objections to the budget. After the hearing, the board may modify or amend the budget. Notice must be given to the municipalities of modifications or amendments.

Subd. 2. MUNICIPAL FUNDING OF DISTRICT. (a) The governing body or board of supervisors of each municipality in the district shall provide the funds necessary to meet its proportion of the total cost to be borne by the municipalities as finally certified by the board.

(b) The municipality's funds may be raised by any means within the authority of the municipality. The municipalities may each levy a tax not to exceed .02418 percent of taxable market value on the taxable property located in the district to provide the funds. The levy shall be within all other limitations provided by law.

(c) The funds must be deposited into the treasury of the district in amounts and at times as the treasurer of the district requires. [MN L 1971, c 355, sec 5]

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### ARTICLE 3

#### CHAPTER 103C

##### SOIL AND WATER CONSERVATION DISTRICTS

###### Section 1. [103C.001] EFFECT OF CHAPTER 103C ON WATER LAW.

Chapters 103A, 103B, 103C, 103D, 103E, 103F, and 103G constitute the water law of this state and may be cited as the water law.

###### Sec. 2. [103C.005] SOIL AND WATER CONSERVATION POLICY.

Improper land use practices have caused serious wind and water erosion of the land of this state, the runoff of polluting materials, increased costs to maintain agricultural productivity, increased energy costs and increased flood damage. Land occupiers have the responsibility to implement practices to correct these conditions and conserve the soil and water resources of the state. It is the policy of the state to encourage land occupiers to conserve soil and water resources through the implementation of practices that effectively reduce or prevent erosion, sedimentation, siltation and agriculturally related pollution in order to preserve natural resources, ensure continued soil productivity, control floods, prevent impairment of dams and reservoirs, assist in maintaining the navigability of rivers and harbors, preserve wildlife, protect the tax base, and protect public lands. [40.02]

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Sec. 3. [103C.009] CITATION.

This chapter may be cited as the soil and water conservation district law. [40.15]

Sec. 4. [103C.101] DEFINITIONS.

Subdivision 1. APPLICABILITY. The definitions in this section apply to this chapter. [40.01 s. 1]

Subd. 2. APPROPRIATE AGENCIES. "Appropriate agencies" means local, state, or federal agencies that possess expertise, involvement, or authority concerning the use and development of land and water resources, but does not include districts or the state board. [40.01 s. 15]

Subd. 3. DISTRICT. "District" means a soil and water conservation district. [40.01 s. 2]

Subd. 4. DISTRICT BOARD. "District board" means the board of supervisors of a soil and water conservation district. [40.01 s. 3]

Subd. 5. DUE NOTICE. "Due notice" means notice published at least twice, with an interval of at least seven days between the two publication dates, in a legal newspaper, and by posting at three conspicuous places within an appropriate area. Posting must include, if possible, posting at public places where it is customary to post notices concerning county or municipal affairs. A hearing held pursuant to a notice at the time and place designated in the notice may be adjourned, from time to time, without renewing the notice for the adjourned dates. [40.01 s. 12]

Subd. 6. FEDERAL. "Federal" means the United States, the soil conservation service of the United States Department of Agriculture, and agencies or instrumentalities, corporate or otherwise, of the United States. [40.01 s. 9]

Subd. 7. GOVERNMENT. "Government" means the state or the United States, or an agency or instrumentality of the state or the United States. [40.01 s. 10]

Subd. 8. LAND OCCUPIER. "Land occupier" means a person, corporation, or legal entity that holds title to or is in possession of land within a district as an owner, lessee, tenant, or otherwise. [40.01 s. 11]

Subd. 9. NOMINATING PETITION. "Nominating petition" means a petition filed under sections 13, subdivision 1, and 14, subdivision 2, to nominate candidates for the office of supervisor. [40.01 s. 6]

Subd. 10. SOIL AND WATER CONSERVATION DISTRICT. "Soil and water conservation district" means a governmental subdivision organized under this chapter. [40.01 s. 2]

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Subd. 11. STATE AGENCY. "State agency" means a political subdivision, agency, or instrumentality, corporate or otherwise, of the state. [40.01 s. 8]

Subd. 12. STATE BOARD. "State board" means the board of water and soil resources. [40.01 s. 4]

Subd. 13. SUPERVISOR. "Supervisor" means a member of a district board. [40.01 s. 3]

Subd. 14. WATERSHED PROJECT. "Watershed project" means a project that is approved and authorized to be carried out by the district in a watershed area in accordance with a watershed work plan. [40.01 s. 14]

Subd. 15. WATERSHED WORK PLAN. "Watershed work plan" means a plan for constructing works of improvement in a watershed area, including structural and land treatment measures for flood prevention or the conservation, development, utilization, and disposal of water that is developed by the district, with or without federal assistance. [40.01 s. 13]

#### SOIL AND WATER CONSERVATION DISTRICTS

#### Sec. 5. [103C.201] FORMATION OF SOIL AND WATER CONSERVATION DISTRICTS.

Subdivision 1. PETITION. (a) Twenty-five land occupiers in an area proposed to be organized into a district may file a petition with the state board requesting that a soil and water conservation district be organized to function in the area described in the petition. The petition must state:

- (1) the proposed name of the district;
- (2) that there is need, in the interest of the public health, safety, and welfare, for a district in the described area;
- (3) a description of the area proposed to be organized as a district, which need not be by metes and bounds or legal subdivision, but may be by general description that identifies the area;
- (4) a request that the state board define the boundaries for the district;
- (5) a request for a referendum to be held in the defined territory on the question of the creation of a district in the territory; and
- (6) a request by the state board to determine that a district be established.

(b) If more than one petition is filed covering parts of the same area, the state board may consolidate the petitions. [40.04 s. 1]

Subd. 2. HEARINGS. (a) By 30 days after a petition has been filed with the state board, the state board may give due notice of a proposed hearing, to be held by the state board or a designated agent, on:

[Bracketed paragraph notes cite text sources]

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(1) the question of the desirability and necessity, in the interest of the public health, safety, and welfare, for the establishment of a district;

(2) the appropriate boundaries of the district;

(3) the propriety of the petition and other proceedings taken under this section; and

(4) other questions relevant to clauses (1), (2), and (3).

(b) Land occupiers in the area described in the petition and in the area considered for addition to the described area and other interested parties may attend the hearing and be heard. If after a hearing, the state board determines it may be desirable to include in the proposed district area outside the area where notice of the hearing was given, the hearing must be adjourned and due notice of the continued hearing must be given throughout the entire area considered for inclusion in the district, and the continued hearing held. [40.04 s. 2]

**Subd. 3. CONSIDERATIONS FOR DISTRICT ESTABLISHMENT.** (a) After the hearing is complete, if the state board determines, on the information presented at the hearing and other relevant information, that there is a need, in the interest of the public health, safety, and welfare, for a district to function in the area considered at the hearing, the state board shall make and record the determination and define the district boundaries by metes and bounds or by legal subdivisions. In making the determination and in defining the boundaries, the state board shall consider the public policy in article 1, section 6, and:

(1) the topography of the area considered and of the state;

(2) the composition of its soils;

(3) the distribution of erosion;

(4) the prevailing land use practices;

(5) the desirability and necessity of including within the boundaries the particular lands under consideration;

(6) the benefits the lands may receive from being included;

(7) the relation of the proposed area to existing watersheds and agricultural regions and other soil and water conservation districts organized or proposed for organization; and

(8) other relevant physical, geographical, and economic factors.

(b) The area included in a district need not be contiguous. [40.04 s. 2]

**Subd. 4. DENIAL OF PETITION.** (a) If the state board determines, after the hearing and consideration of the information, that there is not a need for a district to function in the area, the state board must make and record the determination and deny the petition.

[Bracketed paragraph notes cite text sources]

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(b) Subsequent petitions to establish a district in substantially the same area may not be filed until six months after the date of the denial of a petition. [40.04 s. 2]

**Subd. 5. REFERENDUM FOR DISTRICT ESTABLISHMENT.** (a) After the state board has made and recorded a determination that there is a need for a district in a particular area and has defined the boundaries, the state board shall consider whether the operation of a district within the boundaries is administratively feasible. To assist the state board to determine the feasibility, the state board shall, within a reasonable time after entry of the finding that there is a need for the proposed district, give notice of and hold a referendum within the proposed district on the creation of the district.

(b) The question shall be submitted by ballots with:

(1) the words printed "For creation of a soil and water conservation district of the lands described below in the county (or counties) of ..... and ....." and "Against establishment of a soil and water conservation district of the lands described below in the county (or counties) of ..... and .....";

(2) a square before each proposition and a direction to insert an X mark in the square before one proposition or the other as the voter may favor or oppose establishment of the district; and

(3) the boundaries of the proposed district.

(c) Only land occupiers in the boundaries of the proposed district, as determined by the state board, may vote in the referendum. [40.04 s. 3]

**Subd. 6. ADMINISTRATION OF REFERENDUM.** The state board shall pay the expenses for the notices and the conduct of the hearing and referendum, and supervise their conduct. The state board shall issue rules governing the conduct of hearings and referenda, and providing for the registration, before the date of the referendum, of all eligible voters, or prescribing some other appropriate procedure to determine eligible voters. Informalities in the conduct of a referendum or in a matter related to it do not invalidate the referendum or its result if notice of it has been given substantially as provided by this section and the referendum has been fairly conducted. [40.04 s. 4]

**Subd. 7. DETERMINATION AFTER REFERENDUM.** (a) The state board shall publish the result of the referendum and then determine whether the operation of a district in the defined boundaries is administratively feasible. In making the determination the state board must consider the policy in article 1, section 6, and:

(1) the attitudes of the land occupiers in the defined boundaries;

(2) the number of land occupiers eligible to vote in the referendum who have voted;

[Bracketed paragraph notes cite text sources]

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(3) the proportion of the votes cast in the referendum in favor of establishing the district to the total number of votes cast;

(4) the approximate wealth and income of the land occupiers of the proposed district;

(5) the probable expense of carrying on erosion-control operations within the district; and

(6) other relevant economic and social factors. The state board may not determine that the operation of the proposed district within the defined boundaries is administratively feasible unless a majority of the votes cast in the referendum on establishment of the district have been cast in favor of establishing the district.

(b) If the state board determines that the operation of the district is not administratively feasible, the state board shall record the determination and deny the petition. [40.04 s. 5] Six months after the date of entry of a determination by the state board that operation of a proposed district is not administratively feasible, a new petition may be filed and a new proceeding started. [40.04 s. 7]

(c) If the state board determines that the operation of the district is administratively feasible, it shall record the determination and proceed with the establishment and organization of the district. [40.04 s. 5]

#### Subd. 8. APPLICATION BY SUPERVISORS TO SECRETARY OF STATE.

(a) The district shall be a governmental subdivision of this state and a public body corporate and politic after the actions in this subdivision are taken.

(b) If the state board determines that the operation of the proposed district within the defined boundaries is administratively feasible, the state board must appoint two supervisors to act, with the three elected supervisors, as the district board.

(c) The two appointed supervisors shall sign and present an application to the secretary of state with the following recitals:

(1) a petition for the establishment of a district was filed with the state board;

(2) the proper proceedings were taken relating to the petition;

(3) the application is being filed to complete the organization of the district as a governmental subdivision and a public body, corporate or politic;

(4) the state board has appointed the signers as supervisors;

(5) the name and official residence of each supervisor, with a certified copy of the supervisor's appointment;

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- (6) the term of office of each supervisor;
- (7) the name proposed for the district; and
- (8) the location of the principal office of the district board.

(d) The application shall be subscribed and sworn to by each supervisor before an officer authorized by state law to take oaths. The officer shall certify upon the application that the officer has personal knowledge of the supervisors, that they are the supervisors named in the application, and that each supervisor has signed the application in the officer's presence. [40.04 s. 6]

Subd. 9. CERTIFIED STATEMENT OF STATE BOARD. (a) The application shall be accompanied by a certified statement of recitals by the state board, that:

- (1) a petition was filed, notice issued, and hearing held;
- (2) the state board determined that there is need, in the interest of the public health, safety, and welfare, for a district to function in the proposed area;
- (3) the state board defined the district's boundaries;
- (4) notice was given and a referendum held on the question of establishing a district;
- (5) a majority of the votes cast in the referendum were in favor of establishing a district; and
- (6) after the referendum the state board determined that the operation of the proposed district is administratively feasible.

(b) The certified statement shall prescribe the boundaries of the district as defined by the state board. [40.04 s. 6]

Subd. 10. SECRETARY OF STATE'S CERTIFICATE. (a) The secretary of state shall examine the application of the supervisors and certified statement of the state board and, on finding that the name proposed for the district is not identical to the name of another district in the state, and is not so similar as to lead to confusion or uncertainty, the secretary of state shall receive, file, and record the application and statement.

(b) If the secretary of state finds that the name proposed for the district is identical with the name of another district, or so similar as to lead to confusion and uncertainty, the secretary of state shall certify the fact to the state board. The state board shall submit to the secretary of state a new name for the district that does not have the defect. Upon receipt of a new name, free of defect, the secretary of state shall record the application and statement, with the new name.

(c) After the application and statement have been made, filed, and recorded, the district is a governmental subdivision of the state.

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(d) The secretary of state shall issue to the supervisors a certificate, under the seal of the state, of the organization of the district and record the certificate with the application and statement.

(e) The boundaries of the district consist of the area determined by the state board, but may not include area in another district. The area of a home rule charter or statutory city within the boundaries of a district is included in the district. If there is a question of whether an area is within or outside of a district, the state board shall determine whether the area of a city is included. [40.04 s. 6]

**Subd. 11. CERTIFICATE OF ORGANIZATION AS EVIDENCE.** In a suit, action, or proceeding involving the validity of, enforcement of, or relating to, a contract, proceeding, or action of a district, the district is considered to have been established in accordance with this section upon proof of the issuance of the certificate by the secretary of state. A copy of the certificate, certified by the secretary of state, is admissible in evidence in the suit, action, or proceeding and is proof of its filing and contents. [40.04 s. 9]

#### Sec. 6. [103C.205] ANNEXING ADDITIONAL AREA.

(a) Land occupiers may file a petition to include additional area within an existing district with the state board. The procedure for a petition to establish a district shall be followed on a petition to include additional area. The state board shall prescribe the form for the petition, which shall be as nearly as possible in the form for a petition to organize a district.

(b) If the number of land occupiers in the area proposed for inclusion is less than 25, the petition may be filed when signed by a majority of the land occupiers in the area and a referendum need not be held.

(c) In a referendum to include additional area, all land occupiers within the proposed additional area may vote.

(d) It is not necessary to obtain the consent of the owners within the district before the additional area is annexed to a district. [40.04 s. 8]

#### Sec. 7. [103C.211] CONSOLIDATION AND DIVISION OF DISTRICTS.

(a) A petition to consolidate two or more districts or to separate a district into two or more districts may be filed with the state board by 25 or more land occupiers within the affected districts. It is not necessary to obtain the consent of fee owners in an established district before districts are consolidated or an existing district is divided. Proceedings provided for petitions to organize a district shall be followed as far as they are applicable. The state board shall prescribe the form for a petition, which shall be as nearly as possible in the form for petitions to organize a district.

(b) The land occupiers within the affected districts may vote in the referendum. The state board may not determine the administrative feasibility of consolidating or separating districts unless a majority of the votes cast in the referendum within each separate district affected, or within each separate area

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sought to be made a separate district, is in favor of the consolidation or separation.

(c) When districts are consolidated or separated, the corporate existence and terms of office of the officers of the old districts expire upon the issuance and recording by the secretary of state of a certificate of organization of the new districts. Upon consolidation, the rights and liabilities of the consolidating districts shall be assumed by the consolidated district. Upon separation, the rights and liabilities of the original district shall be vested in and assumed by the new districts in an equitable proportion determined by the state board. A separation does not affect the term of office for which a supervisor was elected or appointed. The supervisor shall continue to represent the district where the supervisor resides for that full term. [40.04 s. 8]

**Sec. 8. [103C.215] CHANGE OF NAME.**

The name of a district may be changed with the approval of the state board, after the adoption of a resolution by a majority of the supervisors stating the new name, by filing a certified copy of the resolution with the secretary of state. [40.04 s. 10]

**Sec. 9. [103C.221] CHANGE OF LOCATION OF PRINCIPAL OFFICE.**

The location of the principal office of the district board may be changed with the approval of the state board after the adoption of a resolution by a majority of the district board stating the new location, and by filing a certified copy of the resolution with the secretary of state. [40.04 s. 11]

**Sec. 10. [103C.225] DISCONTINUANCE OF DISTRICTS.**

Subdivision 1. PETITION FOR TERMINATION. (a) After five years after the organization of a district, 25 occupiers of land in the district may file a petition with the state board asking that the operations and existence of the district be terminated.

(b) The state board may not receive a petition, conduct a referendum, or make a determination on a petition to discontinue a district more often than once in two years. [40.14]

Subd. 2. HEARINGS. The state board may conduct public meetings and public hearings upon the petition as necessary to assist in consideration of the petition. [40.14]

Subd. 3. REFERENDUM. (a) Within 60 days after the petition is received by the state board, it shall give due notice of the holding of a referendum, supervise the referendum, and issue appropriate regulations governing the conduct of the referendum.

(b) The question shall be submitted by ballots, upon which the words "For

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terminating the existence of the ..... (name of the soil and water conservation district to be here inserted)" and "Against terminating the existence of the ..... (name of the soil and water conservation district to be here inserted)" shall be printed, with a square before each proposition and a direction to insert an X mark in the square before one or the other.

(c) Only land occupiers in the district may vote in the referendum.

(d) Informalities in the conduct of the referendum or matters relating to the referendum do not invalidate the referendum, or result of the referendum, if due notice has been given and the referendum has been fairly conducted.

(e) The state board shall publish the result of the referendum. [40.14]

Subd. 4. DETERMINATION BY STATE BOARD. (a) The state board shall determine whether the continued operation of the district board is administratively feasible and give consideration to the public policy under article 1, section 6, and:

(1) the attitudes of the occupiers of lands lying within the district;

(2) the number of land occupiers eligible to vote in the referendum who have voted;

(3) the proportion of the votes cast in the referendum in favor of the discontinuance of the district to the total number of votes cast;

(4) the approximate wealth and income of the land occupiers of the district;

(5) the probable expense of carrying on erosion-control operations within the district; and

(6) other economic and social factors relevant to the determination.

(b) If the state board determines that the continued operation of the district is administratively feasible, the state shall record the determination and deny the petition.

(c) If the state board determines that the continued operation of the district is not administratively feasible, the state board shall record the determination and certify the determination to the district board. The state board may not determine that the continued operation of the district is administratively feasible unless at least a majority of the votes cast in the referendum have been cast in favor of continuance. [40.14]

Subd. 5. TERMINATION OF DISTRICT AFFAIRS. Upon receipt from the state board of a certification that the state board has determined that the continued operation of the district is not administratively feasible, the district board shall promptly terminate the affairs of the district. The district board shall dispose of all property belonging to the district at public auction and pay the proceeds into the state treasury. [40.14]

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Subd. 6. APPLICATION TO SECRETARY OF STATE. The district board shall then file a verified application with the secretary of state to discontinue the district with the certificate of the state board setting forth its determination that the continued operation of the district is not administratively feasible. The application shall recite that the property of the district has been disposed of and the proceeds paid as provided in this section, and set forth a full accounting of the property and proceeds. [40.14]

Subd. 7. CERTIFICATE OF DISSOLUTION. The secretary of state shall issue to the district board a certificate of dissolution and record the certificate in the secretary of state's office. [40.14]

Subd. 8. EFFECT OF DISSOLUTION. Upon issuance of the certificate of dissolution, the ordinances and regulations in force in the district are of no further force. All contracts entered into, to which the district or district board were parties, shall remain in force and effect for the period provided in the contracts. The state board shall be substituted for the district or district board as party to the contracts and succeed to the district's rights and duties. [40.14]

**Sec. 11. [103C.231] COOPERATION BETWEEN DISTRICTS AND OTHER PUBLIC AGENCIES.**

Subdivision 1. COOPERATION WITH OTHER AGENCIES. (a) The district boards of two or more districts may cooperate with one another or with appropriate agencies to exercise powers conferred in this chapter or article 6, sections 57 to 68. [40.12]

(b) The district board may make contracts or other arrangements with:

(1) the federal government;

(2) persons or public or private corporations; and

(3) the government of this state or other states.

(c) A soil and water conservation district may join or cooperate by agreement as provided in section 471.59 with another soil and water conservation district or a watershed district, or a governmental unit defined in section 471.59, or with a combination of them in an operation or project in which the soil and water conservation district and the other party have a common interest. For the purposes of this section, soil and water conservation districts and watershed districts are governmental units under section 471.59. [40.12]

Subd. 2. COOPERATION AMONG DISTRICTS. (a) If the improvement work unit covers two districts, a joint board made up of three supervisors from each of the district boards shall preside. If the improvement work unit covers three or more districts, a joint board made up of two supervisors from each district board shall preside. The individual boards shall appoint the supervisors to represent them on the joint board.

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(b) The joint board shall accept and approve initial requests for improvement work units, direct the preparation of preliminary surveys and studies, establish improvement work units, and, at the direction of the county boards, adopt programs and reports, award contracts, supervise construction, and accept completed construction work. [40.12]

**Sec. 12. [103C.235] STATE AGENCIES TO COOPERATE.**

State agencies which have jurisdiction over or administer state-owned lands, and agencies of a county, or other governmental subdivision, that have jurisdiction over or administer county-owned or other publicly owned lands that are in a district, shall cooperate with the district boards to implement programs and operations undertaken by the district board under this chapter and article 6, sections 57 to 68. The district board shall have free access to enter and perform work on the affected lands. [40.13]

**DISTRICT BOARDS**

**Sec. 13. [103C.301] INITIAL ELECTION OF SUPERVISORS.**

Subdivision 1. NOMINATING PETITIONS. Within 30 days after the date that the secretary of state issues a certificate of organization of a district, or during additional time as the state board may allow, nominating petitions may be filed with the state board nominating legal voters as candidates for election as supervisors. Two supervisors shall be elected for terms to expire on December 31 following the second general election after their initial election, and one for a term to expire on December 31 following the third general election after their initial election. Each petition must be signed by one or more legal voters of the district. If a person signs petitions nominating more than three candidates, the signature may not be counted on any petition. [40.05 s. 1]

Subd. 2. NOTICE OF ELECTION. The state board shall give due notice of the time and place where the election will be held in the district, and specify in the notice the names of all candidates and the terms for which they are nominated. [40.05 s. 1]

Subd. 3. BALLOTS. The state board shall prepare ballots for the election with the surnames of the candidates printed in alphabetical order for each term, a square before each name, and a direction to insert an X mark in the square before three names with different terms to indicate the voter's choice. [40.05 s. 1]

Subd. 4. VOTING. All legal voters shall be eligible to vote at the election. [40.05 s. 1]

Subd. 5. ELECTION. The three candidates who receive the highest numbers respectively of the votes cast for each of three positions at the election shall be the elected supervisors. In case of a tie, the election shall be determined by lot, under the direction of the state board. The state board shall supervise the

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election, pay expenses of the election, prescribe rules for the election, determine the eligibility of voters, and publish the results. [40.05 s. 1]

Subd. 6. ELECTED SUPERVISOR TERM. Except to fill a vacancy, supervisors shall be elected for six-year terms. [40.05 s. 2]

**Sec. 14. [103C.305] GENERAL ELECTION OF SUPERVISORS.**

Subdivision 1. TIME FOR ELECTION. Except for elections under section 13 held after the organization of the district, elections must be held at the state general election specified in section 204D.03, subdivision 2. A primary may not be held. [40.05 s. 3]

Subd. 2. NOMINATING PETITION. (a) The district secretary shall immediately submit the names of the candidates and the terms for which each candidate is nominated to the county auditor.

(b) Nominating petitions conforming to section 13, subdivision 1, shall be filed with the secretary of the district at least 60 days before the general election. [40.05 s. 3]

Subd. 3. BALLOTS. Ballots shall be prepared by the county auditor. The names of candidates shall be placed on the "canary ballot" described in section 204D.11, subdivision 3. [40.05 s. 3]

Subd. 4. ELECTION. Laws relating to elections for county office shall govern to the extent that they are consistent with this section and section 15. The county auditor shall certify the result to the state board. If the district includes land in more than one county, the county auditor shall immediately certify to the state board the vote, as shown by the report of the county canvassing board, for candidates voted for in more than one county. In the latter case, the state board shall certify and publish the result. [40.05 s. 3]

Subd. 5. ELECTION WITHIN AREAS GOVERNED BY INDIAN TRIBES. In a district where a supervisor nomination district is entirely within lands of an American Indian tribe or band to which county election laws do not apply, a supervisor to represent the district shall be elected or appointed as provided by the governing body of the tribe or band. [40.05 s. 3a]

Subd. 6. VACANCY. (a) If a vacancy occurs in the office of an elected supervisor, more than 60 days before the next general election, the district board shall fill the vacancy by appointment. The supervisor appointed shall hold office until December 31 following the next general election. A successor shall be elected at the general election following the appointment and hold office for the remainder of the term or for the next regular term, whichever is appropriate.

(b) If a vacancy occurs less than 60 days before the next general election, the district board shall fill the vacancy by appointment. The appointed supervisor shall hold office until the expiration of the term or until December 31 following the second succeeding general election, whichever is shorter. A successor shall

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be elected at the general election preceding expiration of the appointed term and hold office for the remainder of the term or for the next regular term, whichever is appropriate. [40.05 s. 4]

**Sec. 15. [103C.311] FORMATION OF SUPERVISOR DISTRICTS.**

(a) The district board, after two successive annual elections have been held, shall, with the approval of the state board, divide a district into five supervisor districts for purposes of nomination for election. At each election after the division, one or more supervisors shall be nominated from each supervisor district.

(b) If the boundary of a soil and water conservation district has been substantially changed by a division of the district, the district shall be divided into five supervisor districts for nomination purposes.

(c) This subdivision does not disqualify a supervisor during the term for which the supervisor was elected or nominated for election. Supervisors nominated from the supervisor districts shall be included on the ballot for election from the entire area included in the soil and water conservation district.

(d) A certified copy of the minutes or the resolution of the supervisors establishing supervisor districts must be promptly filed by the chair of the district board with the county auditor of the counties where the district is located and with the state board. [40.04 s. 12]

**Sec. 16. [103C.315] SUPERVISORS.**

Subdivision 1. MEMBERS. (a) The district board shall consist of five supervisors, elected or appointed as provided in section 5, subdivision 8, and sections 13 and 14.

(b) Supervisors must be legal voters residing in the district. [40.06 s. 1]

Subd. 2. TERMS. The two supervisors appointed by the state board upon the establishment of a district shall serve terms ending on December 31 following the next general election after their appointment. Their successors shall be elected for terms of six years. [40.06 s. 1]

A supervisor shall hold office until a successor is elected or appointed and has qualified. Vacancies in the office of supervisor appointed by the state board shall be filled by the state board. [40.06 s. 2]

Subd. 3. QUORUM. A majority of the supervisors is a quorum and the concurrence of a majority in any matter is required for its determination except as otherwise expressly provided. [40.06 s. 2]

Subd. 4. COMPENSATION. A supervisor shall receive compensation for services as the state board may determine, and may be reimbursed for expenses, including traveling expenses, necessarily incurred in the discharge of duties. A [Bracketed paragraph notes cite text sources]

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supervisor shall be reimbursed for the use of the supervisor's own automobile in the performance of duties at the rate per mile prescribed for state officers and employees. [40.06 s. 2]

Subd. 5. REMOVAL OF SUPERVISOR. A supervisor may be removed by the state board upon notice and hearing, for neglect of duty or malfeasance in office, but for no other reason. [40.06 s. 4]

**Sec. 17. [103C.321] OFFICERS AND EMPLOYEES.**

Subdivision 1. OFFICERS. (a) The supervisors shall elect or appoint officers for the district and the district board.

(b) A chair of the district board shall be elected from its own members.

(c) A secretary and a treasurer shall be appointed who need not be members of the board.

(d) Officers serve at the pleasure of the supervisors. Officers shall have the powers and duties incident to their respective offices, and other powers and duties expressly prescribed by law or directed by the district board. [40.06 s. 3]

Subd. 2. EMPLOYEES. The district board may employ technical experts and other officers, agents, and employees, permanent and temporary, as they may require. The supervisors shall determine their qualifications, duties, and compensation. [40.06 s. 3]

Subd. 3. EMPLOYEE AND OFFICER BONDS. The district board shall provide for the execution of surety bonds for all employees and officers who are entrusted with funds or property. [40.06 s. 4]

Subd. 4. ATTORNEY. The county attorney of the county where the major portion of the district is located or one otherwise employed by the board shall be the attorney for the district and its supervisors. The district board may call upon the county attorney for necessary legal counsel and advice and service. [40.06 s. 3]

Subd. 5. DELEGATION OF DUTIES. The district board may delegate to its chair or other officer, to one or more supervisors, or to one or more agents or employees the powers and duties they deem proper. [40.06 s. 3]

**Sec. 18. [103C.325] RECORDS, AUDIT, INFORMATION TO STATE BOARD.**

Subdivision 1. RECORDS. The district board shall keep a full and accurate record of all proceedings and resolutions, regulations, and orders issued or adopted. [40.06 s. 4]

Subd. 2. AUDIT. The state auditor shall annually audit the books of the district and its supervisors, or, at the request of the district board, the state

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auditor may contract for an annual audit by a certified public accountant. The state auditor may determine that an annual audit of a district is not necessary, in which case an audit shall be made at least every four years. [40.06 s. 4]

Subd. 3. INFORMATION TO STATE BOARD. The supervisors shall furnish to the state board, upon request, copies of the ordinances, rules, regulations, orders, contracts, forms, and other documents that they adopt or use, and other information concerning their activities as the state board requires in the performance of its duties under this chapter. [40.06 s. 3]

**Sec. 19. [103C.331] POWERS OF DISTRICT BOARDS.**

Subdivision 1. GENERAL AUTHORITY. A soil and water conservation district is a governmental and political subdivision of this state, and a public body, corporate and politic, and has the following powers in addition to any others prescribed by law. [40.07 s. 1]

Subd. 2. ADVISORY ASSISTANCE. The supervisors may invite the legislative body of a municipality or county in the district to designate a representative to advise and consult with the supervisors of the district on questions of program and policy that may affect the property, water supply, or other interests of the municipality or county. [40.06 s. 5]

Subd. 3. SURVEYS, INVESTIGATIONS, AND RESEARCH. A district may conduct surveys, investigations, and research to identify the problems and preventive practices specified in article 1, section 6. To avoid duplication of research activities, no district shall initiate any research program except in cooperation with a state agency or an agency of the United States. [40.07 s. 2]

Subd. 4. PUBLICATION OF INFORMATION. A district may publish its comprehensive plan and the results of its surveys, investigations, and research and may disseminate information to the public concerning any of its activities. [40.07 s. 2]

Subd. 5. DEMONSTRATION PROJECTS. A district may conduct demonstration projects within the district on lands owned or administered by a state agency, with the cooperation of the administering agency, and on other lands with the consent of the land occupier, to demonstrate practices which implement the state policy specified in article 1, section 6. [40.07 s. 3]

Subd. 6. IMPLEMENTATION OF PRACTICES. A district may implement any necessary practices within the district, including structural measures and works of improvement for any purpose specified in article 1, section 6, methods of cultivation, the use of vegetation, and changes in use of land, on:

(1) lands acquired by the district;

(2) lands owned or administered by a state agency, with the cooperation of the administering agency; and

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(3) other lands, with the consent of the land occupier. [40.07 s. 4]

**Subd. 7. IMPLEMENTATION OF SOIL AND WATER CONSERVATION POLICY.** A district may cooperate or enter into agreements with and furnish financial or other aid to a land occupier or appropriate agency, to implement the policy specified in article 1, section 6, within the district, subject to conditions the district board determines is necessary. [40.07 s. 5]

**Subd. 8. ACQUISITION AND MAINTENANCE OF PROPERTY.** A district may acquire any rights or interests in real or personal property by option, purchase, exchange, lease, gift, grant, bequest, devise, or otherwise. It may maintain, operate, administer, and improve any properties acquired. It may receive income from the properties and expend the income to implement this chapter and article 6, sections 57 to 68. It may sell, lease, or otherwise dispose of any of its property or interests. [40.07 s. 6]

**Subd. 9. USE OF MACHINERY AND SUPPLIES.** A district may make available, on terms it shall prescribe, to land occupiers within the district, agricultural and engineering machinery and equipment, fertilizer, seeds, and seedlings, and other material or equipment which will assist land occupiers to implement practices on their land specified in section 2. [40.07 s. 7]

**Subd. 10. CONSTRUCTION OF IMPROVEMENTS.** A district may construct, install, improve, maintain, and operate structures and works necessary or convenient to perform an operation authorized under this chapter and article 6, sections 57 to 68. [40.07 s. 8]

**Subd. 11. COMPREHENSIVE PLAN.** (a) A district may develop and revise a comprehensive plan, specifying practices to implement the state policy specified in article 1, section 6, including:

- (1) the construction, maintenance, and operation of structural measures;
- (2) methods of cultivation;
- (3) the use of vegetation;
- (4) cropping programs;
- (5) mechanical practices;
- (6) changes in use of land;
- (7) other land use, soil erosion reduction, and agricultural practices; and
- (8) related technical standards and specifications.

(b) The plan shall include a classification of the soil types within the district as determined by the Minnesota cooperative soil survey.

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(c) The plan must identify the areas within the district where erosion, sedimentation and related water quality problems appear most in need of control methods.

(d) The plan shall be consistent with the statewide framework water resources plan, the statewide water quality management plan, and the state board's soil and water program plan. The plan shall be prepared as required by the rules of the state board.

(e) By August 1 of each even-numbered year, each district which applies for cost-sharing funds under section 23 shall submit to the state board an amendment of its comprehensive plan that identifies high priority erosion, sedimentation and water quality problems within the district as required by the rules of the state board.

(f) By August 1 of each year, each district that applies for cost-sharing funds under section 23 shall submit to the state board an annual work plan for the high priority erosion, sedimentation and water quality problems in the district. The work plan shall be prepared as required by the rules of the state board. In preparing the annual work plan, the district shall actively identify and seek out land occupiers with high priority erosion problems who have not participated in cost-sharing contracts and encourage their participation in programs to control their erosion problems. [40.07 s. 9]

Subd. 12. ASSUMPTION OF CONSERVATION PROJECTS. (a) A district may take over by purchase, lease, or otherwise, and may improve, maintain, operate, and administer a soil or water conservation, erosion-control, erosion-prevention, watershed protection, flood prevention or flood control project in its boundaries undertaken by the United States or by a state agency.

(b) A district may accept donations, gifts, grants, or contributions in money, services, materials, or otherwise from the United States, a state agency or other source to accomplish the authorization in this section. A board may enter into a contract or agreement necessary or appropriate to accomplish the transfer. A board may use or expend money, services, materials, or other things to accomplish an authorized purpose. [40.07 s. 10]

Subd. 13. AUTHORITY FOR SUIT AND CONTRACTS. A district may sue and be sued in its name, have perpetual succession unless terminated as provided in section 10, make and execute contracts and other instruments necessary or convenient to the exercise of its powers, and make, amend, or repeal rules and regulations consistent with this chapter and article 6, sections 57 to 68. [40.07 s. 11]

Subd. 14. COMPENSATION FOR WORK OR PROJECTS. As a condition for extending benefits for the performance of work upon lands not owned or administered by a state agency or the district, the supervisors may require compensation or contributions in money, services, materials, or otherwise, com-

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mensurate with the cost or reasonable value of the operations or work conferring the benefits. [40.07 s. 12]

**Subd. 15. AGREEMENTS FOR FEDERAL ASSISTANCE.** (a) A district may submit an application and enter into an agreement or contract with the secretary of agriculture or other designated authority to obtain or use federal assistance under any law providing for federal assistance for an authorized purpose of the district.

(b) A district may:

(1) acquire without cost to the federal government any land, easements, or rights-of-way needed in connection with works of improvement installed with federal assistance;

(2) assume the proportionate share of the cost of installing works of improvement involving federal assistance determined by the secretary or other designated authority to be equitable in consideration of anticipated benefits from the improvements;

(3) make arrangements satisfactory to the secretary or other authority to defray costs of operating and maintaining works of improvement in accordance with prescribed regulations;

(4) acquire or provide assurance that land occupiers have acquired the water rights and other rights, pursuant to state law, needed to install, maintain, and operate the works of improvement; and

(5) obtain agreements to carry out recommended soil and water conservation measures and prepare farm plans for owners of not less than 50 percent or other required percentage of the lands situated in a drainage area above a retention reservoir installed with federal assistance, as prescribed by applicable federal law, and may do any other acts necessary to secure and use federal aid. [40.07 s. 14]

**Subd. 16. BUDGET.** The district board shall annually present a budget consisting of an itemized statement of district expenses for the ensuing calendar year to the boards of county commissioners of the counties in which the district is located. The county boards may levy an annual tax on all taxable real property in the district for the amount that the boards determine is necessary to meet the requirements of the district. The amount levied shall be collected and distributed to the district as prescribed by chapter 276. The amount may be spent by the district board for a district purpose authorized by law. [40.07 s. 15]

**Subd. 17. FUNDS FOR STATE AND NATIONAL ASSOCIATIONS.** A district may appropriate funds to provide membership in state and national associations that have as their purpose the betterment and improvement of soil and water conservation district operations. A district may participate through

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designated representatives in the meetings and activities of the associations. A district may appropriate funds to defray the actual and necessary expenses of its representatives in connection with the associations' membership. The expenses may be paid only upon the presentation of a verified itemized claim. [40.07 s. 16]

Subd. 18. LIABILITY INSURANCE. A district may procure liability insurance as provided in section 466.06, automobile insurance on personal cars while used on official business, insurance on the contents of district offices, and workers' compensation insurance, or may require the counties in which the district is located to include the district in the counties' insurance coverage for these purposes. [40.071]

**Sec. 20. [103C.335] TECHNICAL AND ADMINISTRATIVE ASSISTANCE TO DISTRICTS.**

At the request of local districts, the agricultural extension service of the University of Minnesota, county extension committees, and county extension agents shall:

(1) advise the districts in developing their comprehensive plan amendments and annual work plans;

(2) in cooperation with the districts and the soil conservation service of the United States Department of Agriculture, provide technical assistance and education to land occupiers about conservation tillage practices and other soil conservation practices; and

(3) participate in training district officials and employees in cooperation with the state board. [40.038]

**DUTIES OF THE STATE BOARD**

**Sec. 21. [103C.401] BOARD OF WATER AND SOIL RESOURCES.**

Subdivision 1. POWERS AND DUTIES. In addition to the powers and duties of the state board provided by other law, the state board shall:

(1) receive and disburse any grants made available to the state by the United States Department of Agriculture under the preferred program developed under United States Code, title 16, sections 2001 to 2009;

(2) offer to assist the district boards to implement their programs;

(3) keep the district boards of the state informed of the activities and experience of other districts and facilitate cooperation and an interchange of advice and experience among the districts;

(4) coordinate the programs and activities of the districts with appropriate agencies by advice and consultation;

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(5) approve or disapprove the plans or programs of districts relating to the use of state funds administered by the state board;

(6) secure the cooperation and assistance of agencies in the work of the districts and develop a program to advise and assist appropriate agencies in obtaining state and federal funds for erosion, sedimentation, flooding, and agriculturally related pollution control programs;

(7) develop and implement a public information program concerning the districts' activities and programs, the problems and preventive practices relating to erosion control, sedimentation, agriculturally related pollution, flood prevention, and the advantages of formation of districts in areas where their organization is desirable;

(8) divide and consolidate districts without a hearing or a referendum to confine districts within county limits, without allowing a district, if feasible and practicable, to contain less than four full or fractional congressional townships;

(9) assist the statewide program to inventory and classify the types of soils in the state as determined by the Minnesota cooperative soil survey;

(10) identify research needs and cooperate with other public agencies in research concerning the nature and extent of erosion, sedimentation, flooding and agriculturally related pollution, the amounts and sources of sediment and pollutants delivered to the waters of the state, and long-term soil productivity;

(11) develop structural, land use management practice, and other programs to reduce or prevent soil erosion, sedimentation, flooding, and agriculturally related pollution;

(12) develop a system of priorities to identify the erosion, flooding, sediment, and agriculturally related pollution problem areas that most need control systems; and

(13) ensure compliance with statewide programs and policies established by the state board by advice, consultation, and approval of grant agreements with the districts. [40.03 s. 4]

Subd. 2. USE OF FUNDS. (a) Funds made available to a district from the state for expenditures necessary for its operations may be used only for purposes authorized by the state board.

(b) A district may designate the board of county commissioners to act as the agent of the district to receive and expend the funds at the direction and with the approval of the district board.

(c) At least annually the state board shall audit, in a manner it prescribes, the expenditure of the funds. [40.03 s. 4]

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Sec. 22. [103C.405] PROGRAM PLAN.

Subdivision 1. CONTENTS. The state board shall prepare, in consultation with the districts and appropriate agencies, a program plan to accomplish its duties. The state board shall use the program plan in decisions to allocate funds to districts. The state board shall emphasize the determination of priority areas where erosion, sedimentation, and related water quality problems appear most in need of control and the development of the comprehensive public information program. [40.035 s. 1]

Subd. 2. INFORMATIONAL HEARING ON PLAN. To develop the program plan, the state board may request existing pertinent information from state agencies and may conduct hearings. [40.035 s. 2]

Subd. 3. COORDINATION WITH STATE RESOURCE PLANS. The program plan shall be coordinated as closely as possible with the statewide framework water resources plan, the statewide water quality management plan, and other statewide resource plans. [40.035 s. 3]

Subd. 4. REVIEW AND REVISION. The state board shall review and revise the program plan at intervals it deems appropriate. [40.035 s. 4]

COST-SHARING CONTRACTS

Sec. 23. [103C.501] COST-SHARING CONTRACTS FOR EROSION CONTROL AND WATER MANAGEMENT.

Subdivision 1. COST SHARE AUTHORIZATION. The state board may allocate available funds to districts to share the cost of systems or practices for erosion or sedimentation control or water quality improvement that are designed to protect and improve soil and water resources. [40.036 s. 1]

Subd. 2. REQUEST BY DISTRICT BOARD. (a) A district board requesting funds of the state board must submit an application in a form prescribed by the board containing:

- (1) a comprehensive plan;
- (2) an annual work plan; and
- (3) an application for cost-sharing funds.

(b) The comprehensive and annual work plans must be completed as provided in section 19, subdivision 11. After review of the district's comprehensive plan, the state board must approve the comprehensive plan with necessary amendments or reject the plan. [40.036 s. 1]

Subd. 3. APPROVAL OF APPLICATION. If the state board approves the comprehensive plan, including the plan's most recent amendment, the annual

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work plan, and the application of the district, the state board shall determine the specific amount of funds to allocate to the district for cost-sharing contracts. [40.036 s. 1]

Subd. 4. COST-SHARING FUNDS. (a) The state board shall allocate at least 70 percent of cost-sharing funds to areas with high priority erosion, sedimentation, or water quality problems. The areas must be selected based on the statewide priorities established by the state board. The allocated funds must be used for conservation practices for high priority problems identified in the comprehensive and annual work plans of the districts.

(b) The remaining cost-sharing funds may be allocated to districts as follows:

(1) for technical and administrative assistance, not more than 20 percent of the funds; and

(2) for conservation practices for lower priority erosion, sedimentation, or water quality problems. [40.036 s. 1]

Subd. 5. CONTRACTS BY DISTRICTS. (a) A district board may contract on a cost-share basis to furnish financial aid to a land occupier or to a state agency for permanent systems for erosion or sedimentation control or water quality improvement that are consistent with the district's comprehensive and annual work plans. [40.036 s. 2]

(b) The duration of the contract may be the time required to complete the planned systems. A contract must specify that the land occupier is liable for monetary damages, not to exceed the amount of financial assistance received from the district, for failure to complete the systems or practices in a timely manner or maintain the systems or practices as specified in the contract. [40.036 s. 2]

(c) A contract may provide for cooperation or funding with federal agencies. A land occupier or state agency may provide the cost-sharing portion of the contract through services in kind. [40.036 s. 2]

(d) The state board or the district board may not furnish any financial aid for practices designed only to increase land productivity. [40.036 s. 1]

Subd. 6. RULES. The state board shall adopt rules prescribing:

(1) procedures and criteria for allocating funds for cost-sharing contracts;

(2) standards and guidelines for cost-sharing contracts;

(3) the scope and content of district comprehensive plans, plan amendments, and annual work plans;

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(4) standards and methods necessary to plan and implement a priority cost-sharing program, including guidelines to identify high priority erosion, sedimentation, and water quality problems;

(5) the share of the cost of conservation practices to be paid from cost-sharing funds; and

(6) requirements for districts to document their efforts to identify and contact land occupiers with high priority erosion problems. [40.036 s. 3]

## WORKS OF IMPROVEMENT

### Sec. 24. [103C.601] WORKS OF IMPROVEMENT.

Subdivision 1. AUTHORITY. (a) The district board may, if directed by resolution of the boards of commissioners from the counties where the district is located undertake, construct, install, maintain, and operate works of improvement for a district purpose. The district board may:

(1) use the proceeds of tax levies, assessments, and other available funds for the works of improvement;

(2) acquire necessary real or personal property by purchase or gift for the works of improvement;

(3) contract, survey, plan, construct, install, maintain, and operate the works of improvement; and

(4) exercise other authorized powers.

(b) Two or more district boards may jointly exercise the powers granted by this section. [40.072 s. 1]

Subd. 2. REQUEST FOR PROJECT. A program for works of improvement in any area within one or more districts may be initiated upon written request for a project submitted to the district board by one or more of the owners of land in the affected area. The request must include:

(1) a general description of the area proposed for inclusion in an improvement work unit, with a proposed name or number for the project;

(2) a description of the affected land owned by the signers; and

(3) a statement of the objectives of the proposed works in furtherance of the authorized purposes, the grounds upon which the project will be of public benefit and utility and promote the public health, safety, and welfare, and special benefits to property that will result from the project. [40.072 s. 2]

Subd. 3. DETERMINATION BY DISTRICT BOARD. As soon as practi-  
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cable after receipt of the request the district board shall have necessary preliminary surveys and studies conducted. [40.072 s. 2]

Subd. 4. RESOLUTION OF ESTABLISHMENT. (a) The district board may, by resolution, recommend the establishment of an improvement work unit and a program for works of improvement in the work unit to the boards of county commissioners of the counties where the affected land is located if the district board determines the proposed works of improvement:

- (1) are feasible;
- (2) will be of public utility and benefit;
- (3) will promote the public health, safety, and welfare; and
- (4) will further the authorized purposes and best interests of the district.

(b) The district board shall by resolution give the improvement work unit an appropriate name or number, which may be different from the one proposed in the initial project request.

(c) The resolution shall recommend definite boundaries for the improvement work unit, which may be those proposed in the request or modified as the district board deems advisable.

(d) In the resolution the district board may also enlarge, reduce, or otherwise modify the proposed objectives of the program, but not make a substantial change in its main purposes as stated in the initial project request unless consented to in writing by the signers of the request.

(e) At any time before further action is taken on the project as provided in section 25 the district board may amend the resolution, subject to the foregoing limitations. [40.072 s. 2]

Subd. 5. PRELIMINARY GENERAL PLAN. (a) After adoption of the resolution recommending the improvement work unit and program under subdivision 4, the district board after being directed by resolution of the affected boards of county commissioners may have further surveys and studies made as necessary.

(b) The district board may then have a preliminary general plan with cost estimates made to implement the program for the improvement work unit or part of the work unit. [40.072 s. 3]

Subd. 6. FINANCIAL AID. (a) The district board, at the direction of the affected county boards, may apply for federal aid, state aid, or aid available from other sources for the works of improvement in the program or part of the works of improvement under federal or state law.

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(b) The district board may take the steps necessary to determine whether aid will be available and the amount of the aid. The district board may consider how the cost of the works not expected to be paid by federal or other aid may be met from funds of the district or from the proceeds of assessments on benefited property or otherwise, and the district board may make estimates of the amounts and sources. [40.072 s. 3]

Subd. 7. NECESSARY COOPERATION OR JOINT ACTION. If the cooperation or joint action of an adjacent district or other public agency is desirable for the program, the district board, at the direction of the affected county boards, may negotiate with the authorities concerned for cooperation or joint action. [40.072 s. 3]

Subd. 8. RECOMMENDATION REPORT. (a) After completion of the requirements in subdivisions 1 to 7, the district board may make and file a recommendation report, summarizing findings and recommendations for further action on all or part of the program and containing substantially the engineering information required by article 4, section 55, subdivisions 1 to 3.

(b) The district board shall make the recommendation report and the preliminary general plan for the improvement work unit available to the affected county boards and to all other public agencies and concerned persons, and may provide other publicity that it deems advisable. The district board shall transmit a copy of the recommendation report and preliminary general plan to regional development agencies where the project is located. If the preliminary general plan involves a project for which a water use permit or public waters works permit is required from the commissioner of natural resources under chapter 103G, or for which proceedings will be instituted under chapter 103E, the district board shall transmit the recommendation report and plan to the commissioner of natural resources and to the state board. [40.072 s. 3]

Subd. 9. STATE BOARD REVIEW. (a) The state board shall review the recommendation report and preliminary general plan and, if the state board concludes that the plan is inconsistent with systematic administration of state water policy, the state board shall report the conclusion to the district board and the commissioner of natural resources within 60 days after receiving the recommendation report and preliminary general plan.

(b) The district board may modify and retransmit the recommendation report and preliminary general plan to the state board, or request a hearing on the recommendation report and preliminary general plan. The state board shall hear the matter in the manner and following the procedures provided in article 1, sections 15 to 19, for the hearing of cases when the state board consents to intervention proceedings.

(c) Unless the state board concludes that the report and plan are inconsistent with state water policy, the district board, with the approval of the county boards, may adopt and sponsor the improvement work unit and a program of work for the unit. [40.072 s. 3]

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**Sec. 25. [103C.605] COUNTY DETERMINATION OF PROJECT.**

Subdivision 1. PETITION. (a) The county board or joint county board, acting jointly under section 471.59, may take action on a project within the improvement work unit to construct or install works of improvement or part of the works of improvement pursuant to the recommendation report after receiving a petition.

(b) The petition must be for a project signed by:

(1) at least 25 percent of the owners of the land over which the proposed improvement work passes;

(2) at least 25 percent of the owners of land where the proposed improvement is located;

(3) the owners of at least 30 percent of the land area over which the proposed improvement work passes; or

(4) the owners of at least 30 percent of the land area where the proposed project is located.

(c) The petition must describe the land and request the county board or joint county board to hold a hearing on the practicability and desirability of implementing the project in accordance with the preliminary general plan and the recommendation report of the district board.

(d) If the recommendation report specifies that part of the cost of the project is to be paid from the proceeds of assessments on benefited property, one or more of the petitioners, upon filing the petition and before action is taken on the petition, must file a bond to the county or counties conditioned as provided by article 5, section 27, for a county drainage system, to be approved by the chair of the board. [40.072 s. 4]

Subd. 2. HEARING. The county board or joint county board shall set a time and place for the hearing on the petition, and give notice of the hearing as provided in article 5, section 40, subdivision 1. [40.072 s. 4]

Subd. 3. RESOLUTION FOR FURTHER ACTION. (a) After the hearing the county board or joint county board may adopt a resolution directing further action on the project if it makes and states findings that implementation of the project as requested in the petition will be:

(1) feasible;

(2) in accordance with the recommendation report;

(3) in furtherance of the objectives and purposes of the recommendation report; and

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(4) within the estimated cost for which funds may reasonably be expected to be available.

(b) By the resolution the county board or joint county board shall determine the amount to be paid from the various sources of available or potentially available funds, including federal aid, district funds, assessments on benefited property, and other funds. The amount payable from district funds may not exceed the value of the general public benefit of the project to the district as determined by the district board. [40.072 s. 4]

**Sec. 26. [103C.611] PROJECT WITHOUT ASSESSMENTS.**

Subdivision 1. ORDER ESTABLISHING PROJECT. (a) If a portion of the project cost is not to be paid from assessments on benefited property, the county board or joint county board may proceed with complete surveys and detailed plans and specifications and make an order establishing the project. The order shall contain findings substantially conforming to those required by article 5, section 57, subdivision 2.

(b) Notice summarizing the findings and order shall be served upon the persons entitled to notice of a county drainage project in article 5, section 54, unless the notice is waived in writing by each person entitled to the notice. Waiver of notice must be filed with the county auditor. [40.072 s. 5]

Subd. 2. ACQUISITION OF PROPERTY AND MATERIALS. Unless an appeal is taken within 30 days after the notice is given, the county board or joint county board may proceed to acquire necessary rights or property, procure materials, let contracts, and take other steps appropriate to complete the project. [40.072 s. 5]

Subd. 3. DELEGATION OF DUTIES TO DISTRICT. The county board or joint county board may delegate its duties and powers under this section to the district board or joint district board but the district board or joint district board may not exercise the power of eminent domain. [40.072 s. 5]

**Sec. 27. [103C.615] ACTION ON PROJECT WITH ASSESSMENTS.**

Subdivision 1. VIEWERS. If part of the cost of the project is to be paid from the proceeds of assessments on benefited property, viewers must be appointed as provided in article 5, section 49, and report as required by article 5, sections 50, 51, and 52. [40.072 s. 6]

Subd. 2. ENGINEERING SERVICES. The board or joint board of county commissioners shall direct the petitioners or, with its consent, the district board or joint district board, to provide engineering services as necessary to produce final plans adequate for construction of the proposed improvement. [40.072 s. 6]

Subd. 3. HEARING. The county board or joint county board shall then give notice of and conduct a final hearing substantially in accordance with

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article 5, sections 54 to 57, as for a drainage proceeding, so far as the procedure is consistent with sections 24 to 31. [40.072 s. 6]

**Subd. 4. ASSESSMENTS GREATER THAN BENEFITS.** If the county board or joint county board determines that the total benefits to property are not as much as the amount payable from the proceeds of assessments as specified in the recommendation report of the district board, the petition shall be dismissed and further action on the project discontinued unless the county board or joint county board determines that the deficiency may be met by increasing the amount payable from other funds. [40.072 s. 6]

**Subd. 5. ESTABLISHMENT OF PROJECT.** (a) If it determines that the total benefits to property are as much as or more than the amount payable from the proceeds of assessments as specified in the report and that the other requirements of law have been complied with, the county board or joint county board shall by an order containing the findings establish the project as reported or amended and adopt and confirm the viewers' report as made or amended.

(b) If the total amount of benefits to be assessed upon property pursuant to the viewers' report as confirmed is greater than the amount specified as payable from assessments in the report of the district board, the county board or joint county board may reduce the amounts payable from other sources in proportions it may determine.

(c) Further action shall be taken as provided in chapter 103E, so far as is appropriate, except that each tract of land affected shall be assessed for the full amount of benefits, less damages, if any, as shown by the viewers' report as confirmed, unless the total amount of benefits, less damages, exceeds the total actual cost of the project to be paid from the assessments, in which case the cost shall be prorated as provided in article 5, section 77. [40.072 s. 6]

**Subd. 6. COUNTY FUNDING SHARE OF PROJECT.** (a) Upon filing of the viewers' report as provided in this section, the county board of each county affected shall provide funds to meet its proportionate share of the total cost of the improvement, as shown by the report and order of the county board or joint county board. The county may issue bonds for the purpose in the amount necessary in the manner provided in article 5, section 84.

(b) The provision of article 5, section 84, requiring the county board to let a contract for construction before issuing bonds does not apply to bonds issued to provide funds required to be furnished by this section. [40.072 s. 6]

**Subd. 7. DELEGATION OF DUTIES TO DISTRICT.** (a) The county board or joint county board, pursuant to agreement with the district board, may by resolution direct the district to undertake, construct, install, maintain, and operate the improvement upon mutually agreed terms. If it is necessary to acquire property by eminent domain, the county, or the counties acting jointly, shall do so and convey the property to the district pursuant to the agreement. [40.072 s. 6]

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(b) If, pursuant to an agreement, the responsibility for an improvement is vested in a district, the county treasurers shall transmit the proceeds of assessments or bond issues, when collected, to the treasurer of the district. The district treasurer shall credit the proceeds to the proper funds under the direction of the district board. [40.072 s. 6]

**Sec. 28. [103C.621] PROJECT BONDS.**

The county board may pledge the proceeds of assessments on property made for the purposes of a project, any revenues derived from the project, and the proceeds of tax levies or funds from other sources to pay bonds issued for the project. [40.072 s. 7]

**Sec. 29. [103C.625] STATUS OF DISCONTINUED PROJECT.**

If a project is discontinued after action on it has begun under section 25, the project shall have the same status as if the action had not begun. The recommendation report of the district board on the project shall continue to be subject to amendment, a new petition for further action may be made at any time as provided in section 25, and further proceedings conducted. [40.072 s. 8]

**Sec. 30. [103C.631] REPAIR.**

Subdivision 1. DEFINITION OF REPAIR. The term "repair" used in this section means to restore a work of improvement or part of it as nearly as practicable to the same condition as when originally constructed or subsequently improved. [40.072 s. 9]

Subd. 2. MAINTENANCE OF PROJECTS REQUIRED. After the construction of a project is completed and accepted by the board of the county or district board having authority over the project, the county board or district board shall maintain the project or the part of the project that is in its jurisdiction and provide the repairs required to keep the project efficient. [40.072 s. 9]

Subd. 3. REPAIR AUTHORITY. The county board or district board shall have the powers and duties of the drainage authority under article 5, sections 90 to 100, except as provided in subdivision 4. [40.072 s. 9]

Subd. 4. FINANCING REPAIRS. If the board is a district board, the financing of repairs which require assessments and bond issues shall be the responsibility of the county board or joint county board. The county board or joint county board shall finance repairs in the same way as original construction of the project and as provided in article 5, sections 90 to 100, so far as appropriate. [40.072 s. 9]

**Sec. 31. [103C.635] APPEALS.**

(a) A person aggrieved by an order of a county board or joint county board in a proceeding under sections 24 to 30 may appeal to the district court upon the grounds and in the manner provided by article 5, sections 19 and 20, for a county drainage proceeding.

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(b) Notices required by article 5, sections 19 and 20, to be filed with the county auditor shall also be filed with the district board or joint district board.

(c) An appeal may not be taken from an order made under section 26 or 27 by the board, joint board of county commissioners, district board, or joint district board if the order dismisses a petition or refuses to establish a project.  
[40.073]

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## ARTICLE 4

### CHAPTER 103D

#### WATERSHED DISTRICTS

##### Section 1. [103D.001] CITATION.

This chapter may be cited as "the watershed law." [112.34 s. 2]

##### Sec. 2. [103D.011] DEFINITIONS.

Subdivision 1. APPLICABILITY. The definitions in this section apply to this chapter. [112.35 s. 1]

Subd. 2. AFFECTED. "Affected" means the jurisdiction or property of an entity that receives benefits, is assessed costs, or is part of a watershed district.

Subd. 3. APPRAISERS. "Appraisers" means the persons appointed by the managers to determine and report benefits and damages arising from a proposed project. [112.35 s. 12]

Subd. 4. AUDITOR. "Auditor" means the county auditor of a county affected by a watershed district. [112.35 s. 9]

Subd. 5. BOARD. "Board" means the board of water and soil resources. [112.35 s. 4]

Subd. 6. CITY. "City" means a statutory or home rule charter city.

Subd. 7. COMMISSIONER. "Commissioner" means the commissioner of natural resources. [112.35 s. 14]

Subd. 8. COURT ADMINISTRATOR. "Court administrator" means the court administrator of the district court of the county where a judicial proceeding concerning a watershed district is pending. [112.35 s. 10]

Subd. 9. DIRECTOR. "Director" means the director of the division of waters of the department of natural resources. [112.35 s. 13]

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Subd. 10. ENGINEER. "Engineer" means the engineer designated by the managers to act as engineer. [112.35 s. 11]

Subd. 11. ESTABLISHMENT PETITION. "Establishment petition" means a petition to establish a watershed district, and may consist of one or more separate petitions. [112.35 s. 16]

Subd. 12. HEARING. "Hearing" means a hearing conducted by the managers or the board of water and soil resources. [112.35 s. 17]

Subd. 13. INTERESTED PARTY. "Interested party" means a person or political subdivision with an interest in the pending subject matter. Interested party includes the director or any agency of government. [112.35 s. 18]

Subd. 14. NOTICE BY MAIL. "Notice by mail" means a notice mailed and addressed to each person entitled to receive the notice if the address is known to the auditor or court administrator, or can be obtained at the office of the county treasurer of the affected county. [112.35 s. 20]

Subd. 15. MANAGERS. "Managers" means the board of managers of a watershed district. [112.35 s. 5]

Subd. 16. METROPOLITAN AREA. "Metropolitan area" has the meaning given in section 473.121, subdivision 2. [112.35 s. 22]

Subd. 17. MUNICIPALITY. "Municipality" means a statutory or home rule charter city.

Subd. 18. PERSON. "Person" means an individual, firm, partnership, association, or corporation, but does not include a political subdivision. [112.35 s. 2]

Subd. 19. PETITION. "Petition" means a petition to begin a project and may consist of one or more separate petitions. [112.35 s. 15]

Subd. 20. POLITICAL SUBDIVISION. "Political subdivision" means a county, town, school district, or a political division or subdivision of the state. Political subdivision does not mean a watershed district unless the context clearly indicates watershed districts are to be included. [112.35 s. 3]

Subd. 21. PROJECT. "Project" means planning and development, construction, maintenance, repair, or improvement of a watershed district for a purpose for which the watershed district is established. [112.35 s. 19]

Subd. 22. PUBLICATION. "Publication" means publication once a week for two successive weeks as provided in section 645.11. [112.35 s. 6]

Subd. 23. PUBLIC HEALTH. "Public health" means an act or thing that tends to improve the general sanitary conditions of the watershed district. [112.35 s. 7]

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Subd. 24. PUBLIC WELFARE, GENERAL WELFARE, PUBLIC BENEFIT. "Public welfare," "general welfare," and "public benefit" mean an act or thing that tends to improve, benefit, or contribute to the safety or well-being of the general public, or benefit the inhabitants of the watershed district. [112.35 s. 8]

Subd. 25. RESIDENT OWNER. "Resident owner" means a resident of the state who is the owner of property or the purchaser of property under a contract for deed. [112.35 s. 21]

#### BOARD OF WATER AND SOIL RESOURCES

##### Sec. 3. [103D.101] BOARD OF WATER AND SOIL RESOURCES.

Subdivision 1. DISTRICT ESTABLISHMENT AUTHORITY. The board has the authority after the filing of an establishment petition to:

(1) establish a watershed district;

(2) define the boundaries of the watershed district; and

(3) appoint the first board of managers of a watershed district. [112.36 s. 1]

Subd. 2. INVESTIGATIONS. To implement this chapter and to hold hearings, the chair and members of the board may subpoena witnesses, administer oaths, and compel the production of books, records, and other evidence. [112.39 s. 2]

Subd. 3. EXAMINATION OF WITNESSES. (a) The right to examine and cross-examine witnesses in board hearings is in the same manner as in civil actions.

(b) All persons must be sworn in before testifying.

(c) Witnesses must receive the same fees and mileage as in civil actions. [112.39 s. 2]

Subd. 4. RECORDS. The board must keep a record of all proceedings before it and file the record with the secretary of the board. Copies of the record may be obtained on terms and conditions prescribed by the board. [112.39 s. 2]

Subd. 5. RULES OF PRACTICE. The board may adopt rules of practice for its proceedings and hearings that are consistent with this chapter and other provisions of law. [112.40]

##### Sec. 4. [103D.105] BOARD HEARINGS.

Subdivision 1. PROCEDURE. (a) A rulemaking hearing must be conducted under chapter 14.

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(b) A hearing must be conducted as a contested case under chapter 14 if the hearing is:

- (1) in a proceeding to establish or terminate a watershed district; or
- (2) of an appeal under section 40.

(c) Notwithstanding chapter 14, other hearings under this chapter, except hearings under paragraphs (a) and (b), shall be conducted by the board under this section. The board may refer the hearing to one or more members of the board or an administrative law judge to hear evidence and make findings of fact and report them to the board. [112.401 s. 1]

**Subd. 2. PROCEDURE FOR NONCONTROVERSIAL PLANS OR PETITIONS.** (a) If the board finds that a watershed management plan or petition that would be given a hearing under subdivision 1, paragraph (c), is noncontroversial, the board may proceed under this subdivision. .

(b) The board must give notice that the watershed management plan or petition has been filed. The notice must be made:

- (1) by publication in a legal newspaper in each county affected by the watershed district;
- (2) by mail to the auditor of each county affected by the watershed management plan or petition; and
- (3) by mail to the chief executive officer of each city affected.

(c) The notice must:

- (1) describe the actions proposed by the plan or petition;
- (2) invite written comments on the plan or petition for consideration by the board;
- (3) state that a person who objects to the actions proposed in the plan or petition may submit a written request for hearing to the board within 30 days of the last publication of the notice of filing of the plan or petition; and
- (4) state that if a timely request for hearing is not received, the board may make a decision on the plan or petition at a future meeting of the board.

(d) If one or more timely requests for hearing are received, the board must hold a hearing on the plan or petition. [112.401 s. 2]

#### **Sec. 5. [103D.111] APPEAL OF BOARD ORDERS.**

A party that is aggrieved by the decision made by the order of the board may appeal the order to the district court. [112.401 s. 3]

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## ESTABLISHMENT OF DISTRICTS

## Sec. 6. [103D.201] WATERSHED DISTRICT PURPOSES.

Subdivision 1. GENERAL PURPOSES. To conserve the natural resources of the state by land use planning, flood control, and other conservation projects by using sound scientific principles for the protection of the public health and welfare and the provident use of the natural resources, the establishment of watershed districts is authorized under this chapter. [112.34 s. 1]

Subd. 2. SPECIFIC PURPOSES. A watershed district may be established for any of the following purposes:

- (1) to control or alleviate damage from flood waters;
- (2) to improve stream channels for drainage, navigation, and any other public purpose;
- (3) to reclaim or fill wet and overflowed land;
- (4) to provide a water supply for irrigation;
- (5) to regulate the flow of streams and conserve the streams' water;
- (6) to divert or change all or part of watercourses;
- (7) to provide or conserve water supply for domestic, industrial, recreational, agricultural, or other public use;
- (8) to provide for sanitation and public health, and regulate the use of streams, ditches, or watercourses to dispose of waste;
- (9) to repair, improve, relocate, modify, consolidate, and abandon all or part of drainage systems within a watershed district;
- (10) to control or alleviate soil erosion and siltation of watercourses or water basins;
- (11) to regulate improvements by riparian property owners of the beds, banks, and shores of lakes, streams, and wetlands for preservation and beneficial public use;
- (12) to provide for hydroelectric power generation;
- (13) to protect or enhance the water quality in watercourses or water basins;  
and
- (14) to provide for the protection of groundwater and regulate its use to preserve it for beneficial purposes. [112.36 s. 2]

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Sec. 7. [103D.205] ESTABLISHMENT PETITION.

Subdivision 1. FILING. To establish a watershed district, an establishment petition must be filed with the secretary of the board. [112.37 s. 1]

Subd. 2. REQUIREMENTS. (a) The establishment petition must state:

- (1) the name of the proposed watershed district;
  - (2) in general terms, a description of the property to be included in the watershed district;
  - (3) the necessity for the watershed district and the contemplated improvements within the watershed district;
  - (4) the reasons why the watershed district and the contemplated improvements would be conducive to public health and public welfare, or would accomplish any of the purposes in section 6;
  - (5) by illustration in a map, the proposed watershed district;
  - (6) the number of managers proposed for the watershed district; and
  - (7) a list of the nominees for manager positions containing at least twice the proposed number of managers.
- (b) The number of managers proposed for a watershed district may not be less than three nor more than nine. A manager must not be a public officer of the county, state, or federal government, except that a soil and water conservation supervisor may be a manager. [112.37 s. 1a]

Subd. 3. SIGNATURES. The establishment petition must be signed by one or more of the following groups:

- (1) one-half or more of the counties within the proposed watershed district;
- (2) counties having 50 percent or more of the area within the proposed watershed district;
- (3) a majority of the cities within the proposed watershed district; or
- (4) 50 or more resident owners residing in the proposed watershed district, excluding resident owners within the corporate limits of a city if the city has signed the petition. [112.37 s. 1]

Subd. 4. FILING ESTABLISHMENT PETITIONS. The petitioners must file a copy of the establishment petition with the auditors of the counties affected by the proposed watershed district, the commissioner, and the director. The original establishment petition, with a signed statement of delivery or receipt for each of the establishment petitions submitted to the auditors of affected coun-

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ties, the commissioners, and the directors, must be filed with the secretary of the board. [112.37 s. 1b]

**Subd. 5. SIMILAR AND DUPLICATE ESTABLISHMENT PETITIONS.** Similar and duplicate establishment petitions for the same proposed watershed district may be filed and regarded as one establishment petition. All establishment petitions filed before the establishment hearing must be considered by the board as part of the original petition. [112.37 s. 5]

**Subd. 6. DEFECTIVE ESTABLISHMENT PETITION.** An establishment petition that has the requisite number of petitioner signatures may not be dismissed because of defects in the establishment petition. The board must allow petitioners to amend a defective establishment petition at any time before the end of the establishment hearing. [112.37 s. 5]

**Subd. 7. WITHDRAWAL OF PETITIONERS.** After an establishment petition has been filed, a petitioner may not withdraw from the establishment petition unless the withdrawing petitioner obtains the written consent of all other petitioners and files the written consent with the board. [112.37 s. 5]

**Sec. 8. [103D.211] AUDITOR'S CERTIFICATION OF PETITIONERS.**

An auditor that receives a copy of an establishment petition must determine if the petitioners are resident owners from the tax records. The tax records are prima facie evidence of ownership. The auditor must certify the number of petitioners that are resident owners and file the certification with the board. [112.37 s. 2]

**Sec. 9. [103D.215] DIRECTOR'S REPORT.**

(a) After receiving a copy of the establishment petition, the director must notify the board that an establishment petition has been received and prepare a preliminary watershed map of and a preliminary report about the watershed district.

(b) The preliminary watershed map must show the natural watershed boundaries within the proposed watershed district.

(c) The preliminary report must be based on the establishment petition and other available data and must recommend whether the watershed district should be established.

(d) The director must submit the preliminary report and the preliminary watershed map to the board within 30 days after the date the establishment petition was received by the director, unless the time is extended by the board. [112.37 s. 3]

**Sec. 10. [103D.221] ESTABLISHMENT HEARING NOTICE.**

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Subdivision 1. ORDER FOR HEARING. (a) After receiving an establishment petition, the board must determine whether the establishment petition has the requisite number of petitioner signatures.

(b) If the establishment petition does not have the requisite number of petitioners, the board must dismiss the establishment petition and return it to the petitioners with an explanation of why the petition was dismissed.

(c) If the board determines that an establishment petition has the requisite number of petitioner signatures, the board must, by order, set a time and location for a hearing on the establishment petition within 35 days after its determination. The hearing must be held within the limits of the proposed watershed district for an establishment hearing unless the board determines a suitable place is not located within the proposed watershed district and selects a place within the limits of a county affected by the proposed watershed district. [112.38]

Subd. 2. NOTICE. (a) The board must give notice of the establishment hearing by publication in a legal newspaper that is published in counties affected by the proposed watershed district. The last publication must occur at least ten days before the establishment hearing.

(b) The board must give notice of the establishment hearing by mail to the auditors of counties and to the chief executive officials of municipalities affected by the proposed watershed district.

(c) The notice must include:

(1) a statement that an establishment petition has been filed with the board and auditors of counties affected by the proposed watershed district;

(2) a general description of the purpose of the proposed watershed district's contemplated improvements;

(3) a general description of the property to be included in the proposed watershed district;

(4) the date, time, and location of hearing; and

(5) a statement that all persons affected or interested in the establishment of the proposed watershed district may attend and give statements at the establishment hearing. [112.38]

#### **Sec. 11. [103D.225] ESTABLISHMENT HEARING.**

Subdivision 1. TESTIMONY AND CONTINUANCE. (a) The board must allow all persons interested in or affected by the proposed watershed district to be given an opportunity to make oral and written statements at the establishment hearing.

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(b) The board may continue the establishment hearing. [112.39 s. 1]

Subd. 2. ESTABLISHMENT DETERMINATION. If the board determines after the establishment hearing that the establishment of the proposed watershed district would benefit the public welfare and public interest, and would advance the purpose of this chapter, the board must, by order, establish the watershed district. [112.39 s. 3]

Subd. 3. ESTABLISHMENT ORDER REQUIREMENTS. The order of the board establishing a watershed district must include:

(1) the findings of the board supporting its determination to establish the watershed district;

(2) the official name of the watershed district;

(3) the location of the principal place of business of the watershed district;

(4) the boundaries of the watershed district; and

(5) the names of the managers for the first board of managers selected under subdivision 4. [112.39 s. 3, 4]

Subd. 4. SELECTION OF FIRST BOARD OF MANAGERS. (a) The board shall select the first board of managers of a proposed watershed district from the list of nominees in the establishment petition except as provided in paragraph (b). The number of managers may not be less than three nor more than nine, except that a proposed watershed district entirely within the metropolitan area may not have fewer than five managers. A manager may not be a public officer of the county, state, or federal government, except that a soil and water conservation supervisor may be a manager. The term of the first board of managers is for one year and until their successors can be appointed and qualified. [112.37 s. 1a, 7; 112.39 s. 4]

(b) For a proposed watershed district entirely within the metropolitan area, the board must select managers from a list of persons nominated by one or more of the cities and towns affected by the proposed watershed district. The list must contain at least three nominees for each manager position. The board must select managers to fairly represent the various hydrologic areas within the proposed watershed district according to their residence within an area. If the cities or towns fail to nominate managers under this paragraph, the board shall select managers under paragraph (a). [112.37 s. 7]

(c) In the order establishing a watershed district, the board must prescribe the terms of office for the first board of managers appointed by the county boards as provided in paragraphs (d) to (f).

(d) If the first board of managers has three members, the term of office for the managers is one for a term of one year, one for a term of two years, and one for a term of three years.

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(e) If the first board of managers has five members, the term of office for the managers is one for a term of one year, two for a term of two years, and two for a term of three years.

(f) If the first board of managers does not have three or five members, the managers must be appointed so that as nearly as possible one-third serve terms of one year, one-third serve terms of two years, and one-third serve terms of three years. [112.42 s. 3]

**Subd. 5. FILING ESTABLISHMENT ORDER.** The board must file a certified copy of the findings and order establishing a watershed district with the secretary of state and, at the same time:

(1) mail a copy of the findings and order to the auditor of each county affected by the watershed district, the commissioner, and the director; and

(2) have each manager personally served with a copy of the order. [112.42 s. 1, 5]

**Subd. 6. EFFECT OF ESTABLISHMENT.** After the establishment order is filed with the secretary of state, the watershed district is a political subdivision of the state with the power, authority, and duties prescribed in this chapter. [112.34 s. 1; 112.39 s. 3]

**Subd. 7. EXISTENCE OF WATERSHED DISTRICT.** A watershed district established under this chapter exists from the time the order establishing the watershed district is filed with the secretary of state until the watershed district is terminated. [112.39 s. 3; 112.41]

**Sec. 12. [103D.231] DISMISSAL OF ESTABLISHMENT PROCEEDINGS.**

If the board determines that establishment of a proposed watershed district in an establishment petition would not benefit the public welfare and public interest, or would not serve the purpose of this chapter, the board must, by order, dismiss the establishment proceedings. A copy of the order dismissing the establishment proceeding must be mailed immediately to the auditors of counties affected by the proposed watershed district, the commissioner, and the director. [112.39 s. 6]

#### CONSOLIDATION AND BOUNDARY CHANGES

**Sec. 13. [103D.251] WATERSHED DISTRICT BOUNDARY CHANGES.**

**Subdivision 1. BOUNDARY REQUIREMENT.** The boundaries of a watershed district as established or changed must define contiguous areas. The boundaries may include all or part of one or more watersheds or counties. [112.36 s. 1]

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Subd. 2. PROCEDURE. The boundaries of a watershed district may be changed as provided in this section, and for a watershed district entirely within the metropolitan area the boundary may also be changed as provided in article 2, sections 8 and 10. [473.8771 s. 1, 3]

Subd. 3. INITIATION. A proceeding to change the boundary of a watershed district must be initiated by a petition to the board requesting the boundary change. [112.37 s. 1]

Subd. 4. PETITION. A petition for a watershed district boundary change must state:

(1) the names of watershed districts affected by the proposed boundary changes;

(2) a description, in general terms, of the property affected by the proposed boundary change;

(3) reasons why the proposed boundary change would benefit the affected watershed districts;

(4) by illustration in a map, the proposed boundary change, including watershed districts affected by the proposed boundary change; and

(5) a request for the board to establish the proposed boundary change. [112.37 s. 1; 112.39 s. 4]

Subd. 5. PETITION SIGNATURES. (a) A petition for a watershed boundary change must be signed by:

(1) at least one-half of the counties within the proposed watershed district if the boundary change were adopted;

(2) counties having at least 50 percent of the area within the proposed watershed district if the boundary change were adopted;

(3) a majority of the cities within the proposed watershed district if the boundary change were adopted;

(4) at least 50 resident owners in the proposed watershed district if the boundary change were adopted, excluding resident owners within the corporate limits of a city, if the city has signed the petition; or

(5) the managers of a watershed district affected by the proposed boundary change.

(b) The managers must pass a resolution authorizing the boundary change before the managers sign a petition for a boundary change. [112.37 s. 1; 112.39 s. 4]

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Subd. 6. HEARING. The board must set a time and location for a hearing and give notice of the hearing in the same manner as an establishment hearing. If a petition for a boundary change involves a common boundary of two or more watershed districts, the board must determine the watershed district where the hearing will be held. [112.39 s. 4]

Subd. 7. ESTABLISHMENT OF BOUNDARY CHANGE. (a) After the hearing on the petition for a boundary change, the board must establish the proposed boundary change, by order, if the board determines that establishment of the proposed boundary change would benefit the public welfare and public interest and the proposed boundary change would advance the purpose of this chapter.

(b) In the order establishing the boundary change, the board must include:

(1) the findings of the board supporting its determination to establish the boundary change; and

(2) the boundaries of watershed districts affected by the boundary change.

(c) The board must file a certified copy of the findings and order establishing the boundary change with the secretary of state and, at the same time, mail a copy of the order to the auditors of counties affected by the change, the commissioner, the director, and the managers of watershed districts affected by the change.

(d) The boundary change is effective the day the certified order establishing the boundary change is filed with the secretary of state. [112.39 s. 3, 4, 5]

Subd. 8. DISMISSAL OF PROCEEDINGS. If the board determines that a watershed district boundary change would not benefit the public welfare and public interest or would not serve the purposes of this chapter, the board must, by order, dismiss proceedings to change a watershed district boundary. A copy of the order dismissing the boundary change proceedings must be mailed to auditors of counties affected by the proposed boundary change, the commissioner, the director, and the boards of managers of watershed districts affected by the proposed boundary change. [112.39 s. 4, 6]

#### **Sec. 14. [103D.255] WITHDRAWAL OF TERRITORY.**

Subdivision 1. PETITION. (a) Proceedings to withdraw territory from an existing watershed district must be initiated by a petition filed with the secretary of the board.

(b) The required signatures on a petition for withdrawal are the same as prescribed for an establishment petition, but the percentages must be calculated only with reference to the territory that is proposed to be withdrawn from the watershed district.

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(c) The petition must state that:

(1) the territory described has not received or will not receive any benefits from the operation of the watershed districts;

(2) the watershed district can perform the functions for which it was established without the inclusion of the territory; and

(3) the territory is not, in fact, a part of the watershed.

(d) The petition must request the release of the described territory from the watershed district.

(e) The petition must be served on the board and any affected watershed district, and the board shall proceed as prescribed for an establishment petition. The requirements for notices and public hearings are as prescribed for the establishment petition. [112.85 s. 1]

**Subd. 2. BOARD'S ORDER OF WITHDRAWAL.** (a) After the hearing the board may issue an order releasing the territory, or a part of the territory, as described in the petition, if the board determines that:

(1) the territory described in the petition has not received and will not receive any benefit from the operation of the watershed district;

(2) the watershed district can perform the functions for which it was established without the inclusion of the territory; and

(3) the territory is not, in fact, a part of the watershed.

(b) Property may not be released that has been determined subject to benefits or damages for a project previously constructed.

(c) Property released remains liable for the proportionate share of any indebtedness existing at the time of the order. Levies on the property released continue in force until fully paid.

(d) If the board determines that the order prescribing the distribution of managers should be amended following the withdrawal of any territory, the board may direct redistribution of managers in the order authorizing the withdrawal. [112.85 s. 2]

**Sec. 15. [103D.261] PROCEEDINGS TO ENLARGE A WATERSHED DISTRICT.**

**Subdivision 1. PETITION.** (a) Proceedings to enlarge an existing watershed district must be initiated by a petition filed with the secretary of the board. The required signatures on a petition to enlarge are the same as for an establishment petition, but the percentages must be calculated only with reference to the territory that is proposed to be added to the watershed district. The petition must:

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(1) state that the area to be added is contiguous to the existing watershed district;

(2) state that the area can be feasibly administered by the managers of the existing watershed district;

(3) state reasons why adding the area to the existing watershed district would be conducive to the public health and welfare;

(4) include a map of the affected area;

(5) state the name of the proposed enlarged watershed district, if other than that of the existing watershed district; and

(6) state a request for the addition of the proposed territory.

(b) The petition must be served on the board and affected watershed districts, and the board must proceed as prescribed for an establishment petition.

(c) The requirement of notice and public hearings is as prescribed for the establishment petition. [112.761 s. 1]

Subd. 2. BOARD ORDER. (a) After the hearing, if the board determines that the enlargement of the watershed district as asked for in the petition would be for the public welfare and public interest and the purpose of this chapter would be served, the board shall, by making findings and an order, enlarge the watershed district and file a certified copy of the findings and order with the secretary of state.

(b) The name of the watershed district may be changed by order of the board if requested in the petition to enlarge the watershed district. [112.761 s. 2]

Subd. 3. DISTRIBUTION OF MANAGERS IN ENLARGED WATERSHED DISTRICT. If the enlarged watershed district affects more than one county, the distribution of the managers among the counties affected shall be as directed by the board in the order enlarging the watershed district. [112.761 s. 3]

#### Sec. 16. [103D.265] CONSOLIDATION OF DISTRICTS.

Subdivision 1. PETITION. (a) Proceedings for the consolidation of two or more watershed districts must be initiated by a petition filed with the board.

(b) The petition must be signed by each watershed district affected and state:

(1) the names of the watershed districts to be consolidated;

(2) that the watershed districts are adjoining;

(3) that the consolidated watershed districts can be feasibly administered as one watershed district;

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(4) the proposed name of the consolidated watershed district;

(5) the reasons why it would be conducive to the public health, convenience and welfare to consolidate the watershed districts; and

(6) a request for the consolidation.

(c) The petition must be served and the board shall proceed as prescribed for an establishment petition. The requirement of notice and public hearings are as prescribed for the establishment petition. [112.86 s. 1]

**Subd. 2. BOARD'S ORDER AND FINDINGS.** (a) After the hearing, if the board determines that consolidation of the watershed districts as asked in the petition would serve the public welfare, public interest, and the purpose of this chapter, the board shall, by its findings and order, consolidate the watershed districts.

(b) The board shall file a certified copy of the findings and order with the secretary of state.

(c) The name of the watershed district may be changed by order of the board. [112.86 s. 2]

**Subd. 3. NEW MANAGERS.** (a) The term of office of the managers of the consolidated watershed districts ends on the date of the order of consolidation. Distribution of the managers of the consolidated watershed district shall be as directed by the board in the order of consolidation.

(b) Five managers of the consolidated watershed district must be appointed from the managers of the consolidated watershed districts. Their first term shall be for one year. After the first year, the managers must be appointed as provided in this chapter. [112.86 s. 3]

**Subd. 4. WATERSHED DISTRICT ASSETS AND LIABILITIES.** (a) The real and personal property assets of the watershed districts involved and all legally valid and enforceable claims and contract obligations of the watershed districts pass to the new watershed district.

(b) Levies on the property of the watershed districts consolidated continue in force until fully paid.

(c) Property in the watershed districts remains liable for its proportionate share of indebtedness existing at the time of the order. [112.86 s. 4]

**Subd. 5. NEW PLAN.** The watershed management plans of the watershed districts that were consolidated become the watershed management plan of the consolidated watershed district. [112.86 s. 5]

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## TERMINATION

**Sec. 17. [103D.271] PROCEDURE FOR TERMINATION OF WATERSHED DISTRICT.**

Subdivision 1. PROCEDURE. A watershed district may be terminated under this section and a watershed district entirely within the metropolitan area may also be terminated under article 2, sections 9 and 10. [473.8771 s. 2, 3]

Subd. 2. INITIATION. Proceedings for the termination of a watershed district may only be initiated by filing a termination petition with the secretary of the board. [112.411 s. 1]

Subd. 3. FREQUENCY OF TERMINATION PETITION. The board may not accept a termination petition within five years from the date of a watershed district's establishment. The board may not make determinations or accept termination petitions for watershed districts more than once in five years. [112.411 s. 5]

Subd. 4. TERMINATION PETITION. (a) The termination petition must be signed by at least 25 percent of the resident owners residing in the watershed district. The termination petition must state that the existence of the watershed district does not benefit the public welfare and public interest and the watershed district is not needed to accomplish the purposes of this chapter.

(b) The petitioners must file a copy of the termination petition with the auditors of the counties affected by the watershed district. The original termination petition with a statement signed for delivery or receipt of each of the termination petitions submitted to the auditors of counties affected by the watershed district must be filed with the secretary of the board. [112.411 s. 1]

Subd. 5. AUDITOR'S DETERMINATION OF RESIDENT OWNERS. An auditor who receives a termination petition must determine from the tax records whether the petitioners are resident owners within the watershed district. The auditor must certify the number of petitioners that are resident owners and file the certification with the board. [112.411 s. 2]

Subd. 6. PETITIONERS' BOND. Before the board gives notice of a termination hearing, the petitioners must file a bond with the board. The bond must be in an amount determined by the board and is subject to the board's approval. The bond must state that the petitioners will pay all costs and expenses of the termination proceedings if the termination petition proceedings are dismissed or denied. [112.411 s. 3]

Subd. 7. TERMINATION HEARING ORDER. When the board determines a termination petition has been filed that meets the requirements of subdivisions 4 and 5 and the petitioners' bond has been filed, the board must, by order, set a time by 35 days after its determination and a location within the watershed district for a termination hearing. [112.411 s. 4]

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Subd. 8. HEARING NOTICE. (a) The board must give notice of the termination hearing by publication in a legal newspaper that is published in counties affected by the watershed district. The last publication must occur at least ten days before the termination hearing.

(b) The board must give notice of the termination hearing by mail to the auditors of counties and to the chief executive officials of municipalities affected by the watershed district.

(c) The notice must include:

(1) a statement that a termination petition has been filed with the board and auditors of the counties affected by the watershed district;

(2) a general description of why the watershed district is to be terminated;

(3) a general description of the property within the watershed district;

(4) the date, time, and location of the hearing; and

(5) a statement that all persons affected by or interested in the watershed district may attend and give statements at the termination hearing. [112.38; 112.411 s. 4]

Subd. 9. TERMINATION HEARING. The board must allow all persons affected by or interested in the watershed district to make oral and written statements at the termination hearing. The board may continue the termination hearing. [112.39 s. 1; 112.411 s. 4]

Subd. 10. TERMINATION ORDER. (a) If, after the termination hearing, the board determines that the existence of the watershed district does not benefit the public welfare and public interest and the watershed district is not needed to accomplish the purpose of this chapter, the board must issue a termination order.

(b) The termination order must include findings that support termination of the watershed district and a statement that the watershed district is terminated.

(c) The board must file a certified copy of the termination order with the secretary of state.

(d) A watershed district ceases to be a political subdivision and ceases to exist when a termination order for the watershed district is filed with the secretary of state. [112.411 s. 4]

## MANAGERS

### Sec. 18. [103D.301] DISTRIBUTION OF MANAGER POSITIONS.

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Subdivision 1. MORE THAN ONE AFFECTED COUNTY. If more than one county is affected by a watershed district, the board must provide that managers are distributed by residence among the counties affected by the watershed district. [112.42 s. 3]

Subd. 2. MORE THAN FIVE AFFECTED COUNTIES. If more than five counties are affected by a watershed district, the board may provide for the orderly distribution of the managers by identifying the manager areas within the watershed district and selecting the county board of commissioners for each manager's area to appoint a manager. [112.42 s. 3]

Subd. 3. REDISTRIBUTION. (a) After ten years from the establishment of the watershed district, the county board of commissioners of a county affected by the watershed district may petition the board to redistribute the managers. After holding a public hearing on redistributing the managers, the board may redistribute the managers among the counties affected by the watershed district if the redistribution is in accordance with the policy and purposes of this chapter.

(b) A petition for the redistribution of managers may not be filed with the board more often than once in ten years. [112.42 s. 3]

(c) If more than one county is affected by a watershed district, the board must distribute the one-, two-, and three-year terms among counties affected by the watershed district. [112.42 s. 3]

#### Sec. 19. [103D.305] INCREASING NUMBER OF MANAGERS.

Subdivision 1. INITIATION. A proceeding to increase the number of managers of a watershed district must be initiated by filing a petition with the secretary of the board. [112.421 s. 1]

Subd. 2. PETITION SIGNATURES. The petition to increase the number of managers must request the increase and be signed by one or more of the following groups:

- (1) one-half or more of the counties within the watershed district;
- (2) counties with 50 percent or more of the area within the watershed district;
- (3) a majority or greater number of the cities within the watershed district;
- (4) 50 or more resident owners residing in the watershed district, excluding resident owners within the corporate limits of a city if the city has signed the petition; or
- (5) the managers of the watershed district. [112.37 s. 1; 112.421 s. 1]

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New language is indicated by underline, deletions by ~~strikeout~~.

Subd. 3. HEARING ORDER. When the board receives a petition to increase the number of managers of a watershed district, the board must order a hearing on the petition. [112.421 s. 1]

Subd. 4. HEARING NOTICE. (a) The board must give notice of the hearing to increase the number of managers by publication in a legal newspaper published in counties affected by the watershed district. The last publication must occur at least ten days before the hearing.

(b) The board must give notice of the hearing by mail to the auditors of counties and to the chief executive officials of municipalities affected by the watershed district.

(c) The notice must include:

(1) a statement that a petition to increase the number of managers of the watershed district has been filed with the board;

(2) a general description of the purpose of the watershed district;

(3) a general description of the property in the watershed district;

(4) the date, time, and location of the hearing; and

(5) a statement that all persons affected or interested in the watershed district may attend and give statements at the hearing. [112.38; 112.421 s. 1]

Subd. 5. HEARING. (a) If the board determines at the hearing that an increase in the number of managers would benefit the public welfare, public interest, and the purpose of this chapter, the board must increase the number of managers.

(b) If the watershed district affects more than one county, the board, by order, must direct the distribution of the managers among the affected counties. [112.421 s. 2]

## Sec. 20. [103D.311] APPOINTMENT OF MANAGERS.

Subdivision 1. MANAGER QUALIFICATIONS. A person may not be appointed as a manager who:

(1) is not a voting resident of the watershed district; and

(2) is a public officer of the county, state, or federal government, except that a soil and water conservation supervisor may be a manager. [112.42 s. 3]

Subd. 2. APPOINTMENT. (a) At least 30 days before the terms of office of the first managers named by the board expire, the county commissioners of each county affected by the watershed district must meet and appoint successors.

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(b) The county commissioners must meet at least 30 days before the term of office of any manager expires and appoint a successor.

(c) A vacancy occurring in an office of a manager must be filled by the appointing county board. [112.42 s. 3]

**Subd. 3. NOMINEES FOR CITY INITIATED AND METROPOLITAN WATERSHED DISTRICTS.** (a) If the establishment petition that initiated the watershed district originated from a majority of the cities within the watershed district, or if the watershed district is located entirely within the metropolitan area, the county commissioners must appoint the managers from a list of persons nominated by one or more of the townships and municipalities located within the watershed district. The list must contain at least three nominees for each manager's position to be filled. The list must be submitted to the county boards affected by the watershed district at least 60 days before the manager's term of office expires.

(b) If the list is not submitted 60 days before the managers' terms of office expire, the county commissioners must appoint the managers from eligible persons residing in the watershed district.

(c) Managers of a watershed district entirely within the metropolitan area must be appointed to fairly represent the various hydrologic areas within the watershed district by residence of the manager appointed. [112.42 s. 3]

**Subd. 4. RECORD OF APPOINTED MANAGERS.** A record of all appointments made under this section must be filed with the county auditor of each county affected by the watershed district, the secretary of the board of managers, and the secretary of the board of water and soil resources. [112.42 s. 3]

#### Sec. 21. [103D.315] MANAGERS.

**Subdivision 1. OATH.** Each manager must take and sign the oath defined in the Minnesota Constitution, article V, section 6. The signed oath must be filed with the secretary of the board. [112.42 s. 1]

**Subd. 2. BOND.** (a) Each manager must file a bond with the board before assuming the manager's duties. The bond may be:

(1) a personal bond for each manager;

(2) a schedule or position bond or undertaking by the managers of the watershed district; or

(3) a single corporate surety fidelity, schedule or position bond or undertaking covering all managers and employees of the watershed district, including officers and employees required by law to furnish an individual bond or undertaking.

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(b) The amount of the bond for managers is \$1,000, unless increased by the board. The amount of the bond for officers and employees of the watershed district is the amount set by law or by the person or board authorized to set the amounts.

(c) The bond must be conditioned substantially as provided in section 574.13.

(d) The premium for the bond must be paid by the watershed district. [112.42 s. 1a]

Subd. 3. OFFICERS. After filing the bond, the managers must elect different managers as president, secretary, and treasurer. The managers must fill vacancies occurring in the officers' positions. The managers must provide the necessary books, records, furniture, and equipment for the officers to perform their official duties. [112.42 s. 1a]

Subd. 4. SEAL. The managers must adopt a seal for the watershed district. [112.42 s. 2]

Subd. 5. RECORDS. The managers must keep efficient records of all proceedings, minutes, certificates, contracts, bonds of the board's employees, and all other business transacted or action taken by the managers. The records must be open to inspection by the property owners within the watershed district and all other interested parties at all reasonable times. [112.42 s. 2]

Subd. 6. TERMS OF OFFICE. The term of office for a manager is three years except for the first board of managers appointed by the state board and the first board appointed by the county board. A manager's term continues until a successor is appointed and qualified. [112.42 s. 3]

Subd. 7. VACANCIES. The provisions of section 351.02 regarding vacancies apply to members of the board of managers. [112.42 s. 4]

Subd. 8. COMPENSATION. The compensation of managers for meetings and for performance of other necessary duties may not exceed \$50 a day. Managers are entitled to reimbursement for traveling and other necessary expenses incurred in the performance of official duties. [112.42 s. 5]

Subd. 9. FIRST MEETING OF MANAGERS. (a) Within ten days after the first board of managers has received notice by personal service of their selection, the managers must meet at the watershed district's principal place of business.

(b) At the first meeting, the managers must take the oath under subdivision 1, provide a bond under subdivision 2, elect officers under subdivision 3, and appoint an advisory committee under section 24. [112.42 s. 1; 112.44]

Subd. 10. MEETINGS. The managers shall meet annually and at other necessary times to transact the business of the watershed district. A meeting may be called at any time at the request of any manager. When a manager

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requests a meeting, the secretary of the watershed district must mail a notice of the meeting to each member at least eight days before the meeting. [112.42 s. 7]

Subd. 11. ADMINISTRATION BYLAWS AND RULES. The managers shall adopt bylaws and rules for the administration of the business and affairs of the watershed district. Rules adopted under this subdivision are not subject to section 26. [112.42 s. 6]

**Sec. 22. [103D.321] PRINCIPAL PLACE OF BUSINESS**

Subdivision 1. UNAVAILABLE PUBLIC FACILITIES. If public facilities are not available for a watershed district's principal place of business within the watershed district, the board shall determine and designate the nearest suitable public facility as the watershed district's principal place of business. [112.42 s. 7]

Subd. 2. CHANGE OF PRINCIPAL PLACE OF BUSINESS. (a) The managers may initiate a change of the principal place of business to a different location within the watershed district by passing a resolution stating the proposed change of location. After passing the resolution, the managers must set a time and location for a hearing on the change of the principal place of business.

(b) The managers must give notice of the hearing by publication in a legal newspaper, published in the counties affected by the watershed district, with the last publication occurring at least ten days before the hearing. Notice of the hearing must be mailed to the auditors of counties affected by the watershed district ten days before the hearing. After the hearing, the managers may, by order, change the place of business.

(c) The change of the principal place of business of the watershed district is effective when a certified copy of the managers' order is filed with the secretary of state and the secretary of the board. [112.39 s. 4]

**Sec. 23. [103D.325] EMPLOYEES.**

Subdivision 1. EMPLOYMENT AUTHORITY. The managers may employ a chief engineer, professional assistants, and other employees, and provide for their qualifications, duties, and compensation. [112.45]

Subd. 2. BOND. The managers may require an officer or employee of the watershed district to give a bond for the faithful performance of duties in an amount prescribed by the manager. The cost of the bond must be paid from the funds of the watershed district. [112.45]

Subd. 3. CHIEF ENGINEER. The chief engineer is superintendent of all the works and improvements undertaken by the district. The chief engineer must make a full engineer's report to the managers each year, and more often if necessary. A copy of the engineer's report and all recommendations by the chief engineer must be transmitted to the managers and the director. [112.45]

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**Sec. 24. [103D.331] ADVISORY COMMITTEE.**

Subdivision 1. PURPOSE. The managers must appoint an advisory committee to advise and assist the managers on all matters affecting the interests of the watershed district and make recommendations to the managers on all contemplated projects and improvements in the watershed district. [112.44]

Subd. 2. MEMBERS. (a) The advisory committee consists of at least five members. If practicable, the advisory committee members selected must include a supervisor of a soil and water conservation district, a member of a county board, a member of a sporting organization, and a member of a farm organization. Other advisory committee members may be appointed at the discretion of the managers. The members must be residents of the watershed district and serve at the pleasure of the managers.

(b) In addition, the managers may appoint other interested and technical persons who may or may not reside within the watershed district to serve at the pleasure of the managers. [112.44]

Subd. 3. EXPENSE REIMBURSEMENT. The managers may reimburse members of the advisory committee for actual traveling and other necessary expenses incurred in the performance of duties in the amount as provided for state employees. [112.44]

**Sec. 25. [103D.335] DISTRICT AND MANAGERS' POWERS.**

Subdivision 1. GENERAL POWERS OF WATERSHED DISTRICT. A watershed district has the power, to the extent necessary for lawful conservation purposes:

- (1) to sue and be sued;
- (2) to incur debts, liabilities, and obligations;
- (3) to exercise the power of eminent domain;
- (4) to provide for assessments and to issue certificates, warrants, and bonds; and
- (5) to perform all acts expressly authorized, and all other acts necessary and proper for the watershed district to carry out and exercise the powers expressly vested in it. [112.41]

Subd. 2. JOINT POWERS. Section 471.59 relating to joint power authority applies to watershed districts organized under this chapter. [112.68]

Subd. 3. ACQUISITION AND DISPOSITION OF PROPERTY FROM STATE AND FEDERAL AGENCIES. Section 471.64 relating to acquisition and disposition of property from the United States and state agencies applies to watershed districts organized under this chapter. [112.68]

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Subd. 4. GENERAL MANAGERS' POWERS. (a) The managers may use the powers in subdivisions 5 to 23 to implement this chapter. [112.43 s. 1]

(b) The exercise of the managers' powers is subject to review by the board as provided in this chapter. [112.43 s. 4]

Subd. 5. DATA ACQUISITION. The managers may:

(1) make necessary surveys or use other reliable surveys and data and develop projects to accomplish the purposes for which the watershed district is organized; and

(2) establish and maintain devices for acquiring and recording hydrological data. [112.43 s. 1]

Subd. 6. PROJECTS NOT REQUIRING A PETITION. The managers may initiate, undertake, and construct projects not required to be instituted by a petition under section 53. [112.43 s. 1]

Subd. 7. COOPERATE WITH OTHER ENTITIES. The managers may cooperate or contract with any state or subdivision of a state or federal agency, private corporation, political subdivision, or cooperative association. [112.43 s. 1]

Subd. 8. DITCH AND WATERCOURSE WORK. The managers may construct, clean, repair, alter, abandon, consolidate, reclaim, or change the course or terminus of any public ditch, drain, sewer, river, watercourse, natural or artificial, within the watershed district. [112.43 s. 1]

Subd. 9. WATER CONTROL WORKS. The managers may acquire, operate, construct, and maintain dams, dikes, reservoirs, water supply systems, and appurtenant works. [112.43 s. 1]

Subd. 10. WATER USE AND CONSERVATION. The managers may regulate, conserve, and control the use of water within the watershed district. [112.43 s. 1]

Subd. 11. ACQUISITION OF PROPERTY. The managers may acquire by gift, purchase, or the right of eminent domain necessary real and personal property. The watershed district may acquire property outside the watershed district where necessary for a water supply system. [112.43 s. 1]

Subd. 12. ACQUISITION OF INSURANCE. The managers may contract for or purchase insurance the managers find necessary for the protection of the watershed district. [112.43 s. 1]

Subd. 13. CONSTRUCTION CONTRACTS. The managers may enter into contracts of construction authorized by this chapter. [112.43 s. 1]

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Subd. 14. ENTRY ON LANDS. The managers may enter lands inside or outside the watershed district to make surveys and investigations to accomplish the purposes of the watershed district. The watershed district is liable for actual damages resulting from entry. [112.43 s. 1]

Subd. 15. TAKE OVER DRAINAGE SYSTEM. The managers may take over when directed by a drainage authority all joint county or county drainage systems within the watershed district, together with the right to repair, maintain, and improve them. [112.43 s. 1]

Subd. 16. SANITATION AND POLLUTION PREVENTION. The managers may provide for sanitation and public health and regulate the use of streams, ditches, or watercourses to dispose of waste and prevent pollution. [112.43 s. 1]

Subd. 17. BORROWING FUNDS. The managers may borrow funds from an agency of the federal government, a state agency, a county where the watershed district is located in whole or in part, or a financial institution authorized under chapter 47 to do business in this state. A county board may lend the amount requested by a watershed district. A watershed district may not have more than a total of \$200,000 in loans from counties and financial institutions under this subdivision outstanding at any time. [112.43 s. 1]

Subd. 18. FLOODPLAIN MAPS. The managers may prepare a floodplain map of the lands of the watershed district that are in the floodplain of lakes and watercourses. The map must be made available to the counties and local municipalities for inclusion in floodplain ordinances. It must conform to rules of the commissioner setting standards for designation of floodplain areas. [112.43 s. 1]

Subd. 19. OPEN SPACE AND GREENBELTS. The managers may prepare an open space and greenbelt map of the lands of the watershed district that should be preserved and included in the open space and greenbelt land areas of the watershed district. The map must be made available to the counties and local municipalities for inclusion in floodplain and shoreland ordinances. The managers may control the use and development of land in the floodplain and the greenbelt and open space areas of the watershed district. The managers may adopt, amend, or repeal rules to control encroachments, the changing of land contours, the placement of fill and structures, and the placement of encumbrances or obstructions, and may require a landowner to remove fill, structures, encumbrances, or other obstructions and restore the previously existing land contours and vegetation. The managers may by rule provide a procedure for the watershed district to do the work required and assess its cost against the affected property as a special assessment. The rules apply only in the absence of county or municipal ordinances regulating the items set forth in this subdivision. The rules must be adopted in accordance with section 26. [112.43 s. 1]

Subd. 20. STATE ASSOCIATION MEMBERSHIP. The managers may  
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appropriate necessary funds to provide for membership in a state association of watershed districts whose purpose is to improve watershed governmental operations. [112.43 s. 1]

Subd. 21. CONTRACTS. The managers may make contracts or other arrangements with the federal government, persons, railroads or other corporations, political subdivisions, and the state or other states, with drainage authorities, flood control, soil conservation, or other improvement districts in this state or other states, for cooperation or assistance in constructing, maintaining, and operating the projects of the watershed district, or for the control of its waters, or for making surveys and investigations or reports on them. [112.67]

Subd. 22. PROJECTS IN OTHER STATES. The managers may purchase, lease, or acquire land or other property in adjoining states to secure outlets, to construct and maintain dikes or dams or other structures for the purposes of this chapter. [112.67]

Subd. 23. METROPOLITAN WATERSHED DISTRICTS. (a) A watershed district located wholly within the metropolitan area has the duties and powers in article 2, section 7.

(b) Notwithstanding any contrary provision of this section, a watershed district located entirely within the metropolitan area may regulate the use and development of land only under the conditions specified in article 2, section 7, subdivision 1. [112.43 s. 1b]

#### Sec. 26. [103D.341] RULES.

Subdivision 1. REQUIREMENT. The managers must adopt rules to accomplish the purposes of this chapter and to implement the powers of the managers. [112.43 s. 1c]

Subd. 2. PROCEDURE. (a) Rules of the watershed district must be adopted or amended by a majority vote of the managers, after public notice and hearing. Rules must be signed by the secretary of the board of managers and recorded in the board of managers' official minute book.

(b) For each county affected by the watershed district, the managers must publish a notice of hearings and adopted rules in one or more legal newspapers published in the county and generally circulated in the watershed district. The managers must file adopted rules with the county recorder of each county affected by the watershed district.

(c) The managers must mail a copy of the rules to the governing body of each municipality affected by the watershed district. [112.43 s. 1c]

Subd. 3. NOTIFICATION FOR RULE THAT AFFECTS CITY. A rule or resolution that affects land or water within the boundaries of a city is not effective within the city's boundaries until the governing body of the city is notified. [112.43 s. 1a]

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Sec. 27. **[103D.345] PERMITS.**

Subdivision 1. APPLICATION FEE. A person applying for a permit required by the managers under a rule controlling the use and development of land in the floodplain, greenbelt, and open space areas of the watershed district must accompany the application with a permit application fee to defray the cost of recording and processing the application. The managers may set the fee not to exceed \$10. [112.88. s. 1]

Subd. 2. FIELD INSPECTION FEE. The managers may charge, in addition, a field inspection fee of at least \$35. The inspection fee must be used to cover actual costs related to a field inspection. Inspection costs include investigation of the area affected by the proposed activity, analysis of the proposed activity, services of a consultant, and any required subsequent monitoring of the proposed activity. Costs of monitoring an activity authorized by permit may be charged and collected as necessary after issuance of the permit. [112.88 s. 2]

Subd. 3. GOVERNMENT AGENCIES EXEMPT. The fees in subdivisions 1 and 2 may not be charged to the federal government, the state, or a political subdivision. [112.88 s. 3]

Subd. 4. BOND. The managers may require an applicant for a permit to file a bond with the managers in an amount set by the managers and conditioned on performance by the applicant of authorized activities in conformance with the terms of the permit. [112.88 s. 4]

Sec. 28. **[103D.351] ANNUAL REPORT.**

(a) The managers must prepare a yearly report of the financial conditions of the watershed district, the status of all projects, the business transacted by the watershed district, other matters affecting the interests of the watershed district, and a discussion of the managers' plans for the succeeding year.

(b) Copies of the report must be transmitted to the secretary of the board of water and soil resources, the commissioner, and the director within a reasonable time. [112.43 s. 3]

Sec. 29. **[103D.355] ANNUAL AUDIT.**

Subdivision 1. REQUIREMENT. The managers must have an annual audit completed of the books and accounts of the watershed district. The annual audit may be made by a public accountant or by the state auditor. [112.73]

Subd. 2. AUDIT BY STATE AUDITOR. (a) If the annual audit is to be made by the state auditor, the audit must be initiated by a petition of the resident owners of the watershed district or resolution of the managers of the watershed district. The petition must request an annual audit pursuant to the authority granted municipalities under sections 6.54 and 6.55.

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(b) If the audit is made by the state auditor, the watershed district receiving the examination must pay the state the total cost and expenses of the examination, including the salaries paid to the examiners while actually engaged in making the examination. The general fund must be credited with all collections made for examinations under this subdivision. [112.73]

Subd. 3. REPORTS FOR STATE AUDITOR. The managers must make and submit reports demanded by the state auditor. [112.73]

## WATERSHED MANAGEMENT PLAN

### Sec. 30. [103D.401] WATERSHED MANAGEMENT PLAN.

Subdivision 1. CONTENTS. (a) The managers must adopt a watershed management plan for any or all of the purposes for which a watershed district may be established. The watershed management plan must give a narrative description of existing water and water-related problems within the watershed district, possible solutions to the problems, and the general objectives of the watershed district.

(b) The watershed management plan may include a separate section on proposed projects. If the watershed district is within the metropolitan area, the separate section of proposed projects or petitions for projects to be undertaken according to the watershed management plan is a comprehensive plan of the watershed district for purposes of review by the metropolitan council under section 473.165. [112.46 s. 1]

Subd. 2. REVIEW. The managers must send a copy of the proposed watershed management plan to the county auditor of each county affected by the watershed district, the secretary of the board, the commissioner, the director, the governing body of each municipality affected by the watershed district, and soil and water conservation districts affected by the watershed district. For a watershed district within the metropolitan area, a copy of the proposed watershed management plan must also be submitted to the metropolitan council. [112.46 s. 2]

Subd. 3. DIRECTOR'S AND METROPOLITAN COUNCIL'S RECOMMENDATIONS. After receiving the watershed management plan, the director and the metropolitan council must review and make recommendations on the watershed management plan. By 60 days after receiving the plan, the director and the metropolitan council must send their recommendations on the watershed management plan to the board and a copy to the managers of the watershed district, the county auditor of each county affected by the watershed district, the governing bodies of all municipalities affected by the watershed district, and soil and water conservation districts affected by the watershed district. The board may extend the period for review and transmittal of the recommendations. [112.46 s. 2]

Subd. 4. HEARING NOTICE. (a) The board must give notice and hold a watershed management plan hearing on the proposed watershed management

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plan by 45 days after receiving the director's and metropolitan council's recommendations.

(b) The board must give notice of the watershed management plan hearing by publication in a legal newspaper that is published in counties affected by the watershed district. The last publication must occur at least ten days before the watershed management plan hearing.

(c) The board must give notice of the watershed management plan hearing by mail to the auditors of counties and to the chief executive officials of municipalities affected by the watershed district.

(d) The notice must include:

(1) a statement that a copy of the proposed watershed management plan has been filed with the board, the metropolitan council, where applicable, the auditors of counties affected by the proposed watershed district, the commissioner, the director, the governing body of each municipality affected by the watershed district, and the soil and water conservation districts affected by the watershed district;

(2) a general description of the purpose of the watershed district;

(3) a general description of the property included in the watershed district;

(4) a general description of the proposed watershed management plan;

(5) the date, time, and location of the hearing; and

(6) a statement that all persons affected or interested in the watershed district may attend and give statements at the watershed management plan hearing. [112.38; 112.46 s. 2]

Subd. 5. BOARD APPROVAL. After the watershed management plan hearing, the board must, by order, prescribe and approve a watershed management plan for the watershed district. The board must send a copy of the order and approved watershed management plan to the managers, the county board of each county affected by the watershed district, the commissioner, the director, the metropolitan council, where applicable, the governing body of each municipality affected by the watershed district, and soil and water conservation districts affected by the watershed district. The watershed management plan approved by the board is the watershed management plan for the watershed district. [112.46 s. 2]

#### Sec. 31. [103D.405] REVISED WATERSHED MANAGEMENT PLAN.

Subdivision 1. REQUIREMENTS. (a) The managers and the board must revise the watershed management plan for the watershed district at least once every ten years after the original watershed management plan is approved.

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(b) The managers must consider inclusion of at least the following items in the revised watershed management plan:

(1) updates and supplements of the existing hydrological and other statistical data of the watershed district;

(2) specific projects to be completed;

(3) a statement of the extent that the purposes for which the watershed district had been established have been accomplished;

(4) a description of problems requiring future action by the watershed district;

(5) a summary of completed studies on active or planned projects, including financial data; and

(6) an analysis of the effectiveness of the watershed district's rules and permits in achieving its water management objectives in the watershed district.

(c) A revised watershed management plan must be transmitted, reviewed, recommended, and approved as provided in subdivisions 2 to 4 and 6. [112.46 s. 3, 4, 5]

Subd. 2. REQUIRED TEN-YEAR REVISION. (a) After ten years and six months from the date that the board approved a watershed management plan or the last revised watershed management plan, the managers must consider the requirements under subdivision 1 and adopt a revised watershed management plan outline and send a copy of the outline to the board.

(b) By 60 days after receiving a revised watershed management plan outline, the board must review it, adopt recommendations regarding the revised watershed management plan outline, and send the recommendations to the managers.

(c) By 120 days after receiving the board's recommendations regarding the revised watershed management plan outline, the managers must complete the revised watershed management plan. [112.46 s. 4, 5]

Subd. 3. REVIEW. The managers must send a copy of the revised watershed management plan to the board, the county board and county auditor of each county affected by the watershed district, the director, the governing body of each municipality affected by the watershed district, soil and water conservation districts affected by the watershed district, and the metropolitan council, if the watershed district is within the metropolitan area. [112.46 s. 5]

Subd. 4. DIRECTOR'S AND METROPOLITAN COUNCIL'S RECOMMENDATIONS. The director and the metropolitan council, if applicable, must review and make recommendations on the revised watershed management plan. By 60 days after receiving the revised watershed management plan unless the time is extended by the board, the director and the council must send the

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recommendations on the revised watershed management plan to the board, and a copy of the recommendations to the managers, the county auditor of each county affected by the watershed district, the governing body of each municipality affected by the watershed district, and soil and water conservation districts affected by the watershed district. [112.46 s. 5]

Subd. 5. NOTICE. (a) The board must give notice and hold a revised watershed management plan hearing on the proposed revised watershed management plan by 45 days after receiving the director's and metropolitan council's recommendation.

(b) The board must give notice of the revised watershed management plan hearing by publication in a legal newspaper published in counties affected by the watershed district. The last publication must occur at least ten days before the revised watershed management plan hearing.

(c) The board must give notice of the revised watershed management plan hearing by mail to the auditors of counties and to the chief executive officials of municipalities affected by the watershed district.

(d) The notice must include:

(1) a statement that a copy of the proposed revised watershed management plan has been filed with the board, the metropolitan council, where applicable, the auditors of counties affected by the proposed watershed district, the commissioner, the director, the governing body of each municipality affected by the watershed district, and the soil and water conservation districts affected by the watershed district;

(2) a general description of the purpose of the watershed district;

(3) a general description of the property included in the watershed district;

(4) a general description of the proposed revised watershed management plan;

(5) the date, time, and location of the hearing; and

(6) a statement that all persons affected or interested in the watershed district may attend and give statements at the revised watershed management plan hearing. [112.38; 112.46 s. 2, 5]

Subd. 6. BOARD ORDER. After the revised watershed management plan hearing, the board must prescribe a revised watershed management plan for the watershed district. The board must send a copy of the order and approved revised watershed management plan to the managers, the county board of each county affected by the watershed district, the commissioner, the director, the metropolitan council, where applicable, and soil and water conservation districts affected by the watershed district. The revised watershed management plan approved by the board is the revised watershed management plan for the watershed district. [112.46 s. 2, 5]

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**Sec. 32. [103D.411] AMENDMENT OF WATERSHED MANAGEMENT PLAN AND REVISED WATERSHED MANAGEMENT PLAN.**

The managers may initiate an amendment of a watershed management plan or revised watershed management plan by submitting a petition with the proposed amendment to the board. The board must give notice and hold a hearing on the amendment in the same manner as for the watershed management plan. After the hearing, the board may, by order, approve or prescribe changes in the amendment. The amendment becomes part of the watershed management plan after approval by the board. The board must send the order and approved amendment to the entities that receive an approved watershed management plan under section 30, subdivision 5. [112.46 s. 2]

**GENERAL PROVISIONS**

**Sec. 33. [103D.501] CONSTRUCTION AND ADMINISTRATION.**

This chapter shall be construed and administered so as to make effective the purposes of section 6, subdivision 1. [112.34 s. 1]

**Sec. 34. [103D.505] REFERENCE TO OTHER DRAINAGE LAWS.**

If this chapter refers to particular sections of the drainage laws of this state, the sections and provisions shall, if consistent with this chapter, be treated and construed as having the same effect, so far as the provisions of this chapter are concerned, as though set forth in this chapter. Amendments of those laws passed after the effective date of this chapter are applicable to this chapter. [112.72]

**Sec. 35. [103D.511] CERTAIN CONDEMNATION PROVISIONS DO NOT APPLY.**

Section 117.155 relating to payment of damages in a condemnation proceeding does not apply to a project financed by special assessment. [112.87]

**Sec. 36. [103D.515] PREEXISTING AND IMPROVED WATER RIGHTS.**

Subdivision 1. PREEXISTING WATER RIGHTS RECOGNIZED. The rights of private or corporate landowners to use the waters of the watershed district for any purpose continue as the rights existed at the time of the organization of the watershed district. [112.71]

Subd. 2. WATERSHED DISTRICT POSSESSES IMPROVED RIGHTS. All preexisting rights must be recognized by the managers, but if projects constructed by the watershed district make possible a greater, better, or more convenient use of or benefit from the waters of the watershed district for any purpose, the right to the greater use or benefit is the property of the watershed district. [112.71]

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**Subd. 3. COMPENSATION FOR IMPROVED RIGHTS.** The watershed district may lease or assign the rights in return for reasonable compensation, as provided in this section. [112.71]

**Subd. 4. APPROVAL OF RIGHTS TRANSFER.** Leases, assignments, permits, or contracts for the use of water shall be entered into only after the managers have reported to the board the terms and conditions of the lease, permit, or contract relative to the use of any watershed district property. The secretary of the board shall give notice of the contract to all parties interested, by mail, and shall have notice of the application published. The notice must state the purpose of the application and the time and place of hearing on it. At the time of hearing the board shall hear all interested persons for or against the proposed contract and make an order accordingly on conditions and restrictions necessary to protect the interest of the watershed district and of the public. [112.71]

**Sec. 37. [103D.521] RIGHTS ASSURED DUE PROCESS OF LAW.**

A person may not be deprived or divested under this chapter of a previously established beneficial use or right without due process of law. [112.84]

**Sec. 38. [103D.525] PROCEEDINGS AFTER FAULTY NOTICES ARE GIVEN.**

**Subdivision 1. JURISDICTION RETAINED.** If a notice is required for a hearing or proceeding before the board, managers, or district court, and the board, managers, or court find that proper notice was not given, the board, managers, or court do not lose jurisdiction and the proceedings are not invalid. [112.78]

**Subd. 2. PROPER NOTICE TO BE GIVEN.** If the notice was defective, the board, managers, or court shall order proper notice to be given. The board, managers, or court shall continue the hearing until notice is properly given and then proceed as though notice had been properly given in the first instance. [112.78]

**Subd. 3. DEFECTIVE PUBLISHED NOTICE.** If the original notice was faulty only with reference to publication as to certain tracts, only the persons interested in those particular tracts need be notified by a later notice. If the publication of a notice in a county was defective or not made in time, notice need be given only within the county where notice was defective. [112.78]

**Sec. 39. [103D.531] CONTINUANCE OF HEARINGS.**

If an order has been made and notice given for a hearing in a proceeding under this chapter, and the board, managers, or court fail to appear at the time and place specified, the secretary of the board or the managers, or the court administrator of the district court shall continue the hearing to another date as necessary and notify the board, managers, or the court of the continuance and

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the date of hearing. The matter shall be continued to that date without affecting the jurisdiction of the board, the managers, or the court. [112.79]

**Sec. 40. [103D.535] APPELLATE PROCEDURES AND REVIEW.**

Subdivision 1. WHAT CAN BE APPEALED. Any party alone or jointly may appeal to the district court or to the board an order of the managers made in a proceeding and entered in the watershed district's record that determines:

(1) the amount of benefits determined;

(2) the amount of damages allowed;

(3) the allowance of fees or expenses in any proceedings;

(4) a matter that affects a substantial right; or

(5) an order of the managers authorizing or refusing to establish a project in whole or in part. [112.801 s. 1]

Subd. 2. AMOUNTS AWARDED ON APPEAL ARE SUBSTITUTED. On appeal, the amount awarded by the jury or the board as finally determined shall stand for and in the place of the amount from which the appeal was taken. [112.801 s. 2]

Subd. 3. APPEALS FROM MANAGERS' ORDERS. (a) If an appeal is taken from an order authorizing a project, a trial of an appeal of benefits or damages from the proceedings must be stayed until the appeal is decided. If the order authorizing the project is affirmed, a trial of an appeal of benefits or damages may commence.

(b) If the appeal is from an order refusing to authorize a project and the court or the board later orders the project, the secretary of the watershed district shall give notice by publication of the filing of the order. The notice is sufficient if it refers to the proposed project by general description and recites the substance of the order and the date of filing in the court. [112.801 s. 3]

Subd. 4. APPEALS CAN INVOLVE PROPERTY OTHER THAN APPELLANT'S OWN. (a) A person or political subdivision appealing the amount of benefits or damages may include and have considered and determined benefits or damages affecting property other than that person's or political subdivision's own property.

(b) Notice of the appeal must be served on:

(1) the owner or occupant of the property not owned by the appellant or on the attorney who represented the other owner in the proceedings;

(2) the auditor of the county where the property is located; and

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(3) on the court administrator of the district court of the county where the principal place of business of the watershed district is located, or on the secretary of the board. [112.801 s. 4]

Subd. 5. NOTICE OF APPEAL. (a) Before the appeal is heard by the court or board, the appellant must file a notice of appeal with the court administrator of the district court or the secretary of the board. The appeal must:

(1) be filed within 30 days of the date of the final order;

(2) state the grounds upon which the appeal is taken; and

(3) be accompanied by an appeal bond of at least \$250 to the watershed district where the property is located.

(b) The bond must be approved by the court administrator of the district court or the secretary of the board where the appeal is filed. The bond must be conditioned that the appellant will:

(1) make the appeal;

(2) pay all costs and disbursements that may be adjudged against the appellant; and

(3) comply with the order of the court or of the board where the appeal is filed. [112.801 s. 5]

Subd. 6. TIME AND PLACE OF TRIAL. (a) The appeal must be tried by a jury, or by the board at a time and place set by the court or board. If the appeal is tried by a jury, the appeal must be tried and determined at the next term of the district court held within the county where the notice of appeal was filed, or in other counties where the appeal is heard, beginning after the filing of the appeal.

(b) An appeal takes precedence over all other civil matters.

(c) If there is more than one appeal to the board involving the same project, or if there is more than one appeal triable in one county, the court or the board may consolidate the appeals and try them together, but the rights of the appellants must be determined separately. Consolidation of the appeals may be made on the court's or board's own motion or on the motion of a party in interest. [112.801 s. 6]

Subd. 7. BENEFITS OUTSIDE COUNTY OF DISTRICT'S OFFICE. If there is an appeal relating to damages or benefits to property in a county other than the county where the principal place of business of the watershed district is located, on request of the appellant, the trial must be held at the next term of the district court of the county where the benefited or damaged property is located. The court administrator of the district court where the appeal is filed

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shall make a transcript of the papers and documents on file in the court administrator's office in the proceeding as they pertain to the matter for which the appeal is taken. The court administrator shall certify the transcript and file it in the office of the court administrator of the district court in the county where the appeal will be tried. After the final determination of the appeal, the court administrator of the district court where the action is tried shall certify and return the verdict to the district court of the county where the proceedings were initiated. [112.801 s. 6]

Subd. 8. APPEAL TO BOARD. If the appeal is to the board, the board shall file its decision with the board's secretary. If the appeal is taken to the board from the order of the managers, the decision of the board may be reviewed by certiorari proceedings in the district court of a county where the proposed project lies in whole or in part. [112.801 s. 6]

Subd. 9. COURT REFERRAL OF QUESTIONS TO BOARD. If an appeal is from the order of the managers and made to the district court, and the court determines that there are involved facts, circumstances, or matters especially within the knowledge, functions, or duties of the board, the court may refer to the board as referee questions of fact within the scope of the board's knowledge, functions, and duties. The board shall make its findings of fact upon the questions and report them back to the court. [112.801 s. 6]

Subd. 10. TRIAL RECORD. The board shall make a record of all matters tried by the board on appeal or referred to it by the district court for findings of fact under this section. The record must meet the requirements of a record of the trial of a matter in district court. [112.801 s. 7]

Subd. 11. BOARD MUST FOLLOW ADMINISTRATIVE PROCEDURE. Proceedings before the board must conform to sections 14.57 to 14.62. [112.801 s. 8]

#### Sec. 41. [103D.541] APPEAL OF COURT ORDER.

Subdivision 1. APPEAL AUTHORIZED. A party may appeal a court order as in other civil cases if aggrieved by a final order or judgment given on appeal to the district court, or by the original order of the court made in proceedings heard and tried before the court. [112.82 s. 1]

Subd. 2. APPEAL OF PROCEEDING BEFORE MANAGERS. In a proceeding before the managers for the repair, improvement, maintenance, consolidation, or abandonment of a project of the watershed district, the right of appeal is the same as in other civil cases. [112.82 s. 2]

#### Sec. 42. [103D.545] ENFORCEMENT.

Subdivision 1. MISDEMEANOR. A violation of a provision of this chapter, a rule, order, or stipulation agreement made or a permit issued by the managers under this chapter is a misdemeanor. [112.89 s. 1]

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**Subd. 2. METHODS OF ENFORCEMENT.** A provision of this chapter, a rule, order, or stipulation agreement made or a permit issued by the managers under this chapter may be enforced by criminal prosecution, injunction, action to compel performance, restoration, abatement, and other appropriate action. [112.89 s. 2]

**Sec. 43. [103D.551] ENFORCEMENT OF RULES AND ORDERS.**

The district court may enforce the provisions of this chapter, and a rule adopted or order issued by the managers under this chapter by injunction or other appropriate order. [112.43 s. 2]

**PROCEDURE FOR MANAGERS' ESTABLISHMENT OF PROJECTS**

**Sec. 44. [103D.601] ESTABLISHMENT OF PROJECT BY MAJORITY OF MANAGERS.**

**Subdivision 1. REQUIREMENTS.** (a) The managers may initiate a project by resolution of at least a majority of the managers if:

(1) the project is financed by grants totaling at least 50 percent of the estimated project cost; and

(2) the engineer's estimate of costs to parties affected by the watershed district, including assessments against benefited properties but excluding state, federal, or other grants, is not more than \$750,000 for the project.

(b) A resolution under this subdivision may not be used to establish a project that has drainage as its essential nature and purpose. [112.48 s. 4]

**Subd. 2. PRELIMINARY RESOLUTION HEARING NOTICE.** (a) The managers must set the time and location for a preliminary resolution hearing on the proposed resolution for the project.

(b) The managers must give notice of the preliminary resolution hearing by publication in a legal newspaper published in the counties affected by the watershed district. The last publication must occur at least ten days before the preliminary resolution hearing.

(c) The preliminary resolution hearing notice must contain:

(1) the date, time, and place of hearing;

(2) the substance of the proposed project resolution;

(3) the means of financing the project; and

(4) a statement that all persons who might be affected by the proposed project or who may be interested in the proposed project may appear and be heard.

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(d) Defects in the notice do not invalidate the proceedings. [112.48 s. 4]

**Subd. 3. PRELIMINARY REPORT AND INFORMATION.** (a) The managers must have the watershed district engineer or another competent person prepare a preliminary report advising the managers whether the proposed project is feasible and estimating the cost of the project. An error or omission in the preliminary report does not invalidate the proceeding.

(b) The managers may have other helpful information prepared that will aid in determining the desirability and feasibility of the project. [112.48 s. 4]

**Subd. 4. UNFAVORABLE PRELIMINARY REPORT.** If the preliminary report is unfavorable, the managers must set a time and location for a hearing in the manner provided for the preliminary resolution. After the hearing, the project may be referred back to the watershed district engineer or another competent person for further study and report, or the managers may dismiss the proceeding. [112.48 s. 4]

**Subd. 5. FINAL RESOLUTION.** If, after the hearing, the managers determine that the proposed project promotes the public interest and welfare and is practicable and in conformity with the watershed management plan of the watershed district, the managers must adopt a final resolution approving the project and identify the proceeding by name and number. [112.48 s. 4]

**Subd. 6. FURTHER PROCEDURE.** (a) When a final resolution is adopted, the proceeding must continue as provided for a project initiated by a petition.

(b) After the managers file a statement listing the property benefited, damaged, or otherwise affected by a project with the auditors of counties affected by the project, the proceedings for the project must continue under section 68. [112.48 s. 4]

PROCEDURE FOR BASIC WATER MANAGEMENT PROJECTS  
AND GOVERNMENT PROJECTS

**Sec. 45. [103D.605] PROJECT CONSTRUCTED WITH GOVERNMENT AID OR AS PART OF PLAN.**

**Subdivision 1. PROCEDURE REQUIREMENT.** The procedure in this section must be followed if:

(1) a project is to be constructed within the watershed district under an agreement between the managers and the state or federal government and the cost of the project is to be paid for in whole or in part by the state or federal government, but the rights-of-way and the cost of the project are assumed by the watershed district; or

(2) the managers are undertaking all or a portion of the basic water management project as identified in the watershed management plan. [112.48 s. 3]

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**Subd. 2. BOARD'S AND DIRECTOR'S REPORTS.** A copy of the project plan must be transmitted to the board and the director. The board and the director must review the project plan and prepare reports on the project. The reports must be transmitted to the managers. [112.48 s. 3]

**Subd. 3. PROJECT HEARING NOTICE.** (a) After receiving the board's and the director's reports, the managers must set a time and location for a hearing on the proposed project.

(b) The project hearing notice must state:

(1) the time and location of the project hearing;

(2) the general nature of the proposed project;

(3) the estimated cost of the proposed project; and

(4) the method by which the cost of the proposed project is to be paid, including the cost to be allocated to each affected municipality or the state government.

(c) The managers must give notice by publication before the date of the hearing in a legal newspaper, published in the counties where property is to be improved by the proposed project. The last publication must occur between 30 days and ten days before the project hearing.

(d) At least ten days before the project hearing, notice by mail must be given to the director and the municipalities entirely or partly within the project area.

(e) Failure to give mailed notice or defects in the notice do not invalidate the proceedings. [112.48 s. 3]

**Subd. 4. PROJECT HEARING.** At the project hearing, the managers must hear all parties interested in the proposed project. [112.48 s. 3]

**Subd. 5. PROJECT ESTABLISHMENT.** After the project hearing, if the managers find that the project will be conducive to public health, promote the general welfare, and is in compliance with the watershed management plan and the provisions of this chapter, the board must, by order, establish the project. The establishment order must include the findings of the managers. [112.48 s. 3]

#### Sec. 46. [103D.611] CONSTRUCTION BY GOVERNMENT AGENCIES.

**Subdivision 1. PROJECT PLAN TO DIRECTOR AND BOARD.** If a project is to be constructed within the watershed district under a contract between the watershed district and the state or the federal government, and the cost of construction is to be paid by the governmental agency but the rights-of-way, legal, and general expenses of the improvement are to be paid by the watershed district, the managers shall forward a copy of the project plan to the board and the director. The director shall prepare a director's advisory report and the board shall prepare a board's advisory report. [112.69 s. 1]

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Subd. 2. HEARING NOTICE. (a) The managers shall hold a public hearing on the proposed contract following publication of the hearing notice.

(b) The hearing notice must be published once each week for two successive weeks before the date of the hearing in a legal newspaper published in the counties where a part or all of the affected waters and lands are located. The last publication must occur at least ten days before the hearing. The notice must state the time and place of hearing, the general nature of the proposed improvement, its estimated cost, and the area proposed to be assessed.

(c) At least ten days before the hearing, notice must be mailed to each resident owner, as shown on the county auditor's most recent records maintained for taxation purposes, within the area proposed to be assessed, and to the director, and to each public body within the area to be assessed and likely to be affected. Failure to give mailed notice or defects in the notice do not invalidate the proceedings. [112.69 s. 1]

Subd. 3. HEARING. At the time and place specified in the notice the managers shall hear all interested parties for and against the proposed project. All questions relative to the project must be determined on evidence presented at the hearing. If the managers find that the project will be conducive to public health and will promote the general welfare, and that it complies with this chapter, the managers shall make findings accordingly, authorize the project, and make the proposed contract or other arrangement. [112.69 s. 1]

Subd. 4. APPRAISAL. (a) After authorizing the project, the managers shall appoint three disinterested resident owners of the state to act as appraisers.

(b) After the appraisers sign an oath to faithfully and impartially perform their duties, they shall, with or without the engineer, determine the benefits and damages to property affected by the proposed project. The appraisers shall make a detailed statement and file the statement with the managers showing:

(1) the actual damages that have resulted or will result to individuals, property, or corporations from the construction of the project; and

(2) a list of property, including highways and corporations, receiving actual benefits by way of drainage, control of flood waters, or other means authorized in this chapter. [112.69 s. 1]

Subd. 5. HEARING ON APPRAISERS' REPORT. (a) After the appraisers' report and the plans and engineering data prepared by the governmental agency are filed with the managers, the managers shall prepare a detailed statement of all costs, including damages, to be incurred by the watershed district in construction of the project.

(b) The managers shall order a time and place within the watershed district for a hearing on the appraisers' report by 35 days after the detailed statement of

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costs is prepared. The managers shall give notice by publication and mailing as provided in subdivision 1 for a hearing on a petition. At the time and place specified in the notice, the managers shall hear all parties interested for and against confirming the appraisers' report.

(c) The managers may order and direct the modification of the assessment of benefits and damages, and amend or change the list of properties reported as benefited or damaged. If the amended reports include property not included in the original report, the managers shall adjourn and publish and mail in the manner for the original notice, the proper notice concerning the property not included in the previous notice.

(d) If upon full hearing the managers find that the benefits resulting from the construction will be greater than the assessments including damages they shall confirm the appraisers' report.

(e) Persons or political subdivisions affected by the order may appeal the order under this chapter. [112.69 s. 2]

Subd. 6. ASSESSMENTS AND LEVIES. Proceedings for assessments and levies may be brought under section 68 after the managers file a statement with the auditor of a county that lists the property and corporations benefited or damaged or otherwise affected by a project as found by the appraisers and approved by the managers. [112.69 s. 2]

Subd. 7. NORMAL PROJECT INITIATION DOES NOT APPLY. Section 53 relating to project initiation does not apply to projects of the watershed district constructed under contract as provided in this section. [112.69 s. 2]

Subd. 8. ACQUISITION OF PROPERTY. (a) If the watershed district is required to acquire an interest in real property under this section or convey an interest in real property to the federal government, the managers shall, before the filing of the appraisers' report, record a notice of the pendency of a proceeding initiated by the managers to acquire the lands to be conveyed to the federal government. The notice of pendency must be recorded in the office of the county recorder of the affected county. The notice must state the purpose for which the lands are to be taken.

(b) By 20 days before the hearing on the appraisers' report, in addition to the notice required by subdivision 2, the notice of the hearing must be served on the owners of the property to be acquired, in the same manner as the summons in a civil action. The notice must:

(1) describe the property;

(2) state by whom and for what purpose the property is to be taken;

(3) give the names of all persons appearing of record or known to the managers to be the owners;

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(4) state that appraisers have been appointed as provided by subdivision 4, to determine the benefits and damages; and

(5) state that a hearing will be held by the managers on the appraisers' report at the time and place specified in the notice.

(c) After the managers have confirmed the appraisers' report listing the property to be benefited or damaged as provided in subdivision 5, the managers have all rights of possession and entry conferred in other cases of condemnation by chapter 117.

(d) After confirmation of the appraisers' report, the attorney for the managers shall make a certificate describing the property taken and the purpose for the taking, and reciting the fact of payment of all awards determined by the appraisers appointed by the managers or judgments in relation to the land. When approved by the managers, the certificate establishes the right of the watershed district in the property taken. The certificate must be filed for record with the county recorder of the county where the property is located. The filing constitutes notice to all parties of the title of the watershed district to the property described in the certificate.

(e) After the certificate is filed, the managers may convey the property and interests in the property acquired to the federal government, if necessary. [112.69 s. 3]

## EMERGENCY PROJECTS

### Sec. 47. [103D.615] EMERGENCY PROJECTS.

Subdivision 1. DECLARATION OF EMERGENCY. If the managers find that conditions exist that present a clear and imminent danger to the health or welfare of the people of the watershed district, and that to delay action would prejudice the interests of the people of the watershed district or would be likely to cause irreparable harm, the managers may declare the existence of an emergency and designate the location, nature, and extent of the emergency. [112.58]

Subd. 2. PROJECT ORDER. If an emergency has been declared to the extent necessary to protect the interests of the watershed district, the managers may order that work be done under the direction of the managers and the engineer, without a contract. [112.58]

Subd. 3. ASSESSMENT. The cost of work undertaken without a contract may be assessed against benefited properties or, if the cost is not more than 25 percent of the most recent administrative ad valorem levy of the watershed district and the work is found to be of common benefit to the watershed district, funding may be raised by an ad valorem tax levy upon all taxable property within the watershed district, or both. [112.58]

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## DRAINAGE SYSTEMS AND PROJECTS

## Sec. 48. [103D.621] DRAINAGE IMPROVEMENTS.

Subdivision 1. FINDINGS. The legislature finds that because of urban growth and development in the metropolitan area problems arise for the improvement and repair of drainage systems which were originally established for the benefit of land used for agriculture. The procedure for improvement and repair of drainage systems now in the metropolitan area should be simplified to more adequately and economically improve and repair drainage systems. [112.431 s. 1]

Subd. 2. DEFINITIONS. (a) The terms in this section have the meanings given them in this subdivision.

(b) "Drainage system" has the meaning given in article 5, section 1, subdivision 12.

(c) "Watershed district" means any watershed district established under this chapter, wholly or partially in a metropolitan county.

(d) "Metropolitan county" means any one of the following counties: Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, or Washington.

(e) "Metropolitan area" means the combined area of the metropolitan counties. [112.431 s. 2]

Subd. 3. DRAINAGE IMPROVEMENTS. With the concurrence of the governing bodies of the cities and the town boards of the towns where the drainage system is located, the managers of a watershed district where there is a drainage system may improve and repair any drainage system transferred to the watershed district under section 49 by conforming to sections 429.031; 429.041, subdivisions 1 and 2; 429.051; 429.061; and 429.071. [112.431 s. 3]

Subd. 4. ALTERNATIVE POWER. With the concurrence of the governing bodies of the cities and the town boards of the towns where the drainage system is located, the managers may improve and repair a drainage system under the power granted to them in this chapter. [112.431 s. 4]

Subd. 5. APPEAL. A person aggrieved by an order for improvement or repair by the managers or by an assessment may appeal as provided in sections 40 and 41. [112.431 s. 5]

## Sec. 49. [103D.625] DRAINAGE SYSTEMS WITHIN WATERSHED DISTRICT.

Subdivision 1. WATERSHED DISTRICT ASSUMPTION OF DRAINAGE SYSTEM. (a) The managers shall take over a joint county or county drainage system within the watershed district and the right to repair and maintain the drainage system if directed by a joint county drainage authority or a county board. The transfer may be initiated by:

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- (1) the joint county drainage authority or county board;
- (2) a petition from a person interested in the drainage system; or
- (3) the managers.

(b) The transfer may not be made until the joint county drainage authority or county board has held a hearing on the transfer. Notice of the proposed transfer with the time and place of hearing must be given by two weeks' published notice in a legal newspaper of general circulation in the area where the transfer is to occur. All interested persons may appear and be heard.

(c) After the hearing, the joint county drainage authority or county board shall order the watershed district to take over the joint county or county drainage system, unless it appears that the takeover would not serve the purpose of this chapter and would not be for the public welfare or be in the public interest. [112.65 s. 1]

**Subd. 2. DRAINAGE SYSTEMS ARE WORKS OF WATERSHED DISTRICT.** A joint county or county drainage system that is taken over in whole or in part is part of the works of the watershed district to the extent taken over. [112.43 s. 1]

**Subd. 3. PROCEDURE FOR REPAIR OR IMPROVEMENT.** After the transfer is ordered, all proceedings for repair and maintenance must conform to chapter 103E. [112.65 s. 1]

**Subd. 4. CONSTRUCTION OR IMPROVEMENT.** Construction of new drainage systems or improvements of existing drainage systems in the watershed district must be initiated by filing a petition with the managers. The proceedings for the construction or improvement of drainage systems in the watershed district must conform to chapter 103E. [112.65 s. 2]

#### PROJECT REPAIRS AND IMPROVEMENTS

#### Sec. 50. [103D.631] MAINTENANCE OF PROJECTS.

**Subdivision 1. MAINTENANCE REQUIRED.** The managers are responsible for maintaining the projects of the watershed district in a condition so that they will accomplish the purposes for which they were constructed. [112.64 s. 1]

**Subd. 2. MAINTENANCE FUND.** (a) The cost of normal or routine maintenance of the projects of the watershed district, and the cost of removing obstructions and accumulations of foreign substances from a drainage system, shall be paid from the maintenance fund on the order of the managers. [112.64 s. 1]

(b) The managers may assess all the parcels of property and municipal corporations previously assessed for benefits in proceedings for the construction

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of the project, to establish a maintenance fund for the project. The assessment must be made pro rata according to benefits determined. An assessment for the benefit of the maintenance fund may not be made when the fund exceeds 20 percent of the original cost of construction of the project. The auditors of the affected counties shall file a tabular lien statement covering the assessment in the office of the county recorder for the county when the assessment order from the managers is received.

(c) The assessment shall be collected as provided in the order in the same manner as provided in article 5, section 97.

(d) Before ordering the levy of an assessment for the benefit of the maintenance fund, the managers may give notice of a hearing on making the assessment and establishing the maintenance fund. [112.64 s. 2]

**Sec. 51. [103D.635] REPAIRS AND IMPROVEMENTS EXCEEDING NORMAL MAINTENANCE.**

Subdivision 1. TECHNICAL AND COST SPECIFICATIONS. The managers shall order the engineer to prepare and submit to the managers technical and cost specifications on the work necessary to restore or improve the project to the desired level of operating efficiency before ordering repairs other than normal and routine maintenance if the engineer certifies to the managers, in the annual report or otherwise, that:

(1) a project of the watershed district is in such a state of disrepair that the project cannot be restored by normal and routine maintenance to the same condition as when it was originally constructed or subsequently improved;

(2) a ditch or channel must be widened or deepened; or

(3) a project of the watershed district must be altered or improved to attain the level of operating efficiency contemplated at the time of the original construction. [112.64 s. 3]

Subd. 2. HEARING. The managers shall set a date for a hearing on the report and give notice of the hearing in the same manner as in the original proceeding on the construction of the improvement after receiving the engineer's report. [112.64 s. 3]

Subd. 3. ASSESSMENT. (a) The managers may order the repair or improvement and assess the cost against the benefited properties if, after a hearing, the managers find that the repair or improvement is in compliance with the plan, is necessary to accomplish the purposes of this chapter, and that the cost of the repair or improvement will not exceed its benefits. The cost of the repair or improvement shall be apportioned and assessed pro rata upon all property that was assessed for the construction of the project.

(b) A single levy for the repair or improvement may not exceed the amount

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of benefits originally determined. The managers shall file a copy of the order for levy with the auditor of each affected county. The auditor shall extend the levy against affected properties as in proceedings for the levy, assessment, and collection of assessments in drainage proceedings conducted under article 5, sections 77 to 83. [112.64 s. 3]

**Sec. 52. [103D.641] WORK WITHOUT BID.**

If the managers find that the estimated cost of repair, including all fees and costs incurred for proceedings relating to it, is less than \$20,000, it may have the work done by contract without advertising for bids. [112.64 s. 4]

GENERAL PROCEDURE TO ESTABLISH PROJECTS

**Sec. 53. [103D.701] PROJECT INITIATION.**

Projects may not be initiated until the board approves a watershed management plan for the watershed district. The projects of the watershed district that are to be paid for by assessment of the benefited properties must be initiated:

- (1) by a project petition filed with the managers;
- (2) by unanimous resolution of the managers; or
- (3) as otherwise prescribed by this chapter. [112.47; 112.48 s. 1]

**Sec. 54. [103D.705] PROJECT PETITION.**

Subdivision 1. REQUIREMENTS. A project within the watershed district that generally conforms with the watershed management plan may be initiated by a project petition. A project petition must contain:

- (1) a description of the proposed project and the purpose to be accomplished;
- (2) a description of the property where the proposed project passes over or is located;
- (3) a general description of the part of the watershed district that will be affected, if less than the entire watershed district;
- (4) the necessity for the proposed project;
- (5) a statement that the proposed project will be conducive to public health, convenience, and welfare; and
- (6) a statement that the petitioners will pay all costs and expenses that may be incurred if the proceedings are dismissed or a construction contract is not awarded for the proposed project. [112.48 s. 1, 1a]

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**Subd. 2. SIGNATURES.** (a) The project petition must be signed by:

(1) at least 25 percent of the property owners or the owners of more than 25 percent of the property within the limits of the area proposed to be improved, unless the project consists of the establishment of a new drainage system as defined in article 5, section 1, subdivision 12, or the improvement of an existing drainage system;

(2) if the project consists of the establishment of a new drainage system as defined in article 5, section 1, subdivision 12, a majority of the owners of the property that the proposed project passes over or is located on, or the owners of at least 60 percent of the area of the property that the proposed project passes over or is located on;

(3) if the project consists of the improvement of an existing drainage system as defined in article 5, section 29, subdivision 2, at least 26 percent of the owners of the property proposed to be improved by the project or that the proposed project passes over, or the owners of at least 26 percent of the area proposed to be improved by the project or that the proposed project passes over;

(4) a county board of a county affected by the watershed district; or

(5) the governing body of a city entirely or partly within the area proposed to be improved.

(b) If a proposed project improves property entirely within a city, a petition must originate from the governing body of the city.

(c) For a signature on a project petition, holders of easements for electric or telephone transmission or distribution lines are not considered owners. [112.48 s. 1]

**Subd. 3. PETITIONERS' DEPOSIT OR BOND.** (a) When a project petition is filed and before the managers take action on the project petition, one or more of the petitioners must deposit at least \$2,000 with the managers. The deposit must be conditioned to pay all costs and expenses incurred if the project petitioned for is not constructed.

(b) Alternatively, with the approval of the managers, one or more of the petitioners may make and file a bond payable to the watershed district named in the petition. The bond must be for at least \$2,000 with adequate sureties, subject to the approval of the managers of the watershed district where the bond is filed. The bond must be conditioned to pay all costs and expenses incurred if the proceedings are dismissed or a contract is not entered into to construct the project petitioned for.

(c) If, before a project is established, the petitioner's deposit or bond is insufficient to protect the watershed district from loss from the costs or expenses incurred or to be incurred, the watershed district must require an additional

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deposit or bond. Further proceedings must be stopped until an adequate deposit or bond is furnished. If the additional deposit or bond is not furnished within a time set by the managers, the proceedings may be dismissed.

(d) In proceedings to establish a project, the expenses incurred before the project is established may not exceed the deposit or the bond furnished by the petitioners. A claim in excess of the amount of the petitioners' deposit or bond may not be audited or paid by the watershed district unless the petitioners file an additional deposit or bond within a time and in an amount directed by the managers.

(e) If a project petition is signed by a county board or governing body of a city, a bond is not required. [112.48 s. 2]

Subd. 4. PETITIONERS MAY DISMISS PETITION. The petitioners may dismiss the petition upon payment of costs and expenses. [112.49 s. 4]

#### Sec. 55. [103D.711] ENGINEER'S REPORT.

Subdivision 1. DETERMINATION. If the managers determine that a proper project petition has been filed, the proposed project promotes the public interest and welfare, is practicable and conforms with the watershed management plan of the watershed district, the managers must:

- (1) identify the project proceeding by name and number; and
- (2) designate an engineer to make surveys, maps, and a report on the proposed project. [112.49 s. 1]

Subd. 2. REQUIREMENTS. (a) The engineer's report must include findings and recommendations about the proposed project. If the engineer finds the improvement feasible, the engineer must provide a plan of the proposed project as part of the report. The plan must include:

- (1) a map of the area to be improved, drawn to scale, showing the location of the proposed improvements;
- (2) the estimated total cost of completing the project including construction, supervision, and administrative costs;
- (3) the acreage required as right-of-way listed by each lot and 40-acre tract or fraction of the lot or tract under separate ownership; and
- (4) other details and information to inform the managers of the practicability and necessity of the proposed project with the engineer's recommendations on these matters.

(b) The map of the area must include:

- (1) the location and adequacy of the outlet;

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- (2) the watershed of the project area;
- (3) the location of existing highways, bridges, and culverts;
- (4) the property, highways, and utilities affected by the project with the names of the known property owners;
- (5) the location of public land and water affected by the project; and
- (6) other physical characteristics of the watershed necessary to understand the area. [112.49 s. 1]

**Subd. 3. STATE AND FEDERAL PROJECTS MAY BE INCLUDED.**  
The engineer may adopt, approve, and include as a part of the engineer's report a project of the state or federal government that is pertinent to the project and may accept data, plats, plans, details, or information pertaining to the state or federal project given to the engineer by the state or federal agency. The engineer shall omit the items required in subdivision 2 from the engineer's report if the data given by the state or federal government is sufficient to meet the requirements of subdivision 2. [112.49 s. 2]

**Subd. 4. HEARING AFTER UNFAVORABLE ENGINEER'S REPORT.**  
(a) If the engineer's report is unfavorable, the managers shall, by order, within 35 days set a time and place within the watershed district for a hearing for the petitioners to demonstrate why the managers should not refer the petition back to the petitioners for further proceedings or dismiss the petition.

(b) The hearing notice must state:

- (1) that the engineer's report is unfavorable;
- (2) that the engineer's report is on file with the managers and may be reviewed; and
- (3) the time and place for the hearing.

(c) The managers shall mail a copy of the notice to each of the petitioners at least 14 days before the hearing. [112.49 s. 3]

**Subd. 5. ADVISORY REPORTS.** (a) When the engineer's report is filed with the managers, the managers shall send a complete copy to the director and to the board.

(b) The director and the board shall examine the engineer's report and by 30 days after receiving the report, the director shall make a director's advisory report and the board shall make a board's advisory report which must include:

(1) a statement on whether the engineer's report is incomplete and not in accordance with this chapter;

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(2) a statement of whether the engineer's report is approved as being a practical plan;

(3) if the project as planned does not meet approval, recommendations for changes considered advisable must be stated or an opinion that the proposed project or improvement is not practical; and

(4) a recommendation as to whether a soil survey appears advisable.

(c) The director's advisory report and the board's advisory report shall be directed to and filed with the managers.

(d) The director's advisory report and the board's advisory report shall be considered advisory only. [112.49 s. 6]

Subd. 6. ADVISORY REPORTS MUST BE FILED BEFORE NOTICE. A notice may not be issued for the final hearing until the board's advisory report and the director's advisory report are filed or the time for filing the reports with the managers has expired. [112.49 s. 6]

Subd. 7. FORM. The findings, recommendations, and content of the engineering report shall conform as nearly as practicable to the requirements of this section. [112.49 s. 7]

Subd. 8. SOIL SURVEY. If a soil survey is recommended to be made in the director's advisory report or the board's advisory report, the engineer shall make the soil survey and a soil survey report. The soil survey report must be submitted to the managers before the final hearing. [112.49 s. 6]

#### Sec. 56. [103D.715] APPRAISERS.

Subdivision 1. APPOINTMENT. After the engineer's report is filed, the managers shall, with the least possible delay, appoint three disinterested resident owners of the state as appraisers. [112.50 s. 1]

Subd. 2. OATH. An appraiser must subscribe to an oath to faithfully and impartially perform the appraiser's duties. [112.50 s. 1]

Subd. 3. DUTIES. The appraisers shall with or without the engineer determine the benefits and damages to property affected by the proposed project, including property owned by the state or a state agency, highways, and other property likely to be affected by the proposed project or that may be used or taken for construction or maintenance. [112.50 s. 1]

Subd. 4. BENEFITS AND DAMAGES TO STATE LAND. Benefits and damages to property owned by the state or a state agency, held and used for the purposes described in article 5, sections 5 and 51, subdivision 1, must be determined as provided in article 5, sections 5 and 51, subdivision 1, as they are applicable. [112.50 s. 1]

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Subd. 5. COMPENSATION. An appraiser may be paid on a per diem basis for each day the appraiser is necessarily engaged in the performance of duties and for actual and necessary expenses. The compensation shall be set by the managers, paid by the watershed district, and included in the cost of the project. [112.50 s. 1]

**Sec. 57. [103D.721] DETERMINATION OF BENEFITS AND DAMAGES BY MANAGERS.**

Subdivision 1. AUTHORITY. The managers may, in their discretion, use the procedure in this section to determine benefits and damages. [112.50 s. 1]

Subd. 2. DETERMINATION. After the engineer's report is filed, the managers, with the assistance of the engineer, shall determine the benefits or damages to the property affected by the proposed project, including property owned by the state or a state agency, highways, and other property likely to be affected by the proposed improvement or that may be used or taken for construction or maintenance. [112.50 s. 1]

Subd. 3. STATE PROPERTY. Benefits and damages to property owned by the state or a state agency that is held and used for the purposes described in article 5, sections 5 and 51, subdivision 1, shall be determined as provided in article 5, sections 5 and 51, subdivision 1, as they are applicable. [112.50 s. 1]

Subd. 4. WATER MANAGEMENT ASSESSMENT PORTION. The managers must determine the amount to be paid and generally assessed by the watershed district for the basic water management portion of the improvement projects. [112.50 s. 1]

**Sec. 58. [103D.725] BENEFITED PROPERTY, DETERMINATION.**

Subdivision 1. APPRAISERS' STANDARDS. If the proposed project includes the construction or improvement of a ditch, stream, river, or watercourse, or structures for the control or alleviation of damages from flood waters, the appraisers shall be governed by article 5, sections 50 to 52. [112.501 s. 1]

Subd. 2. DETERMINATION OF BENEFITS. In proceedings under this chapter, assessments for benefits shall be made based on the benefits to the property because of the project affecting the property. Benefited property must include:

(1) all property, including property owned by the state or a political subdivision receiving direct benefits, including assessments for drainage, recreation, commercial navigation, disposal of sewage or waste material, bank stabilization, flood control, land reclamation, prevention of siltation, control of erosion, and maintenance of lake levels;

(2) all property that is contributing water or is furnished an improved drainage outlet and all property that contributes waters that are stored, handled, or controlled by the proposed project;

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(3) all property that is not receiving but needs drainage and that is furnishing waters handled or controlled by the proposed project;

(4) benefits to the state by reason of the improvement of lakes, streams, or other bodies of water as a place for propagation, protection, and preservation of fish and other forms of wildlife, that are assessable against the state to the extent and in the manner provided in section 84A.55, subdivision 9, and within the available appropriation;

(5) benefits to municipal corporations that occur to the property in the municipality generally and that may be in addition to special benefits to specific property within the municipality; and

(6) benefits that will result to property used for railway or other utility purposes. [112.501 s. 2]

**Sec. 59. [103D.731] APPRAISERS' REPORT, EXAMINATION.**

(a) The appraisers shall prepare an appraisers' report of the benefits and damages determined and file the report with the managers.

(b) After the appraisers' report is filed, the managers shall examine the report and determine whether:

(1) the report was made in conformity with the requirements of this chapter; and

(2) the total benefits are greater than the total estimated costs and damages.

(c) If the managers determine the appraisers' report is inadequate in any manner, the managers may return the report to the appraisers for further study and report. [112.51]

**Sec. 60. [103D.735] HEARING ON PETITION AND REPORTS.**

(a) The managers shall order a final hearing by 35 days after:

(1) the engineer's report is filed;

(2) the appraisers' report is filed; and

(3) the director's advisory report and the board's advisory report are filed or the time for that filing has expired.

(b) The order for a final hearing must set a time and place within the watershed district for a hearing upon the petition or resolution and reports. [112.52]

**Sec. 61. [103D.741] HEARING NOTICE.**

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**Subdivision 1. PUBLISHED FINAL HEARING NOTICE.** The managers shall give notice by publication of the final hearing. The final hearing notice must contain:

(1) a statement of the pendency of the petition or resolution;

(2) the time and place for hearing;

(3) a statement that the engineer's report and appraisers' report, including the plans, have been filed with the managers and are subject to inspection;

(4) a brief description of the proposed project;

(5) a description of the properties benefited or damaged, the names of the owners of the properties, the public and other corporations affected by the project as shown by the engineer's report and appraisers' report or may include a map of the affected area in lieu of the names of the owners and of the descriptions of the properties affected by the project; and

(6) a statement requiring all parties interested in the proposed project to appear before the managers at the time and place designated in the final hearing notice to present objections, and to show why an order should not be made by the managers granting the petition, confirming the reports of the engineer and appraisers, and ordering the establishment and construction of the project.  
[112.53 s. 1]

**Subd. 2. MAILED FINAL HEARING NOTICE.** (a) The managers shall give the final hearing notice by mail, within one week after the beginning of publication, to the director and to each person, corporation, and public body that owns property benefited or damaged by the proposed project as shown by the engineer's and appraisers' report.

(b) The mailed final hearing notice must contain:

(1) a brief description of the proposed project;

(2) a statement that the engineer's report and appraisers' report are on file with the managers and available for public inspection;

(3) the time and place of hearing; and

(4) a statement that the addressee's name appears as an affected party.  
[112.53 s. 2]

**Subd. 3. NOTICE OF PROPERTY ACQUISITION BY WATERSHED DISTRICT.** (a) If the watershed district must acquire the ownership of real property, the managers must record a notice of pendency of the watershed district's proceeding to acquire property in the office of county recorder of the county where the property is located before the appraisers' report is filed. The pendency notice must state the purpose for which the property is to be acquired.

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(b) By 20 days before the final hearing, the final hearing notice, in addition to being given in the manner required in subdivisions 1 and 2, must be served on the owners of the property to be acquired, in the same manner as a summons in a civil action. In addition to the other requirements of the final hearing notice, the notice to property owners must:

(1) describe the property to be acquired;

(2) state by whom and for what purpose it is to be taken;

(3) give the names of all persons appearing of record or known to the managers to be the owners;

(4) state that benefits and damages have been determined; and

(5) state that the final hearing will be held by the managers at the time and place specified in the notice. [112.53 s. 3]

Subd. 4. FINAL HEARING NOTICE IN MORE THAN ONE COUNTY. If a project affects the property in more than one county, separate final hearing notices must be prepared and published in each county affected showing only the general description of the proposed project and the names and descriptions of the property affected in the county or, instead of the names and descriptions, a map of the area affected in the county. [112.53 s. 4]

**Sec. 62. [103D.745] FINAL HEARING.**

Subdivision 1. HEARING. (a) At the time and place specified in the final hearing notice, the managers must hear all parties interested for and against the establishment of the proposed project and confirm the engineer's report and the appraisers' report.

(b) Questions about the proposed project including jurisdiction, sufficiency of the petition or resolution, practicability, and necessity shall be determined by evidence presented at the hearing. Findings made by the managers before the final hearing are not conclusive but are subject to further investigation, consideration, and determination at the final hearing. [112.54]

Subd. 2. MODIFICATION OF REPORTS. (a) The managers may order and direct the modification of:

(1) the engineer's report within the scope of the watershed management plan for the watershed district;

(2) the assessment of benefits and damages; and

(3) amendment or change of the list of property reported as assessable for construction and maintenance.

(b) If the amended engineer's report and appraisers' report includes property not included in the original reports, the managers shall adjourn the hearing

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and have an amended notice published and mailed with the proper reference to all property as amended by the managers. [112.54]

**Subd. 3. ESTABLISHMENT OF PROJECT.** (a) The managers shall make findings, order and direct construction of the project, and confirm the engineer's report and the findings of the appraisers and the appraisers' report if, at the end of the final hearing, the managers find that the project will:

(1) be conducive to public health;

(2) promote the general welfare;

(3) be in compliance with this chapter; and

(4) result in benefits that will be greater than the cost of the construction and damages.

(b) The order may authorize the construction of the project as a whole or authorize different parts of the project to be constructed separately.

(c) The managers shall order the engineer to proceed with making the necessary surveys and preparing plans and specifications that are needed to construct the project and report the results of the surveys and plans to the managers. [112.54]

**Subd. 4. RECESS UNTIL AWARDING CONTRACT.** The final hearing shall be recessed until the engineer's report and the bids are received. The hearing may be recessed to allow compliance with section 63 if it becomes applicable. [112.54]

## CONSTRUCTION OF PROJECTS

### Sec. 63. [103D.801] PROCEDURE WHEN CONTRACT IS NOT LET.

If all of the bids received are for a price more than 30 percent greater than the engineer's estimate in the engineer's report, or for a price in excess of the benefits less damages and other costs, the managers shall follow the procedure described in article 5, section 65. [112.541]

### Sec. 64. [103D.805] FILING ORDER OF MANAGERS ESTABLISHING PROJECT.

An order of the managers establishing the project and authorizing construction must immediately be filed with the secretary of the watershed district, and a certified copy of the order must be filed with the auditor of each county affected, the board, the commissioner, the director, the pollution control agency, and the commissioner of health. [112.55]

### Sec. 65. [103D.811] BIDS FOR CONSTRUCTION.

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Subdivision 1. CALL FOR BIDS. After an establishment order has been made by the managers directing the establishment of a project, the managers shall call for bids for the construction of the work and give notice by publication specifying the time and place when the bids will be opened for awarding a contract for the construction of the project. The contract may be awarded in sections or as a whole, as directed by the managers. [112.57]

Subd. 2. BID NOTICE. A bid notice shall be published in at least one of the newspapers in the state where notices are usually published. [112.57]

Subd. 3. AWARDING OF CONTRACT. (a) At a time and place specified in the bid notice, the managers may accept or reject any or all bids and may award the contract to the lowest responsible bidder. The bidder to whom the contract is to be awarded must give a bond, with ample security, conditioned by satisfactory completion of the contract.

(b) Bids must not be considered which in the aggregate exceed by more than 30 percent the total estimated cost of construction.

(c) The contract must be in writing and be accompanied by or refer to the plans and specifications for the work to be done as prepared by the engineer for the watershed district. The plans and specifications shall become a part of the contract.

(d) The contract shall be approved by the managers and signed by the president, secretary, and contractor. [112.57]

#### Sec. 66. [103D.815] CONTROL OF CONTRACTS.

Subdivision 1. MANAGERS' CONTROL OF CONTRACTS. The managers have full control of contracts of the watershed district and matters pertaining to the contracts. [112.50]

Subd. 2. EXTENSION OF CONTRACTS. If a contractor fails to complete a project within the time or in the manner specified in the contract, the managers may:

- (1) extend the time for completion;
- (2) refuse an extension of time;
- (3) cancel the contract, readvertise, and award a new contract;
- (4) require surety for the contractor to complete the project;
- (5) proceed to have the contract otherwise completed at the expense of the contractor and the surety; or
- (6) take other action with reference to the contract in the interest of the watershed district. [112.59]

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Subd. 3. ENGINEER'S AUTHORITY OVER CONTRACTOR. Applicable provisions of chapter 103E govern the relations between the engineer and the contractor, including the examination and report of the engineer and the amount and time of payment. [112.59]

Subd. 4. EXPENSE RECORD. (a) The managers shall keep an accurate account of all expenses incurred, including:

(1) the compensation of the engineer and the engineer's assistants;

(2) the compensation and expenses of the appraisers as provided in section 56, subdivision 5;

(3) the compensation of the petitioners' attorney;

(4) the cost of petitioners' bond;

(5) the fees of all county officials necessitated by the project, which are in addition to all fees otherwise allowed by law; and

(6) the time and expenses of all employees of the watershed district, including the expenses of the managers, while engaged in an authorized project.

(b) Fees and expenses shall be audited, allowed, and paid upon the order of the managers and shall be charged to and be treated as a part of the cost of the project. [112.59]

**Sec. 67. [103D.821] DAMAGE TO HIGHWAY OR BRIDGE BY PASSAGE OF EQUIPMENT.**

Subdivision 1. NOTICE. If it is necessary to pass a dredge or other equipment through a bridge or grade of a highway or railroad owned by a corporation, county, town, or municipality, the managers shall give notice to the owner of the bridge or grade by 20 days before the removal so the bridge or grade may be removed temporarily to allow the passage of the equipment, or an agreement may be immediately entered into to allow the passage. [112.66]

Subd. 2. COST PAID BY WATERSHED DISTRICT. The owner of the bridge or grade shall keep an itemized account of the cost of removal and if necessary, of replacing of the bridge or grade. The actual cost must be paid by the watershed district. [112.66]

Subd. 3. MANAGERS MAY REMOVE BRIDGE OR GRADE. If the owner of the bridge or grade refuses to provide for the passage of the equipment, the managers may remove the bridge or grade at the expense of the watershed district, interrupting traffic in the least degree consistent with good work and without delay or unnecessary damage. [112.66]

Subd. 4. OWNERS LIABLE FOR DELAY. If the managers are prevented from moving the equipment, the owner of the bridge or grade is liable for the damages resulting from the delay. [112.66]

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## FUNDING OF WATERSHED DISTRICT AND PROJECTS

## Sec. 68. [103D.901] ASSESSMENTS, LEVIES.

Subdivision 1. ASSESSMENT. (a) After the managers file an approved assessment statement listing the property and corporations benefited or damaged or otherwise affected by a project with the auditor of an affected county, the auditor shall assess the amount specified in the assessment statement against the property, municipalities, or other corporations as specified in the pertinent provisions of chapter 103E. [112.60 s. 1]

(b) For a watershed district entirely within the metropolitan area, the auditor must mail an assessment notice to property owners and corporations benefited and damaged before the assessment is made under paragraph (a). The assessment notice must include:

(1) the amount to be specially assessed against the property;

(2) the right of the property owner to prepay the entire assessment and to whom prepayment must be made;

(3) whether partial prepayment of the assessment is authorized;

(4) the time within which prepayment may be made without interest being charged; and

(5) the rate of interest to be charged if the assessment is not prepaid within the required time period. [112.60 s. 1a]

Subd. 2. COUNTY FUNDING. After the assessment statement is filed with the auditor, the county board of each affected county shall provide funds to meet its proportionate share of the total cost of the project, as shown by the engineer's report and order of the managers. The county may issue bonds of the county in the manner provided by article 5, section 84. If an improvement is to be constructed under section 46, the provisions of article 5, section 84, requiring the county board to award a contract for construction before issuing bonds is not applicable to bonds issued to provide the funds required to be furnished by this section. [112.60 s. 2]

Subd. 3. LEVY AND COLLECTION. (a) The respective county auditors and county treasurers shall levy and collect the amount shown in the tabular statement and lien as provided in article 5, sections 77 to 83. [112.60 s. 3]

(b) For a watershed district entirely within the metropolitan area, the auditor must mail an assessment notice to the owners of affected property as provided in subdivision 1, paragraph (b), before the assessment is levied. The assessment may be prepaid as provided in paragraphs (c) and (d). [112.64 s. 3a]

(c) For a watershed district entirely within the metropolitan area, a property owner or corporation may prepay the entire assessment at any time before the

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first installment of the assessment is entered on the tax lists for the year with the interest that has accrued to the date of payment, except that interest may not be charged on an assessment that is prepaid within 30 days after the assessment notice is mailed. [112.60 s. 5]

(d) After the first installment of an assessment is entered on the tax list, a property owner or corporation may prepay the entire assessment remaining due before November 15 with interest accrued to December 31 of the year in which the prepayment is made. [112.60 s. 5]

(e) The money received by the treasurer of a county from the sale of bonds, assessments, or otherwise, for the benefit of the watershed district shall be accounted for by the auditor and paid to the treasurer of the watershed district. [112.60 s. 3]

Subd. 4. ASSESSMENT MAY NOT EXCEED BENEFITS. (a) An assessment may not be levied against property or corporations benefited under this chapter in excess of the amount of benefits received as set by the order of the managers authorizing the construction of the project or subsequently determined on appeal. [112.60 s. 4]

(b) If the damages for a project financed by special assessment are awarded and confirmed, the managers must determine that the project's benefits exceed the total costs, including damages awarded.

(c) The managers shall amend the project's statement filed with the county auditor to reflect the amount of damages awarded. [112.87]

Subd. 5. DAMAGES PAID BEFORE ENTERING PROPERTY. Before entering property for which damages were awarded to begin construction of the project, the managers shall pay the amount of damages awarded less any assessment against the property from the funds provided by the county board under subdivision 3. If the amount of damages is appealed, damages may not be paid until the final determination of the appeal. [112.87]

#### Sec. 69. [103D.905] FUNDS OF WATERSHED DISTRICT.

Subdivision 1. GENERALLY. The money of a watershed district consists of the funds established in this section. [112.61 s. 1]

Subd. 2. ORGANIZATIONAL EXPENSE FUND. (a) An organizational expense fund, consisting of an ad valorem tax levy, shall not exceed 0.01596 percent of taxable market value, or \$60,000, whichever is less. The money in the fund shall be used for organizational expenses and preparation of the watershed management plan for projects.

(b) The managers may borrow from the affected counties up to 75 percent of the anticipated funds to be collected from the organizational expense fund levy and the counties affected may make the advancements.

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(c) The advancement of anticipated funds shall be apportioned among affected counties in the same ratio as the net tax capacity of the area of the counties within the watershed district bears to the net tax capacity of the entire watershed district. If a watershed district is enlarged, an organizational expense fund may be levied against the area added to the watershed district in the same manner as provided in this subdivision.

(d) Unexpended funds collected for the organizational expense may be transferred to the administrative fund and used for the purposes of the administrative fund. [112.61 s. 2]

Subd. 3. ADMINISTRATIVE FUND. An administrative fund, consisting of an ad valorem tax levy, may not exceed 0.02418 percent of taxable market value, or \$125,000, whichever is less. The money in the fund shall be used for general administrative expenses and for the construction and maintenance of projects of common benefit to the watershed district. The managers may make an annual levy for the administrative fund as provided in section 70. In addition to the annual administrative levy, the managers may annually levy a tax not to exceed 0.00798 percent of taxable market value for a period not to exceed 15 consecutive years to pay the cost attributable to the basic water management features of projects initiated by petition of a municipality of the watershed district. [112.61 s. 3]

Subd. 4. BOND FUND. A bond fund consists of the proceeds of bonds issued by the watershed district secured by the property of the watershed district that is producing or is likely to produce a regular income. The bond fund is to be used for the payment of the purchase price of the property or the value of the property as determined by the court in proper proceedings, and for the improvement and development of the property. [112.61 s. 4]

Subd. 5. CONSTRUCTION FUND. (a) A construction fund consists of:

(1) the proceeds of the sale of county bonds;

(2) construction loans from any agency of the federal government; and

(3) special assessments to be levied to supply funds for the construction of the projects of the watershed district, including reservoirs, ditches, dikes, canals, channels, and other works, and the expenses incident to and connected with the construction.

(b) Construction loans from an agency of the federal government may be repaid from money collected by special assessments on properties benefited by the project. [112.61 s. 5]

Subd. 6. PRELIMINARY FUND. A preliminary fund consists of funds authorized to be provided. The preliminary fund is to be used for preliminary work on proposed works of the watershed district. [112.61 s. 6]

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Subd. 7. REPAIR AND MAINTENANCE FUNDS. Repair and maintenance funds are established under section 50, subdivision 2. [112.61 s. 7]

Subd. 8. SURVEY AND DATA ACQUISITION FUND. (a) A survey and data acquisition fund is established and used only if other funds are not available to the watershed district to pay for making necessary surveys and acquiring data.

(b) The survey and data acquisition fund consists of the proceeds of a property tax that can be levied only once every five years. The levy may not exceed 0.02418 percent of taxable market value.

(c) The balance of the survey and data acquisition fund may not exceed \$50,000.

(d) In a subsequent proceeding for a project where a survey has been made, the attributable cost of the survey as determined by the managers shall be included as a part of the cost of the work and the sum shall be repaid to the survey and data acquisition fund. [112.61 s. 8]

#### Sec. 70. [103D.911] BUDGET.

Subdivision 1. HEARING. (a) Before adopting a budget, the managers shall hold a public hearing on the proposed budget.

(b) The managers shall publish a notice of the hearing with a summary of the proposed budget in one or more newspapers of general circulation in each county consisting of part of the watershed district. The notice and summary shall be published once each week for two successive weeks before the hearing. The last publication shall be at least two days before the hearing. [112.611 s. 1]

Subd. 2. ADOPTION. On or before October 1 of each year, the managers shall adopt a budget for the next year and decide on the total amount necessary to be raised from ad valorem tax levies to meet the watershed district's budget. [112.611 s. 1]

#### Sec. 71. [103D.915] TAX LEVY.

Subdivision 1. CERTIFICATION TO AUDITOR. After adoption of the budget and no later than October 1, the secretary of the watershed district shall certify to the auditor of each county within the watershed district the county's share of the tax, which shall be an amount bearing the same proportion to the total levy as the net tax capacity of the area of the county within the watershed bears to the net tax capacity of the entire watershed district. The maximum amount of a levy may not exceed the amount provided in section 69. [112.611 s. 1]

Subd. 2. LEVY. The auditor of each county in the watershed district shall add the amount of a levy made by the managers to the other tax levies on the  
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property of the county within the watershed district for collection by the county treasurer with other taxes. The county treasurer shall make settlement of the taxes collected with the treasurer of the watershed district in the same manner as other taxes are distributed to the other political subdivisions. The levy authorized by this section is in addition to other county taxes authorized by law. [112.611 s. 2]

**Sec. 72. [103D.921] DISTRICT COURT TO CREATE PRELIMINARY FUND.**

Subdivision 1. PETITION. (a) If a petition has been filed with the managers for the construction of a project within the watershed district, the managers may file a petition with the district court in the county where the watershed district has its principal place of business asking that a preliminary expense fund be created for the watershed district.

(b) The managers may subsequently amend or supplement the petition if necessary. At least ten days' notice of a petition or amended or supplementary petition must be given to the auditor of each county affected by the proposed project.

(c) The preliminary fund must be of a size that is proportionate to the needs of the watershed district for preliminary work on the proposed project. [112.62 s. 1]

Subd. 2. COURT ORDER OF AMOUNT. The district court after the hearing may designate the amount of the fund and set the proportionate amount that each county affected by the improvement shall pay, in proportion to the area in the county affected by the proposed project. The court shall order the auditor of each county to draw a warrant on the treasurer of the county for the payment of the amount specified in the order, payable to the treasurer of the watershed district. The sum advanced by the county shall be charged to the watershed district, and must be repaid with interest as soon as the watershed district has funds for that purpose. [112.62 s. 2]

Subd. 3. USE OF FUND. The preliminary fund must be used by the managers for preliminary work. If the managers incur expenses for surveys or other preliminary work on a proposed project, all expenses connected with the work shall be included in the cost of construction of the proposed project. If construction of the project is authorized by the managers, the money advanced from the preliminary fund shall be repaid from assessments for the project. [112.62 s. 2]

Subd. 4. APPROPRIATIONS FROM GOVERNMENTAL BODIES. The state, state agencies, and political subdivisions may appropriate money necessary to pay their proportionate share of the preliminary expenses, determined by the managers according to the benefits that will probably accrue from the proposed project. [112.62 s. 4]

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Subd. 5. PRELIMINARY FUND. The district court may order a preliminary fund for all works of the watershed district instituted under section 53. [112.62 s. 5]

Sec. 73. [103D.925] WARRANTS.

The managers may issue warrants of the watershed district to pay contracts for the construction of projects, ordinary general expenses, and expenses incurred in making repairs that have been approved by the managers, only if there are sufficient funds available for payment in the watershed district treasury. [112.63]

ARTICLE 5

CHAPTER 103E

DRAINAGE OF WATERS

Section 1. [103E.005] DEFINITIONS.

Subdivision 1. APPLICABILITY. The definitions in this section apply to this chapter. [106A.005 s. 1]

Subd. 2. AFFECTED. "Affected" means benefited or damaged by a drainage system or project. [106A.005 s. 2]

Subd. 3. AUDITOR. "Auditor" means the auditor of the county where the petition for a drainage project was properly filed. [106A.005 s. 3]

Subd. 4. BOARD. "Board" means the board of commissioners of the county where the drainage system or project is located. [106A.005 s. 4]

Subd. 5. COMMISSIONER. "Commissioner" means the commissioner of natural resources. [106A.005 s. 5]

Subd. 6. DIRECTOR. "Director" means the director of the division of waters in the department of natural resources. [106A.005 s. 6]

Subd. 7. DISMISSAL OF PROCEEDINGS. "Dismissal of proceedings" means that the petition and proceedings related to the petition are dismissed. [106A.005 s. 7]

Subd. 8. DITCH. "Ditch" means an open channel to conduct the flow of water. [106A.005 s. 8]

Subd. 9. DRAINAGE AUTHORITY. "Drainage authority" means the board or joint county drainage authority having jurisdiction over a drainage system or project. [106A.005 s. 9]

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**Subd. 10. DRAINAGE LIEN.** “Drainage lien” means a lien recorded on property for the costs of drainage proceedings and construction and interest on the lien, as provided under this chapter. [106A.005 s. 10]

**Subd. 11. DRAINAGE PROJECT.** “Drainage project” means a new drainage system, an improvement of a drainage system, an improvement of an outlet, or a lateral. [106A.005 s. 10a]

**Subd. 12. DRAINAGE SYSTEM.** “Drainage system” means a system of ditch or tile, or both, to drain property, including laterals, improvements, and improvements of outlets, established and constructed by a drainage authority. “Drainage system” includes the improvement of a natural waterway used in the construction of a drainage system and any part of a flood control plan proposed by the United States or its agencies in the drainage system. [106A.005 s. 11]

**Subd. 13. ENGINEER.** “Engineer” means the engineer for a drainage project appointed by the drainage authority under section 36, subdivision 1. [106A.005 s. 12]

**Subd. 14. ESTABLISHED.** “Established” means the drainage authority has made the order to construct the drainage project. [106A.005 s. 13]

**Subd. 15. LATERAL.** “Lateral” means any drainage construction by branch or extension, or a system of branches and extensions, or a drain that connects or provides an outlet to property with an established drainage system. [106A.005 s. 14]

**Subd. 16. MUNICIPALITY.** “Municipality” means a statutory or home rule charter city or a town having urban powers under section 368.01, subdivision 1 or 1a. [106A.005 s. 16]

**Subd. 17. NOTICE BY MAIL.** “Notice by mail” means a notice mailed and addressed to each person entitled to receive the notice, if the address is known to the auditor or can be determined by the county treasurer of the county where the affected property is located. [106A.005 s. 16]

**Subd. 18. OWNER.** “Owner” means an owner of property or a buyer of property under a contract for deed. [106A.005 s. 16a]

**Subd. 19. PASSES OVER.** “Passes over” means in reference to property that has a drainage project or system, the 40-acre tracts or government lots or property that is bordered by, touched by, or underneath the path of the proposed drainage project. [106A.005 s. 16b]

**Subd. 20. PERSON.** “Person” means an individual, firm, partnership, association, or private corporation. [106A.005 s. 17]

**Subd. 21. POLITICAL SUBDIVISIONS.** “Political subdivisions” means statutory and home rule charter cities, counties, towns, school districts, and other political subdivisions. [106A.005 s. 18]

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Subd. 22. PROCEEDING. "Proceeding" means a procedure under this chapter for or related to drainage that begins with filing a petition and ends by dismissal or establishment of a drainage project. [106A.005 s. 19]

Subd. 23. PROPERTY. "Property" means real property. [106A.005 s. 20]

Subd. 24. PUBLICATION. "Publication" means a notice published at least once a week for three successive weeks in a legal newspaper in general circulation in each county affected by the notice. [106A.005 s. 21]

Subd. 25. PUBLIC HEALTH. "Public health" includes an act or thing that tends to improve the general sanitary condition of the community by drainage, relieving low wetland or stagnant and unhealthful conditions, or preventing the overflow of any property that produces or tends to produce unhealthful conditions. [106A.005 s. 25]

Subd. 26. PUBLIC WATERS. "Public waters" has the meaning given in article 7, section 2, subdivision 15. [106A.005 s. 23]

Subd. 27. PUBLIC WELFARE OR PUBLIC BENEFIT. "Public welfare" or "public benefit" includes an act or thing that tends to improve or benefit the general public, either as a whole or as to any particular community or part, including works contemplated by this chapter, that drain or protect roads from overflow, protect property from overflow, or reclaim and render property suitable for cultivation that is normally wet and needing drainage or subject to overflow. [106A.005 s. 24]

Subd. 28. ROAD. "Road" means any road used by the public for transportation purposes. [106A.005 s. 26]

## GENERAL PROVISIONS

### Sec. 2. [103E.011] DRAINAGE AUTHORITY POWERS.

Subdivision 1. GENERALLY. The drainage authority may make orders to:

(1) construct and maintain drainage systems;

(2) deepen, widen, straighten, or change the channel or bed of a natural waterway that is part of the drainage system or is located at the outlet of a drainage system;

(3) extend a drainage system into or through a municipality for a suitable outlet; and

(4) construct necessary dikes, dams, and control structures and power appliances, pumps, and pumping machinery as provided by law.

### Subd. 2. DRAINAGE OF WATERBASINS AND WATERCOURSES. A

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drainage authority may not drain a water body or begin work or activity regulated by the public waters work permit requirement under article 7, section 22, in a watercourse until the commissioner determines that the water body or watercourse is not public waters. If a water body or watercourse is determined to be public waters, the drainage proceedings are subject to article 7, section 16, relating to replacing public waters and the water bank program.

**Subd. 3. PERMISSION OF COMMISSIONER FOR WORK IN PUBLIC WATERS; APPLICATION.** (a) The drainage authority must receive permission from the commissioner to:

- (1) remove, construct, or alter a dam affecting public waters;
- (2) establish, raise, or lower the level of public waters; or
- (3) drain any portion of a public water.

(b) The petitioners for a proposed drainage project or the drainage authority may apply to the commissioner for permission to do work in public waters or for the determination of public waters status of a water body or watercourse.

**Subd. 4. FLOOD CONTROL.** The drainage authority may construct necessary dams, structures, and improvements and maintain them to impound and release flood water to prevent damage. The dams, structures, and improvements may be constructed with or without a drainage project. For a water body or watercourse that is not public waters the drainage authority may:

- (1) lower or establish the level of water in the water body or watercourse to control flood waters;
- (2) build structures and improvements to maintain a water body or watercourse for flood control or other public purposes; and
- (3) construct dikes or dams in a water body to maintain water at the level designated by the drainage authority and to drain part of the water body. [106A.011]

**Sec. 3. [103E.015] CONSIDERATIONS BEFORE DRAINAGE WORK IS DONE.**

**Subdivision 1. ENVIRONMENTAL AND LAND USE CRITERIA.** Before establishing a drainage project the drainage authority must consider:

- (1) private and public benefits and costs of the proposed drainage project;
- (2) the present and anticipated agricultural land acreage availability and use in the drainage project or system;
- (3) the present and anticipated land use within the drainage project or system;

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(4) flooding characteristics of property in the drainage project or system and downstream for 5-, 10-, 25-, and 50-year flood events;

(5) the waters to be drained and alternative measures to conserve, allocate, and use the waters including storage and retention of drainage waters;

(6) the effect on water quality of constructing the proposed drainage project;

(7) fish and wildlife resources affected by the proposed drainage project;

(8) shallow groundwater availability, distribution, and use in the drainage project or system; and

(9) the overall environmental impact of all the above criteria.

**Subd. 2. DETERMINING PUBLIC UTILITY, BENEFIT, OR WELFARE.** In any proceeding to establish a drainage project, or in the construction of or other work affecting a public drainage system under any law, the drainage authority or other authority having jurisdiction over the proceeding must give proper consideration to conservation of soil, water, forests, wild animals, and related natural resources, and to other public interests affected, together with other material matters as provided by law in determining whether the project will be of public utility, benefit, or welfare. [106A.015]

**Sec. 4. [103E.021] DITCHES MUST BE PLANTED WITH PERMANENT GRASS.**

**Subdivision 1. SPOIL BANKS MUST BE SPREAD AND GRASS PLANTED.** In any proceeding to establish, construct, improve, or do any work affecting a public drainage system under any law that appoints viewers to assess benefits and damages, the authority having jurisdiction over the proceeding shall order spoil banks to be spread consistent with the plan and function of the drainage system. The authority shall order that permanent grass, other than a noxious weed, be planted on the banks and on a strip 16-1/2 feet in width or to the crown of the leveled spoil bank, whichever is the greater, on each side of the top edge of the channel of the ditch. The acreage and additional property required for the planting must be acquired by the authority having jurisdiction.

**Subd. 2. RESEEDING AND HARVESTING GRASS.** The authority having jurisdiction over the repair and maintenance of the drainage system shall supervise all necessary reseeded. The permanent grass must be maintained in the same manner as other drainage system repairs. Harvest of the grass from the grass strip in a manner not harmful to the grass or the drainage system is the privilege of the fee owner or assigns. The county drainage inspector shall establish rules for the fee owner and assigns to harvest the grass.

**Subd. 3. AGRICULTURAL PRACTICES PROHIBITED.** Agricultural practices, other than those required for the maintenance of a permanent growth of grass, are not permitted on any portion of the property acquired for planting.

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**Subd. 4. COMPLIANCE WORK BY DRAINAGE AUTHORITY.** If a property owner does not bring an area into compliance with this section as provided in the compliance notice, the inspection committee or drainage inspector must notify the drainage authority. If a property owner does not bring an area into compliance after being notified under section 91, subdivision 2, the drainage authority must issue an order to have the work performed to bring the property into compliance. After the work is completed, the drainage authority must send a statement of the expenses incurred to bring the property into compliance to the auditor of the county where the property is located and to the property owner.

**Subd. 5. COLLECTION OF COMPLIANCE EXPENSES.** (a) The amount of the expenses to bring an area into compliance with this section is a lien in favor of the drainage authority against the property where the expenses were incurred. The auditor must certify the expenses and enter the amount in the same manner as other drainage liens on the tax list for the following year. The amount must be collected in the same manner as real estate taxes for the property. The provisions of law relating to the collection of real estate taxes shall be used to enforce payment of amounts due under this section. The auditor must include a notice of collection of compliance expenses with the tax statement.

(b) The amounts collected under this subdivision must be deposited in the drainage system account. [106A.021]

**Sec. 5. [103E.025] PROCEDURE FOR DRAINAGE PROJECT THAT AFFECTS STATE LAND OR WATER AREA USED FOR CONSERVATION.**

**Subdivision 1. AREAS SUBJECT TO THIS SECTION.** If a land or water area owned by the state and held or used to protect or propagate wild animals, provide hunting or fishing for the public, or for any other purpose relating to the conservation, development, or use of soil, water, forests, wild animals, or related natural resources will be affected by any public project or proceeding for drainage under any law, all procedures relating to the project or proceeding are subject to this section, if applicable.

**Subd. 2. CONDITIONS TO TAKE OR DAMAGE STATE LAND AND WATER AREAS.** (a) Any part of the state land or water area may be taken or damaged for a public project after payment of just compensation as provided by law and under the provisions of this subdivision.

(b) The authority having jurisdiction of the drainage project or proceeding shall first find and determine that there is public necessity for the taking or damage that is greater than the public interest in the purposes for which the affected land and water areas are held or used by the state.

(c) In determining the compensation to be paid for the taking or damage, the authority must give proper consideration to the value of the land and water  
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area for the purposes it is held or used by the state and other material elements of value.

(d) Public waters may not be taken, damaged, or impaired except as otherwise expressly authorized by law, and a provision of any other law for the protection or conservation of public waters may not be abridged or superseded by this subdivision.

Subd. 3. CONSIDERATIONS IN DETERMINING BENEFITS. In determining benefits to the state land or water area in any proceeding to levy assessments or offset benefits against damages, proper consideration must be given to the value of the area for the purpose it is held or used by the state, with other material elements of value.

Subd. 4. AMOUNTS PAID TO STATE. Any amounts paid to the state for taking or damaging the state land or water area in a proceeding must be credited to the proper account for acquisition, development, or maintenance of the areas, and the amount is appropriated to the commissioner for those purposes to remain available until expended.

Subd. 5. MONEY TO PAY ASSESSMENTS. Assessments for benefits made against the state land or water area in a proceeding must be paid out of money appropriated and available to pay assessments as provided by law. [106A.025]

**Sec. 6. [103E.031] CONNECTION WITH DRAINS IN ADJOINING STATES.**

Subdivision 1. PROCEDURE. If it is necessary to construct a drainage project at or near the boundary between this state and another state or country and the work cannot be done in a proper manner without extending the drainage project into the adjoining state or country, the drainage authority may join with the board or tribunal of the adjoining state or country having jurisdiction to plan and construct public drainage systems. The drainage authority in this state may enter into contracts or arrangements with the board or tribunal of the adjoining state or country to construct the drainage project. The proceeding and construction related to property in this state and, as applicable, the drainage authority in relation to the joint drainage work, are governed by this chapter.

Subd. 2. PAYMENT OF COSTS. The adjoining county or district in another state or country must pay its proper share of the necessary costs of the construction of any drainage work including damages. If the benefits to property in the adjoining state or country are not sufficient to pay all the costs of construction of the drainage project in that state or country, including damages, the drainage authority may authorize or direct the affected counties to contribute sufficient funds to complete the construction of the drainage project in the adjoining state or country, if the construction will be of sufficient benefit to the affected property in this state to warrant the contribution. [106A.031]

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Sec. 7. **[103E.035] DEFECTIVE NOTICE.**

If notice is required under this chapter and proper notice has been given to some parties but the notice is defective or not given to other parties, the drainage authority has jurisdiction of all parties that received proper notice. The proceedings may be continued by order of the drainage authority for the time necessary to publish, post, or mail a new notice. The new notice needs only be given to those not properly notified by the first notice. [106A.035]

Sec. 8. **[103E.041] PERSONAL SERVICE IN LIEU OF OTHER METHODS OF NOTICE.**

If notice is to be given under this chapter, personal service at least ten days before the date of hearing may be given in lieu of the manner provided. The notice must be served in the manner provided for the service of summons in a civil action in district court. [106A.041]

Sec. 9. **[103E.043] INFORMAL MEETINGS.**

A drainage authority may hold informal meetings in addition to the meetings and hearings required in this chapter to inform persons affected by the drainage system about the drainage proceedings and provide a forum for informal discussions. [106A.043]

Sec. 10. **[103E.045] FAILURE OF DRAINAGE AUTHORITY TO ATTEND HEARINGS.**

If an order has been made and notice for a hearing given under this chapter, and the drainage authority does not appear at the time and place specified for any reason, the auditor shall continue the hearing to a date set by the auditor. The auditor shall notify the drainage authority of the continuance and the date of hearing. The jurisdiction is continued until the date set by the auditor. [106A.045]

Sec. 11. **[103E.051] DEFECTIVE PROCEEDINGS.**

(a) A party may not take advantage of an error in a drainage proceeding or an informality, error, or defect appearing in the record of the proceeding or construction, unless the party complaining is directly affected. The modification of the benefits or damages to any property, or the enjoining of collection of any assessment, does not affect any other property or the collection of any assessment on other property.

(b) If a drainage project has been established and a contract awarded in good faith, without collusion, and at a reasonable price:

(1) a defect or lack of notice in awarding, making, or executing the contract does not affect the enforcement of an assessment; and

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(2) if the contract is performed in good faith in whole or in part, a defect does not invalidate the contract. [106A.051]

**Sec. 12. [103E.055] REIMBURSEMENT OF COST OF FORMER SURVEYS WHEN USED LATER.**

If after a proceeding has begun a survey has been made and a proceeding to establish a drainage project has been dismissed or the drainage project has not been established, and if all or a part of the former survey is used by the engineer for a drainage proceeding in the same area, the amount saved in the subsequent proceedings must be paid to the proper parties according to this section. If the parties who paid the expense of the former survey make a petition, the drainage authority shall:

(1) determine the amount of benefit that was derived by the subsequent proceedings from the former survey;

(2) order the amount of the benefit to be paid to the proper parties; and

(3) charge the amount paid as a cost of the subsequent drainage proceeding. [106A.055]

**Sec. 13. [103E.061] RIGHT OF ENTRY.**

In proceedings under this chapter, the engineer, the engineer's assistants, the viewers, and the viewers' assistants may enter any property to make a survey, locate a drain, examine the property, or estimate the benefits and damages. [106A.061]

**Sec. 14. [103E.065] DRAINAGE INSPECTORS.**

In counties where constructed drainage systems have an aggregate cost of more than \$50,000, the board shall appoint a competent person as county drainage inspector. The inspector may be the county highway engineer. The inspector shall examine the drainage systems designated by the board. The board shall specify the appointment period and compensation. [106A.065]

**Sec. 15. [103E.071] COUNTY ATTORNEY.**

The county attorney shall represent the county in all drainage proceedings and related matters without special compensation. A county attorney, the county attorney's assistant, or any attorney associated with the county attorney in business, may not otherwise appear in any drainage proceeding for any interested person. [106A.071]

**Sec. 16. [103E.075] OBSTRUCTION OF DRAINAGE SYSTEM.**

Subdivision 1. NOTIFICATION TO RESPONSIBLE PARTY. If the board determines that a drainage system has been obstructed, including by the installation of bridges or culverts of insufficient hydraulic capacity, the board shall notify the person or public authority responsible for the obstruction as soon as  
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possible and direct the responsible party to remove the obstruction or show the board why the obstruction should not be removed. The board must set a time and location in the notice for the responsible person to appear before the board.

**Subd. 2. OBSTRUCTION ON PRIVATE PROPERTY.** If the obstruction is on private property, the owner is responsible for the obstruction unless the owner proves otherwise. The owner must be notified by certified mail at least ten days before the hearing.

**Subd. 3. OBSTRUCTION HEARING.** The board shall hear all interested parties and if the board determines that the drainage system has been obstructed by a person or public authority, the board shall order the obstruction removed by the responsible party within a reasonable time set in the order. If the obstruction is not removed by the prescribed time, the board shall have the obstruction removed and the auditor shall make a statement of the removal cost. The statement must be filed in the county recorder's office as a lien on the property where the obstruction is located or against the responsible party. The lien must be enforced and collected as liens for drainage repairs under this chapter, except that a lien may not be filed against private property if the board determines that the owner of the property is not responsible for the obstruction. The lien may be enforced against the responsible party by civil action. [106A.075]

**Sec. 17. [103E.081] CRIMES RELATED TO DRAINAGE SYSTEMS; PENALTIES.**

**Subdivision 1. UNAUTHORIZED DRAIN OUTLETING INTO DRAINAGE SYSTEM.** A person may not cause or construct a drain that outlets into a lawfully constructed drainage system except as provided in this chapter.

**Subd. 2. OBSTRUCTION OR DAMAGE OF A DRAINAGE SYSTEM.** A person may not willfully obstruct or damage a drainage project or system.

**Subd. 3. ALTERING ENGINEER'S MARKING OF STAKES.** A person may not willfully change the location or alter markings of stakes set by the engineer in a drainage project or system.

**Subd. 4. PENALTY.** Violation of this section is a misdemeanor. [106A.081]

**Sec. 18. [103E.085] ENFORCEMENT.**

**Subdivision 1. WARRANTS AND ARRESTS.** An enforcement officer, as defined in section 97A.015, subdivision 18, may execute and serve warrants, and arrest persons detected in actual violation of sections 1 to 103 as provided in sections 97A.205 and 97A.211.

**Subd. 2. PROSECUTION.** The county attorney shall prosecute all criminal actions arising under this chapter. [106A.085]

**Sec. 19. [103E.091] APPEALS.**

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Subdivision 1. GROUNDS FOR APPEAL. A party may appeal to the district court from a recorded order of a drainage authority made in a drainage proceeding that determines:

(1) the amount of benefits;

(2) the amount of damages;

(3) fees or expenses allowed; or

(4) whether the environmental and land use requirements and criteria of section 3, subdivision 1, are met.

Subd. 2. PROCEDURE FOR APPEALS RELATED TO BENEFITS AND DAMAGES. (a) A person who appeals the amount of benefits or damages may include benefits and damages affecting property not owned by the appellant. Notice of the appeal must be served to the auditor and to the owner or occupant of property included in the appeal or to the attorney representing the property owner in the proceedings.

(b) The appellant must file a notice of appeal with the auditor within 30 days after the order to be appealed is filed. The notice must state the particular benefits or damages appealed and the basis for the appeal. Within 30 days after the notice is filed, the auditor must file the original notice with the court administrator of the district court.

Subd. 3. PROCEDURE FOR APPEAL RELATED TO ALLOWANCE OF FEES OR EXPENSES. An appeal related to the allowance of fees or expenses may be to the district court of any county where the affected property is located. The appeal must be made within 30 days after the order allowing or disallowing the claim and is governed as applicable by the provisions of subdivision 4.

Subd. 4. APPEAL TRIAL. (a) The issues in the appeal are entitled to a trial by a jury in the district court of the county where the drainage proceeding was pending.

(b) At the request of the appellant, the trial must be held at the district court of the county where the affected property is located. The court administrator of the district court where the appeal is first filed shall make, certify, and file with the court administrator of the district court of the county where the trial is transferred, a transcript of the papers and documents on file in the court administrator's office in the proceedings related to the matters of the appeal. After the final determination of the appeal, the court administrator of the district court that tried the appeal shall certify and return the verdict to the district court of the county where the drainage proceedings were filed.

(c) The appeal shall take precedence over all other civil court matters. If there is more than one appeal to be tried in one county, the court may, on its own motion or the motion of an interested party, consolidate two or more

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appeals and try them together, but the rights of the appellants must be determined separately. If the appellant does not prevail, the cost of the trial must be paid by the appellant.

(d) The court administrator of the district court where the appeal is filed shall file a certified copy of the final determination of the appeal with the auditor of the affected counties.

Subd. 5. EFFECT OF DETERMINATION. For all appeals, the amount awarded by the jury as a determination of the issue appealed shall replace the amount that was appealed. [106A.091]

**Sec. 20. [103E.095] APPEAL FROM ORDERS DISMISSING OR ESTABLISHING DRAINAGE SYSTEMS.**

Subdivision 1. NOTICE OF APPEAL. A party may appeal an order made by the board that dismisses drainage proceedings or establishes or refuses to establish a drainage project to the district court of the county where the drainage proceedings are pending. The appellant must serve notice of the appeal to the auditor within 30 days after the order is filed. After notice of the appeal is served, the appeal may be brought to trial by the appellant or the drainage authority after notifying the other party at least ten days before the trial date.

Subd. 2. TRIAL. The appeal must be tried by the court without a jury. The court shall examine the entire drainage proceeding and related matters and receive evidence to determine whether the findings made by the board can be sustained. At the trial the findings made by the board are prima facie evidence of the matters stated in the findings, and the board's order is prima facie reasonable. If the court finds that the order appealed is lawful and reasonable, it shall be affirmed. If the court finds that the order appealed is arbitrary, unlawful, or not supported by the evidence, it shall make an order, justified by the court record, to take the place of the appealed order, or remand the order to the board for further proceedings. After the appeal has been determined by the court, the board shall proceed in conformity with the court order.

Subd. 3. DETERMINATION OF BENEFITS AND DAMAGES AFTER COURT ORDER. If the order establishing a drainage project is appealed, the trial of appeals related to benefits or damages in the drainage proceeding must be stayed until the establishment appeal is determined. If the order establishing the drainage project is affirmed, appeals related to benefits and damages must then be tried.

Subd. 4. PROCEDURE IF APPEAL ORDER ESTABLISHES DRAINAGE PROJECT. If an order refusing to establish a drainage project is appealed, and the court, by order, establishes the drainage project, the auditor shall give notice by publication of the filed order. The notice is sufficient if it refers to the drainage project or system by number or other descriptive designation, states the meaning of the order, and states the date the court order was filed. A person may appeal the establishment order to the district court as provided in this section.

[Bracketed paragraph notes cite text sources]

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**Subd. 5. APPEAL OF APPELLATE ORDER.** A party aggrieved by a final order or judgment rendered on appeal to the district court may appeal as in other civil cases. The appeal must be made and perfected within 30 days after the filing of the order or entry of judgment. [106A.095]

**Sec. 21. [103E.097] PAYMENT OF ATTORNEY FEES ON APPEAL.**

If the commissioner of natural resources is a party making an appeal under section 19 or 20 and the commissioner does not prevail on the issues appealed, the court may award attorney fees to the party prevailing on the appeal. If more than one issue is appealed and the commissioner prevails on some issues and does not prevail on others, the court shall determine the amount of the attorney fee to be awarded. [106A.097]

**Sec. 22. [103E.101] DRAINAGE PROCEEDING AND CONSTRUCTION RECORDS.**

**Subdivision 1. DOCUMENTS ARE PUBLIC RECORDS.** All maps, plats, charts, drawings, plans, specifications, and other documents that have been filed, received in evidence, or used in connection with a drainage proceeding or construction are subject to the provisions on public records in section 15.17.

**Subd. 2. RECORD REQUIREMENTS.** All maps, plats, profiles, plans, and specifications prepared and used in relation to a proceeding must:

- (1) be uniform;
- (2) have each sheet bound and marked to identify the proceeding by the drainage project and system number;
- (3) show the name of the person preparing the sheet;
- (4) show the date the sheet was prepared; and
- (5) conform to rules and standards prescribed by the director of the division of waters.

**Subd. 3. INDEX OF PROCEEDINGS AND RECORDS.** The auditor shall keep all orders, exhibits, maps, charts, profiles, plats, plans, specifications, and records of the proceedings. These records may not be removed except when the board makes a written order to remove them. The auditor shall keep an accurate index of the proceedings and related documents in a bound book.

**Subd. 4. ENGINEER'S DOCUMENTS.** All original plats, profiles, records, and field books made by the engineer during the proceedings or the construction of a drainage project are public records and the property of the drainage authority. These public records must be filed with the auditor under the direction of the drainage authority when construction is completed or when the engineer stops acting for the drainage project, whichever is earlier.

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Subd. 5. FILING AND STORAGE FACILITIES. County boards shall provide the auditor with necessary filing and storage facilities to protect the files and records of all proceedings. The county boards may provide for the copying and filing of the documents and records of proceedings by photographic devices as provided for public records under section 15.17. In the event of loss of the originals, the photographic copies are originals after authentication by the auditor.

Subd. 6. RECORDS ARE PRIMA FACIE EVIDENCE. The record of proceedings under this chapter and of orders made by the drainage authority or the district court in the proceedings, or a certified copy of a record or order, is prima facie evidence of the facts stated in the record or order and of the regularity of all proceedings prior to the making of the order. [106A.101]

**Sec. 23. [103E.105] ADVICE ABOUT DRAINAGE QUESTIONS.**

The director shall provide advice to a drainage authority or engineer, upon request, about engineering questions or problems in connection with a drainage project or drainage system. [105.40 s. 3]

**Sec. 24. [103E.111] FIELD SURVEYS AND INVESTIGATIONS BY DIRECTOR.**

Subdivision 1. AUTHORIZATION. If a field survey or investigation of a drainage project or drainage system is determined to be necessary by the director or is requested in writing by the drainage authority, the director may conduct the survey or investigation. [105.40 s. 4]

Subd. 2. COSTS IF REQUESTED BY DRAINAGE AUTHORITY. If the field survey or investigation is made at the request of a drainage authority, the cost must be reported to the drainage authority and paid by the drainage authority as a drainage project or drainage system expense. [105.40 s. 4]

**Sec. 25. [103E.115] HYDROLOGICAL AND DRAINAGE INFORMATION.**

(a) The director may prepare and publish: (1) runoff data; (2) information about the capacity of drain tile and ditches; (3) specifications for drain tile, ditches, and ditch construction; and (4) standard procedural forms for public ditch proceedings.

(b) The director may furnish the information to engineers and drainage authorities for their advice and information. [105.40 s. 2, 5]

**Sec. 26. [103E.121] DRAIN TILE MANUFACTURING STUDIES.**

Subdivision 1. DRAIN TILE INVESTIGATIONS. The director may:

(1) investigate the methods used in the manufacture of drain tile;

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(2) determine the causes of drain tile failure; and

(3) conduct research and experimentation to improve the quality of drain tile. [105.40 s. 6]

Subd. 2. MANUFACTURING INVESTIGATIONS AND TESTS. The director may make inspections and tests of manufacturing processes and materials used and the resultant product of a manufacturing plant in the state where drain tile is made and sold to drainage authorities or the general public. The director, or an authorized agent of the director, must have free access to manufacturing plants of drain tile sold in this state for inspections and tests. [105.40 s. 6]

Subd. 3. DISTRIBUTION OF INFORMATION. The results of inspections and tests must be made public for drainage authorities, engineers, tile manufacturers, and others interested in the use of drain tile. [105.40 s. 6]

#### PETITIONS FOR DRAINAGE PROJECTS

##### Sec. 27. [103E.202] PETITIONS.

Subdivision 1. APPLICABILITY. This section applies to a petition for a drainage project and a petition for repair.

Subd. 2. SIGNATURES ON PETITION. (a) A petition must be signed by a requisite number of owners of 40-acre tracts or government lots and property that the drainage project described in the petition passes over, or by the property owners of the required percentage of the property area determined by the total and percentage of area of 40-acre tracts or government lots that the proposed drainage project passes over, excluding areas in and holders of easements for utilities and roads. A petition may be signed by the commissioner of transportation or by a political subdivision if the property is in their jurisdiction and is passed over by the proposed drainage project.

(b) Each separate parcel of property counts as one signature but the petition must be signed by all owners of the parcel to count as a signature. The signature of each entity regardless of the number of parcels of property owned counts as one signature on the petition.

(c) Paragraph (a) does not apply to a petition for an improvement of an outlet.

Subd. 3. WITHDRAWAL OF A PETITIONER. After a petition has been filed, a petitioner may not withdraw from the petition except with the written consent of all other petitioners on the filed petition.

Subd. 4. FILING PETITION AND BOND. A petition for a drainage project and a bond must be filed with the auditor. If a drainage system is within two or more counties, the petition must be filed with the auditor of the county with the greatest area of property that the proposed drainage project passes over.

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**Subd. 5. PETITIONERS' BOND.** One or more petitioners must file a bond with the petition for at least \$10,000 that is payable to the county where the petition is filed, or for a petition for a proposed joint county drainage system or a petition for a drainage project affecting a joint county drainage system, the bond must be payable to all of the counties named in the petition. The bond must have adequate surety and be approved by the county attorney where the petition is filed. The bond must be conditioned to pay the costs incurred if the proceedings are dismissed or a contract is not awarded to construct the drainage system proposed in the petition.

**Subd. 6. EXPENSES NOT TO EXCEED BOND.** The costs incurred before the proposed drainage project is established may not exceed the amount of the petitioners' bond. A claim for expenses greater than the amount of the bond may not be paid unless an additional bond is filed. If the drainage authority determines that the cost of the proceeding will be greater than the petitioners' bond before the proposed drainage project is established, the drainage authority must require an additional bond to cover all costs to be filed within a prescribed time. The proceeding must be stopped until the additional bond prescribed by the drainage authority is filed. If the additional bond is not filed within the time prescribed, the proceeding must be dismissed. [106A.202]

**Sec. 28. [103E.212] NEW DRAINAGE SYSTEM PROJECTS.**

**Subdivision 1. PROCEDURE.** To establish a new drainage system under this chapter, the petitioners and drainage authority must proceed according to this section and the provisions applicable to establishment of drainage projects.

**Subd. 2. SIGNATURES ON PETITION.** The petition for a new drainage system must be signed by a majority of the owners of the property that the proposed drainage system described in the petition passes over, or by the property owners of at least 60 percent of the area that the proposed new drainage system passes over.

**Subd. 3. PETITION REQUIREMENTS.** The petition must:

(1) describe the 40-acre tracts or government lots and property where the proposed new drainage system passes over, including names and addresses of the property owners from records in the county assessor's office;

(2) describe the starting point, the general course, and the terminus of the proposed drainage system;

(3) state why the proposed drainage system is necessary;

(4) state that the proposed drainage system will benefit and be useful to the public and will promote public health; and

(5) state that the petitioners will pay all costs of the proceedings if the proceedings are dismissed or the contract for the construction of the proposed drainage system is not awarded. [106A.212]

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Sec. 29. **[103E.215] IMPROVEMENT OF DRAINAGE SYSTEM.**

Subdivision 1. PROCEDURE. The procedure in this section must be used to improve an established and constructed drainage system.

Subd. 2. DEFINITION. In this section "improvement" means the tiling, enlarging, extending, straightening, or deepening of an established and constructed drainage system including construction of ditches to reline or replace tile and construction of tile to replace a ditch.

Subd. 3. LIMIT OF EXTENSION. An improvement may only extend a drainage system downstream to a more adequate outlet and the extension may not exceed one mile.

Subd. 4. PETITION. (a) A petition must be signed by:

(1) at least 26 percent of the owners of the property affected by the proposed improvement;

(2) at least 26 percent of the owners of property that the proposed improvement passes over;

(3) the owners of at least 26 percent of the property area affected by the proposed improvement; or

(4) the owners of at least 26 percent of the property area that the proposed improvement passes over.

(b) The petition must be filed with the auditor or, for a drainage system in more than one county, with the auditor of the county having the largest area of property the improvement would be located on.

(c) The petition must:

(1) designate the drainage system proposed to be improved by number or another description that identifies the drainage system;

(2) state that the drainage system has insufficient capacity or needs enlarging or extending to furnish sufficient capacity or a better outlet;

(3) describe the starting point, general course, and terminus of any extension;

(4) describe the improvement, including the names and addresses of owners of the 40-acre tracts or government lots and property that the improvement passes over;

(5) state that the proposed improvement will be of public utility and promote the public health; and

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(6) contain an agreement by the petitioners that they will pay all costs and expenses that may be incurred if the improvement proceedings are dismissed.

Subd. 5. SUBSEQUENT PROCEEDINGS. When a petition and the bond required by section 27 are filed, the auditor shall present the petition to the board at its next meeting or, for a joint county drainage system, to the joint county drainage authority within ten days after the petition is filed. The drainage authority shall appoint an engineer to examine the drainage system and make an improvement report. The improvement proceedings must be conducted under this chapter as provided for the original proceedings for the establishment of a drainage project. The benefits and damages determined must be as a result of the proposed improvement. Assessments for the repair of the improvement must be based on the benefits determined for the improvement.

Subd. 6. PETITION FOR SEPARABLE PART OF THE DRAINAGE SYSTEM NEEDING REPAIR. (a) If the existing drainage system needs repair and the petition for the improvement is for a separable part only of the existing drainage system, the engineer may include in the detailed survey report a statement showing the proportionate estimated cost of the proposed improvement required to repair the separable part of the existing system and the estimated proportionate cost of the added work required for the improvement. The notice of hearing on the detailed survey report must be given by publication and mailing to all persons owning property affected by the existing drainage system. The hearing may be held at the same time and location as the establishment hearing for the improvement.

(b) At the hearing, if the drainage authority determines that only a separable portion of the existing drainage system will be improved and that the portion needs repair, the drainage authority shall determine and assess, by order, the proportionate cost of the improvement that would be required to repair the separable portion of the drainage system to be improved. The order must direct that:

(1) the repair portion is allocated as repairs and assessed against all property benefited by the entire drainage system, as provided by section 97; and

(2) the balance of the cost of the improvement is assessed in addition to the repair assessment against the property benefited by the improvement. [106A.215]

### Sec. 30. [103E.221] IMPROVEMENT OF OUTLETS.

Subdivision 1. CONDITIONS FOR IMPROVEMENT OF OUTLETS. If a public or private proposed drainage project or existing drainage system has waters draining into an existing drainage system, watercourse, or body of water, and the construction or proposed construction of the drainage project causes an overflow of the existing drainage system, watercourse, or body of water on adjoining property, an affected county or the owners of the overflowed property may start outlet improvement proceedings under this section.

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Subd. 2. PETITION. (a) A petition must be signed by the board of an affected county, by at least 26 percent of the owners of adjoining overflowed property, or by the owners of at least 26 percent of the area of the overflowed property. The petition must:

(1) describe the property that has been or is likely to be overflowed including the names and addresses of the property owners from records in the county assessor's office;

(2) state in general terms by number or otherwise the drainage systems that have caused or are likely to cause the overflow;

(3) describe the location of the overflowed drainage system, watercourse, or body of water and the outlet;

(4) show the necessity of the improvement by enlarging the system or controlling the waters by off-take ditches, additional outlets, or otherwise;

(5) show that the outlet improvement will protect the adjoining property from overflow;

(6) state that the improvement will be of public benefit and utility and improve the public health; and

(7) state that the petitioners will pay all costs incurred if the proceedings are dismissed or a contract for construction of the outlet improvement is not awarded.

(b) The petitioners, except for a petition made by the board, shall give the required bond.

Subd. 3. FILING OF PETITION. The petition shall be filed with the county auditor. If the board makes the petition, it must be addressed to the drainage authority and filed with the auditor. If part of the improvement or the overflowed property is located in more than one county, the petition must be filed with the auditor of the county with the greatest affected area.

Subd. 4. JURISDICTION OF DRAINAGE AUTHORITY. After the petition is filed, the board or joint county drainage authority where the petition is filed has jurisdiction of the petition, the improvement, the affected property, and all proceedings for the establishment and construction of the outlet improvement and the assessment of property benefited by the outlet improvement, as provided for establishment and construction of a drainage project under this chapter.

Subd. 5. PRELIMINARY SURVEY REPORT REQUIREMENTS. In the preliminary survey report, the engineer shall show the existing or proposed drainage projects or systems that cause the overflow, the property drained or to be drained by the drainage project, and the names of affected property owners.

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**Subd. 6. BENEFITED PROPERTY TO BE DETERMINED BY VIEWERS.** If, after the preliminary survey report hearing, a detailed survey is ordered and viewers are appointed, the viewers shall determine and report the benefits to all property from the outlet improvement including property drained or to be drained by the existing drainage system and proposed drainage project. [106A.221]

**Sec. 31. [103E.225] LATERALS.**

**Subdivision 1. PETITION.** (a) Persons that own property in the vicinity of an existing drainage system may petition for a lateral that connects their property with the drainage system. The petition must be signed by at least 26 percent of the owners of the property or by the owners of at least 26 percent of the area of the property that the lateral passes over. The petition must be filed with the auditor, or for property in more than one county, the petition must be filed with the auditor of the county with the largest property area to be passed over by the lateral. The petition must:

(1) describe in general terms the starting point, general course, and terminus of the proposed lateral;

(2) describe the property traversed by the lateral including the names and addresses of the property owners from records in the county assessor's office;

(3) state the necessity to construct the lateral;

(4) state that, if constructed, the lateral will be of public benefit and utility and promote the public health;

(5) request that the lateral be constructed and connected with the drainage system; and

(6) provide that the petitioners will pay all costs incurred if the proceedings are dismissed or if a contract for the construction of the lateral is not awarded.

(b) The petitioners shall give the bond required by section 27, subdivision 5.

**Subd. 2. ESTABLISHMENT PROCEDURE.** After the petition is filed, the procedure to establish and construct the lateral is the same as that provided in this chapter to establish a drainage project.

**Subd. 3. AUTHORITY NECESSARY FOR PROPERTY NOT ASSESSED.** A lateral may not be constructed to drain property that is not assessed benefits for the existing drainage system until express authority for the use of the existing drainage system as an outlet for the lateral has been obtained under section 60. [106A.225]

**Sec. 32. [103E.227] IMPOUNDING AND DIVERSION OF DRAINAGE SYSTEM WATERS.**

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**Subdivision 1. PETITION.** (a) To conserve and make more adequate use of our water resources, a person, public or municipal corporation, governmental subdivision, the state or a department or agency of the state, the commissioner of natural resources, and the United States or any of its agencies, may petition for the installation of dams or other control works in drainage ditch systems to impound or divert waters for beneficial use. The petition must be directed to the drainage authority where the drainage system is located.

(b) The petition must contain the location of the installation, plans, and specifications for the proposed structure and a map of the areas likely to be affected by the impoundment or diversion.

(c) The petitioner shall agree to be responsible for the cost of installation and construction of the structure. [105.81]

(d) The petition must also be accompanied by a public waters work permit or a water use permit from the commissioner of natural resources if required under chapter 103G. [105.81]

**Subd. 2. BOND.** (a) Upon filing the petition, the petitioners shall file a bond as provided in section 27.

(b) A bond is not required if the petition is filed by the state, a state agency or department, the commissioner of natural resources, the United States or any of its agencies, or a municipality. [105.81]

**Subd. 3. PROCEDURE TO ESTABLISH PROJECT.** (a) After receiving the petition, bond, and permit, if required, the drainage authority must appoint an engineer to investigate the effect of the proposed installation and file a report of findings.

(b) After filing of the engineer's report, notice must be given and a public hearing held as provided in section 40.

(c) If from the hearing it appears from the engineer's report and other evidence presented that the installation will be of a public or private benefit and that it will not impair the utility of the ditch or deprive affected land owners of its benefit, the drainage authority shall make an order modifying the drainage system and issue a permit authorizing its installation. [105.81]

**Subd. 4. FLOWAGE EASEMENTS REQUIRED.** Before installing or constructing an impoundment or diversion, the petitioner shall obtain rights-of-way and flowage easements from owners of land to be affected by it. [105.81]

**Subd. 5. ASSESSMENT OF MAINTENANCE AND REPAIR COSTS.** The order of the drainage authority modifying the drainage system must provide that construction and later maintenance and repairs of the drainage system modification and installation must be done by the petitioner without assessment of the cost to the property owners previously within the drainage system. [105.81]

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**Sec. 33. [103E.231] DISMISSAL OR DELAY OF PROCEEDINGS BY PETITIONERS.**

Subdivision 1. DISMISSAL. (a) A proceeding under this chapter may be dismissed by a majority of the petitioners if they own at least 60 percent of the area owned by all of the petitioners as described in the petition.

(b) The proceeding may be dismissed at any time before the proposed drainage project is established after payment of the cost of the proceeding. If the costs cannot be collected, each and all petitioners are liable for unpaid assessments. The drainage authority shall determine and assess the cost of the proceeding against the persons liable. After the proceeding is dismissed any other action on the proposed drainage project must begin with a new petition.

Subd. 2. DELAY. The drainage authority may delay drainage proceedings and drainage project construction under this chapter if a majority of the petitioners petition for a delay and the drainage authority holds a hearing on the petition. The delay may be for a period determined by the drainage authority. The drainage authority shall determine the cost of the proceedings up to the time the proceedings are delayed and when the costs are to be paid. The costs may include interest on the costs due. [106A.231]

**Sec. 34. [103E.235] DRAINAGE SYSTEM IN TWO OR MORE COUNTIES.**

Subdivision 1. DESIGNATION. A petition for a proposed drainage project in two or more counties must be designated as a joint county drainage system with a number assigned by the auditor of the county with the largest area of property in the drainage system.

Subd. 2. JOINT COUNTY DRAINAGE AUTHORITY. The board where a petition for a proposed joint county drainage project is filed shall notify the board of each county where property is affected by the drainage system and request the boards to meet jointly and consider the petition. The boards shall select five of their members at the meeting to be the drainage authority. At least one member must be from each board. The drainage authority shall be known as the joint county drainage authority with a joint county drainage project or system number. A vacancy in the membership of the joint county drainage authority must be filled by joint action of the boards.

Subd. 3. TRANSFER OF DRAINAGE SYSTEMS TO WATERSHED DISTRICTS NOT AFFECTED. This section does not affect the transfer of a drainage system to the board of managers of a watershed district under chapter 103D. [106A.235]

**Sec. 35. [103E.238] COUNTY ATTORNEY REVIEW OF PETITION AND BOND.**

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The county attorney must review each petition and bond filed with the county to determine if it meets the requirement of the proceedings for which it is intended. The county attorney must review the petition and bond within 30 days after it is filed. The county attorney must:

(1) refer the petition and bond back to the petitioners if it does not meet the requirements, with the county attorney's opinion describing the deficiencies of the petition; or

(2) refer the petition to the drainage authority. [106A.238]

#### PRELIMINARY SURVEY AND HEARING

##### Sec. 36. [103E.241] ENGINEER.

Subdivision 1. APPOINTMENT. Within 30 days after receiving a petition and bond from the county attorney, the drainage authority shall, by order, appoint an engineer to make a preliminary survey within a prescribed time. The engineer must be the county highway engineer of a county where the affected property is located or a professional engineer registered under state law. The engineer is the engineer for the drainage project throughout the proceeding and construction unless otherwise ordered. Each appointed engineer must file an oath and bond. The engineer may be removed by the drainage authority at any time. If the engineer position is vacant, the drainage authority shall appoint another engineer as soon as possible.

Subd. 2. OATH; BOND. An appointed engineer must subscribe to an oath to faithfully perform the assigned duties in the best manner possible and file a bond with the auditor. Within ten days after being appointed, the drainage authority shall set an amount of at least \$5,000 for the bond. The bond must have adequate surety and be payable to the county where the petition is filed, or for a proposed joint county drainage project to all counties in the petition. The bond must be conditioned to pay any person or the drainage authority for damages and injuries resulting from negligence of the engineer while the engineer is acting in the proceedings or construction and provide that the engineer will diligently and honestly perform the engineer's duties. The bond is subject to approval by the auditor. The aggregate liability of the surety for all damages may not exceed the amount of the bond.

Subd. 3. ASSISTANTS; COMPENSATION. The engineer may appoint assistant engineers and hire help necessary to complete the engineer's duties. The engineer is responsible for the assistant engineers and may remove them. The compensation of the engineer, assistant engineers, and other employees is provided by section 86.

Subd. 4. ENGINEER'S REPORTS. The engineer shall make an expense report every two weeks after the beginning of the engineer's work until the construction contract is awarded. The report must show costs incurred by the engineer and expenses incurred under the engineer's direction relating to the proceeding, and include the names of the engineer, engineer assistants, and

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employees and the time each was employed, and every item of expense incurred by the engineer. The engineer must file this report with the auditor as soon as possible and may not incur expenses for the proceeding greater than the petitioners' bond.

Subd. 5. CONSULTING ENGINEER. After the engineer is appointed and before construction of the drainage project is finished, the drainage authority may employ an engineer as a consulting engineer for the proceeding and construction. A consulting engineer shall advise the engineer and drainage authority on engineering matters and problems that may arise related to the proceeding and construction of the drainage project. The drainage authority shall determine the compensation for the consulting engineer. [106A.241]

**Sec. 37. [103E.245] PRELIMINARY SURVEY AND PRELIMINARY SURVEY REPORT.**

Subdivision 1. SURVEY. The engineer shall proceed promptly to:

- (1) examine the petition and order;
- (2) make a preliminary survey of the area likely to be affected by the proposed drainage project to enable the engineer to determine whether the proposed drainage project is necessary and feasible with reference to the environmental and land use criteria in section 3, subdivision 1;
- (3) examine and gather information related to determining whether the proposed drainage project substantially affects areas that are public waters; and
- (4) if the proposed drainage project requires construction of an open channel, examine the nature and capacity of the outlet and any necessary extension.

Subd. 2. LIMITATION OF SURVEY. The engineer shall restrict the preliminary survey to the drainage area described in the petition, except that to secure an outlet the engineer may run levels necessary to determine the distance for the proper fall of the water. The preliminary survey must consider the impact of the proposed drainage project on the environmental and land use criteria in section 3, subdivision 1. The drainage authority may have other areas surveyed after:

- (1) giving notice by mail of a hearing to survey additional areas, to be held at least ten days after the notice is mailed, to the petitioners and persons liable on the petitioners' bond;
- (2) holding the hearing;
- (3) obtaining consent of the persons liable on the petitioners' bond; and
- (4) ordering the additional area surveyed by the engineer.

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**Subd. 3. ADOPTION OF FEDERAL PROJECT.** The engineer may approve and include as a part of the report, a project of the United States relating to drainage or flood control that is within the proposed drainage project area, and may accept data, plats, plans, or information relating to the project furnished by United States engineers. The engineer does not need to make the preliminary survey if the material furnished by the United States is sufficient for the engineer to make the preliminary survey report.

**Subd. 4. PRELIMINARY SURVEY REPORT.** The engineer shall report the proposed drainage project plan or recommend a different practical plan. The report must give sufficient information, in detail, to inform the drainage authority on issues related to feasibility, and show changes necessary to make the proposed plan practicable and feasible including extensions, laterals, and other work. If the engineer finds the proposed drainage project in the petition is feasible and complies with the environmental and land use criteria in section 3, subdivision 1, the engineer shall include in the preliminary survey report a preliminary plan of the drainage project showing the proposed ditches, tile, laterals, and other improvements, the outlet of the project, the watershed of the drainage project or system, and the property likely to be affected and its known owners. The plan must show:

(1) the elevation of the outlet and the controlling elevations of the property likely to be affected referenced to standard sea level datum, if practical;

(2) the probable size and character of the ditches and laterals necessary to make the plan practicable and feasible;

(3) the character of the outlet and whether it is sufficient;

(4) the probable cost of the drains and improvements shown on the plan;

(5) all other information and data necessary to disclose the practicability, necessity, and feasibility of the proposed drainage project;

(6) consideration of the drainage project under the environmental and land use criteria in section 3, subdivision 1; and

(7) other information as ordered by the drainage authority. [106A.245]

**Sec. 38. [103E.251] FILING PRELIMINARY SURVEY REPORT.**

The engineer shall file the completed preliminary survey report in duplicate with the auditor. The auditor shall send one copy of the report to the director. If the proposed drainage project involves a joint county drainage project or system, a copy of the report must be filed with the auditor of each affected county. [106A.251]

**Sec. 39. [103E.255] COMMISSIONER'S PRELIMINARY ADVISORY REPORT.**

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The commissioner shall make a preliminary advisory report to the drainage authority with an opinion about the adequacy of the preliminary survey report. The commissioner shall state any additional investigation and evaluation that should be done relating to public waters that may be affected and environmental and land use criteria in section 3, subdivision 1, and cite specific portions of the preliminary survey report that are determined inadequate. The commissioner shall file an initial preliminary advisory report with the auditor before the date of the preliminary hearing. The commissioner may request additional time for review and evaluation of the preliminary survey report if additional time is necessary for proper evaluation. A request for additional time for filing the commissioner's preliminary advisory report may not be made more than five days after the date of the notice by the auditor that a date is to be set for the preliminary hearing. An extension of time may not exceed two weeks after the date of the request. [106A.255]

**Sec. 40. [103E.261] PRELIMINARY HEARING.**

Subdivision 1. NOTICE. When the preliminary survey report is filed, the auditor shall promptly notify the drainage authority. The drainage authority in consultation with the auditor shall set a time, by order, not more than 30 days after the date of the order, for a hearing on the preliminary survey report. At least ten days before the hearing, the drainage authority after consulting with the auditor shall give notice by mail of the time and location of the hearing to the petitioners, owners of property, and political subdivisions likely to be affected by the proposed drainage project in the preliminary survey report.

Subd. 2. HEARING. The engineer shall attend the preliminary hearing and provide necessary information. The petitioners and all other interested parties may appear and be heard. The commissioner's advisory report on the preliminary plan must be publicly read and included in the record of proceedings.

Subd. 3. SUFFICIENCY OF PETITION. (a) The drainage authority shall first examine the petition and determine if it meets the legal requirements.

(b) If the petition does not meet the legal requirements of this chapter, the hearing shall be adjourned until a specified date by which the petitioners must resubmit the petition. The petition must be referred back to the petitioners who, by unanimous action, may amend the petition. The petitioners may obtain signatures of additional property owners as added petitioners.

(c) When the hearing is reconvened, if the petition is not resubmitted or does not meet the legal requirements, the proceedings must be dismissed.

Subd. 4. DISMISSAL. (a) The drainage authority shall dismiss the proceedings if it determines that:

(1) the proposed drainage project is not feasible;

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(2) the adverse environmental impact is greater than the public benefit and utility after considering the environmental and land use criteria in section 3, subdivision 1, and the engineer has not reported a plan to make the proposed drainage project feasible and acceptable;

(3) the proposed drainage project is not of public benefit or utility; or

(4) the outlet is not adequate.

(b) If the proceedings are dismissed, any other action on the proposed drainage project must begin with a new petition.

Subd. 5. FINDINGS AND ORDER. (a) The drainage authority shall state, by order, its findings and any changes that must be made in the proposed drainage project from those outlined in the petition, including changes necessary to minimize or mitigate adverse impact on the environment, if it determines that:

(1) the proposed drainage project outlined in the petition, or modified and recommended by the engineer, is feasible;

(2) there is necessity for the proposed drainage project;

(3) the proposed drainage project will be of public benefit and promote the public health, after considering the environmental and land use criteria in section 3, subdivision 1; and

(4) the outlet is adequate.

(b) Changes may be stated by describing them in general terms or filing a map that outlines the changes in the proposed drainage project with the order. The order and accompanying documents must be filed with the auditor.

Subd. 6. OUTLET IS EXISTING DRAINAGE SYSTEM. If the outlet is an existing drainage system, the drainage authority may determine that the outlet is adequate and obtain permission to use the existing drainage system as an outlet. The drainage authority shall assign a number to the proposed drainage project and proceed under section 60 to act in behalf of the proposed drainage project.

Subd. 7. EFFECT OF FINDINGS. (a) For all further proceedings, the order modifies the petition and the order must be considered with the petition.

(b) The findings and order of the drainage authority at the preliminary hearing are conclusive only for the signatures and legal requirements of the petition, the nature and extent of the proposed plan, and the need for a detailed survey, and only for the persons or parties shown by the preliminary survey report as likely to be affected by the proposed drainage project. All questions related to the practicability and necessity of the proposed drainage project are subject to additional investigation and consideration at the final hearing. [106A.261]

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## DETAILED SURVEY AND VIEWING

**Sec. 41. [103E.265] ORDER FOR DETAILED SURVEY AND DETAILED SURVEY REPORT.**

Subdivision 1. ORDER. When the preliminary hearing order is filed with the auditor, the drainage authority shall order the engineer to make a detailed survey with plans and specifications for the proposed drainage project and submit a detailed survey report to the drainage authority as soon as possible.

Subd. 2. WAIVER. The drainage authority may waive the detailed survey order and the detailed survey if it determines that adequate data, plans, and specifications have been furnished by a United States engineer. [106A.265]

**Sec. 42. [103E.271] DETAILED SURVEY.**

Subdivision 1. SURVEY AND EXAMINATION. When an order for a detailed survey is filed, the engineer shall proceed to survey the lines of the proposed drainage project in the preliminary hearing order, and survey and examine affected property.

Subd. 2. SURVEY REQUIREMENTS. All drainage lines must be surveyed in 100-foot stations and elevations must be based on standard sea level datum, if practical. Bench marks must be established on permanent objects along the drainage line, not more than one mile apart. Field notes made by the engineer must be entered in bound field books and preserved by the engineer until they are filed with the auditor. [106A.271]

**Sec. 43. [103E.275] ENGINEER'S VARIANCE FROM DRAINAGE AUTHORITY ORDER.**

(a) In planning a proposed drainage project, the engineer may vary from the starting point and the line and plan described by the preliminary hearing order if necessary to drain the property likely to be assessed in the proposed drainage project.

(b) The engineer may:

(1) survey and recommend the location of additional necessary ditches and tile;

(2) where better results will be accomplished and more desirable outlets secured, provide for the extension of the outlet; and

(3) provide for different parts of the drainage to flow in different directions with more than one outlet.

(c) The open ditches do not have to connect if they drain the area to be affected in the petition. The variance must be reported with similar information in the detailed survey report. [106A.275]

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Sec. 44. [103E.281] SOIL SURVEY.

The engineer shall make a soil survey if: (1) the drainage authority orders a soil survey; (2) the commissioner requests a soil survey; or (3) the engineer determines a soil survey is necessary. The soil survey must show the nature and character of the soil in the proposed drainage project area and include the engineer's findings from the soil survey. The report on the soil survey must be included in the detailed survey report or reported and filed separately before the final hearing. [106A.281]

Sec. 45. [103E.285] DETAILED SURVEY REPORT.

Subdivision 1. REPORT AND INFORMATION REQUIRED. The engineer shall prepare a detailed survey report that includes the data and information in this section.

Subd. 2. MAP. A complete map of the proposed drainage project and drainage system must be drawn to scale, showing:

(1) the terminus and course of each drain and whether it is ditch or tile, and the location of other proposed drainage works;

(2) the location and situation of the outlet;

(3) the watershed of the proposed drainage project and the subwatershed of main branches, if any, with the location of existing highway bridges and culverts;

(4) all property affected, with the names of the known owners;

(5) public roads and railways affected;

(6) the outline of any lake basin, wetland, or public water body affected;

(7) other physical characteristics of the watershed necessary to understand the proposed drainage project and the affected drainage system; and

(8) the area to be acquired to maintain a grass strip under section 4.

Subd. 3. PROFILE OF DRAINAGE LINES. A profile of all proposed drainage lines must be presented showing, graphically, the elevation of the ground and gradient at each 100-foot station, and the station number at each section line and at each property line. The profile must show information necessary to understand it, including, in the case of an open ditch, the bottom width and side slope and, in the case of a tiled ditch, the size of tile.

Subd. 4. BRIDGE AND CULVERT PLANS. Plans for private bridges and culverts to be constructed by and as a part of the proposed drainage project and plans for other works to be constructed for the proposed drainage project must be presented. A list must be made that shows the required minimum hydraulic

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capacity of bridges and culverts at railways and highways that cross ditches, and at other prospective ditch crossings where bridges and culverts are not specified to be constructed as part of the proposed drainage project. Plans and estimates of the cost of highway bridges and culverts must be prepared for the viewers to determine benefits and damages.

**Subd. 5. TABULAR STATEMENT OF EXCAVATION, CONSTRUCTION, AND COST.** A tabular statement must be prepared showing:

(1) the number of cubic yards of excavation, linear feet of tile, and average depth on each tile line;

(2) the bridges, culverts, and works to be constructed under the plans for the drainage project; and

(3) the estimated unit cost of each item, a summary of the total cost, and an estimate of the total cost of completing the proposed drainage project that includes supervision and other costs.

**Subd. 6. RIGHT-OF-WAY ACREAGE.** The acreage must be shown that will be taken for ditch right-of-way on each government lot, 40-acre tract, or fraction of a lot or tract under separate ownership. The ditch right-of-way must include the area to be taken to maintain a grass strip under section 4.

**Subd. 7. DRAIN TILE SPECIFICATIONS.** Specifications for drain tile must be given that comply with the requirements of the American Society for Testing Materials standard specifications for drain tile, except where the engineer requires tile of a special, higher quality for certain tile depths or soil conditions.

**Subd. 8. SOIL SURVEY REPORT.** If required under section 44, the report on the soil survey must be included in the detailed survey report or submitted and filed separately before the final hearing.

**Subd. 9. RECOMMENDATION FOR DIVISION OF WORK.** If construction of the proposed drainage project would be more economical, the engineer may recommend:

(1) that the work be divided into sections and contracted separately;

(2) that the ditch and tile work or tile and labor on the project be contracted separately; or

(3) the time and manner for the work to be completed.

**Subd. 10. OTHER INFORMATION ON PRACTICABILITY AND NECESSITY OF DRAINAGE PROJECT.** Other data and information to inform the drainage authority of the practicability and necessity of the proposed drainage project must be made available including a comprehensive examination and the recommendation by the engineer regarding the environmental and land use criteria in section 3, subdivision 1.

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Subd. 11. OUTLET IN ANOTHER STATE. If an outlet is only practical in an adjoining state, the engineer shall describe the right-of-way needed and the cost of obtaining the right-of-way and constructing the outlet.

Subd. 12. COMPLETION. The engineer shall prepare the detailed survey and complete the detailed survey report, in duplicate, as specified in this section. [106A.285]

**Sec. 46. [103E.291] FILING DETAILED SURVEY REPORT.**

The engineer must file the detailed survey report with the auditor where the proceedings are pending and the auditor must deliver a copy of the detailed survey report to the commissioner. The engineer must also file copies of the detailed survey report with the auditors of any affected counties. [106A.291]

**Sec. 47. [103E.295] REVISION OF ENGINEER'S DETAILED SURVEY REPORT AFTER ACCEPTANCE.**

After the final acceptance of the proposed drainage project, the engineer shall revise the plan, profiles, and designs of structures to show the drainage project as actually constructed on the original tracings. The engineer shall file the revised detailed survey report with the auditor. The auditor shall forward the original or a copy to the director as a permanent record. [106A.295]

**Sec. 48. [103E.301] COMMISSIONER'S FINAL ADVISORY REPORT.**

(a) The commissioner shall examine the detailed survey report and within 30 days of receipt make a final advisory report to the drainage authority. The final advisory report must state whether the commissioner:

(1) finds the detailed survey report is incomplete and not in accordance with the provisions of this chapter, specifying the incomplete or nonconforming provisions;

(2) approves the detailed survey report as an acceptable plan to drain the property affected;

(3) does not approve the plan and recommendations for changes;

(4) finds the proposed drainage project is not of public benefit or utility under the environmental and land use criteria in section 3, subdivision 1, specifying the facts and evidence supporting the findings; or

(5) finds a soil survey is needed, and, if it is, makes a request to the engineer to make a soil survey.

(b) The commissioner shall direct the final advisory report to the drainage authority and file it with the auditor. [106A.301]

**Sec. 49. [103E.305] VIEWERS' APPOINTMENT AND QUALIFICATION.**

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Subdivision 1. APPOINTMENT. When the order for a detailed survey is made, the drainage authority shall, by order, appoint viewers consisting of three disinterested residents of the state qualified to assess benefits and damages. The drainage authority may establish qualifications for viewers.

Subd. 2. AUDITOR'S ORDER FOR FIRST MEETING. Within five days after the detailed survey report is filed, the auditor shall, by order, designate the time and location for the first meeting of the viewers, and issue a copy to the viewers of the auditor's order and a certified copy of the order appointing the viewers.

Subd. 3. FIRST MEETING. At the first meeting and before beginning their duties, the viewers shall subscribe to an oath to faithfully perform their duties. If an appointed viewer does not qualify for any reason, the auditor shall designate another qualified person to take the disqualified viewer's place. [106A.305]

#### Sec. 50. [103E.311] VIEWERS' DUTIES.

The viewers, with or without the engineer, shall determine the benefits and damages to all property affected by the proposed drainage project and make a viewers' report. [106A.311]

#### Sec. 51. [103E.315] ASSESSMENT OF DRAINAGE BENEFITS AND DAMAGES.

Subdivision 1. STATE LAND. Property owned by the state must have benefits and damages reported in the same manner as taxable lands subject to the provisions relating to conservation areas in section 5.

Subd. 2. GOVERNMENT PROPERTY. The viewers shall report the benefits and damages to the state, counties, and municipalities from the proposed drainage project. The property within the jurisdiction of a municipality, whether owned by the municipality or by private parties, may be assessed as benefits and damages to the municipality.

Subd. 3. PUBLIC ROADS. If a public road or street is benefited or damaged, the state, county, or political subdivision that is the governmental unit with the legal duty of maintaining the road or street, must be assessed benefits or damages to the road or street, except that benefits and damages for bridges and culverts must be assessed to the governmental unit that has the legal duty to construct and maintain the bridge or culvert under section 68.

Subd. 4. RAILWAY AND OTHER UTILITIES. The viewers shall report the benefits and damages to railways and other utilities, including benefits and damages to property used for railway or other utility purposes.

Subd. 5. EXTENT AND BASIS OF BENEFITS. (a) The viewers shall determine the amount of benefits to all property within the watershed, whether the property is benefited immediately by the construction of the proposed drain-

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age project or the proposed drainage project can become an outlet for drainage, makes an outlet more accessible, or otherwise directly benefits the property. The benefits may be based on:

(1) an increase in the current market value of property as a result of constructing the project;

(2) an increase in the potential for agricultural production as a result of constructing the project; or

(3) an increased value of the property as a result of a potential different land use.

(b) Benefits and damages may be assessed only against the property benefited or damaged or an easement interest in property for the exclusive use of the surface of the property.

**Subd. 6. BENEFITS FOR PROPOSED DRAINAGE PROJECT AS OUTLET.** (a) If the proposed drainage project furnishes an outlet to an existing drainage system and benefits the property drained by the existing system, the viewers shall equitably determine and assess:

(1) the benefits of the proposed drainage project to each tract or lot drained by the existing drainage system;

(2) a single amount as an outlet benefit to the existing drainage system; or

(3) benefits on a watershed acre basis.

(b) Assessments that conform with the provisions in this subdivision are valid. If a single sum is assessed as an outlet benefit, the lien for the assessment must be prorated on all property benefited by the existing drainage system in proportion to the benefits determined for the existing drainage system.

(c) Within the watershed that drains to the area where a project is located, the viewers may assess outlet benefits on:

(1) property that is responsible for increased sedimentation in downstream areas of the watershed; and

(2) property that is responsible for increased drainage system maintenance or increased drainage system capacity because the natural drainage on the property has been altered or modified to accelerate the drainage of water from the property.

**Subd. 7. BENEFITS FOR PROJECT THAT INCREASES DRAINAGE CAPACITY.** If part of a drainage project increases drainage capacity and the increased capacity is necessary due to increased drainage in the project watershed rather than increased drainage in a specific area, the viewers may assess benefits on property in the project watershed on a pro rata basis.

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Subd. 8. EXTENT OF DAMAGES. Damages to be paid may include:

(1) the fair market value of the property required for the channel of an open ditch and the permanent grass strip under section 4;

(2) the diminished value of a farm due to severing a field by an open ditch;

(3) loss of crop production during drainage project construction; and

(4) the diminished productivity or land value from increased overflow.  
[106A.315]

Sec. 52. [103E.321] VIEWERS' REPORT.

Subdivision 1. REQUIREMENTS. The viewers' report must show, in tabular form, for each lot, 40 acre tract, and fraction of a lot or tract under separate ownership that is benefited or damaged:

(1) a description of the lot or tract, under separate ownership, that is benefited or damaged;

(2) the names of the owners as they appear on the current tax records of the county and their addresses;

(3) the number of acres in each tract or lot;

(4) the number and value of acres added to a tract or lot by the proposed drainage of public waters;

(5) the damage, if any, to riparian rights;

(6) the damages paid for the permanent grass strip under section 4;

(7) the total number and value of acres added to a tract or lot by the proposed drainage of public waters, wetlands, and other areas not currently being cultivated;

(8) the number of acres and amount of benefits being assessed for drainage of areas which before the drainage benefits could be realized would require a public waters work permit to work in public waters under article 7, section 22, to excavate or fill a navigable water body under United States Code, title 33, section 403, or a permit to discharge into waters of the United States under United States Code, title 33, section 1344;

(9) the number of acres and amount of benefits being assessed for drainage of areas that would be considered conversion of a wetland under United States Code, title 16, section 3821, if the area was placed in agricultural production;

(10) the amount of right-of-way acreage required; and

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(1) the amount that each tract or lot will be benefited or damaged. [106A.321 s. 1]

Subd. 2. BENEFITS AND DAMAGES STATEMENT. (a) The viewers' report must include a benefits and damages statement that shows for each property owner how the benefits or damages for similar tracts or lots were determined. For similar tracts or lots the report must describe:

(1) the existing land use, property value, and economic productivity;

(2) the potential land use, property value, and economic productivity after the drainage project is constructed; and

(3) the benefits or damages from the proposed drainage project.

(b) The soil and water conservation districts and county assessors shall cooperate with viewers to provide information required under paragraph (a). [106A.321 s. 1a]

Subd. 3. DISAGREEMENT OF VIEWERS. If the viewers are unable to agree, each viewer shall separately state findings on the disputed issue. A majority of the viewers may perform the required duties under this chapter. [106A.321 s. 2]

Subd. 4. FILING. When the viewers complete their duties, they shall file the viewers' report with the auditor of each affected county. A detailed statement must be filed with the viewers' report showing the actual time the viewers were engaged and the costs incurred. The viewers shall perform their duties and complete the viewers' report as soon as possible after their first meeting. [106A.321 s. 3]

#### Sec. 53. [103E.323] PROPERTY OWNERS' REPORT.

Subdivision 1. REPORT. Within 30 days after the viewers' report is filed, the auditor must make a property owners' report from the information in the viewers' report showing for each property owner benefited or damaged by the proposed drainage project:

(1) the name and address of the property owner;

(2) each lot or tract and its area that is benefited or damaged;

(3) the total number and value of acres added to a tract or lot by the proposed drainage of public waters, wetlands, and other areas not currently being cultivated;

(4) the number of acres and amount of benefits being assessed for drainage of areas which before the drainage benefits could be realized would require a public waters work permit to work in public waters under article 7, section 22, to excavate or fill a navigable water body under United States Code, title 33, section 403, or a permit to discharge into waters of the United States under United States Code, title 33, section 1344;

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(5) the number of acres and amount of benefits being assessed for drainage of areas that would be considered conversion of a wetland under United States Code, title 16, section 3821, if the area was placed in agricultural production;

(6) the damage, if any, to riparian rights;

(7) the amount of right-of-way acreage required;

(8) the amount that each tract or lot will be benefited or damaged;

(9) the net damages or benefits to each property owner;

(10) the estimated cost to be assessed to the property owner based on the cost of the drainage project in the engineer's detailed survey report; and

(11) a copy of the benefits and damages statement under section 52, subdivision 2, paragraph (a), relating to the property owner.

Subd. 2. MAILING. The auditor must mail a copy of the property owners' report to each owner of property affected by the proposed drainage project, and may prepare and file an affidavit of mailing. [106A.323]

#### FINAL HEARING

##### Sec. 54. [103E.325] FINAL HEARING NOTICE.

Subdivision 1. TIME. Promptly after the filing of the viewers' report and the commissioner's final advisory report, the drainage authority after consulting with the auditor shall set a time and location for the final hearing on the petition, the detailed survey report, and the viewers' report. The hearing must be set 25 to 50 days after the date of the final hearing notice.

Subd. 2. NOTICE. (a) The final hearing notice must state:

(1) that the petition is pending;

(2) that the detailed survey report is filed;

(3) that the viewers' report is filed;

(4) the time and place set for the final hearing;

(5) a brief description of the proposed drainage project and affected drainage system, giving in general terms the starting point, terminus, and general course of the main ditch and branches;

(6) a description of property benefited and damaged, and the names of the owners of the property; and

(7) the municipal and other corporations affected by the proposed drainage project as shown by the detailed survey report and viewers' report.

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(b) Names may be listed in a narrative form and property affected may be separately listed in narrative form by governmental sections or otherwise.

(c) For a joint county proceeding, separate notice may be prepared for each county affected, showing the portion of the proposed drainage project and the names and descriptions of affected property in the county.

Subd. 3. METHOD OF NOTICE. The auditor shall notify the drainage authority, auditors of affected counties, and all interested persons of the time and location of the final hearing by publication, posting, and mail. A printed copy of the final hearing notice for each affected county must be posted at least three weeks before the date of the final hearing at the front door of the courthouse in each county. Within one week after the first publication of the notice, the auditor shall give notice by mail of the time and location of the final hearing to the commissioner, all property owners, and others affected by the proposed drainage project and listed in the detailed survey report and the viewers' report.

Subd. 4. DEFECTIVE NOTICE. If the final hearing notice is not given or is not legally given, the auditor shall properly publish, post, and mail the notice or provide the notice under the provisions to cure defective notice in section 7. [106A.325]

#### **Sec. 55. [103E.331] JURISDICTION OF PROPERTY BY DRAINAGE AUTHORITY.**

After the final hearing notice is given, the drainage authority has jurisdiction of all property described in the detailed survey report and viewers' report, of the persons and municipalities named in the reports, and of persons having an interest in a mortgage, lien, or encumbrance against property described in the reports. [106A.331]

#### **Sec. 56. [103E.335] PROCEEDINGS AT THE FINAL HEARING.**

Subdivision 1. CONSIDERATION OF PETITION AND REPORTS. At the time and location for the final hearing specified in the notice, or after the hearing adjourns, the drainage authority shall consider the petition for the drainage project, with all matters pertaining to the detailed survey report, the viewers' report, and the commissioner's final advisory report. The drainage authority shall hear and consider the testimony presented by all interested parties. The engineer or the engineer's assistant and at least one viewer shall be present. The director may appear and be heard. If the director does not appear personally, the final advisory report shall be read during the hearing. The final hearing may be adjourned and reconvened as is necessary.

Subd. 2. CHANGES IN DRAINAGE PLAN. If the drainage authority determines that the general plan reported by the engineer may be improved by changes, or that the viewers have made an inequitable assessment of benefits or damages to any property, the drainage authority may amend the detailed survey

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report or the viewers' report, and make necessary and proper findings in relation to the reports. The drainage authority may resubmit matters to the engineer or to the viewers for immediate consideration. The engineer or viewers shall proceed promptly to reconsider the resubmitted matters and shall make and file the amended findings and reports. The amended reports are a part of the original reports.

Subd. 3. REEXAMINATION. If the drainage authority determines that property not included in the notice should be included and assessed or that the engineer or viewers, or both, should reexamine the proposed drainage project or the property benefited or damaged by the system, the drainage authority may resubmit the reports to the engineer and viewers. If a report is resubmitted the final hearing may be continued as is necessary to make the reexamination and reexamination report. If the reexamination report includes property not included in the original report, the drainage authority may, by order, adjourn the hearing and direct the auditor to serve or publish, post, and mail a final hearing notice with reference to all property not included in the previous notice. The jurisdiction of the drainage authority continues in the property given proper notice, and new or additional notice is not required for that property. [106A.335]

**Sec. 57. [103E.341] DRAINAGE AUTHORITY FINAL ORDER.**

Subdivision 1. DISMISSAL OF PROCEEDINGS. The drainage authority must dismiss the proceedings and petition, by order, if it determines that:

- (1) the benefits of the proposed drainage project are less than the total cost, including damages awarded;
- (2) the proposed drainage project will not be of public benefit and utility; or
- (3) the proposed drainage project is not practicable after considering the environmental and land use criteria in section 3, subdivision 1.

Subd. 2. ESTABLISHMENT OF PROPOSED DRAINAGE PROJECT. (a) The drainage authority shall establish, by order, a proposed drainage project if it determines that:

- (1) the detailed survey report and viewers' report have been made and other proceedings have been completed under this chapter;
- (2) the reports made or amended are complete and correct;
- (3) the damages and benefits have been properly determined;
- (4) the estimated benefits are greater than the total estimated cost, including damages;
- (5) the proposed drainage project will be of public utility and benefit, and will promote the public health; and

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(6) the proposed drainage project is practicable.

(b) The order must contain the drainage authority's findings, adopt and confirm the viewers' report as made or amended, and establish the proposed drainage project as reported and amended. [106A.341]

**Sec. 58. [103E.345] APPORTIONMENT OF COST FOR JOINT COUNTY DRAINAGE SYSTEMS.**

For joint county proceedings, the auditor where the petition is filed shall file a certified copy of the viewers' report with the auditor of each affected county within 20 days after the date of the final order establishing the system. When the final order to establish the drainage project is made, the drainage authority shall determine and order the percentage of the cost of the drainage project to be paid by each affected county. The cost shall be in proportion to the benefits received, unless there is a contrary reason. An auditor of an affected county may petition the drainage authority after the final order is made to determine and order the percentage of costs to be paid by the affected counties. The drainage authority shall hold a hearing five days after giving written notice to the auditor of each affected county. After giving the notice to the auditors of the affected counties, the drainage authority may, at any time that it is necessary, modify an order or make an additional order to allocate the cost among the affected counties. [106A.345]

**REDETERMINATION OF BENEFITS**

**Sec. 59. [103E.351] REDETERMINATION OF BENEFITS AND DAMAGES.**

**Subdivision 1. CONDITIONS TO REDETERMINE BENEFITS AND DAMAGES; APPOINTMENT OF VIEWERS.** If the drainage authority determines that the original benefits or damages determined in a drainage proceeding do not reflect reasonable present day land values or that the benefited or damaged areas have changed, or if more than 50 percent of the owners of property benefited or damaged by a drainage system petition for correction of an error that was made at the time of the proceedings that established the drainage system, the drainage authority may appoint three viewers to redetermine and report the benefits and damages and the benefited and damaged areas.

**Subd. 2. HEARING AND PROCEDURE.** (a) The redetermination of benefits and damages shall proceed as provided for viewers and the viewers' report in sections 50 to 52.

(b) The auditor must prepare a property owners' report from the viewers' report. A copy of the property owners' report must be mailed to each owner of property affected by the drainage system.

(c) The drainage authority shall hold a final hearing on the report and confirm the benefits and damages and benefited and damaged areas. The final

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hearing shall proceed as provided under sections 54, 56, and 57, except that the hearing shall be held within 30 days after the property owners' report is mailed.

**Subd. 3. REDETERMINED BENEFITS AND DAMAGES REPLACE ORIGINAL BENEFITS AND DAMAGES.** The redetermined benefits and damages and benefited and damaged areas must be used in place of the original benefits and damages and benefited and damaged areas in all subsequent proceedings relating to the drainage system.

**Subd. 4. APPEAL.** A person aggrieved by the redetermination of benefits and damages and benefited and damaged areas may appeal from the order confirming the benefits and damages and benefited and damaged areas under section 19. [106A.351]

#### OUTLETS FOR DRAINAGE SYSTEMS

##### Sec. 60. [103E.401] USE OF DRAINAGE SYSTEM AS AN OUTLET.

**Subdivision 1. COMMISSIONER MUST RECOGNIZE DRAINAGE OUTLET PROCEEDINGS WHEN PURCHASING WETLANDS.** If the commissioner purchases wetlands under section 97A.145, the commissioner must recognize that when a majority of landowners or owners of a majority of the land in the watershed petition for a drainage outlet, the state should not interfere with or unnecessarily delay the drainage proceedings if the proceedings are conducted according to this chapter.

**Subd. 2. EXPRESS AUTHORITY NECESSARY.** After the construction of a drainage project, a public or private drainage system that drains property not assessed for benefits for the established drainage system may not be constructed to use the established drainage system as an outlet without obtaining express authority from the drainage authority having jurisdiction over the drainage system proposed to be used as the outlet. This section is applicable to the construction of a public or private drainage system that outlets water into an established drainage system regardless of the actual physical connection.

**Subd. 3. PETITION.** A person seeking authority to use an established drainage system as an outlet must petition the drainage authority. When the petition is filed, the drainage authority in consultation with the auditor shall set a time and location for a hearing on the petition and shall give notice by mail and notice by publication of the hearing. The auditor must be paid a fee of \$5 plus 30 cents for each notice mailed in excess of ten.

**Subd. 4. HEARING.** At the hearing the drainage authority shall consider the capacity of the outlet drainage system. If express authority is given to use the drainage system as an outlet, the drainage authority shall state, by order, the terms and conditions for use of the established drainage system as an outlet and shall set the amount to be paid as an outlet fee. The order must describe the property to be benefited by the drainage system and must state the amount of benefits to the property for the outlet. The property benefited is liable for assessments levied after that time in the drainage system, on the basis of the benefits as if the benefits had been determined in the order establishing the drainage system.

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**Subd. 5. PRIVATE DRAINAGE SYSTEM MAY NOT BE CONSTRUCTED WITHOUT PAYMENT OF OUTLET FEE.** A private drainage system may not be constructed to use the established drainage system as an outlet until the outlet fee, set by order, is paid by the petitioner to the county treasurer where the petitioner's property is located.

**Subd. 6. PAYMENT OF OUTLET FEE.** The outlet fee for a proposed drainage project is a part of the cost of the proposed drainage project and is to be paid by assessment against the property benefited by the proposed drainage project, under section 77, and credited to the established drainage system account.

**Subd. 7. UNAUTHORIZED OUTLET INTO DRAINAGE SYSTEM.** (a) The drainage authority must notify an owner of property where an unauthorized outlet into a drainage system is located and direct the property owner to block the outlet or otherwise make the outlet ineffective by a specified time. The outlet must be blocked and remain ineffective until:

(1) an outlet fee is paid, which is determined by the drainage authority based on the benefits received by the property for the period the unauthorized outlet was operational; and

(2) the drainage authority approves a petition for the outlet and establishes the outlet fee.

(b) If a property owner does not block or make the outlet ineffective after being notified, the drainage authority must issue an order to have the work performed to bring the outlet into compliance. After the work is completed, the drainage authority must send a statement to the auditor of the county where the property is located and to the property owner where the unauthorized outlet is located, containing the expenses incurred to bring the outlet into compliance and the outlet fee based on the benefits received by the property during the period the unauthorized outlet was operational.

**Subd. 8. COLLECTION OF UNAUTHORIZED OUTLET COMPLIANCE EXPENSES.** (a) The amount of the expenses and outlet fee is a lien in favor of the drainage authority against the property where the unauthorized outlet is located. The auditor must certify the expenses and outlet fee and enter the amount in the same manner as other drainage liens on the tax list for the following year. The amount must be collected in the same manner as real estate taxes for the property. The provisions of law relating to the collection of real estate taxes shall be used to enforce payment of amounts due under this section. The auditor must include a notice of collection of unauthorized outlet compliance expenses with the tax statement.

(b) The amounts collected under this subdivision must be deposited in the drainage system account. [106A.401]

**Sec. 61. [103E.405] OUTLETS IN ADJOINING STATES.**

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In any drainage proceeding, at the hearing on the detailed survey report and viewers' report, if the drainage authority determines that a proper outlet for the drainage system does not exist except through property in an adjoining state, the drainage authority may adjourn the hearing. If the hearing is adjourned the drainage authority shall require the auditor or, for a joint county drainage system, the auditors of affected counties to procure an option to acquire the needed right-of-way at an expense not exceeding the estimated cost specified in the detailed survey report. The order establishing the drainage project may not be made until the option is procured. If the option is procured and the drainage project established, the option shall be exercised and the cost of the right-of-way shall be paid as a part of the cost of the drainage project. [106A.405]

**Sec. 62. [103E.411] DRAINAGE SYSTEM AS OUTLET FOR MUNICIPALITY.**

Subdivision 1. PETITION. A municipality may use a drainage system as an outlet for its municipal drainage system or the overflow from the system under the provisions of this section. The municipality must petition to the drainage authority to use the drainage system. The petition must:

- (1) show the necessity for the use of the drainage system as an outlet;
- (2) show that the use of the drainage system will be of public benefit and utility and promote the public health;
- (3) be accompanied by a plat showing the location of the drainage system and the location of the municipal drainage system; and
- (4) be accompanied by specifications showing the plan of connection from the municipal drainage system to the drainage system.

Subd. 2. APPROVAL BY POLLUTION CONTROL AGENCY. The plan for connecting the municipal drainage system to the drainage system must be approved by the pollution control agency.

Subd. 3. FILING; NOTICE. (a) If proceedings to establish the drainage project to be used as an outlet are pending, the petition must be filed with the auditor. The municipal drainage system petition must be presented to the drainage authority at the final hearing to consider the detailed survey report and viewers' report. Notice of the municipal drainage system petition must be included in the final hearing notice.

(b) If the drainage system to be used as an outlet is established, the municipal drainage system petition must be filed with the auditor. When the petition is filed, the drainage authority in consultation with the auditor shall, by order, set a time and place for hearing on the petition. Notice of the hearing must be given by publication and by mailed notice to the auditor of each affected county.

Subd. 4. HEARING AND ORDER. (a) At the hearing the drainage authority may receive all evidence of interested parties for or against the granting of

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the petition. The drainage authority, by order, may authorize the municipality to use the drainage system as an outlet, subject to the conditions that are necessary and proper to protect the rights of the parties and safeguard the interests of the general public, if the drainage authority determines:

(1) that a necessity exists for the use of the drainage system as an outlet for the municipal drainage system or the overflow from the system;

(2) that use of the drainage system will be of public utility and promote the public health; and

(3) that the proposed connection conforms to the requirements of the pollution control agency and provides for the construction and use of proper disposal works.

(b) The drainage authority must, by order, make the municipality a party to the drainage proceedings and determine the benefits from using the drainage project or system as an outlet.

**Subd. 5. BENEFITS AND ASSESSMENTS IF DRAINAGE SYSTEM IS ESTABLISHED.** If the drainage system is established, the drainage authority must determine the amount the municipality must pay for the privilege of using the drainage system as an outlet. The amount must be paid to the affected counties and credited to the account of the drainage system used as an outlet. The municipality is liable for all subsequent liens and assessments for the repair and maintenance of the drainage system in proportion to the benefits, as though the benefits were determined in the order establishing the drainage system. [106A.411]

## CONSTRUCTION OF DRAINAGE PROJECT

### Sec. 63. [103E.501] CONTRACT AND BOND.

Subdivision 1. PREPARATION. The county attorney, the engineer, and the attorney for the petitioners shall prepare the contract and bond. The contract and bond must include the provisions required by this chapter and section 574.26 for bonds given by contractors for public works and must be conditioned as provided by section 574.26 for the better security of the contracting counties and parties performing labor and furnishing material in performance of the contract. The prepared contract and bond must be attached and provided to the contractor for execution.

Subd. 2. CONTRACTOR'S BOND. The contractor shall file a bond with the auditor for an amount not less than 75 percent of the contract price of the work. The bond must have adequate surety and be approved by the auditor. The bond must provide that the surety for the bond is liable for all damages resulting from a failure to perform work under the contract, whether the work is resold or not, and that any person or political subdivision showing damages from the failure to perform work under the contract may maintain an action

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against the bond in their own names. Actions may be successive in favor of all persons injured, but the aggregate liability of the surety for all the damages may not exceed the amount of the bond. The surety is liable for the tile work guaranteed by the contractor. The contractor is considered a public officer and the bond an official bond within the meaning of section 574.24 construing the official bonds of public officers as security to all persons and providing for actions on the bonds by a party that is damaged.

Subd. 3. CONTRACT. The contract must contain a specific description of the work to be done, either expressly or by reference to the plans and specifications, and must provide that the work must be done and completed as provided in the plans and specifications and subject to the inspection and approval of the engineer. The contract must provide that time is of the essence of the contract, and that if there is a failure to perform the work according to the terms of the contract within the time given in the original contract or as extended, the contractors shall forfeit and pay the affected counties an amount stated in the contract as liquidated damages. The amount must be fixed by the auditor for each day that the failure of performance continues.

Subd. 4. CONTRACT PROVISIONS FOR CHANGES DURING CONSTRUCTION. The contract must give the engineer the right, with the consent of the drainage authority, to modify the detailed survey report, plans, and specifications as the work proceeds and as circumstances require. The contract must provide that the increased cost resulting from the changes will be paid by the drainage authority to the contractor at a rate not greater than the amount for similar work in the contract. A change may not be made that will substantially impair the usefulness of any part of the drainage project or system, substantially alter its original character, or increase its total cost by more than ten percent of the total original contract price. A change may not be made that will cause the cost to exceed the total estimated benefits found by the drainage authority or that will cause any detrimental effects to the public interest under section 3, subdivision 1.

Subd. 5. CONTRACT WITH FEDERAL UNIT. If any portion of the work is to be done by the United States or an agency of the United States, a bond or contract is not necessary for that portion of the work, except that a contract must be made if the United States or its agencies require a contract with the local governmental units. The contract must contain the terms, conditions, provisions, and guaranties required by the United States or its agencies to proceed with the work.

Subd. 6. GUARANTY OF TILE WORK. If tile is used to construct any part of the drainage project, a majority of the persons affected may file a written request with the auditor to contract the tile work separately. The request must be filed before advertising for the sale of the work has begun. If the request is properly made, the tile work must be contracted separately. The contractor must guarantee the tile work under the contract for three years after its comple-

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tion against any fault or negligence on the part of the contractor. The advertisement for bids must include this requirement.

Subd. 7. MODIFICATION OF CONTRACT BY AGREEMENT. This chapter does not prevent the persons with property affected by the construction of a drainage project from uniting in a written agreement with the contractor and the surety of the contractor's bond to modify the contract as to the manner or time when any portion of the drainage project is constructed, if the modification is recommended, in writing, by the engineer and approved by the drainage authority. [106A.501]

Sec. 64. [103E.505] AWARDING THE CONSTRUCTION CONTRACT.

Subdivision 1. AUDITORS AND DRAINAGE AUTHORITY TO PROCEED. Thirty days after the order establishing a drainage project is filed, the auditor and the drainage authority or, for a joint county drainage project, a majority of the auditors of the affected counties shall proceed to award the contract to construct the drainage project.

Subd. 2. PENDING APPEAL OF BENEFITS AND DAMAGES. If an appeal regarding the determination of benefits and damages is made within 30 days after the order establishing the drainage project has been filed, a contract may not be awarded until the appeal has been determined, unless the drainage authority orders the contract awarded. The auditor of an affected county or an interested person may request the drainage authority to make the order. If the request is not made by an affected auditor, the auditors of affected counties must be given notice five days before the hearing on the request.

Subd. 3. NOTICE OF CONTRACT AWARDING. The auditor of an affected county shall give notice of the awarding of the contract by publication in a newspaper in the county. The notice must state the time and location for awarding the contract. For a joint county drainage project the auditors shall award the contract at the office of the auditor where the proceedings are pending. If the estimated cost of construction is more than \$3,000, the auditor must also place a notice in a drainage construction trade newspaper. The trade newspaper notice must state:

- (1) the time and location for awarding the contract;
- (2) the approximate amount of work and its estimated cost;
- (3) that bids may be for the work as one job, or in sections, or separately, for bridges, ditches and open work, tile, or tile construction work, if required or advisable;
- (4) that each bid must be accompanied by a certified check or a bond furnished by an approved surety corporation payable to the auditors of affected counties for ten percent of the bid, as security that the bidder will enter into a contract and give a bond as required by section 63; and

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(5) that the drainage authority reserves the right to reject any and all bids.

**Subd. 4. ENGINEER SHALL ATTEND AWARDING OF CONTRACT.** The engineer shall attend the meeting to award the contract. A bid may not be accepted without the engineer's approval of the bidder's compliance with plans and specifications.

**Subd. 5. HOW CONTRACT MAY BE AWARDED.** The contract may be awarded in one job, in sections, or separately for labor and material and must be let to the lowest responsible bidder.

**Subd. 6. BIDS EXCEEDING 130 PERCENT OF ESTIMATED COST NOT ACCEPTED.** Bids that in the aggregate exceed the total estimated cost of construction by more than 30 percent may not be accepted.

**Subd. 7. AFFECTED COUNTIES CONTRACT THROUGH AUDITOR.** The chair of the drainage authority and the auditor of each affected county shall contract, in the names of their respective counties, to construct the drainage project in the time and manner and according to the plans and specifications and the contract provisions in this chapter.

**Subd. 8. WORK DONE BY FEDERAL GOVERNMENT.** If any of the drainage work is to be done by the United States or its agencies, a notice of awarding that contract does not need to be published and a contract for that construction is not necessary. Affected municipalities may contract or arrange with the United States or its agencies for cooperation or assistance in constructing, maintaining, and operating the drainage project and system, for control of waters in the district, or for making a survey and investigation or reports on the drainage project or system. The municipalities may provide required guaranty and protection to the United States or its agencies. [106A.505]

**Sec. 65. [103E.511] PROCEDURE IF CONTRACT IS NOT AWARDED DUE TO BIDS OR COSTS.**

**Subdivision 1. CONDITIONS TO USE PROCEDURE IN THIS SECTION.** The procedure in this section may be used if, after a drainage system is established:

(1) the only bids received are for more than 30 percent in excess of the engineer's estimated cost, or in excess of the benefits, less damages and other costs; or

(2) a contract is awarded, but due to unavoidable delays not caused by the contractor, the contract cannot be completed for an amount equal to or less than the benefits, less damages and other costs.

**Subd. 2. PETITION AFTER COST ESTIMATE ERROR OR CHANGE TO LOWER COST.** A person interested in the drainage project may petition the drainage authority if the person determines that the engineer made an error in the estimate of the drainage project cost or that the plans and specifications could be changed in a manner materially affecting the cost of the drainage

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system without interfering with efficiency. The petition must state the person's determinations and request that the detailed survey report and viewers' report be referred back to the engineer and to the viewers for additional consideration.

**Subd. 3. PETITION AFTER EXCESSIVE COST DUE TO INFLATION.** (a) A person interested in the drainage project may petition the drainage authority for an order to reconsider the detailed survey report and viewers' report if the person determines:

(1) that bids were received only for a price more than 30 percent in excess of the detailed survey report estimate because inflation increased the construction cost between the time of the detailed survey cost estimate and the time of awarding the contract; or

(2) that after the contract was awarded there was unavoidable delay not caused by the contractor, and between the time of awarding the contract and completion of construction inflation increased construction costs resulting in the contract not being completed for an amount equal to or less than the assessed benefits.

(b) The person may request in the petition that the drainage authority reconsider the original cost estimate in the detailed survey report and viewers' report and adjust the cost estimate consistent with the increased construction cost.

**Subd. 4. HEARING ORDERED AFTER RECEIPT OF PETITION.** After receiving a petition, the drainage authority shall order a hearing. The order must designate the time and place of the hearing and direct the auditor to give notice by publication.

**Subd. 5. HEARING ON COST PETITION.** (a) At the hearing the drainage authority shall consider the petition and hear all interested parties.

(b) The drainage authority may, by order, authorize the engineer to amend the detailed survey report, if the drainage authority determines that:

(1) the detailed survey report cost estimate was erroneous and should be corrected;

(2) the plans and specifications could be changed in a manner materially affecting the cost of the drainage project without interfering with efficiency; and

(3) with the correction or modification a contract could be awarded within the 30 percent limitation and equal to or less than benefits.

(c) If the drainage authority determines that the amended changes affect the amount of benefits or damages to any property or that the benefits should be reexamined because of inflated land values or inflated construction costs, it shall refer the viewers' report to the viewers to reexamine the benefits and damages.

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(d) The drainage authority may, by order, direct the engineer and viewers to amend their detailed survey report and viewers' report to consider the inflationary cost increases if the drainage authority determines that:

(1) bids were not received; or

(2) because of inflationary construction cost increases, construction under the awarded contract cannot be completed for 30 percent or less over the detailed survey cost estimate or in excess of the benefits, less damages and other costs.

(e) The drainage authority may continue the hearing to give the engineer or viewers additional time to amend the reports. The jurisdiction of the drainage authority continues at the adjourned hearing.

(f) The drainage authority has full authority to consider the amended reports and make findings and orders. A party may appeal to the district court under section 19, subdivision 1. [106A.511]

**Sec. 66. [103E.515] DAMAGES, PAYMENT.**

The board of each county where the damaged property is located must order the awarded damages to be paid, less any assessment against the property, before the property is entered for construction of the drainage project. If a county or a municipality that is awarded damages requests it, the assessment may not be deducted. If there is an appeal, the damages may not be paid until the final determination. If it is not clear who is entitled to the damages, the board may pay the damages to the court administrator of the district court of the county. The court shall direct the court administrator, by order, to pay the parties entitled to the damages. [106A.515]

**Sec. 67. [103E.521] SUPERVISION OF CONSTRUCTION.**

The drainage authority shall require the engineer to supervise and inspect the construction under contract. The drainage authority shall cause the contracts under this chapter to be performed properly. [106A.521]

**Sec. 68. [103E.525] CONSTRUCTION AND MAINTENANCE OF BRIDGES AND CULVERTS.**

Subdivision 1. HYDRAULIC CAPACITY. A public or private bridge or culvert may not be constructed or maintained across or in a drainage system with less hydraulic capacity than specified in the detailed survey report, except with the written approval of the director of the division of waters. If the detailed survey report does not specify the hydraulic capacity, a public or private bridge or culvert in or across a drainage system ditch may not be constructed without the director's approval of the hydraulic capacity.

**Subd. 2. ROAD AUTHORITY RESPONSIBLE FOR CONSTRUCTION.**  
Bridges and culverts on public roads required by the construction or improvement  
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of a drainage project or system must be constructed and maintained by the road authority responsible for keeping the road in repair, except as provided in this section.

**Subd. 3. NOTICE; CHARGING COST.** The auditor shall notify the state and each railroad company, corporation, or political subdivision that they are to construct a required bridge or culvert on a road or right-of-way under their jurisdiction, within a reasonable time as stated in the notice. If the work is not done within the prescribed time, the drainage authority may order the bridge or culvert constructed as part of the drainage project construction. The cost must be deducted from the damages awarded to the corporation or collected from it as an assessment for benefits. If the detailed survey report or viewers' report shows that the construction of the bridge or culvert is necessary, the drainage authority may, by order, retain an amount to secure the construction of the bridge or culvert from amounts to be paid to a railroad, corporation, or political subdivision.

**Subd. 4. CONSTRUCTION ON LINE BETWEEN TWO CITIES PAID EQUALLY.** The costs of constructing a bridge or culvert that is required by construction of a drainage project on a public road that is not a state trunk highway on the line between two statutory or home rule charter cities, whether in the same county or not, must be paid jointly, in equal shares, by the cities. The cities shall pay jointly, in equal shares, for the cost of maintaining the bridge or culvert.

**Subd. 5. CONSTRUCTION ON TOWN AND COUNTY LINES.** The cost of constructing and maintaining bridges and culverts on a town or county road across a drainage system ditch constructed along the boundary line between towns or counties, with excavated material deposited on the boundary line or within 33 feet of the line, must be paid equally by the town or county where the bridge or culvert is located and the other town or county adjoining the boundary. [106A.525]

**Sec. 69. [103E.526] CONSTRUCTION OF ROAD INSTEAD OF BRIDGE OR CULVERT.**

If the drainage authority finds that constructing a private road would be more cost effective or practical than constructing a bridge or culvert, the drainage authority may order that a private road be constructed. The private road must be constructed and maintained in the same manner as a bridge or culvert. The private road must be constructed in a manner suitable for farm vehicles, but may not have a right-of-way wider than 33 feet. The drainage authority has jurisdiction over the land required for the private road and the road is part of the drainage system. [106A.526]

**Sec. 70. [103E.53] RULES TO STANDARDIZE FORMS.**

The director may adopt rules to standardize the forms and sizes of maps, plats, drawings, and specifications in drainage proceedings. The director must  
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require the permanent grass strips acquired under section 4 to be shown on the maps and maintain an inventory of all permanent grass strips acquired by drainage authorities. [105.40 s. 11]

**Sec. 71. [103E.531] INSPECTION OF DRAINAGE CONSTRUCTION AND PARTIAL PAYMENTS.**

Subdivision 1. INSPECTION AND REPORT. The engineer shall inspect and require the work as it is being completed to be done in accordance with the plans, specifications, and contract for construction. Each month during the work, the engineer shall report to the drainage authority, in writing, showing the work completed since the previous report and all materials furnished under the contract.

Subd. 2. PRELIMINARY CERTIFICATE. The engineer shall issue with the monthly report a preliminary certificate for work done and approved or materials delivered. The certificate must contain the station numbers of the work covered by the certificate and the total value of all work done and the materials furnished according to the contract. For each ditch section, the certificate must show the actual volume, in cubic yards, of the excavation completed. For joint county drainage systems the certificate must also show the percentage of the total value to be paid by each county in the proportion fixed by the drainage authority order. Each certificate must show that a loss will not occur as a result of a partial payment. A duplicate of the certificate must be delivered to the auditor of each affected county.

Subd. 3. PARTIAL PAYMENT. The affected counties must pay the contractor, based on the certificate, 90 percent of the total value of work done and approved and 90 percent of the total value of material furnished and delivered. The materials may only be delivered as required in the course of construction and authorized by the engineer. [106A.531]

**Sec. 72. [103E.535] PARTIAL PAYMENT OF RETAINED CONTRACT AMOUNTS.**

Subdivision 1. PETITION FOR PARTIAL PAYMENT OF RETAINED VALUE. If a single contract exceeds \$50,000, and the contract, exclusive of materials furnished and not installed, is one-half or more complete and the contractor is not in default, the contractor may file a verified petition with the auditor stating these facts and requesting that an order be made to pay 40 percent of the retained value of work and material.

Subd. 2. NOTICE OF HEARING. When the petition is filed, the auditor shall set a time and location for a hearing on the petition before the drainage authority. At least five days before the date of hearing, the auditor shall give notice by mail of the date and location of hearing to the engineer, the attorney for the petitioners, the surety of the contractor's bond, and auditors of the affected counties.

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Subd. 3. HEARING. At the hearing the drainage authority shall hear all parties interested. If the drainage authority determines that the facts in the petition are correct, the work has been performed in a satisfactory manner, and a portion of the retained percentage may be released without endangering the interests of affected counties, the drainage authority shall state the findings and may order not more than 40 percent of the retained value of work and material to be paid. [106A.535]

**Sec. 73. [103E.541] EXTENSION OF TIME ON CONTRACTS.**

The auditors of affected counties may extend the time for the performance of a contract as provided in this section. The contractor may apply, in writing, for an extension of the contract. Notice of the application must be given to: (1) the engineer and the attorney for the petitioners; and (2) for a joint county drainage project, to the auditors of the affected counties. The auditors may grant an extension if sufficient reasons are shown. The extension does not affect a claim for liquidated damages that may arise after the original time expires and before an extension or a claim that may arise after the time for the extension expires. [106A.541]

**Sec. 74. [103E.545] REDUCTION OF CONTRACTOR'S BOND.**

Subdivision 1. APPLICATION TO DRAINAGE AUTHORITY. The contractor, at the end of each season's work and before the contract is completed, may make a verified application to the drainage authority to reduce the contractor's bond and file the application with the auditor. The application must state:

- (1) the work certified as completed by the engineer;
- (2) the value of the certified work;
- (3) the amount of money received by the contractor and the amount retained by the drainage authority;
- (4) the amount unpaid by the contractor for labor or material furnished on the contract; and
- (5) a request for an order to reduce the amount of the contractor's bond.

The application must be filed with the auditor.

Subd. 2. NOTICE OF HEARING. When an application is filed, the auditor, by order, shall set the time and location for a hearing on the application. Ten days before the hearing, notice of the hearing must be published in each affected county and notice by mail given to the engineer, the attorney for the petitioners, and the auditor of each affected county. The contractor must pay the cost of publishing the hearing notice.

Subd. 3. HEARING; REDUCTION OF BOND. The drainage authority

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may, by order, reduce the contractor's bond if it determines that the contractor is not in default and that a loss will not result from reducing the bond. The bond may be reduced to an amount sufficient to protect the affected counties from loss and damage, but the reduction:

(1) may not be more than 35 percent of the amount already paid to the contractor;

(2) may not affect the remaining amount of the bond;

(3) does not affect liability incurred on the bond before the reduction; and

(4) does not affect a provision for a three-year guaranty of tile work.  
[106A.545]

Sec. 75. [103E.551] CONTRACTOR'S DEFAULT.

Subdivision 1. NOTICE. If a contractor defaults in the performance of the contract, the auditor shall mail a notice of the default to the contractor, the surety of the contractor's bond, the engineer, and the auditors of the affected counties. The notice must specify the default and state that if the default is not promptly removed and the contract completed, the unfinished portion of the contract will be awarded to another contractor.

Subd. 2. COMPLETION OF CONTRACT BY SURETY. If the surety of the contractor's bond promptly proceeds with the completion of the contract, the affected auditors may grant an extension of time. If the contract is completed by the surety, the balance due on the contract must be paid to the surety, less damages incurred by the affected counties from the default.

Subd. 3. AWARDING OF CONTRACT; RECOVERY ON BOND. If the surety of the contractor's bond does not undertake the completion of the contract or does not complete the contract within the time specified or extended, auditors of the affected counties shall advertise for bids to complete the contract in the manner provided in the original awarding of contracts. The drainage authority may recover the increased amounts paid to a subsequent contractor after reselling the work, and damages incurred by affected counties, from the first contractor's bond. [106A.551]

Sec. 76. [103E.555] ACCEPTANCE OF CONTRACT.

Subdivision 1. ENGINEER'S REPORT AND NOTICE. When a contract is completed, the engineer shall make a report to the drainage authority showing the contract price, the amount paid on certificates, the unpaid balance, and the work that is completed under the contract. When the report is filed, the auditor shall set a time and location for a hearing on the report. The auditor shall give notice of the hearing by publication or notice by mail at least ten days before the hearing to the owners of affected property. The notice must state that the report is filed, the time and location for the hearing, and that a party objecting to the acceptance of the contract may appear and be heard.

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Subd. 2. HEARING. At the hearing the drainage authority may, by order, direct payment of the balance due if it determines that the contract has been completed in accordance with the plans and specifications. If good cause is shown, the drainage authority may waive any part of the liquidated damages accruing under the contract. When the order is filed, the auditor shall draw a warrant on the treasurer of the county for the balance due on the contract. For a joint county drainage project or system the auditor shall make an order to the auditors of the affected counties to pay for their proportionate shares of the balance due on the contract. After receiving the order, the auditor of each affected county shall draw a warrant on the treasurer of the county for the amount specified in the order. [106A.555]

#### FUNDING, COLLECTION, AND PAYMENT OF DRAINAGE SYSTEM COSTS

##### Sec. 77. [103E.601] DRAINAGE LIEN STATEMENT.

Subdivision 1. DETERMINATION OF PROPERTY LIABILITY. When the contract for the construction of a drainage project is awarded, the auditor of an affected county shall make a statement showing the total cost of the drainage project with the estimated cost of all items required to complete the work. The cost must be prorated to each tract of property affected in direct proportion to the benefits. The cost, less any damages, is the amount of liability for each tract for the drainage project. The property liability must be shown in the tabular statement as provided in subdivision 2, opposite the property owner's name and description of each tract of property. The amount of liability on a tract of property for establishment and construction of a drainage project may not exceed the benefits determined in the proceedings that accrue to the tract.

Subd. 2. DRAINAGE LIEN STATEMENT. The auditor of each affected county shall make a lien statement in tabular form showing:

(1) the names of the property owners, corporate entities, or political subdivisions of the county benefited or damaged by the construction of the drainage project in the viewers' report as approved by the final order for establishment;

(2) the description of the property in the viewers' report, and the total number of acres in each tract according to the county tax lists;

(3) the number of acres benefited or damaged in each tract shown in the viewers' report;

(4) the amount of benefits and damages to each tract of property as stated in the viewers' report and confirmed by the final order that established the drainage project unless the order is appealed and a different amount is set; and

(5) the amount each tract of property will be liable for and must pay to the county for the establishment and construction of the drainage project.

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Subd. 3. SUPPLEMENTAL DRAINAGE LIEN STATEMENT. If any items of the cost of the drainage project have been omitted from the original drainage lien statement, a supplemental drainage lien statement with the omitted items must be made and recorded in the same manner provided for a drainage lien statement. The total amount of the original drainage lien and any supplemental drainage liens may not exceed the benefits.

Subd. 4. RECORDING DRAINAGE LIEN STATEMENT. The lien against property in the drainage lien statement and supplemental drainage lien statements must be certified by the auditor and recorded on each tract by the county recorder of the county where the tract is located. The county recorder's fees for recording must be paid if allowed by the board. The drainage lien statement and any supplemental drainage lien statements, after recording, must be returned and preserved by the auditor. [106A.601]

**Sec. 78. [103E.605] EFFECT OF FILED DRAINAGE LIEN.**

The amount recorded from the drainage lien statement and supplemental drainage lien statement that each tract of property will be liable for, and the interest allowed on that amount, is a drainage lien on the property. The drainage lien is a first and paramount lien until fully paid, and has priority over all mortgages, charges, encumbrances, and other liens, unless the board subordinates the drainage lien to liens of record. The recording of the drainage lien, drainage lien statement, or a supplemental drainage lien statement is notice to all parties of the existence of the drainage lien. [106A.605]

**Sec. 79. [103E.611] PAYMENT OF DRAINAGE LIENS AND INTEREST.**

Subdivision 1. PAYMENT OF DRAINAGE LIEN PRINCIPAL. (a) Drainage liens against property benefited under this chapter are payable to the treasurer of the county in 20 or less equal annual installments. The first installment of the principal is due on or before November 1 after the drainage lien statement is recorded, and each subsequent installment is due on or before November 1 of each year afterwards until the principal is paid.

(b) The drainage authority may, by order, direct the drainage lien to be paid by 1/15 of the principal on or before five years from November 1 after the lien statement is recorded, and 1/15 on or before November 1 of each year afterwards until the principal is paid.

(c) The drainage authority may order that the drainage lien must be paid by one or two installments, notwithstanding paragraphs (a) and (b), if the principal amount of a lien against a lot or tract of property or against a county or municipality is less than \$50.

Subd. 2. INTEREST. (a) Interest is an additional drainage lien on all property until paid. The interest rate on the drainage lien principal from the  
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date the drainage lien statement is recorded must be set by the board, but may not exceed the rate determined by the state court administrator for judgments under section 549.09.

(b) Before the tax lists for the year are given to the county treasurer, the auditor shall compute the interest on the unpaid balance of the drainage lien at the rate set by the board. The amount of interest must be computed on the entire unpaid principal from the date the drainage lien was recorded to August 15 of the next calendar year, and afterwards from August 15 to August 15 of each year.

(c) Interest is due and payable after November 1 of each year the drainage lien principal or interest is due and unpaid.

Subd. 3. COLLECTION OF PAYMENTS. Interest and any installment due must be entered on the tax lists for the year. The installment and interest must be collected in the same manner as real estate taxes for that year by collecting one-half of the total of the installment and interest with and as a part of the real estate taxes.

Subd. 4. PREPAYMENT OF INTEREST. Interest may be paid at any time, computed to the date of payment, except that after the interest is entered on the tax lists for the year, it is due as entered, without a reduction for prepayment.

Subd. 5. PAYMENT OF DRAINAGE LIENS WITH BONDS. The board may direct the county treasurer to accept any outstanding bond that is a legal obligation of the county under this chapter issued on account of a drainage lien in payment of drainage liens under the provisions of this chapter. The bonds must be accepted at their par value plus accrued interest.

Subd. 6. DRAINAGE LIEN RECORD. The auditor shall keep a drainage lien record for each drainage project and system showing the amount of the drainage lien remaining unpaid against each tract of property.

Subd. 7. COLLECTION AND ENFORCEMENT OF DRAINAGE LIENS. The provisions of law that exist relating to the collection of real estate taxes are adopted to enforce payment of drainage liens. If there is a default, a penalty may not be added to an installment of principal and interest, but each defaulted payment, principal, and interest draws interest from the date of default until paid at the rate determined by the state court administrator for judgments under section 549.09. [106A.611]

#### Sec. 80. [103E.615] ENFORCEMENT OF ASSESSMENTS.

Subdivision 1. MUNICIPALITIES. Assessments filed for benefits to a municipality are a liability of the municipality and are due and payable with interest in installments on November 1 of each year as provided in section 79. If the installments and interest are not paid on or before November 1, the

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amount due with interest added as provided in section 79 must be extended by the county auditor against all property in the municipality that is liable to taxation. A levy must be made and the amount due must be paid and collected in the same manner and time as other taxes.

Subd. 2. COUNTY OR STATE-AID ROAD. If a public road benefited is a county or state-aid road, the assessment filed is against the county and must be paid out of the road and bridge fund of the county.

Subd. 3. STATE TRUNK HIGHWAY. An assessment against the state for benefits to trunk highways is chargeable to and payable out of the trunk highway fund. The commissioner of transportation shall pay assessments from the trunk highway fund after receipt of a certified copy of the assessment against the state for benefits to a trunk highway.

Subd. 4. ASSESSMENT FOR VACATED TOWN ROADS. If a town is assessed for benefits to a town road in a drainage project proceeding under this chapter and the town road is later vacated by the town board under section 164.07, the town board may petition the drainage authority to cancel the assessment. The drainage authority may cancel the assessment if it finds that the town road for which benefits are assessed has been vacated under section 164.07.

Subd. 5. STATE PROPERTY. State property, including rural credit property, is assessable for benefits received. The assessment must be paid by the state from funds appropriated and available for drainage assessments after the state officer having jurisdiction over the assessed property certifies the assessment to the commissioner of finance.

Subd. 6. ASSESSMENTS ON WILDLIFE LANDS TO BE PAID FROM WILDLIFE ACQUISITION FUND. An assessment against state land acquired for wildlife habitat shall be paid from the game and fish fund as provided in section 97A.071, subdivision 4.

Subd. 7. RAILROAD AND UTILITY PROPERTY. Property owned by a railroad or other utility corporation benefited by a drainage project is liable for the assessments of benefits on the property as other taxable property. From the date the drainage lien is recorded, the amount of the assessment with interest is a lien against all property of the corporation within the county. Upon default the assessment may be collected by civil action or the drainage lien may be foreclosed by action in the same manner as provided by law for the foreclosure of mortgage liens. The county where the drainage lien is filed has the right of action against the corporation to enforce and collect the assessment. [106A.615]

#### Sec. 81. [103E.621] SATISFACTION OF LIENS.

When a drainage lien with the accumulated interest is fully paid, the auditor shall issue a certificate of payment with the auditor's official seal and record the certificate with the county recorder. The recorded certificate releases and dis-

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charges the drainage lien. The auditor may collect 25 cents for each description in the certificate. The auditor's fee and the fee of the county recorder must be paid from the account for the drainage system. [106A.621]

**Sec. 82. [103E.625] SUBDIVISION BY PLATTING MUST HAVE LIENS APPORTIONED.**

A tract of property with a drainage lien that is subdivided by platting is not complete and the plat may not be recorded until the drainage liens against the tracts are apportioned and the apportionment is filed with the county recorder of the county where the tract is located. [106A.625]

**Sec. 83. [103E.631] APPORTIONMENT OF LIENS.**

Subdivision 1. PETITION. A person who has an interest in property that has a drainage lien attached to it may petition the drainage authority to apportion the lien among specified portions of the tract if the payments of principal and interest on the property are not in default.

Subd. 2. NOTICE. When the petition is filed, the drainage authority shall, by order, set a time and location for a hearing on the petition. The drainage authority shall give notice of the hearing by personal service to the auditor, the occupants of the tract, and all parties having an interest in the tract as shown by the records in the county recorder's office. The service must be made at least ten days before the hearing. If personal service cannot be made to all interested persons, notice may be given by publication. The petitioner shall pay the costs for service or publication.

Subd. 3. HEARING. The drainage authority shall hear all related evidence and, by order, apportion the lien. A certified copy of the order must be recorded in the county recorder's office and filed with the auditor. [106A.631]

**Sec. 84. [103E.635] DRAINAGE BOND ISSUES.**

Subdivision 1. AUTHORITY. After the contract for the construction of a drainage project is awarded, the board of an affected county may issue the bonds of the county in an amount necessary to pay the cost of establishing and constructing the drainage project.

Subd. 2. SINGLE ISSUE FOR TWO OR MORE DRAINAGE SYSTEMS. The board may include two or more drainage systems in a single drainage bond issue. The total amount of the drainage bond issue may not exceed the total cost, including expenses, to be assessed to pay for the drainage systems. The total cost to be assessed must be determined or estimated by the board when the drainage bonds are issued.

Subd. 3. SECURITY AND SOURCE OF PAYMENT. The drainage bonds must be issued in accordance with chapter 475 and must pledge the full faith, credit, and resources of the county for the prompt payment of the principal and

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interest of the drainage bonds. The drainage bonds are primarily payable from the funds of the drainage systems financed by the bonds or from the common drainage bond redemption fund of the county. The common drainage bond redemption fund may be created by resolution of the county board as a debt redemption fund for the payment of drainage bonds issued under this chapter.

**Subd. 4. PAYMENT PERIOD AND INTEREST ON DRAINAGE BONDS.** (a) The board shall determine, by resolution:

(1) the time of payment for the drainage bonds, not to exceed 23 years from their date of issue;

(2) the rates of interest for the drainage bonds, with the net average rate of interest over the term of the bonds not to exceed the rate established under section 475.55; and

(3) whether the drainage bonds are payable annually or semiannually.

(b) The board shall determine the years and amounts of principal maturities that are necessary by the anticipated collections of the drainage systems assessments, without regard to any limitations on the maturities imposed by section 475.54.

**Subd. 5. TEMPORARY DRAINAGE BONDS MATURING IN TWO YEARS OR LESS.** The board may issue and sell temporary drainage bonds under this subdivision maturing not more than two years after their date of issue, instead of bonds as provided under subdivision 4. The county shall issue and sell definitive drainage bonds before the maturity of bonds issued under this subdivision and use the proceeds to pay for the temporary drainage bonds and interest to the extent that the temporary bonds are not paid for by assessments collected or other available funds. The holders of temporary drainage bonds and the taxpayers of the county have and may enforce by mandamus or other appropriate proceedings:

(1) all rights respecting the levy and collection of assessments sufficient to pay the cost of drainage proceedings and construction financed by the temporary drainage bonds that are granted by law to holders of other drainage bonds, except the right to require levies to be collected before the temporary drainage bonds mature; and

(2) the right to require the offering of definitive drainage bonds for sale, or to require the issuance of definitive drainage bonds in exchange for the temporary drainage bonds, on a par for par basis, bearing interest at the rate established under section 475.55 if the definitive drainage bonds have not been sold and delivered before the maturity of the temporary drainage bonds.

**Subd. 6. DEFINITIVE DRAINAGE BONDS.** The definitive drainage bonds issued in exchange for an issue of temporary drainage bonds must be numbered

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and mature serially at times and in amounts to allow the principal and interest to be paid when due by the collection of assessments levied for the drainage systems financed by the temporary bond issue. The definitive bonds are subject to redemption and prepayment on any interest payment date when the county notifies the definitive bondholders who have registered their names and addresses with the county treasurer. The bondholders must be notified by mail 30 days before the interest payment date. The definitive bonds must be delivered in order of their serial numbers, lowest numbers first, to the holders of the temporary drainage bonds in order of the serial numbers of the bonds held by them.

**Subd. 7. SALE OF DEFINITIVE DRAINAGE BONDS.** The board must sell and negotiate the definitive drainage bonds for at least their par value. The definitive bonds must be sold in accordance with section 475.60.

**Subd. 8. COUNTY INVESTMENT, PURCHASE, AND SELLING OF TEMPORARY DRAINAGE BONDS.** (a) Funds of the issuing county may be invested in temporary drainage bonds under sections 471.56 and 475.66, except that the temporary drainage bonds may be:

(1) purchased by the county when the temporary drainage bonds are initially issued;

(2) purchased only out of funds that the board determines will not be required for other purposes before the temporary drainage bonds mature; and

(3) resold before the temporary drainage bonds mature only if there is an unforeseen emergency.

(b) If a temporary drainage bond purchase is made from money held in a sinking fund for other bonds of the county, the holders of the other bonds may enforce the county's obligation to sell definitive bonds at or before the maturity of the temporary drainage bonds, or exchange the other bonds, in the same manner as holders of the temporary drainage bonds.

**Subd. 9. DELIVERY OF BONDS AS DRAINAGE WORK PROCEEDS.** The board may provide in the contract for the sale of drainage bonds, temporary drainage bonds, and definitive drainage bonds, that the bonds are delivered as the drainage work proceeds and the money is needed, and that interest is paid only from the date of delivery.

**Subd. 10. BOND RECITAL.** Each drainage bond, temporary drainage bond, and definitive drainage bond must contain a recital that it is issued by authority of and in strict accordance with this chapter. The recital is conclusive in favor of the holders of the bonds as against the county, that the drainage project has been properly established, that property within the county is subject to assessment for benefits in an amount not less than the amount of the bonds, and that all proceedings and construction relative to the drainage systems financed by the bonds have been or will be made according to law.

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Subd. 11. HOW BONDS MAY BE PAID. The board may pay drainage bonds, temporary drainage bonds, and definitive drainage bonds issued under this chapter from any available funds in the county treasury if the money in the common drainage bond redemption fund or in the drainage fund for the issued bonds is insufficient. The county treasury funds that money is transferred from must be reimbursed, with interest at a rate of seven percent per year for the time the money is actually needed, from assessments on the drainage systems or from the sale of drainage funding bonds. [106A.635]

**Sec. 85. [103E.641] DRAINAGE FUNDING BONDS.**

Subdivision 1. AUTHORITY. The board may issue drainage funding bonds under the conditions and terms in this section.

Subd. 2. CONDITIONS FOR ISSUANCE. Drainage funding bonds may be issued if:

(1) money in a drainage system account or in the common drainage bond redemption fund will not be sufficient to pay the principal and interest of the drainage bonds payable from the funds and becoming due within one year afterwards; or

(2) the county has paid any of the principal or interest on any of its drainage bonds from county funds other than the fund from which the bonds are payable, or by the issuance of county warrants issued and outstanding.

Subd. 3. AUDITOR'S CERTIFICATE. (a) Before drainage funding bonds are authorized or issued under this section, the county auditor shall first sign and seal a certificate and present the certificate to the board. The board shall enter the certificate in its records. The certificate must state in detail, for each of the several drainage systems:

(1) the amount that will be required to pay an existing shortage under subdivision 2; and

(2) the probable amount that will be required to pay the principal and interest of the county's outstanding drainage bonds that become due within one year afterwards.

(b) The certificate is conclusive evidence that the county has authority to issue bonds under the provisions of this section in an amount that does not exceed the aggregate amount specified in the auditor's certificate.

Subd. 4. ISSUANCE OF BONDS. When the auditor's certificate is entered in the board's records, the board may issue and sell, from time to time, county drainage funding bonds for the same drainage purposes as the funds listed in the certificate were used. The bonds must be designated drainage funding bonds. The board shall authorize issuance of the drainage funding bonds by resolution. The drainage funding bonds must be sold, issued, bear interest, and obligate the county as provided in section 84 for drainage bonds. The drainage funding

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bonds must mature serially in annual installments that are payable within 15 years.

Subd. 5. APPLICATION OF BOND PROCEEDS. The proceeds of drainage funding bonds that are paid into the treasury must be applied to the purpose for which they are issued.

Subd. 6. COUNTY BOND OBLIGATION. Drainage funding bonds are general obligations of the county but are not included in determining the county's net indebtedness under any law. [106A.641]

Sec. 86. [103E.645] ALLOWANCE AND PAYMENT OF FEES AND EXPENSES.

Subdivision 1. FEES AND EXPENSES. The fees and expenses in this section are allowed and must be paid for services provided under this chapter.

Subd. 2. ENGINEER, ENGINEER'S ASSISTANTS, AND OTHER EMPLOYEES. The compensation of the engineer, the engineer's assistants, and other employees is on a per diem basis and must be set by order of the drainage authority. The order setting compensation must provide for payment of the actual and necessary expenses of the engineer, the engineer's assistants, and other employees, including the cost of the engineer's bond.

Subd. 3. VIEWERS. Each viewer may be paid for every necessary day the viewer is engaged on a per diem basis and for the viewer's actual and necessary expenses. The compensation must be set by the drainage authority.

Subd. 4. BOARD MEMBERS. Each member of the board may be paid a per diem under section 375.055, subdivision 1, and actual and necessary expenses incurred while actually employed in drainage proceedings or construction, or in the inspection of any drainage system if the board member is appointed to a committee for that purpose.

Subd. 5. AUDITOR, ATTORNEY FOR THE PETITIONERS, AND OTHER COUNTY OFFICIALS. The county auditor and the attorney for the petitioners must each be paid reasonable compensation for services actually provided as determined by the drainage authority. The fees and compensation of all county officials in drainage proceedings and construction are in addition to other fees and compensation allowed by law.

Subd. 6. PETITIONERS' BOND. The cost of the petitioners' bond must be allowed and paid.

Subd. 7. PAYMENT. The fees and expenses provided for in this chapter for a drainage project or system in one county must be audited, allowed, and paid by order of the board or for a drainage project or system in more than one county must be audited, allowed, and paid by order of the drainage authority after ten days' written notice to each affected county. The notice must be given by the auditor to the auditors of affected counties. The notice must state the

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time and location of the hearing and that all bills on file with the auditor at the date of the notice must be presented for hearing and allowance. [106A.645]

**Sec. 87. [103E.651] DRAINAGE SYSTEM ACCOUNT.**

Subdivision 1. FUNDS FOR DRAINAGE SYSTEM COSTS. The board shall provide funds to pay the costs of drainage projects and systems.

Subd. 2. DRAINAGE SYSTEM ACCOUNT. The auditor shall keep a separate account for each drainage system. The account must be credited with all money from the sale of bonds and bond premiums and all money received from interest, liens, assessments, and other sources for the drainage system. The account must be debited with every item of expense made for the drainage system.

Subd. 3. INVESTMENT OF SURPLUS FUNDS. If a drainage system account or the common drainage bond redemption fund has a surplus over the amount required for payment of obligations presently due and payable from the account or fund, the board may invest any part of the surplus in bonds or certificates of indebtedness of the United States or of the state.

Subd. 4. DORMANT DRAINAGE SYSTEM ACCOUNT TRANSFERRED TO GENERAL REVENUE FUND. If a surplus has existed in a drainage system account for a period of 20 years or more and there have not been any expenditures from the account during the period, the board, by a unanimous resolution, may transfer the surplus remaining in the drainage system account to the general revenue fund of the county. [106A.651]

**Sec. 88. [103E.655] PAYMENT OF DRAINAGE SYSTEM COSTS.**

Subdivision 1. PAYMENT MADE FROM DRAINAGE SYSTEM ACCOUNT. The costs for a drainage project proceeding and construction must be paid from the drainage system account by drawing on the account.

Subd. 2. INSUFFICIENT FUNDS; TRANSFER FROM OTHER ACCOUNTS. If money is not available in the drainage system account on which the warrant is drawn, the board may, by unanimous resolution, transfer funds from any other drainage system account under its jurisdiction or from the county general revenue fund to the drainage system account. If the board transfers money from another account or fund to a drainage system account, the money plus interest must be reimbursed from the proceeds of the drainage system that received the transfer. The interest must be computed for the time the money is actually needed at the same rate per year charged on drainage liens and assessments.

Subd. 3. WARRANT ON ACCOUNT WITH INSUFFICIENT FUNDS; INTEREST ON WARRANT. If a warrant is issued by the auditor under this chapter and there is not enough money in the drainage system account to pay

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the warrant when it is presented, the county treasurer shall endorse the warrant "Not paid for want of funds" with the date and treasurer's signature. Interest on the warrant must be at the rate of six percent per year and paid annually from available funds until the warrant is called in and paid by the treasurer. Interest may not be paid on a warrant after money is available to the treasurer to pay the warrants. The warrant is a general obligation of the county issuing the warrant. [106A.655]

**Sec. 89. [103E.661] EXAMINATION AND ESTABLISHMENT OF DRAINAGE SYSTEM ACCOUNTS BY STATE AUDITOR.**

Subdivision 1. STATE AUDITOR MUST EXAMINE ACCOUNTS UPON APPLICATION. A county may apply, by resolution, to the state auditor to examine the accounts and records of any or all drainage systems in the county.

Subd. 2. ESTABLISHMENT OF ACCOUNTS. The auditor must establish a system of accounts for each drainage system applied for in the county.

Subd. 3. PAYMENT OF EXPENSES. The compensation and travel and hotel expenses of the examining accountant must be audited, allowed, and paid into the state treasury by the board. The money must be credited to the general fund. The county auditor shall apportion the expenses among the drainage systems in the county. [106A.661]

**PROCEDURE TO REPAIR DRAINAGE SYSTEMS**

**Sec. 90. [103E.701] REPAIRS.**

Subdivision 1. DEFINITION. The term "repair," as used in this section, means to restore all or a part of a drainage system as nearly as practicable to the same condition as originally constructed and subsequently improved, including resloping of ditches and leveling of waste banks if necessary to prevent further deterioration, realignment to original construction if necessary to restore the effectiveness of the drainage system, and routine operations that may be required to remove obstructions and maintain the efficiency of the drainage system. [106A.701 s. 1]

Subd. 2. REPAIRS AFFECTING PUBLIC WATERS. Before a repair is ordered, the drainage authority must notify the commissioner if the repair may affect public waters. If the commissioner disagrees with the repair depth, the engineer, a representative appointed by the director, and a soil and water conservation district technician must jointly determine the repair depth using soil borings, field surveys, and other available data or appropriate methods. Costs for determining the repair depth beyond the initial meeting must be shared equally by the drainage system and the commissioner. The determined repair depth must be recommended to the drainage authority. The drainage authority may accept the joint recommendation and proceed with the repair. [106A.701 s. 1a]

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**Subd. 3. REPAIR OF TOWN DITCHES.** The town board has the power of a drainage authority to repair a town drainage system located within the town. [106A.701 s. 2]

**Subd. 4. BRIDGES AND CULVERTS.** (a) Highway bridges and culverts constructed on a drainage system established on or after March 25, 1947, must be maintained by the road authority charged with the duty of maintenance under section 68.

(b) Private bridges or culverts constructed as a part of a drainage system established by proceedings that began on or after March 25, 1947, must be maintained by the drainage authority as part of the drainage system. Private bridges or culverts constructed as a part of a drainage system established by proceedings that began before March 25, 1947, may be maintained, repaired, or rebuilt and any portion paid for as part of the drainage system by the drainage authority.

(c) For a repair of a drainage system that has had redetermination of benefits under section 59, the drainage authority may repair or rebuild existing bridges or culverts on town and home rule charter and statutory city roads constructed as part of the drainage system and any portion of the cost may be paid by the drainage system. [106A.701 s. 3]

**Subd. 5. CONSTRUCTION OF ROAD INSTEAD OF BRIDGE OR CULVERT.** In a repair proceeding under sections 90 to 100, if the drainage authority finds that constructing a private road is more cost-effective or practical than constructing a bridge or culvert, a drainage authority may order a private road to be constructed under section 69, instead of a bridge or culvert. [106A.701 s. 4]

#### Sec. 91. [103E.705] REPAIR PROCEDURE.

**Subdivision 1. INSPECTION.** After the construction of a drainage system has been completed, the drainage authority shall maintain the drainage system that is located in its jurisdiction including grass strips under section 4 and provide the repairs necessary to make the drainage system efficient. The drainage authority shall have the drainage system inspected on a regular basis by an inspection committee of the drainage authority or a drainage inspector appointed by the drainage authority. [106A.705 s. 1]

**Subd. 2. GRASS STRIP INSPECTION AND COMPLIANCE NOTICE.** (a) The drainage authority having jurisdiction over a drainage system must inspect the drainage system for violations of section 4. If an inspection committee of the drainage authority or a drainage inspector determines that permanent grass strips are not being maintained in compliance with section 4, a compliance notice must be sent to the property owner.

(b) The notice must state:

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(1) the date the ditch was inspected;

(2) the persons making the inspection;

(3) that spoil banks are to be spread in a manner consistent with the plan and function of the drainage system and the drainage system has acquired a grass strip 16-1/2 feet in width or to the crown of the spoil bank, whichever is greater;

(4) the violations of section 4;

(5) the measures that must be taken by the property owner to comply with section 4 and the date when the property must be in compliance; and

(6) that if the property owner does not comply by the date specified, the drainage authority will perform the work necessary to bring the area into compliance with section 4 and charge the cost of the work to the property owner.

(c) If a property owner does not bring an area into compliance with section 4 as provided in the compliance notice, the inspection committee or drainage inspector must notify the drainage authority.

(d) This subdivision applies to property acquired under section 4. [106A.705 s. 1a]

Subd. 3. DRAINAGE INSPECTION REPORT. For each drainage system that the board designates and requires the drainage inspector to examine, the drainage inspector shall make a drainage inspection report in writing to the board after examining a drainage system, designating portions that need repair or maintenance of grass strips and the location and nature of the repair or maintenance. The board shall consider the drainage inspection report at its next meeting and may repair all or any part of the drainage system as provided under this chapter. The grass strips must be maintained in compliance with section 4. [106A.705 s. 2]

Subd. 4. INSPECTION REPORT TO DRAINAGE AUTHORITY. If the inspection committee or drainage inspector reports, in writing, to the drainage authority that maintenance of grass strips or repairs are necessary on a drainage system and the report is approved by the drainage authority, the maintenance or repairs must be made under this section. [106A.705 s. 3]

Subd. 5. REPAIRS LESS THAN \$50,000. If the drainage authority finds that the estimated cost of repairs and maintenance of one drainage system for one year will be less than the greater of \$50,000 or \$1,000 per mile of open ditch in the ditch system, it may have the repair work done by hired labor and equipment without advertising for bids or entering into a contract for the repair work. [106A.705 s. 4]

Subd. 6. ANNUAL REPAIR ASSESSMENT LEVY LIMITS. The drainage authority may give notice of and hold a hearing on the repair levy before

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ordering the levy of an assessment for repairs. In one calendar year the drainage authority may not levy an assessment for repairs or maintenance on one drainage system for more than 20 percent of the benefits of the drainage system, \$1,000 per mile of open ditch in the ditch system, or \$50,000, whichever is greater, except for a repair made after a disaster as provided under subdivision 7 or under the petition procedure. [106A.705 s. 5]

Subd. 7. REPAIR AND CONSTRUCTION AFTER DISASTER. The drainage authority may repair and reconstruct the drainage system without advertising for bids and without regard to the \$1,000 per mile of open ditch or \$50,000 limitation if:

(1) a drainage system is destroyed or impaired by floods, natural disaster, or unforeseen circumstances;

(2) the area where the drainage system is located has been declared a disaster area by the President of the United States and federal funds are available for repair or reconstruction; and

(3) the public interests would be damaged by repair or reconstruction being delayed. [106A.705 s. 6]

#### **Sec. 92. [103E.711] COST APPORTIONMENT FOR JOINT COUNTY DRAINAGE SYSTEMS.**

Subdivision 1. REPAIR COST STATEMENT. For a joint county drainage system the auditor of a county that has made repairs may present a repair cost statement at the end of each year, or other convenient period after completion, to each affected county. The repair cost statement must show the nature and cost of the repairs to the drainage system and must be based on the original apportionment of cost following the establishment of the drainage system. If a board approves the repair costs, the amount of the statement must be paid to the county submitting the statement.

Subd. 2. REPAIR COST STATEMENT NOT PAID. (a) If a county does not pay the amount of the repair cost statement, the board of an affected county may petition the joint county drainage authority. The petition must:

(1) show the nature and necessity of the repairs made to the drainage system in the county during the period;

(2) show the cost of the repairs; and

(3) request the drainage authority to apportion the costs, by order, among the affected counties.

(b) When the petition is filed, the drainage authority shall, by order, set a time and location for a hearing to apportion the costs, and direct the auditor to give notice of the hearing to each affected county by publication and notice by

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mail to its auditor. At or before the hearing, the auditor of each affected county, except the petitioner, shall file with the drainage authority a statement showing:

(1) all repairs made to the drainage system in that county, not previously reimbursed;

(2) the nature and necessity of the repairs; and

(3) the cost of the repairs.

(c) The drainage authority has jurisdiction over the affected counties and shall hear all interested parties. The drainage authority shall determine which repairs were necessary and reasonable and proper costs. For the allowed repairs the drainage authority shall balance the accounts among the affected counties, by charging each county with its proportionate share of the cost of all repairs made and crediting each county with the amount paid for the repairs. The drainage authority shall order a just reimbursement among the affected counties. A certified copy of the order must be filed by the auditor with the auditors of affected counties, and the boards shall make the required reimbursement. [106A.711]

#### Sec. 93. [103E.715] PROCEDURE FOR REPAIR BY PETITION.

Subdivision 1. REPAIR PETITION. An individual or an entity interested in or affected by a drainage system may file a petition to repair the drainage system. The petition must state that the drainage system needs repair. The auditor shall present the petition to the board at its next meeting or, for a joint county drainage system, to the drainage authority within ten days after the petition is filed.

Subd. 2. ENGINEER'S REPAIR REPORT. If the drainage authority determines that the drainage system needs repair, the drainage authority shall appoint an engineer to examine the drainage system and make a repair report. The report must show the necessary repairs, the estimated cost of the repairs, and all details, plans, and specifications necessary to prepare and award a contract for the repairs. The drainage authority may give notice and order a hearing on the petition before appointing the engineer.

Subd. 3. NOTICE OF HEARING. When the repair report is filed, the auditor shall promptly notify the drainage authority. The drainage authority in consultation with the auditor shall set a time, by order, not more than 30 days after the date of the order for a hearing on the repair report. At least ten days before the hearing, the auditor shall give notice by mail of the time and location of the hearing to the petitioners, owners of property, and political subdivisions likely to be affected by the repair in the repair report.

Subd. 4. HEARING ON REPAIR REPORT. (a) The drainage authority shall make findings and order the repair to be made if:

(1) the drainage authority determines from the repair report and the evi-  
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dence presented that the repairs recommended are necessary for the best interests of the affected property owners; or

(2) the repair petition is signed by the owners of at least 26 percent of the property area affected by and assessed for the original construction of the drainage system, and the drainage authority determines that the drainage system is in need of repair so that it no longer serves its original purpose and the cost of the repair will not exceed the total benefits determined in the original drainage system proceeding.

(b) The order must direct the auditor and the chair of the board or, for a joint county drainage system, the auditors of the affected counties to proceed and prepare and award a contract for the repair of the drainage system. The contract must be for the repair described in the repair report and as determined necessary by the drainage authority, and be prepared in the manner provided in this chapter for the original drainage system construction.

**Subd. 5. APPORTIONMENT OF REPAIR COST FOR JOINT COUNTY DRAINAGE SYSTEM.** For the repair of a joint county drainage system, the drainage authority shall, by order, apportion the repair cost among affected counties in the same manner required in the original construction of the drainage system.

**Subd. 6. REPAIR BY RESLOPING DITCHES, LEVELING WASTE BANKS, INSTALLING EROSION CONTROL AND REMOVING TREES.**

(a) For a drainage system that is to be repaired by resloping ditches, leveling waste banks, installing erosion control measures, or removing trees, before ordering the repair, the drainage authority must appoint viewers to assess and report on damages and benefits if it determines that:

(1) the resloping, leveling, installing erosion control measures or tree removal will require the taking of any property not contemplated and included in the original proceeding for the establishment of the drainage system;

(2) any waste bank leveling will directly benefit property where the bank leveling is specified; and

(3) the installation of erosion control measures will aid the long-term efficiency of the drainage system.

(b) The viewers shall assess and report damages and benefits as provided by sections 51 and 52. The drainage authority shall hear and determine the damages and benefits as provided in sections 54, 56, and 57. The hearing shall be held within 30 days after the property owners' report is mailed. Damages must be paid as provided by section 51 as a part of the cost of the repair, and benefits must be added to the benefits previously determined as the basis for the pro rata assessment for the repair of the drainage system for the repair proceeding only.  
[106A.715]

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**Sec. 94. [103E.721] REPLACEMENT AND HYDRAULIC CAPACITY OF BRIDGES AND CULVERTS.**

**Subdivision 1. REPORT ON HYDRAULIC CAPACITY.** If the engineer determines in a drainage system repair proceeding that because of added property under section 99 or otherwise, a bridge constructed or replaced or culvert installed or replaced as a part of a drainage system provides inadequate hydraulic capacity for the efficient operation of the drainage system to serve its original purpose, the engineer shall make a hydraulic capacity report to the drainage authority. The hydraulic capacity report must include plans and specifications for the recommended replacement of bridges and culverts, the necessary details to make and award a contract, and the estimated cost.

**Subd. 2. NOTICE.** When the hydraulic capacity report is filed, the auditor shall promptly notify the drainage authority. The drainage authority in consultation with the auditor shall, by order, set a time not more than 30 days after the date of the order, for a hearing on the report. At least ten days before the hearing, the auditor shall give notice by mail of the time and location of the hearing to the petitioners, owners of property, and political subdivisions likely to be affected by the repair proposed in the repair report. The notice may be given in conjunction with and as a part of the repair report notice, but the notice must specifically state that increasing the hydraulic capacity will be considered by the drainage authority at the hearing.

**Subd. 3. REPORT HEARING.** At the hearing on the hydraulic capacity report, the drainage authority shall hear all interested parties. If the drainage authority finds that existing bridges and culverts provide insufficient hydraulic capacity for the efficient operation of the drainage system as originally constructed or subsequently improved, the drainage authority shall make findings accordingly, and may order that the hydraulic capacity be increased by constructing bridges or installing culverts of a sufficient capacity. The drainage authority shall determine and include in the order the type and plans for the replacement bridges or culverts. The order must direct the state, political subdivision, railroad company, or other entity to construct bridges or culverts required by the order for its road or right-of-way within a reasonable time stated in the order. The auditor shall notify the state, political subdivision, railroad company, or other entity to construct the bridges and culverts in accordance with the order.

**Subd. 4. CONSTRUCTION NOT COMPLETED WITHIN SPECIFIED TIME.** If the work is not done within the time specified, the drainage authority may order the bridges and culverts built and the cost collected as an assessment for benefits.

**Subd. 5. REQUEST FOR CULVERT OR BRIDGE TO BE INSTALLED AS PART OF REPAIR.** If a political subdivision, railroad company, or other entity, at the hearing or when notified to construct a bridge or install a culvert, requests that the bridge or culvert be installed as part of the repair of the drainage system, the drainage authority may, by order, direct the cost of the

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construction and installation be assessed and collected from the political subdivision, railroad company, or other entity in the manner provided by section 97. [106A.721]

Sec. 95. [103E.725] COST OF REPAIR.

All fees and costs incurred for proceedings relating to the repair of a drainage system, including inspections, engineering, viewing, and publications, are costs of the repair and must be assessed against the property and entities benefited. [106A.725]

Sec. 96. [103E.728] APPORTIONMENT OF REPAIR COSTS.

Subdivision 1. GENERALLY. The cost of repairing a drainage system shall be apportioned pro rata on all property and entities that have been assessed benefits for the drainage system except as provided in this section.

Subd. 2. ADDITIONAL ASSESSMENT FOR AGRICULTURAL PRACTICES ON GRASS STRIP. (a) The drainage authority may, after notice and hearing, charge an additional assessment on property that has agricultural practices on or otherwise violates provisions related to the permanent grass strip acquired under section 4.

(b) The drainage authority may determine the cost of the repair per mile of open ditch on the ditch system. Property that is in violation of the grass requirement shall be assessed a cost of 20 percent of the repair cost per open ditch mile multiplied by the length of open ditch in miles on the property in violation.

(c) After the amount of the additional assessment is determined and applied to the repair cost, the balance of the repair cost may be apportioned pro rata as provided in subdivision 1.

Subd. 3. SOIL LOSS VIOLATIONS. The drainage authority after notice and hearing may make special assessments on property that is in violation of a county soil loss ordinance. [106A.728]

Sec. 97. [103E.731] ASSESSMENT; BONDS.

Subdivision 1. REPAIR COST OF ASSESSMENTS. If there is not enough money in the drainage system account to make a repair, the board shall assess the costs of the repairs on all property and entities that have been assessed benefits for the drainage system.

Subd. 2. NUMBER OF INSTALLMENTS. The assessments may be paid in annual installments specified in the assessment order. If the assessments are not more than 50 percent of the original cost of the drainage system, the installments may not exceed ten. If the assessments are greater than 50 percent of the original cost of the drainage system, the board may order the assessments to be paid in 15 or less installments.

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**Subd. 3. INTEREST ON ASSESSMENTS.** If the order provides for payment in installments, interest on unpaid assessments from the date of the order for assessments must be set by the board in the order. The interest rate may not exceed seven percent per year and must be collected with each installment.

**Subd. 4. COLLECTION OF ASSESSMENTS.** If the assessment is not payable in installments, a lien does not need to be filed, and the assessment, plus interest from the date of the order to August 15 of the next calendar year, must be entered on the tax lists for the year. The assessment and interest are due and payable with and as a part of the real estate taxes for the year. If an assessment is levied and payable in installments, the auditor shall file for the record in the county recorder's office an additional tabular statement in substance as provided in section 77, and all the provisions of sections 78, 79, and 80 relating to collection and payment must apply to the assessment. Upon the filing of the tabular statement, the installment and interest are due and payable and must be entered on the tax lists and collected in the same manner as the original lien.

**Subd. 5. CONDITIONS TO SELL BONDS FOR REPAIR.** If a contract for drainage system repair has been entered into under this chapter or the repair has been ordered to be constructed by hired labor and equipment, and the board has ordered the assessments to be paid in installments, the board may issue and sell bonds, as provided by section 84.

**Subd. 6. REPAIR OF STATE DRAINAGE SYSTEM WHEN NO BENEFITS WERE ASSESSED.** For the repair of a drainage system established by the state where benefits were not assessed to the property, the drainage authority shall proceed to appoint viewers to determine the benefits resulting from the repair and collect assessments for the repair as provided in this chapter. [106A.731]

#### Sec. 98. [103E.735] DRAINAGE SYSTEM REPAIR FUND.

**Subdivision 1. AUTHORITY AND LIMITS OF FUND.** To create a repair fund for a drainage system to be used only for repairs, the drainage authority may apportion and assess an amount against all property and entities assessed for benefits in proceedings for establishment of the drainage system, including property not originally assessed and subsequently found to be benefited according to law. The fund may not exceed 20 percent of the assessed benefits of the drainage system or \$40,000, whichever is greater. If the account in a fund for a drainage system exceeds the larger of 20 percent of the assessed benefits of the drainage system or \$40,000, assessments for the fund may not be made until the account is less than the larger of 20 percent of the assessed benefits or \$40,000. Assessments must be made pro rata according to the determined benefits. Assessments may be made payable, by order, in equal annual installments. The auditor shall file a tabular statement as provided in section 97, subdivision 4, with the county recorder. Assessments must be collected as provided in section 97.

**Subd. 2. TRANSFER OF DRAINAGE SYSTEM.** If a drainage system  
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within the county has been taken over by a watershed district, or if responsibility for repair and maintenance of the drainage system has been assumed by any other governing body, the board may transfer any remaining surplus of the drainage system repair fund to the repair fund of the watershed district or to the appropriate fund of any existing governing body having responsibility for repair and maintenance of the drainage system. [106A.735]

**Sec. 99. [103E.741] INCLUSION OF PROPERTY THAT HAS NOT BEEN ASSESSED BENEFITS.**

**Subdivision 1. CONSIDERATION BY ENGINEER.** In a proceeding to repair a drainage system, if the engineer determines or is made aware that property that was not assessed for benefits for construction of the drainage system has been drained into the drainage system or has otherwise benefited from the drainage system, the engineer shall submit a map with the repair report. The map must show all public and private main ditches and drains that drain into the drainage system, all property affected or otherwise benefited by the drainage system, and the names of the property owners to the extent practicable. The property owners must be notified of the hearing on the repair report at least ten days before the hearing. The auditor must give notice of the time and location of the hearing by mail.

**Subd. 2. APPOINTMENT OF VIEWERS.** At the hearing on the repair report, if the drainage authority determines that property not assessed for benefits for the construction of the drainage system has been benefited by the drainage system, the drainage authority shall appoint viewers as provided by section 49 before the repair contract is awarded. The viewers shall determine the benefits to all property and entities benefited by the original construction of the drainage system and not assessed for benefits arising from its construction. The viewers shall make a viewers' repair report to the drainage authority as provided by section 51. When the viewers' repair report is filed, the auditor shall give notice of a hearing as required by section 54 and the drainage authority has jurisdiction of each tract of property described in the viewers' report as provided in section 55.

**Subd. 3. VIEWERS' REPAIR REPORT HEARING.** At the hearing on the viewers' repair report, the drainage authority shall hear all interested parties and determine the benefits to property and entities benefited by the original construction of the drainage system and not assessed for benefits.

**Subd. 4. APPEAL OF ASSESSMENT ORDER.** A person may appeal from the order determining the assessments as provided by section 19.

**Subd. 5. PROPERTY BENEFITED IN HEARING ORDER INCLUDED IN FUTURE PROCEEDINGS.** For the repair of the drainage system under this section that included the property that was not assessed and in all future proceedings relating to repairing, cleaning, improving, or altering the drainage system, the property benefited in the viewers' report hearing is part of the property benefited by the drainage system and must be assessed, in the same manner

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provided for the assessment of the property originally assessed for and included in the drainage system. [106A.741]

**Sec. 100. [103E.745] COST OF REPAIR EXCEEDING BENEFITS IN ANOKA COUNTY.**

If the cost of the repair of a drainage system exceeds the benefits determined in the original proceedings for the establishment of the drainage system, the requirements of section 29 for improvements of drainage systems apply if:

(1) the repair will result in the drainage of 100 or more acres of public waters in Anoka county;

(2) the public waters have existed for 15 or more years;

(3) the drainage system has not been substantially repaired for more than 25 years; and

(4) the physical repair was not started before July 1, 1980. [106A.745]

**CONSOLIDATION, DIVISION, AND ABANDONMENT OF  
DRAINAGE SYSTEMS**

**Sec. 101. [103E.801] CONSOLIDATION OR DIVISION OF DRAINAGE SYSTEMS.**

Subdivision 1. AUTHORITY TO CONSOLIDATE OR DIVIDE. After the benefited area of a drainage system has been redetermined by the drainage authority under section 59 or in connection with drainage proceedings, the drainage authority may divide one system into two or more separate systems, consolidate two or more systems, transfer part of one system to another, or attach a part of a system that has been abandoned as provided in section 102 or 103 to another system to provide for the efficient administration of the system consistent with the redetermination of the benefited area.

Subd. 2. INITIATION OF ACTION. The consolidation or division may be initiated by the drainage authority on its own motion or by any party interested in or affected by the drainage system filing a petition. If the system is under the jurisdiction of a drainage authority, the petition must be filed with the auditor. If the system is under the jurisdiction of a watershed board, the petition must be filed with the secretary of the board.

Subd. 3. HEARING. (a) When a drainage authority or watershed board directs by resolution or a petition is filed, the drainage authority in consultation with the auditor or secretary shall set a time and location for a hearing. The auditor or secretary shall give notice by publication to all persons interested in the drainage system. The drainage authority may consolidate or divide drainage systems, by order, if it determines that the division of one system into two or  
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more separate systems, the consolidation of two or more systems, the transfer of part of one system to another, or the attachment of a previously abandoned part of a system to another system:

(1) is consistent with the redetermination of the benefited areas of the drainage system;

(2) would provide for the efficient administration of the drainage system; and

(3) would be fair and equitable.

(b) An order to consolidate or divide drainage systems does not release property from a drainage lien or assessment filed for costs incurred on account of a drainage system before the date of the order. [106A.801]

**Sec. 102. [103E.805] REMOVAL OF PROPERTY FROM AND PARTIAL ABANDONMENT OF A DRAINAGE SYSTEM.**

Subdivision 1. PETITION. After the construction of a drainage system, the owner of benefited property may petition the drainage authority to remove property from the drainage system or abandon any part of the drainage system that is not of public benefit and utility and does not serve a substantial useful purpose to property remaining in the system if:

(1) waters are diverted from property assessed for benefits so that the drainage from the property does not use or affect the drainage system; or

(2) a dam authorized by law is constructed in the drainage system so that the property above the dam cannot use or receive benefits from the drainage system.

Subd. 2. FILING. If the drainage system is under the jurisdiction of a drainage authority, the petition must be filed with the auditor. If the system is under the jurisdiction of a watershed district, the petition must be filed with the secretary of the district.

Subd. 3. HEARING. (a) When the petition is filed, the drainage authority in consultation with the auditor or the secretary shall set a time and location for a hearing on the partial abandonment petition and shall give notice by publication of the hearing to all persons interested in the drainage system.

(b) At the hearing, the drainage authority shall make findings and shall direct, by order, that the petitioners' property be removed from the drainage system if the drainage authority determines:

(1) that the waters from the petitioners' property have been diverted from the drainage system, or that a dam has been lawfully constructed and the property cannot use the drainage system;

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(2) that the property is not benefited by the drainage system and does not use or affect the drainage system; and

(3) that removing the property from the drainage system will not prejudice the property owners and property remaining in the system.

(c) The drainage authority shall make findings and direct, by order, that part of the drainage system be abandoned if the drainage authority determines that part of the drainage system does not serve a substantial useful purpose to any property remaining in the system and is not of a substantial public benefit and utility.

Subd. 4. EFFECT OF REMOVING PROPERTY FROM DRAINAGE SYSTEM. The property that has been removed from the drainage system is not affected by the drainage system at any later proceeding for the repair or improvement of the drainage system and a drainage lien or assessment for repairs or improvements may not be made against the property that has been removed on or after the date of the order.

Subd. 5. LIENS AND ASSESSMENTS ON PROPERTY REMOVED OR ABANDONED. An order under this section does not release the property from a drainage lien filed on account of the drainage system before the date of the order. An order under this section does not release the property from any assessment or a drainage lien filed on or after the date of the order for costs incurred on account of the drainage system before the date of the order.  
[106A.805]

Sec. 103. [103E.811] ABANDONMENT OF DRAINAGE SYSTEM.

Subdivision 1. DRAINAGE LIEN PAYMENT PERIOD MUST EXPIRE. After the period originally fixed or subsequently extended to pay the assessment of the drainage liens expires, a drainage system may be abandoned as provided in this section.

Subd. 2. PETITIONERS. A petition must be signed by at least 51 percent of the property owners assessed for the construction of the drainage system or by the owners of not less than 51 percent of the area of the property assessed for the drainage system. For the purpose of the petition, the county is the resident owner of all tax-forfeited property held by the state and assessed benefits for the drainage system, and the board may execute the petition for the county as an owner.

Subd. 3. PETITION. The petition must designate the drainage system proposed to be abandoned and show that the drainage system is not of public benefit and utility because the agricultural property that used the drainage system has been generally abandoned or because the drainage system has ceased to function and its restoration is not practical.

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**Subd. 4. FILING PETITION; JURISDICTION.** If all property assessed for benefits in the drainage system is in one county, the petition must be filed with the auditor unless the petition is signed by the board, in which case the petition must be made to the district court of the county and filed with the court administrator. If property assessed for benefits is in two or more counties, the petition must be filed with the auditor. When the petition is filed, the drainage authority in consultation with the auditor, or the court administrator with the approval of the court, shall set a time and location for a hearing on the petition. The auditor or court administrator shall give notice by publication of the time and location of the abandonment hearing to all persons interested. The drainage authority or the district court where the petition is properly filed has jurisdiction of the petition.

**Subd. 5. ABANDONMENT HEARING.** (a) At the hearing, the drainage authority or court shall examine the petition and determine whether it is sufficient and shall hear all interested parties.

(b) If a property owner assessed benefits for the drainage system appears and makes a written objection to the abandonment of the drainage system, the drainage authority or court shall appoint three disinterested persons as viewers to examine the property and report to the drainage authority or court. The hearing must be adjourned to make the examination and report and a date must be set to reconvene. The viewers, if appointed, shall proceed to examine the property of the objecting owner and report as soon as possible to the drainage authority or court with the description and situation of the property and whether the drainage system drains or otherwise affects the property.

(c) When the hearing is reconvened, the drainage authority or court shall consider the viewers' report and all evidence offered, and:

(1) if the drainage authority determines that the drainage system serves any useful purpose to any property or the general public, the petition for abandonment must be denied; or

(2) if the drainage authority determines that the drainage system does not serve any useful purpose to any affected property and is not of public benefit and utility, the drainage authority or court shall make findings and shall, by order, abandon the drainage system.

**Subd. 6. EFFECT OF ABANDONMENT.** After abandonment of a drainage system, a repair petition for the drainage system may not be accepted and the responsibility of the drainage authority for the maintenance of the drainage system ends. [106A.811]

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ARTICLE 6  
CHAPTER 103F  
PROTECTION OF WATER RESOURCES  
GENERAL PROVISIONS

Section 1. [103F.001] EFFECT OF CHAPTER 103F ON WATER LAW.

Chapters 103A, 103B, 103C, 103D, 103E, 103F, and 103G constitute the water law of this state and may be cited as the water law.

FLOODPLAIN MANAGEMENT

Sec. 2. [103F.101] CITATION.

Sections 2 to 13 may be cited as the floodplain management law. [104.01 s. 1]

Sec. 3. [103F.105] FLOODPLAIN MANAGEMENT POLICY.

(a) The legislature finds:

(1) a large portion of the state's land resources is subject to recurrent flooding by overflow of streams and other watercourses causing loss of life and property, disruption of commerce and governmental services, unsanitary conditions, and interruption of transportation and communications, all of which are detrimental to the health, safety, welfare, and property of the occupants of flooded lands and the people of this state; and

(2) the public interest necessitates sound land use development as land is a limited and irreplaceable resource, and the floodplains of this state are a land resource to be developed in a manner which will result in minimum loss of life and threat to health, and reduction of private and public economic loss caused by flooding. [104.01 s. 2]

(b) It is the policy of this state to reduce flood damages through floodplain management, stressing nonstructural measures such as floodplain zoning and floodproofing, and flood warning practices.

(c) It is the policy of this state:

(1) not to prohibit but to guide development of the floodplains consistent with legislative findings;

(2) to provide state coordination and assistance to local governmental units in floodplain management;

(3) to encourage local governmental units to adopt, enforce and administer sound floodplain management ordinances; and

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(4) to provide the commissioner of natural resources with authority necessary to carry out a floodplain management program for the state and to coordinate federal, state, and local floodplain management activities in this state. [104.01 s. 3]

Sec. 4. [103F.111] DEFINITIONS.

Subdivision 1. APPLICABILITY. The definitions in this section apply to sections 4 to 15.

Subd. 2. COMMISSIONER. "Commissioner" means the commissioner of natural resources. [104.02 s. 7]

Subd. 3. FLOOD FRINGE. "Flood fringe" means the portion of the floodplain outside of the floodway. [104.02 s. 5]

Subd. 4. FLOODPLAIN. "Floodplain" means the areas adjoining a watercourse or water basin that have been or may be covered by a regional flood. [104.02 s. 3]

Subd. 5. FLOODWAY. "Floodway" means the channel of the watercourse, the bed of water basins, and those portions of the adjoining floodplains that are reasonably required to carry and discharge floodwater and provide water storage during a regional flood. [104.02 s. 4]

Subd. 6. LOCAL GOVERNMENTAL UNIT. "Local governmental unit" means a county, statutory or home rule charter city, town, watershed district, or lake improvement district. [104.02 s. 6]

Subd. 7. MITIGATION. "Mitigation" means the act of alleviating the effects of floods and flooding by moderating or reducing the severe damages resulting from floods through structural and nonstructural flood management measures. [104.02 s. 10]

Subd. 8. MITIGATION MEASURES. "Mitigation measures" means structural or nonstructural flood management measures, or both. [104.02 s. 11]

Subd. 9. NONSTRUCTURAL FLOOD MANAGEMENT MEASURES. "Nonstructural flood management measures" means actions in floodplains designed to reduce the damaging effects of floods on existing and potential users of floodplains, without physically altering the flood behavior. Nonstructural flood management measures include:

- (1) public acquisition of floodplain lands;
- (2) relocation of public and private structures and facilities;
- (3) floodproofing of public and private facilities;
- (4) installation and operation of flood warning systems and evacuation procedures;

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(5) adoption and enforcement of land use control ordinances and building codes;

(6) installation of signs and other notifications in regional flood areas; and

(7) provision of flood insurance and public education. [104.02 s. 9]

Subd. 10. REGIONAL FLOOD. "Regional flood" means a flood that is representative of large floods known to have occurred generally in the state and reasonably characteristic of what can be expected to occur on an average frequency in the magnitude of a 100-year recurrence interval. [104.02 s. 2]

Subd. 11. STRUCTURAL FLOOD MANAGEMENT MEASURES. "Structural flood management measures" means physical actions taken to modify the behavior and extent of floods and flooding, including the construction of dams, dikes, levees, flood bypass channels, floodwater storage and retardation structures, and water level control structures, excluding deepening or straightening of existing stream channels. [104.02 s. 8]

Subd. 12. WATERBASIN. "Waterbasin" has the meaning given it by article 7, section 2, subdivision 16. [104.02 s. 12]

**Sec. 5. [103F.115] PRIORITY FOR REDUCTION OF FLOOD DAMAGE.**

Floodplain management ordinances are to be given primary consideration in the reduction of flood damage in the state and alternative methods for reducing flood damage may not be carried out before adoption of floodplain management ordinances by local governmental units. Structural projects which have the purpose of controlling floods are to be considered only as elements of a floodplain management program. [104.01 s. 4]

**Sec. 6. [103F.121] FLOODPLAIN MANAGEMENT ORDINANCES.**

Subdivision 1. ADOPTION. (a) In accordance with sections 2 to 13, the rules of the commissioner and applicable laws authorizing local governmental units to adopt floodplain management ordinances, local governmental units shall adopt, administer, and enforce floodplain management ordinances, which must include:

(1) the delineation of floodplains and floodways;

(2) the preservation of the capacity of the floodplain to carry and discharge regional floods;

(3) the minimization of flood hazards; and

(4) the regulation of the use of land in the floodplain.

(b) The ordinances shall be based on adequate technical data and competent

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engineering advice and shall be consistent with local and regional comprehensive planning. [104.04 s. 1]

Subd. 2. ADOPTION PROCEDURE. (a) The commissioner, upon determining that sufficient technical information is available for the delineation of floodplains and floodways on a watercourse, shall notify affected local governmental units that technical information is available. Within six months after receiving this notice, the local governmental units shall prepare or amend their floodplain management ordinances in conformance with the provisions of sections 2 to 13 and shall submit the ordinance to the commissioner for review and approval before adoption.

(b) The commissioner shall approve or disapprove the proposed ordinance within 120 days after receiving it.

(c) If the proposed ordinance is disapproved, the commissioner shall return it to the local governmental unit with a written statement of reasons for disapproval. Within 90 days after disapproval, the local governmental unit shall resubmit an amended proposed ordinance for further review and approval before adoption. The local governmental unit shall adopt a floodplain management ordinance within 90 days after approval by the commissioner.

(d) A floodplain management ordinance adopted by a local governmental unit is invalid unless it is approved by the commissioner.

(e) A local governmental unit may adopt a floodplain management ordinance in the absence of notification by the commissioner that the required technical data is available, provided that any such ordinance is submitted to the commissioner prior to its adoption for approval.

(f) A local governmental unit may adopt a floodplain management ordinance that is more restrictive than required under sections 2 to 13. [104.04 s. 3]

(g) Floodplain management ordinances may be amended by a local governmental unit upon the approval of the commissioner. [104.04 s. 4]

Subd. 3. COMMISSIONER'S ADOPTION OF ORDINANCE. (a) If a local governmental unit fails to adopt a floodplain management ordinance, the commissioner shall adopt an ordinance that meets the minimum standards established under section 10 for the local governmental unit.

(b) The commissioner shall hold at least one public hearing on the proposed ordinance in the manner provided in section 394.26 or 462.357, as applicable, after giving notice as provided in section 394.26 or 462.357.

(c) The ordinance is effective for the local governmental unit on the date and in accordance with rules prescribed by the commissioner.

(d) The ordinance shall be enforced as provided in section 394.37 or 462.362, as applicable. The penalties provided in section 394.37 or 462.362 apply to violations of an ordinance adopted by the commissioner. [104.04 s. 5]

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**Subd. 4. COST OF COMMISSIONER'S ORDINANCE.** (a) The cost incurred by the commissioner in adopting a floodplain management ordinance for the local governmental unit shall be paid by the local governmental unit upon submission to the local governmental unit of an itemized statement of these costs by the commissioner.

(b) If the local governmental unit fails to pay the costs within 90 days after the commissioner's statement is received, the commissioner shall file a copy of the statement of the costs for collection by special tax levy with the county auditor of the county where the local governmental unit is located. The county auditor, upon receiving a statement from the commissioner, shall include the amount of the state's claim in the tax levy for general revenue purposes of the local governmental unit. Upon completion of the tax settlement following this levy, the county treasurer shall remit the amount due to the state to the commissioner for deposit in the state treasury. [104.04 s. 6]

**Subd. 5. MAJOR ALTERATIONS AND HAZARDOUS USES PROHIBITED.** (a) If a floodplain has been delineated by a floodplain management ordinance under sections 2 to 13, a major alteration to a structure in existence on the effective date of the ordinance or a new fill, structure, deposit, or other floodplain use that is unreasonably hazardous to the public or that unduly restricts the capacity of the floodplain to carry and discharge a regional flood may not be permitted after the effective date of the ordinance delineating the floodplain.

(b) As used in this subdivision, major alterations of existing structures do not include repair or maintenance and do not include repairs, maintenance, or alterations to structures made under the authority of another authorized agency of the state or federal government.

(c) This subdivision does not apply to alterations, repair, or maintenance reasonably done under emergency circumstances to preserve or protect life or property.

(d) This subdivision applies to alterations to existing structures and to new fill, structures, deposits, or other floodplain uses by the state and state agencies. [104.03 s. 2]

**Sec. 7. [103F.125] CONSIDERATION OF INDUSTRIAL USES IN FLOODPLAIN.**

The commissioner in promulgating guidelines under section 10 and local governmental units in preparing floodplain management ordinances shall give due consideration to the needs of an industry whose business requires that it be located within a floodplain. [104.06]

**Sec. 8. [103F.131] AMUSEMENT PARK EXEMPTION.**

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(a) An amusement park that exists before a floodplain is delineated by a floodplain management ordinance is exempt from the requirements of sections 2 to 13 if the amusement park continues to be used as an amusement park within the amusement park boundaries.

(b) Notwithstanding any other law, the state is not liable for any damage from flooding to an amusement park operating in a floodplain under this subdivision. [104.03 s. 2a]

**Sec. 9. [103F.135] COMMISSIONER'S ASSISTANCE AND INSPECTIONS.**

Subdivision 1. COMMISSIONER'S DUTIES. The commissioner shall:

(1) collect and distribute information relating to flooding and floodplain management;

(2) coordinate local, state, and federal floodplain management activities to the greatest extent possible, and encourage the United States army corps of engineers and the United States soil conservation service to make their flood control planning data available to local governmental units for planning purposes, to allow adequate local participation in the planning process and in the selection of desirable alternatives;

(3) assist local governmental units in their floodplain management activities in cooperation with the commissioner of trade and economic development; and

(4) do all other things, within lawful authority, that are necessary or desirable to manage the floodplain for beneficial uses compatible with the preservation of the capacity of the floodplain to carry and discharge the regional flood. [104.03 s. 1]

Subd. 2. INSPECTIONS. In cooperation with local governmental units, the commissioner shall conduct, whenever possible, periodic inspections to determine the effectiveness of local floodplain management programs, including an evaluation of the enforcement of and compliance with local floodplain management ordinances. [104.03 s. 1]

**Sec. 10. [103F.141] RULES.**

Subdivision 1. AUTHORITY AND CRITERIA. The commissioner shall adopt rules to implement sections 2 to 13, including:

(1) criteria for determining the floodplain uses that may be permitted without creating an unreasonable public hazard or unduly restricting the capacity of the floodplain to carry and discharge a regional flood;

(2) variance procedures; and

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(3) the establishment of criteria for alternative or supplemental floodplain management measures such as floodproofing, subdivision rules, building codes, sanitation rules, and flood warning systems. [104.05]

**Subd. 2. PROTECTION NEEDED ONLY FOR REGIONAL FLOOD LEVEL.** Notwithstanding the rules adopted under this section establishing a flood protection level higher than the elevation of the regional flood, a local governmental unit may elect to adopt and enforce a flood protection level at the elevation of the regional flood in its floodplain ordinance. [104.05]

**Sec. 11. [103F.145] ENFORCEMENT AND PENALTIES.**

**Subdivision 1. USES IN VIOLATION OF ORDINANCE ARE PUBLIC NUISANCES.** Every structure, fill, deposit, or other floodplain use placed or maintained in the floodplain in violation of a floodplain management ordinance adopted under the provisions of sections 3 to 13 is a public nuisance. [104.07]

**Subd. 2. CIVIL REMEDIES.** The creation of a public nuisance under this section may be enjoined and the maintenance of a public nuisance under this section may be abated by an action brought by the commissioner or a local governmental unit. [104.07]

**Subd. 3. CRIMINAL PENALTIES.** A person who violates a provision of sections 3 to 13 is guilty of a misdemeanor. Each day that the violation exists is a separate offense. [104.07]

**Sec. 12. [103F.151] FLOOD PRONE AREA INVENTORY AND ASSESSMENT.**

The commissioner shall conduct a statewide inventory and flood damage assessment of flood prone structures and lands. [104.10]

**Sec. 13. [103F.155] FLOOD PROTECTION PLANS.**

**Subdivision 1. CONSTRUCTION OF FLOOD PROTECTION MEASURES.** If emergency flood protection measures are undertaken, the affected local governmental unit shall submit to the commissioner a plan outlining their use as a part of a future comprehensive flood emergency program. The plan shall be submitted within 120 days after construction. [104.03 s. 3]

**Subd. 2. COMMISSIONER'S REVIEW.** (a) The commissioner shall review the plan and consult with the state office of civil defense and other appropriate state and federal agencies. Following the review, the commissioner shall accept, require modification, or reject the plan.

(b) If required modifications are not made, or if the plan is rejected, the commissioner shall order the removal of the emergency protection measures. [104.03 s. 3]

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Sec. 14. [103F.161] FLOOD HAZARD MITIGATION GRANTS.

Subdivision 1. GRANTS AUTHORIZED. The commissioner may make grants to local governments to:

(1) conduct floodplain damage reduction studies to determine the most feasible, practical, and effective methods and programs for mitigating the damages due to flooding within flood prone rural and urban areas and their watersheds; and

(2) plan and implement flood mitigation measures. [104.11 s. 1]

Subd. 2. ACTION ON GRANT APPLICATIONS. (a) A local government may apply to the commissioner for a grant on forms provided by the commissioner. The commissioner shall confer with the local government requesting the grant and may make a grant up to \$75,000 based on the following considerations:

(1) the extent and effectiveness of mitigation measures already implemented by the local government requesting the grant;

(2) the feasibility, practicality, and effectiveness of the proposed mitigation measures and the associated nonflood related benefits and detriments;

(3) the level of grant assistance that should be provided to the local government, based on available facts regarding the nature, extent, and severity of flood problems;

(4) the frequency of occurrence of severe flooding that has resulted in declaration of the area as a flood disaster area by the president of the United States;

(5) the economic, social, and environmental benefits and detriments of the proposed mitigation measures;

(6) whether the floodplain management ordinance or regulation adopted by the local government meets the minimum standards established by the commissioner, the degree of enforcement of the ordinance or regulation, and whether the local government is complying with the ordinance or regulation;

(7) the degree to which the grant request is consistent with local water plans developed under chapters 103B and 103D;

(8) the financial capability of the local government to solve its flood hazard problems without financial assistance; and

(9) the estimated cost and method of financing of the proposed mitigation measures based on local money and federal and state financial assistance.

(b) If the amount of the grant requested is \$75,000 or more, the commissioner shall determine, under the considerations in paragraph (a), whether any

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part of the grant should be awarded. The commissioner must submit an appropriation request to the governor and the legislature for funding consideration before each odd-numbered year, consisting of requests or parts of grant requests of \$75,000 or more. The commissioner must prioritize the grant requests, under the considerations in paragraph (a), beginning with the projects the commissioner determines most deserving of financing.

(c) A grant may not exceed one-half the total cost of the proposed mitigation measures.

(d) After July 1, 1991, grants made under this section may be made to local governments whose grant requests are part of, or responsive to, a comprehensive local water plan prepared under chapter 103B or 103D. [104.11 s. 2]

#### Sec. 15. [103F.165] FLOOD INSURANCE.

Subdivision 1. POLICY. It is the policy of the state that local governmental units subject to recurrent flooding participate in the national flood insurance program, Public Law Number 90-448, and amendatory and supplementary acts, so that the people of the state may have the opportunity to indemnify themselves from future flood losses through the purchase of the insurance. [104.08 s. 1]

Subd. 2. LIST OF RECURRENT FLOODING AREAS. The commissioner shall prepare a list of local governmental units having areas subject to recurrent flooding and shall notify each local governmental unit included on the list of the findings. If a local governmental unit objects to the commissioner's findings, it shall submit evidence supporting its objections within 45 days after receiving the commissioner's notification. The commissioner shall accept or reject the findings of each local governmental unit submitting evidence, shall prepare an amended list of local governmental units having areas subject to recurrent flooding, and shall notify each local governmental unit of its inclusion on the amended list. [104.08 s. 2]

Subd. 3. APPLICATION FOR FLOOD INSURANCE. Within 120 days after receiving notice of inclusion on the amended list, each local governmental unit shall apply for participation in the national flood insurance program in the manner prescribed by federal laws and regulations. [104.08 s. 3]

#### SOUTHERN MINNESOTA RIVERS BASIN AREA II

#### Sec. 16. [103F.171] SOUTHERN MINNESOTA RIVERS BASIN AREA II BOUNDARIES.

For the purposes of sections 16 to 24, the term "southern Minnesota rivers basin area II" means the area within the watersheds of rivers and streams that are tributaries of the Minnesota river from the south between the cities of Ortonville and Mankato. Major rivers included within the watershed are the

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Yellow Bank, Lac Qui Parle, Yellow Medicine, Redwood, and Cottonwood. All of Lac Qui Parle, Yellow Medicine, and Redwood counties, and parts of Lincoln, Lyon, Pipestone, Murray, Cottonwood, and Brown counties are included within the boundaries of the area. [104.42]

**Sec. 17. [103F.173] PROGRAM.**

There shall be a state grant-in-aid pilot program of providing financial assistance to units of local government, including counties, soil and water conservation districts, and watershed districts, located in the southern Minnesota river basin area II for project and construction costs for the building of floodwater retarding and retention structures within a general plan for floodplain management. [104.43]

**Sec. 18. [103F.175] AID FORMULA.**

Grants may be made by the board of water and soil resources to a local governmental unit for the purposes of sections 16 to 24 in an amount not to exceed 75 percent of the total cost of each project, including site acquisition, engineering, and construction. If federal funds are being utilized for a portion of the project costs, the state contribution may not exceed 50 percent of the remaining nonfederal costs. If the structure is located in the state of South Dakota, the two states shall share the nonfederal costs equally. Money granted by the state may not be used for any project of stream channelization. [104.44]

**Sec. 19. [103F.177] OPERATION WITHIN AGENCY.**

Subdivision 1. BOARD OF WATER AND SOIL RESOURCES. The board of water and soil resources shall supervise the grant-in-aid pilot program pursuant to sections 16 to 24.

Subd. 2. PROCEDURES AND FORMS. The board shall devise procedures and forms for application for grants by the local units of government, and review of and decision on the applications by the state board.

Subd. 3. STAFF POSITION. A professional engineer shall be employed by the board to work exclusively on the technical implementation and engineering of the pilot project established pursuant to sections 16 to 24. The engineer shall assist the local units of government and the board to achieve the purposes of the project, and shall have duties including:

- (1) field review and analysis of projects and project sites;
- (2) preparation of permit applications, including evaluation of environmental effects;
- (3) development of recommended pertinent provisions of permits for specific projects;

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(4) preparation of plans for further consideration of remedial flood control structural measures as part of a general rural floodplain management effort; and

(5) evaluation of the effectiveness of completed projects constructed under this program. [104.45]

**Sec. 20. [103F.179] SELECTION OF PROJECTS.**

Subdivision 1. EVALUATION OF AREA AND SITES; FEDERAL COOPERATION. Before a grant is made, a priority system shall be devised for the selection of projects to receive the aid. The board of water and soil resources is the granting authority and shall cooperate with the United States Army Corps of Engineers, the department of natural resources, the United States Soil Conservation Service and the area II action committee in analysis of the general floodplain management plan for the area and in hydrological and engineering studies on specific proposed sites. From that information, the board of water and soil resources shall determine the relative severity of the flooding problem which would be wholly or partly solved by each project. The range of priorities based on these findings shall provide a basis for selection of project sites.

Subd. 2. PROJECT REQUIREMENT FOR EACH WATERSHED. Notwithstanding the requirement in subdivision 1 that project selection be based on a priority system, not more than one project may be located within any one of the Cottonwood, Lac Qui Parle, Redwood, Yellow Medicine, and Yellow Bank rivers' watersheds unless agreed upon by the area II action committee composed of representatives of each of those watersheds. [104.46]

**Sec. 21. [103F.181] CONDITIONS FOR GRANTS.**

Subdivision 1. LOCAL EXPRESSION OF WILLINGNESS. The local unit of government shall apply for a grant by a resolution requesting state funding assistance for the construction of a floodwater retention or retarding structure within its jurisdiction. The resolution shall include provisions concerning local funding, if any. The local unit of government shall state its intent to obtain necessary land rights for proposed construction sites and to assume responsibility for maintenance of the structure on its completion.

Subd. 2. GENERAL PLAN. The local unit of government shall demonstrate that the construction project that it proposes is consistent with its general plan for floodplain management. The general plan of the local government unit shall be in conformity with the policy and objectives of this chapter and shall, where reasonable and practicable, include nonstructural means of floodplain management.

Subd. 3. FEDERAL AID AVAILABILITY. The board of water and soil resources shall complete a detailed analysis of the availability of federal funds and programs to supplement or complement state and local efforts on each project and include the eligibility requirements and time frame for receiving the federal aid.

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Subd. 4. ENVIRONMENTAL IMPACT STATEMENT. The local unit of government, assisted by the project staff engineer, shall make a comprehensive evaluation of the positive and negative environmental effects which would be reasonably likely to take place if the particular proposed project would be constructed. [104.47]

Sec. 22. [103F.183] APPROVED PROJECTS.

Subdivision 1. CONTRACTS. When a proposed project is approved to receive a grant, the board of water and soil resources shall negotiate a contract with the local unit of government involved. The contract shall specify the terms of state and local cooperation, including the financing arrangement for the construction and an agreement on maintenance of the structure after completion.

Subd. 2. PERMITS. Before grant money is spent on construction of the structure, permits required for construction must be obtained from state agencies. [104.48]

Sec. 23. [103F.185] INTERSTATE COOPERATION.

The board of water and soil resources and the staff engineer may enter into a working agreement with the South Dakota-Minnesota Boundary Waters Commission, or successor organization, in regard to flood retention and retarding structures constructed pursuant to sections 16 to 24 that involve territory of the state of South Dakota as well as this state. [104.49]

Sec. 24. [103F.187] REPORT TO LEGISLATURE.

When the project has been in operation for a period of two years, the board of water and soil resources and the staff engineer shall prepare and deliver a report to the legislature on the program and its consequences with an evaluation of the feasibility and benefit of continuing the project. [104.50]

SHORELAND DEVELOPMENT

Sec. 25. [103F.201] REGULATORY PURPOSE OF SHORELAND DEVELOPMENT.

To promote the policies in article 1, section 2, and chapter 116, it is in the interest of the public health, safety, and welfare to:

(1) provide guidance for the wise development of shorelands of public waters and thus preserve and enhance the quality of surface waters;

(2) preserve the economic and natural environmental values of shorelands;  
and

(3) provide for the wise use of water and related land resources of the state.  
[105.485 s. 1]

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## Sec. 26. [103F.205] DEFINITIONS.

Subdivision 1. APPLICABILITY. The definitions in this section apply to sections 25 to 29.

Subd. 2. COMMISSIONER. “Commissioner” means the commissioner of natural resources.

Subd. 3. MUNICIPALITY. “Municipality” means a statutory or home rule charter city.

Subd. 4. SHORELAND. “Shoreland” means land located within the following distances from the ordinary high water elevation of public waters:

(1) land within 1,000 feet from the normal high watermark of a lake, pond, or flowage; and

(2) land within 300 feet of a river or stream or the landward side of a floodplain delineated by ordinance on the river or stream, whichever is greater. [105.485 s. 2]

## Sec. 27. [103F.211] MODEL STANDARDS AND CRITERIA.

Subdivision 1. ADOPTION. The commissioner shall adopt model standards and criteria for the subdivision, use, and development of shoreland in municipalities and areas outside of a municipality. The standards and criteria must include:

(1) the area of a lot and length of water frontage suitable for a building site;

(2) the placement of structures in relation to shorelines and roads;

(3) the placement and construction of sanitary and waste disposal facilities;

(4) designation of types of land uses;

(5) changes in bottom contours of adjacent public waters;

(6) preservation of natural shorelands through the restriction of land uses;

(7) variances from the minimum standards and criteria; and

(8) for areas outside of a municipality only, a model ordinance. [105.485 s.

3]

Subd. 2. INTERGOVERNMENTAL ADVICE. The state departments of agriculture, health, and trade and economic development; the state planning and pollution control agencies; the board of water and soil resources; and the Minnesota historical society shall provide information and advice necessary to prepare or amend the standards and criteria. [105.485 s. 3]

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**Subd. 3. APPROVAL OF COMMISSIONERS OF HEALTH AND POLLUTION CONTROL AGENCY.** In addition to other requirements of chapter 14, the model standards and ordinance adopted under this section, or amendments to them must not be finally adopted unless approved by the commissioners of health and of the pollution control agency. [105.485 s. 3]

**Sec. 28. [103F.215] MODEL ORDINANCE AS COUNTY ORDINANCE.**

**Subdivision 1. COUNTY ORDINANCE FAILING TO MEET STANDARDS.** The commissioner shall adapt the model ordinance to a county if, after notice and hearing as provided in article 7, section 35, the commissioner finds that a county has adopted a shoreland conservation ordinance that fails to meet the minimum standards established under section 27. [105.485 s. 4]

**Subd. 2. HEARING.** The commissioner shall hold at least one public hearing on the proposed ordinance in the manner provided in section 394.26, after giving notice as provided in section 394.26. The ordinance is effective for the county on the date and in accordance with any rules the commissioner prescribes, by order, relating to compliance. [105.485 s. 4]

**Subd. 3. ENFORCEMENT.** The ordinance must be enforced as provided in section 394.37. The penalties provided in section 394.37 apply to violations of the commissioner's model ordinance for the county. [105.485 s. 4]

**Subd. 4. COMMISSIONER'S COSTS.** The cost incurred by the commissioner in adapting the model ordinance to a county under this section must be paid by the county after the commissioner submits an itemized statement of the costs to the county. If the county fails to pay the costs within 90 days after the commissioner's statement is received, the commissioner may file a copy of the statement of the costs for collection by special tax levy with the county auditor. The county auditor, upon receiving a statement from the commissioner, shall include the amount of the state's claim in the tax levy for general revenue purposes of the county. On completion of the tax settlement following this levy, the county treasurer must pay the amount due to the state to the commissioner for deposit in the state treasury. [105.485 s. 5]

**Sec. 29. [103F.221] MUNICIPAL SHORELAND MANAGEMENT.**

**Subdivision 1. COMMISSIONER'S REVIEW OF ORDINANCES.** (a) A municipality having shoreland within its corporate boundaries must submit ordinances or rules affecting the use and development of its shorelands to the commissioner for review. The commissioner must review the ordinances or rules and:

(1) determine whether the rules and ordinances are in substantial compliance with municipal shoreland management standards and criteria under subdivision 3; and

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(2) consider any feature unique to the municipal shoreland in question, including the characteristics of the waters that may be affected by development, storm sewer facilities, and sanitary and waste disposal facilities in existence at the time of the commissioner's review.

(b) If the commissioner determines that the ordinances or rules of a municipality do not substantially comply with the state standards and criteria for municipal shoreland management, the commissioner must notify the municipality. The notice must state the changes that are necessary to bring the ordinances or rules into substantial compliance with the standards and criteria. By one year after receiving the notice from the commissioner, the municipality must make changes necessary to bring the ordinances or rules into substantial compliance with state standards and criteria. [105.485 s. 6]

**Subd. 2. COMMISSIONER'S ADOPTION OF ORDINANCE FOR MUNICIPALITY.** (a) The commissioner may adopt an ordinance or rules for the municipality if:

(1) a municipality does not have an ordinance or rule affecting the use and development of shoreland;

(2) the corporate boundaries of the municipality are expanded to include shorelands not previously included within the municipal boundaries and the municipality fails to adopt an ordinance within one year after including the shorelands within its municipal boundaries; or

(3) the commissioner determines that a municipal shoreland management ordinance does not substantially comply with the standards and criteria for municipal shoreland management and that the municipality has failed to make the necessary changes within one year after receiving notice of noncompliance.

(b) The ordinance or rules for the municipality must be adopted as provided in this paragraph. The commissioner must hold at least one public hearing on the proposed ordinance or rules in the manner provided in section 462.357, after giving notice under section 462.357. The ordinance or rules are effective for the municipality on the date and in accordance with rules prescribed by the commissioner relating to compliance.

(c) The ordinance must be enforced as provided in section 462.362. The penalties in section 462.362 apply to violations of the ordinances or rules adopted for the municipality by the commissioner. [105.485 s. 6]

**Subd. 3. COMMISSIONER'S COST OF ADOPTING ORDINANCES.** The costs incurred by the commissioner in adopting the ordinances or rules for the municipality must be paid by the municipality and collected from the municipality in the same manner as costs are paid by a county and collected from a county under section 28, subdivision 4. The tax levied to pay the costs may be levied in excess of the per capita levy limitation imposed under section 275.11. [105.485 s. 6]

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**Subd. 4. MUNICIPAL USE OF LAND OTHER THAN SHORELAND.** Municipal planning and land use controls for land other than shoreland in the vicinity of shoreland must be, to the maximum extent practical, compatible with planning and land use controls for shoreland adopted under subdivision 1. [105.485 s. 7]

**Subd. 5. MUNICIPAL ORDINANCE MAY BE MORE RESTRICTIVE.** A municipality may adopt and enforce ordinances or rules affecting the use and development of shoreland that are more restrictive than the standards and criteria adopted by the commissioner. [105.485 s. 8]

#### WILD AND SCENIC RIVERS ACT

Sec. 30. [103F.301] CITATION.

Sections 30 to 39 may be cited as the "Minnesota wild and scenic rivers act." [104.31]

Sec. 31. [103F.305] SCENIC RIVER PROTECTION POLICY.

The legislature finds that certain of Minnesota's rivers and their adjacent lands possess outstanding scenic, recreational, natural, historical, scientific and similar values. It is in the interest of present and future generations to retain these values, and a policy of the state, and an authorized public purpose to preserve and protect these rivers. [104.32]

Sec. 32. [103F.311] DEFINITIONS.

Subdivision 1. APPLICABILITY. The definitions in this section apply to sections 32 to 39. [104.02 s. 1]

Subd. 2. COMMISSIONER. "Commissioner" means the commissioner of natural resources.

Subd. 3. FREE-FLOWING. "Free-flowing" means existing in natural condition without significant artificial modification such as impoundment, diversion, or straightening. The existence, however, of low dams, diversion works or other minor structures at the time any river is proposed for inclusion does not automatically bar its inclusion as a wild, scenic, or recreational river. [104.33 s. 2]

Subd. 4. RECREATIONAL RIVERS. "Recreational rivers" are those rivers that may have undergone some impoundment or diversion in the past and may have adjacent lands that are considerably developed, but that are still capable of being managed so as to further the purposes of sections 30 to 39. [104.33 s. 2]

Subd. 5. RIVER. "River" means a flowing body of water such as a stream or a segment or tributary of a stream and may include lakes through which the river or stream flows. [104.33 s. 1]

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Subd. 6. SCENIC EASEMENT. "Scenic easement" means an interest in land, less than the fee title, that limits the use of the land to protect the scenic, recreational, or natural characteristics of a wild, scenic, or recreational river area. Unless otherwise expressly and specifically provided by the parties, the easement must be:

(1) perpetually held for the benefit of the people of the state;

(2) specifically enforceable by its holder or any beneficiary;

(3) binding upon the holder of the servient estate, and the holder's heirs, successors, and assigns; and

(4) restricted so as not to give the holder or any beneficiary the right to enter on the land except for enforcement of the easement. [104.37 s. 1]

Subd. 7. SCENIC RIVERS. "Scenic rivers" are those rivers that exist in a free-flowing state and with adjacent lands that are largely undeveloped. [104.33 s. 2]

Subd. 8. SYSTEM. "System" means the state wild and scenic rivers system.

Subd. 9. WILD RIVERS. "Wild rivers" are those rivers that exist in a free-flowing state, with excellent water quality, and with adjacent lands that are essentially primitive. [104.33 s. 2]

### Sec. 33. [103F.315] WILD AND SCENIC RIVERS SYSTEM.

Subdivision 1. ELIGIBILITY. An entire river or a segment of a river and adjacent lands in this state that possess outstanding scenic, recreational, natural, historical, scientific, or similar values are eligible for inclusion within the Minnesota wild and scenic rivers system. [104.33 s. 1]

Subd. 2. CLASSIFICATION. Rivers or segments of rivers included within the system shall be classified as wild, scenic, or recreational. [104.33 s. 2]

### Sec. 34. [103F.321] ADMINISTRATION AND RULES.

Subdivision 1. ADMINISTRATION. The commissioner shall administer the wild and scenic rivers system. The commissioner shall conduct studies, develop criteria for classification and designation of rivers, designate rivers for inclusion within the system, manage the components of the system, and adopt rules to manage and administer the system. [104.34 s. 1]

Subd. 2. SHORELAND RULES. (a) The commissioner shall adopt state-wide minimum standards and criteria for the preservation and protection of shorelands within the boundaries of wild, scenic, and recreational rivers.

(b) The standards and criteria may include:

[Bracketed paragraph notes cite text sources]

New language is indicated by underline, deletions by ~~strikeout~~.

(1) the matters covered in the commissioner's standards and criteria for shoreland areas, as provided in sections 25 to 29, except that the distance limitations contained in sections 25 to 29 do not apply to standards and criteria for wild, scenic, and recreational rivers;

(2) furtherance of the purposes of sections 30 to 39 and of the classifications of rivers; and

(3) application to the local governments as specified in sections 25 to 29.  
[104.34 s. 2]

Sec. 35. [103F.325] DESIGNATION PROCEDURE.

Subdivision 1. MANAGEMENT PLAN. (a) For each river proposed to be included in the wild and scenic rivers system, the commissioner shall prepare a management plan, without unreasonable restrictions upon compatible, preexisting, economic uses of particular tracts of land, to preserve and enhance the values that cause the river to be proposed for inclusion in the system.

(b) The plan shall:

(1) give primary emphasis to the area's scenic, recreational, natural, historical, scientific and similar values;

(2) state the proposed classification of the river and segments of the river;

(3) designate the boundaries of the area along the river to be included within the system, which may not include more than 320 acres per mile on both sides of the river; and

(4) include proposed rules governing the use of public lands and waters within the area, which may differ from statewide rules to the extent necessary to take account of the particular attributes of the area.

(c) The plan may include proposed standards and criteria adopted under section 34 for local land use controls that differ from statewide standards and criteria to the extent necessary to take account of the particular attributes of the area. [104.35 s. 1]

Subd. 2. REVIEW AND HEARING. (a) The commissioner shall make the proposed management plan available to affected local governmental bodies, shoreland owners, conservation and outdoor recreation groups, the commissioner of trade and economic development, the director of public service, the governor, and the general public. The commissioners of trade and economic development and of public service and the governor shall review the proposed management plan in accordance with the criteria in section 86A.09, subdivision 3, and submit any written comments to the commissioner within 60 days after receipt of the proposed management plan.

[Bracketed paragraph notes cite text sources]

New language is indicated by underline, deletions by strikeout.



(b) By 60 days after making the information available, the commissioner shall conduct a public hearing on the proposed management plan in the county seat of each county that contains a portion of the designated system area, in the manner provided in chapter 14. [104.35 s. 2]

Subd. 3. POST HEARING REVIEW. Upon receipt of the administrative law judge's report, the commissioner shall immediately forward the proposed management plan and the administrative law judge's report to the commissioners of trade and economic development and of public service for review under section 86A.09, subdivision 3, except that the review by the commissioners must be completed or be deemed completed within 30 days after receiving the administrative law judge's report, and the review by the governor must be completed or be deemed completed within 15 days after receipt. [104.35 s. 3]

Subd. 4. DESIGNATION OF RIVER AS PART OF SYSTEM. Within 60 days after receipt of the administrative law judge's report, the commissioner shall decide whether to designate by order the river or a segment of the river as a wild, scenic, or recreational river and, if so designated, shall adopt a management plan to govern the area. The commissioner shall notify and inform public agencies and private landowners of the plan and its purposes to encourage their cooperation in the management and use of their land in a manner consistent with the plan and its purposes. [104.35 s. 3]

Subd. 5. RESERVATION OF LEGISLATIVE AUTHORITY. The legislature may at any time designate additional rivers to be included within the system, exclude rivers previously included in the system, or change the classification of rivers classified by the commissioner. [104.35 s. 4]

**Sec. 36. [103F.331] ACQUISITION AND DEVELOPMENT OF SYSTEM.**

Subdivision 1. ACQUISITION AUTHORITY. To implement the system, the commissioner may acquire the title, scenic easements, or other interests in land, by purchase, grant, gift, devise, exchange, lease, or other lawful means. [104.37 s. 1]

Subd. 2. DEVELOPMENT OF PUBLIC AREAS. The commissioner may designate and develop appropriate areas of public land along wild, scenic, and recreational rivers as water waysides for facilities compatible with the class of river, including, as appropriate, primitive campsites, picnic sites, portages, water access sites, sanitation facilities, and interpretive display. [104.37 s. 2]

Subd. 3. CANOE AND BOATING ROUTES. (a) The commissioner may mark canoe and boating routes along a wild, scenic, or recreational river, consistent with the classification and characteristics of the river, including points of interest, portages, campsites, dams, rapids, waterfalls, whirlpools, and other hazards to navigation.

[Bracketed paragraph notes cite text sources]

New language is indicated by underline, deletions by ~~strikeout~~.

(b) Canoe routes, boating routes, campsites, and portages marked under this subdivision are not subject to the provisions of section 160.06. [104.37 s. 3]

Subd. 4. ADDITIONAL DESIGNATION AS TROUT STREAM. The commissioner may designate all or a portion of a state wild, scenic, or recreational river that possesses the necessary qualifications as a state trout stream, and make habitat improvement as may be necessary, desirable, and consistent with the classification of the river. [104.37 s. 4]

**Sec. 37. [103F.335] LOCAL GOVERNMENT COMPLIANCE.**

Subdivision 1. COMPLIANCE OF ORDINANCES WITH SYSTEM. (a) Within six months after establishment of a wild, scenic, or recreational river system, each local governmental unit with jurisdiction over a portion of the system shall adopt or amend its ordinances and land use district maps to the extent necessary to comply with the standards and criteria of the commissioner and the management plan.

(b) If a local government fails to adopt adequate ordinances, maps, or amendments within six months, the commissioner shall adopt the ordinances, maps, or amendments in the manner and with the effect specified in section 28. [104.36 s. 1]

(c) The commissioner shall assist local governments in the preparation, implementation and enforcement of the ordinances. [104.36 s. 2]

Subd. 2. LOCAL GOVERNMENTAL UNITS MUST IMPLEMENT SYSTEM. All state, local and special governmental units, councils, commissions, boards, districts, agencies, departments and other authorities shall exercise their powers to implement the purposes of sections 30 to 39 and management plans adopted by the commissioner. [104.38]

Subd. 3. LAND TRANSFERS CONSISTENT WITH SYSTEM PLAN. Land owned by the state and political subdivisions shall be administered in accordance with the management plan, and land owned by governmental bodies within the designated boundaries of a wild, scenic, or recreational river area may not be transferred to any other person or entity if the transfer would be inconsistent with the management plan. [104.38]

**Sec. 38. [103F.341] FEDERAL-STATE RELATIONS.**

Sections 30 to 39 do not preclude a river in the state system from becoming a part of the federal wild and scenic rivers system as established in the Wild and Scenic Rivers Act, Public Law Number 90-542; United States Code, title 16, section 1271 et seq., as amended. The commissioner is authorized to seek, alone or in conjunction with other governmental authorities, financial and technical assistance from the federal government and to enter into written cooperative agreements for the joint administration of a river in the federal wild and scenic rivers system. [104.39]

[Bracketed paragraph notes cite text sources]

New language is indicated by underline, deletions by ~~strikeout~~.

**Sec. 39. [103F.345] CONFLICT WITH OTHER LAWS.**

A river in the wild and scenic rivers system is subject to the provisions of sections 30 to 39, except that in case of conflict with some other law of this state the more protective provision shall apply. [104.40]

**LOWER ST. CROIX RIVER****Sec. 40. [103F.351] LOWER ST. CROIX WILD AND SCENIC RIVER ACT.**

Subdivision 1. FINDINGS. The lower St. Croix river, between the dam near Taylors Falls and its confluence with the Mississippi river, constitutes a relatively undeveloped scenic and recreational asset lying close to the largest densely populated area of the state. The preservation of this unique scenic and recreational asset is in the public interest and will benefit the health and welfare of the citizens of the state. The state recognizes and concurs in the inclusion of the lower St. Croix river into the federal wild and scenic rivers system by the Lower St. Croix River Act of the 92nd Congress, Public Law Number 92-560. The authorizations of the state are necessary to the preservation and administration of the lower St. Croix river as a wild and scenic river, particularly in relation to those portions of the river that are to be jointly preserved and administered as a wild and scenic river by this state and Wisconsin. [104.25 s. 1]

Subd. 2. COMPREHENSIVE MASTER PLAN. (a) The commissioner of natural resources shall join with the secretary of the United States Department of the Interior and the appropriate agency of the state of Wisconsin in the preparation of the comprehensive master plan relating to boundaries, classification, and development required by section 3 of the Lower St. Croix River Act of 1972, and by section 3(b) of the Wild and Scenic Rivers Act, Public Law Number 90-542.

(b) The commissioner shall make the proposed comprehensive master plan available to affected local governmental bodies, shoreland owners, conservation and outdoor recreation groups, and the general public.

(c) Not less than 30 days after making the information available, the commissioner shall conduct a public hearing on the proposed comprehensive master plan in the county seat of each county which contains a portion of the area covered by the comprehensive master plan, in the manner provided in chapter 14. [104.25 s. 2]

Subd. 3. ACQUISITION OF LAND AND EASEMENTS. The commissioner of natural resources may acquire land, scenic easements, or other interests in land by gift, purchase, or other lawful means, and may acquire scenic easement interests in land by eminent domain. The acquisitions must be proposed for acquisition by the state by the comprehensive master plan. [104.25 s. 3]

[Bracketed paragraph notes cite text sources]

New language is indicated by underline, deletions by ~~strikeout~~.

Subd. 4. RULES. (a) The commissioner of natural resources shall adopt rules that establish guidelines and specify standards for local zoning ordinances applicable to the area within the boundaries covered by the comprehensive master plan.

(b) The guidelines and standards must be consistent with this section, the federal Wild and Scenic Rivers Act, and the federal Lower St. Croix River Act of 1972. The standards specified in the guidelines must include:

(1) the prohibition of new residential, commercial, or industrial uses other than those that are consistent with the above mentioned acts; and

(2) the protection of riverway lands by means of acreage, frontage, and setback requirements on development.

(c) Cities, counties, and towns lying within the areas affected by the guidelines shall adopt zoning ordinances complying with the guidelines and standards within the time schedule prescribed by the commissioner. [104.25 s. 3]

Subd. 5. ADMINISTRATION. The commissioner of natural resources in cooperation with appropriate federal authorities and authorities of the state of Wisconsin shall administer state lands and waters in conformance with this section, the federal Wild and Scenic Rivers Act, and the federal Lower St. Croix River Act of 1972. [104.25 s. 3]

## MISSISSIPPI HEADWATERS PLANNING AND MANAGEMENT

### Sec. 41. [103F.361] FINDINGS AND INTENT.

Subdivision 1. FINDINGS. The legislature finds that:

(1) the Mississippi river from its outlet at Lake Itasca, Clearwater county, to the southerly boundary of Morrison county, Minnesota, possesses outstanding and unique natural, scientific, historical, recreational and cultural values deserving of protection and enhancement;

(2) the counties of Clearwater, Hubbard, Beltrami, Cass, Itasca, Aitkin, Crow Wing and Morrison have entered into a joint powers agreement pursuant to law to develop a plan for the protection and enhancement of the foregoing values; and

(3) the plan adopted by the counties pursuant to the joint powers agreement establishes guidelines and minimum standards for cooperative local management of this segment of the Mississippi river. [114B.01]

Subd. 2. LEGISLATIVE INTENT. It is the intent of sections 41 to 49 to authorize and direct the board and the counties to implement this comprehensive plan for the Mississippi headwaters area. [114B.01]

[Bracketed paragraph notes cite text sources]

New language is indicated by underline, deletions by ~~strikeout~~.

## Sec. 42. [103F.363] APPLICABILITY.

Subdivision 1. GENERALLY. Sections 41 to 49 apply to the counties of Clearwater, Hubbard, Beltrami, Cass, Itasca, Aitkin, Crow Wing and Morrison. [114B.07]

Subd. 2. LEECH LAKE INDIAN RESERVATION. Sections 41 to 49 do not alter or expand the zoning jurisdiction of the counties within the exterior boundaries of the Leech Lake Indian Reservation. The comprehensive plan of the board and the county ordinances adopted pursuant to section 45, subdivision 1, apply only to areas within the zoning jurisdiction of the counties as provided by law in effect prior to May 20, 1981. [114B.03 s. 4]

## Sec. 43. [103F.365] DEFINITIONS.

Subdivision 1. APPLICABILITY. The definitions in this section apply to sections 41 to 49. [114B.02 s. 1]

Subd. 2. BOARD. "Board" means the Mississippi headwaters board established under section 44. [114B.02 s. 1]

Subd. 3. COUNTIES. "Counties" means the counties of Clearwater, Hubbard, Beltrami, Cass, Itasca, Aitkin, Crow Wing and Morrison. [114B.02 s. 1]

## Sec. 44. [103F.367] MISSISSIPPI HEADWATERS BOARD.

Subdivision 1. ESTABLISHMENT. The Mississippi headwaters board established by the counties of Clearwater, Hubbard, Beltrami, Cass, Itasca, Aitkin, Crow Wing and Morrison by agreement entered into on February 22, 1980, pursuant to section 471.59, is established as a permanent board with authority to prepare, adopt and implement a comprehensive land use plan designed to protect and enhance the Mississippi river and related shoreland areas situated within the counties. [114B.02 s. 2]

Subd. 2. MEMBERSHIP. (a) The board shall consist of eight members. The governing body of each county shall appoint one of its members to serve on the board.

(b) The terms of board members are two years commencing on the first Monday in January of odd-numbered years.

(c) Vacancies on the board shall be filled for the remainder of the term by the governing body that made the original appointment.

(d) The governing body of a county may designate another member of the governing body or a county officer to act as an alternate for the member appointed by that county. [114B.02 s. 3]

Subd. 3. OFFICERS. (a) The board shall annually appoint from among its

[Bracketed paragraph notes cite text sources]

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members a chair, vice-chair, and secretary-treasurer who shall serve for concurrent one year terms.

(b) The chair shall preside over all meetings of the board and may call special meetings at reasonable times and upon adequate notice when necessary.

(c) The vice-chair shall preside over the meetings of the board in the absence of the chair.

(d) The secretary-treasurer or the designee of the secretary-treasurer shall keep a record of all proceedings of the board. The secretary-treasurer shall provide for the proper receipt and disbursement of funds. [114B.02 s. 4]

Subd. 4. MEETINGS. (a) The regular meetings of the board shall be held at times and places prescribed by it.

(b) A majority of all members of the board shall constitute a quorum and a majority vote of all members shall be required for actions taken by the board. [114B.02 s. 5]

Subd. 5. STAFF AND CONTRACTS. The board may employ staff and contract for goods and services as necessary to implement sections 41 to 49. Contracts are subject to the statutory procedures and restrictions applicable to county contracts. [114B.03 s. 7]

Subd. 6. FUNDING. The board shall annually submit to each county for its approval an estimate of the funds it will need from that county in the next fiscal year to prepare and implement the comprehensive land use plan and otherwise carry out the duties imposed upon it by sections 41 to 49. Each county shall, upon approval of the estimate by its governing body, furnish the necessary funds to the board. The board may apply for, receive and disburse federal, state and other grants and donations. [114B.03 s. 6]

Subd. 7. ADVISORY COMMITTEES. The board shall appoint advisory committees, representing a broad geographical area and diverse public interests, and conduct public meetings and hearings necessary to afford the public an opportunity to become fully informed of all deliberations in the preparation and implementation of the plan. [114B.03 s. 2]

Subd. 8. CONTACT WITH GOVERNMENT AGENCIES. The board shall initiate and maintain contacts with governmental agencies as necessary to properly prepare the plan and shall negotiate cooperative management agreements with the United States Forest Service and Bureau of Land Management and the state department of natural resources. The board, Beltrami, Cass, Hubbard, and Itasca counties shall initiate and maintain contacts with the governing body of the Leech Lake Indian Reservation and shall negotiate a cooperative management and jurisdiction agreement with the reservation governing body. [114B.03 s. 3]

[Bracketed paragraph notes cite text sources]

New language is indicated by underline, deletions by ~~strikeout~~.

**Sec. 45. [103F.369] COMPREHENSIVE LAND USE PLAN.**

Subdivision 1. ADOPTION OF EXISTING PLAN. The comprehensive land use plan prepared by the board and approved by resolution adopted on February 12, 1981, is the comprehensive land use plan authorized by section 44, subdivision 1, and shall be implemented by the board as provided in this section and section 47. [114B.03 s. 1]

Subd. 2. PLAN PROVIDES MINIMUM STANDARDS. The standards set forth in the plan are the minimum standards which may be adopted by the board and by the counties for the protection and enhancement of the natural, scientific, historical, recreational and cultural values of the Mississippi river and related shoreland areas subject to the plan. Except for forest management, fish and wildlife habitat improvement, and open space recreational uses as defined in the plan, state or county lands within the boundaries established by the plan may not be offered for public sale or lease. The board with the agreement, expressed by resolution adopted after public hearing, of the county boards of Clearwater, Hubbard, Beltrami, Cass, Itasca, Aitkin, Crow Wing, and Morrison counties may amend the plan in any way that does not reduce the minimum standards set forth in the plan approved on February 12, 1981. [114B.03 s. 1]

Subd. 3. IMPLEMENTATION. The board shall develop and establish a schedule for implementation and common administration of the plan by the counties. The schedule shall be binding upon the counties subject to approval by the governing bodies of the respective counties. [114B.03 s. 5]

Subd. 4. COUNTY LAND USE ORDINANCE MUST BE CONSISTENT WITH PLAN. The counties shall adopt land use ordinances consistent with the comprehensive land use plan of the board. [114B.03 s. 1]

**Sec. 46. [103F.371] RESPONSIBILITIES OF OTHER GOVERNMENTAL UNITS.**

All local and special governmental units, councils, commissions, boards and districts and all state agencies and departments must exercise their powers so as to further the purposes of sections 41 to 49 and the land use plan adopted by the board on February 12, 1981. Land owned by the state, its agencies, and political subdivisions shall be administered in accordance with the land use plan adopted by the board on February 12, 1981. [114B.031]

**Sec. 47. [103F.373] REVIEW AND CERTIFICATION OF LAND USE ACTIONS.**

Subdivision 1. PURPOSE. To assure that the comprehensive land use plan prepared by the board is not nullified by unjustified exceptions in particular cases and to promote uniformity in the treatment of applications for exceptions, a review and certification procedure is established for the following categories of land use actions taken by the counties and directly or indirectly affecting land use within the area covered by the plan:

[Bracketed paragraph notes cite text sources]

New language is indicated by underline, deletions by ~~strikeout~~.

(1) the adoption or amendment of an ordinance regulating the use of land, including rezoning of particular tracts of land;

(2) the granting of a variance from provisions of the land use ordinance; and

(3) the approval of a plat which is inconsistent with the land use ordinance. [114B.04 s. 1]

Subd. 2. CERTIFICATION. Notwithstanding any provision of chapter 394 to the contrary, an action of a type specified in subdivision 1, clauses (1) to (3), is not effective until the board has reviewed the action and certified that it is consistent with the comprehensive plan of the board. In determining consistency of ordinances and ordinance amendments, the provisions of the comprehensive land use plan shall be considered minimum standards. An aggrieved person may appeal a decision of the type specified in subdivision 1, clauses (1) to (3), that is reviewed by the board under this section in the same manner as provided for review of a decision of a board of adjustment in section 394.27, subdivision 2, but only after the procedures prescribed under this section have been completed. [114B.04 s. 2]

Subd. 3. PROCEDURE FOR CERTIFICATION. A copy of the notices of public hearings or, when a hearing is not required, a copy of the application to consider an action of a type specified in subdivision 1, clauses (1) to (3), must be forwarded to the board by the county at least 15 days before the hearing or meetings to consider the actions. The county shall notify the board of its final decision on the proposed action within ten days of the decision. By 30 days after the board receives the notice, the board shall notify the county and the applicant of its approval or disapproval of the proposed action. [114B.04 s. 3]

Subd. 4. DISAPPROVAL OF ACTIONS. (a) If a notice of disapproval is issued by the board, the county or the applicant may, within 30 days of the notice, file with the board a demand for a hearing. If a demand is not filed within the 30-day period, the disapproval becomes final.

(b) If a demand is filed within the 30-day period, a hearing must be held within 60 days of demand. The hearing must be preceded by two weeks' published notice. Within 30 days after the hearing, the board must:

(1) affirm its disapproval of the proposed action; or

(2) certify approval of the proposed action. [114B.04 s. 4]

#### Sec. 48. [103F.375] INCORPORATION AND ANNEXATION.

Subdivision 1. MORATORIUM ON CERTAIN ACTIVITIES. If land subject to the comprehensive land use plan of the board is annexed, incorporated, or otherwise subjected to the land use planning authority of a home rule charter or statutory city, a moratorium shall exist on:

[Bracketed paragraph notes cite text sources]

New language is indicated by underline, deletions by ~~strikeout~~.



(1) all subdivision platting and building permits on the land until zoning regulations are adopted for the land that comply with the provisions of the comprehensive plan of the board; and

(2) construction, grading and filling, and vegetative cutting as those activities are defined in the comprehensive plan. [114B.05]

Subd. 2. EXCEPTION FOR WORK UNDER PRIOR PERMITS. This section does not apply to work done pursuant to lawful permits issued before the land became subject to the land use planning authority of the city. [114B.05]

Sec. 49. [103F.377] BIENNIAL REPORT.

During the first year of each biennial legislative session, the board shall prepare and present to the appropriate policy committees of the legislature a report concerning the actions of the board in exercising the authority granted by the legislature under sections 41 to 49. The report must include an assessment of the effectiveness of the board's comprehensive land use plan and its implementation in protecting and enhancing the natural, scientific, historical, recreational and cultural values of the Mississippi river and related shorelands situated within the member counties. [114B.06]

PROJECT RIVERBEND

Sec. 50. [103F.381] FINDINGS.

The legislature finds that the Minnesota river from the city of Franklin in Renville county to LeSueur in LeSueur county possesses outstanding scenic, recreational, natural, historical, scientific, and similar values. Because it is in the interest of present and future generations to retain these values, the legislature finds that the adoption and implementation of a comprehensive land use plan is necessary. [MN L 1982, c 627, sec 1, subd 1]

Sec. 51. [103F.383] DEFINITIONS.

Subdivision 1. APPLICABILITY. The definitions in this section apply to sections 51 to 56.

Subd. 2. BOARD. "Board" means the Project Riverbend board.

Subd. 3. COUNTIES. "Counties" means the counties of Renville, Redwood, Brown, Nicollet, Blue Earth, and LeSueur, except as otherwise provided in Laws 1982, chapter 627, section 7. [MN L 1982, c 627, sec 1, subd 2]

Sec. 52. [103F.385] BOARD.

Subdivision 1. ESTABLISHMENT. The Project Riverbend board is established under Laws 1982, chapter 627. [MN L 1982, c 627, sec 2, subd 1]

[Bracketed paragraph notes cite text sources]

New language is indicated by underline, deletions by ~~strikeout~~.

Subd. 2. MEMBERS. (a) Except as provided in Laws 1982, chapter 627, section 7, the board shall consist of six members, one each from the counties of Renville, Redwood, Brown, Nicollet, Blue Earth, and LeSueur.

(b) The members shall be appointed by their respective county boards for a term of two years. [MN L 1982, c 627, sec 2, subd 2]

Subd. 3. CHAIR. The board shall select a chairperson, who shall preside at meetings and hearings and may call special meetings. [MN L 1982, c 627, sec 2, subd 3]

Subd. 4. PROCEDURAL RULES AND RECORDS. The board shall adopt rules for the transaction of its business and shall keep a public record of its transactions, findings, and determinations. [MN L 1982, c 627, sec 2, subd 3]

Subd. 5. QUORUM. A majority of all members of the board constitutes a quorum and a majority vote of all members is required for the board to take any action pursuant to section 54. [MN L 1982, c 627, sec 2, subd 3]

Subd. 6. STAFF AND FUNDS. The counties shall supply staff and funds to the board as may be necessary for its operation. [MN L 1982, c 627, sec 2, subd 4]

**Sec. 53. [103F.387] COMPREHENSIVE PLAN.**

(a) The comprehensive plan known as "Project Riverbend Fifth Draft, June 1981" shall be implemented by the board and the counties as provided in sections 51 to 56. The counties shall adopt land use ordinances consistent with the plan. The standards set forth in the plan are the minimum standards that may be adopted by the board and the counties. The board may amend the comprehensive land use plan in any way that does not reduce the minimum standards set forth in the plan.

(b) The board shall develop and establish a schedule for implementation and administration of the plan by the counties. The schedule shall be binding on the counties subject to approval by the governing bodies of the respective counties. [MN L 1982, c 627, sec 3]

**Sec. 54. [103F.389] REVIEW AND CERTIFICATION OF LAND USE ACTIONS.**

Subdivision 1. LAND USE ACTIONS COVERED. To ensure that the comprehensive land use plan is not nullified by unjustified exceptions in particular cases and to promote uniformity in the treatment of applications for exceptions, a review and certification procedure is established for the following categories of land use actions taken by the counties and directly or indirectly affecting land use within the area covered by the plan:

(1) the adoption or amendment of an ordinance regulating the use of land, including rezoning of a particular tract of land;

[Bracketed paragraph notes cite text sources]

New language is indicated by underline, deletions by ~~strikeout~~.

(2) the granting of a variance from provisions of the land use ordinances; and

(3) the approval of a plat which is inconsistent with the land use ordinance. [MN L 1982, c 627, sec 4, subd 1]

**Subd. 2. LAND USE ACTIONS MUST BE CONSISTENT WITH PLAN.** (a) Notwithstanding any contrary provision of chapter 394, an action of a type specified in subdivision 1, clauses (1) to (3), is not effective until the board has reviewed the action and certified that it is consistent with the comprehensive plan of the board.

(b) In determining consistency of ordinances and ordinance amendments, the provisions of the comprehensive land use plan shall be considered minimum standards. An aggrieved person may appeal a decision of the type specified in subdivision 1, clauses (1) to (3), which is reviewed by the board under this section in the manner provided for review of a decision of a board of adjustment under section 394.27, subdivision 9, but only after the procedures prescribed under this section have been completed. [MN L 1982, c 627, sec 4, subd 2]

**Subd. 3. PROCEDURE FOR CERTIFICATION.** (a) A copy of all notices of public hearings or, when a hearing is not required, a copy of the application to consider any actions of a type specified in subdivision 1, clauses (1) to (3), must be forwarded to the board by the county at least ten days prior to the hearing or meetings to consider the land use actions.

(b) The county shall notify the board of its final decision on the proposed action within ten days of the decision.

(c) By 30 days from the time it receives the notice, the board shall notify the county and the applicant of its approval or disapproval of the proposed action. [MN L 1982, c 627, sec 4, subd 3]

**Subd. 4. DISAPPROVAL OF ACTIONS.** (a) If the board issues a notice of disapproval, either the county or the applicant may, within 30 days of notice, file a demand for a hearing with the board.

(b) If a demand is not filed during that period, the disapproval becomes final.

(c) If a demand is filed within the 30-day period, a hearing shall be held within 60 days of demand and shall be preceded by two weeks' published notice. Within 30 days after the hearing, the board shall either affirm its disapproval of the proposed action or certify its approval. [MN L 1982, c 627, sec 4, subd 4]

**Sec. 55. [103F.391] RESTRICTIONS ON LAND INCORPORATED OR ANNEXED.**

[Bracketed paragraph notes cite text sources]

New language is indicated by underline, deletions by ~~strikeout~~.

(a) If land subject to the comprehensive land use plan of the board is annexed, incorporated, or otherwise subjected to the land use planning authority of a home rule charter or statutory city, a moratorium shall exist on all subdivision platting and building permits on that land until zoning regulations are adopted for the land that comply with the provisions of the comprehensive plan of the board.

(b) The moratorium shall also apply to construction, grading and filling, and vegetative cutting as those activities are defined in the comprehensive plan.

(c) This section does not apply to work done pursuant to lawful permits issued before the land became subject to the land use planning authority of the city. [MN L 1982, c 627, sec 5]

**Sec. 56. [103F.393] BIENNIAL REPORT.**

During the first year of each biennial legislative session, the board shall report and present to the appropriate policy committees of the legislature a report concerning the actions of the board in exercising the authority granted by the legislature under sections 51 to 56. The report shall include an assessment of the effectiveness of the board's comprehensive land use plan and its implementation in protecting and enhancing the outstanding scenic, recreational, natural, historical, scientific, and similar values of the Minnesota river and related shorelands situated within the member counties. [MN L 1982, c 627, sec 6]

**SOIL EROSION**

**Sec. 57. [103F.401] DEFINITIONS.**

Subdivision 1. APPLICABILITY. The definitions in this section apply to sections 57 to 68. [40.19 s. 1]

Subd. 2. CONSERVATION PLAN. "Conservation plan" means a set of practices that will decrease soil erosion to the soil loss limits on a particular parcel of land. [40.19 s. 2a]

Subd. 3. CONSERVATION PRACTICES. "Conservation practices" means practices and standards containing a definition, purpose, and conditions that the practice applies including design requirements and specifications containing a statement of details required for installing a conservation practice, including kinds, quality, and quantity of work and materials needed to meet the standards. A conservation practice may be a permanent or temporary, vegetative or structural measure that will aid the control of wind and water erosion. Permanent practices are those that have effective life greater than ten years and include grassed waterways, terraces, field windbreaks, water control structures, grade stabilization structures, sediment retention structures, strip-cropping, and other permanent practices approved by the board of water and soil resources. Temporary practices include conservation tillage, contour farming, grasses and legumes in rotation, emergency tillage, and any other cultural practices approved by the board of water and soil resources. [40.19 s. 5]

[Bracketed paragraph notes cite text sources]

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**Subd. 4. DEVELOPMENT ACTIVITY.** “Development activity” means a physical disturbance of the land, that may result in sedimentation of adjacent lands or waters, associated with activities that include clearing, grading, excavating, transporting, and filling lands. Road construction by federal, state, county, and municipal governments designed according to department of transportation standard specifications for construction are not development activities. [40.19 s. 6]

**Subd. 5. EROSION.** “Erosion” means any process that removes soil away from the surface of the land by the action of water, wind, or gravity. [40.19 s. 7]

**Subd. 6. EXCESSIVE SOIL LOSS.** “Excessive soil loss” means soil loss that is greater than the soil loss limits. Excessive soil loss may be evidenced by sedimentation on adjoining land or in a body of water. [40.19 s. 7a]

**Subd. 7. LAND OCCUPIER.** “Land occupier” means a person, firm, corporation, municipality, or other legal entity that holds title to or is in possession of lands, as owner, lessee, or otherwise. “Land occupier” includes both the owner and the occupier of the land if they are not the same. [40.19 s. 9]

**Subd. 8. LOCAL GOVERNMENT.** “Local government” means the elected governing body of a county, home rule charter or statutory city, or town, or their designated agents. Agents may include soil and water conservation districts, water management organizations, joint powers boards, watershed districts, and other governmental entities responsible for resource management within the local government’s jurisdiction. [40.19 s. 9a]

**Subd. 9. SEDIMENT.** “Sediment” means solid mineral or organic material that is in suspension, is being transported, or has been moved from its original location by air, water, gravity, or ice, and has been deposited at another location. [40.19 s. 11]

**Subd. 10. SOIL.** “Soil” means the unconsolidated mineral and organic material on the immediate surface of the earth that serves as natural medium for the growth of land plants. [40.19 s. 11a]

**Subd. 11. SOIL LOSS LIMIT.** “Soil loss limit” means the maximum amount of soil loss from water or wind erosion, expressed in tons per acre per year, that is allowed by local regulations on a particular soil. [40.19 s. 13]

**Subd. 12. TECHNICAL GUIDE.** “Technical guide” means the guide developed by the United States Soil Conservation Service and adopted by soil and water conservation districts containing technical information including methods and procedures by which the various types of erosion can be measured, and conservation practice standards and specifications required in the application of soil and water conservation practices. [40.19 s. 16]

**Sec. 58. [103F.405] SOIL LOSS ORDINANCES.**

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Subdivision 1. AUTHORITY. Each statutory or home rule charter city, town, or county that has planning and zoning authority under sections 366.10 to 366.19, 394.21 to 394.37, or 462.351 to 462.365 is encouraged to adopt a soil loss ordinance. The soil loss ordinance must use the soil loss tolerance for each soil series described in the United States Soil Conservation Service Field Office Technical Guide to determine the soil loss limits, but the soil loss limits must be attainable by the best practicable soil conservation practice. Ordinances adopted by local governments within the metropolitan area defined in section 473.121 must be consistent with local water management plans adopted under section 473.879. [40.20]

Subd. 2. AGENTS OF LOCAL GOVERNMENTS. A local government that adopts a soil loss ordinance may enter an agreement with its agent allowing the agent to administer the functions and perform the duties of the local government as provided by sections 57 to 68. [40.20]

Sec. 59. [103F.411] MODEL ORDINANCE.

Subdivision 1. AUTHORITY. The board of water and soil resources, in consultation with counties, soil and water conservation districts, and other appropriate agencies, shall adopt a model ordinance and rules that serve as a guide for local governments to implement sections 57 to 68 and provide administrative procedures for the board for sections 57 to 68. [40.21 s. 1]

Subd. 2. MODEL ORDINANCE. The model ordinance must specify the technical and administrative procedures required to control soil loss and erosion. The model ordinance is the minimum regulation to be adopted. The model ordinance must use the soil loss tolerance for each soil series described in the United States Soil Conservation Service Field Office Technical Guide to determine soil loss limits, but the soil loss limits must be attainable by the best practicable soil conservation practice. [40.21 s. 2]

Subd. 3. PERIODIC REVIEW. At least once every five years the board shall review the rules and model ordinance in cooperation with counties, soil and water conservation districts, and appropriate agencies to ensure their continued applicability and relevance. [40.21 s. 3]

Sec. 60. [103F.415] EXCESSIVE SOIL LOSS PROHIBITED.

Subdivision 1. PROHIBITED ACTIVITIES. A person may not cause, conduct, contract for, or authorize an activity that causes excessive soil loss. [40.22 s. 1]

Subd. 2. AGRICULTURAL LAND. A land occupier of agricultural land is not violating subdivision 1 if the occupier is farming by methods that implement the best practicable conservation practices. [40.22 s. 2]

Subd. 3. WOODLAND. A land occupier who uses wooded land for pasture must ensure that proper management is used to prevent excessive soil loss due to overgrazing or cattle paths. [40.22 s. 3]

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Sec. 61. [103F.421] ENFORCEMENT.

Subdivision 1. COMPLAINT. (a) An adversely affected landowner, an elected or appointed official of the local government, or a soil and water conservation district board member may submit a written complaint to the local government if conditions exist that indicate there is excessive soil loss from a tract of land that affects another tract of land or body of water. The written complaint must contain:

(1) the name and address of the landowner whose land is causing excessive soil loss;

(2) the location of the tract of land with the excessive soil loss;

(3) a description of land or water that is affected by the excessive soil loss;  
and

(4) a description of the nature of the excessive soil loss and resulting sedimentation.

(b) The local government shall submit the complaint to the soil and water conservation district for soil loss determination. [40.23 s. 1]

Subd. 2. DISTRICT DETERMINATION OF SOIL LOSS. (a) The soil and water conservation district shall determine the average soil loss in tons per acre per year of the tract of land cited in the complaint.

(b) Representatives of the soil and water conservation district may enter public or private land to make an inspection for the determination of soil loss or to complete the report required by paragraph (c). The landowners must be notified of the time of the inspection and be given an opportunity to be present when the inspection is made.

(c) The soil and water conservation district shall submit a report to the local government that states the average soil loss in tons per acre per year for each tract of land and whether the soil loss is excessive under the applicable soil loss limits. If the soil loss is excessive the report must include identification of existing management practices and a conservation plan and time schedule that will prevent excessive soil loss or reduce the soil loss to the most practicable extent. [40.23 s. 2]

Subd. 3. MEDIATION. (a) If the soil and water conservation district report shows that soil loss from the tract of land is excessive and alternative practices are available to reduce the soil loss, the local government shall request the allegedly offending landowner to participate in mediation with the local government.

(b) The local government may appoint the planning and zoning director, a planning commissioner, or other county official to act as a mediator. The local

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government may also contract with a mediation center to provide mediation services.

(c) The landowner and the local government or its agent must attempt to agree on conservation practices and times to implement the practice that will reduce soil loss to the local soil loss limits.

(d) A mediated settlement must be in writing and filed with the local government.

(e) If the local government and the landowner do not agree to a mediated settlement, or if the landowner refuses to participate in mediation, the local government shall forward the complaint to the county attorney. The county attorney may dismiss the complaint or petition for a hearing under section 62. [40.23 s. 3]

Subd. 4. APPLICATION FOR COST-SHARING FUNDS. The landowner has 90 days after a mediated settlement is filed to apply for state cost-sharing funds that will provide 75 percent of the cost of the permanent conservation practices. Only 50 percent of the cost share will be provided if the application is not made within 90 days after the settlement is filed. The landowner must apply for 50 percent of the cost share within 270 days after the mediated settlement is filed. [40.23 s. 4]

Subd. 5. PENALTY. A landowner that does not comply with the provisions of the mediated settlement is subject to a civil penalty up to \$500. Soil conservation practices that are made in good faith and substantial compliance are a complete defense. [40.23 s. 5]

## Sec. 62. [103F.425] DISTRICT COURT HEARING.

Subdivision 1. DETERMINATION OF PROPER CONSERVATION PLAN. If the landowner and the local government do not agree to a mediated settlement or if the landowner has refused mediation, the county attorney may petition the district court for a hearing. The landowner shall have the opportunity to present the landowner's conservation plan and time schedule as an alternative to the local government conservation plan and time schedule. The court shall order the landowner to implement the conservation plan and time schedule that is the least burdensome to the landowner and will reduce soil loss to at least the soil loss limit. The court may amend the local government's or landowner's conservation plan and time schedule, or develop a new conservation plan and time schedule. The court shall set times to implement, make satisfactory progress, and complete the conservation plan. [40.242 s. 1]

Subd. 2. COST-SHARING FUNDS. (a) If the court orders implementation of the landowner's conservation plan and time schedule, or amends the conservation plan and time schedule, or if the court develops a new conservation plan and time schedule, the landowner is eligible to apply for 75 percent cost-share

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funds for permanent conservation practices. The landowner must apply for the cost share within 90 days after the court order. If the landowner does not apply within 90 days for the cost-sharing funds the cost share is reduced to 50 percent. The court shall establish a time after which the landowner is no longer eligible for cost-sharing funds if an application is not made.

(b) If the court orders a plan and time schedule developed by the district in its report, the landowner is eligible for 50 percent cost share if the landowner applies within 90 days after the court order. [40.242 s. 2]

**Sec. 63. [103F.431] SOIL AND WATER CONSERVATION ASSISTANCE.**

A landowner who has filed a mediated settlement under section 61 or who has received a court order under section 62 may request the soil and water conservation district to assist in the planning, design, and application of practices necessary to reduce soil loss to the applicable soil loss limit amounts or to the greatest practical extent. The soil and water conservation district must give the landowner a high priority for technical and cost-sharing assistance. [40.244]

**Sec. 64. [103F.435] ATTORNEY AND LOCAL GOVERNMENT MAY PERFORM DUTY OF COUNTY.**

The city attorney or town attorney may perform the duties of a county attorney. A city or town may perform the duties of a local government only if the city or town adopts a soil loss ordinance and the land specified in the complaint is located within the city or town. [40.246]

**Sec. 65. [103F.441] EROSION CONTROL PLAN FOR DEVELOPMENT ACTIVITIES.**

Subdivision 1. SEDIMENTATION CONTROL PLAN. (a) A person engaged in a development activity that will disturb over one acre of land must submit a sedimentation control plan and time schedule that will prevent excessive soil loss to the local government having jurisdiction over the land before the development activity is to begin.

(b) A sedimentation control plan and time schedule must specify how the movement of soil and damage to other property during the construction will be minimized, including the use of temporary seeding, fiber mats, plastic, straw, mulch, sediment control basins, and other measures to prevent erosion and sediment damage. The time schedule must establish deadlines for the implementation and completion of each phase or element of the sedimentation control plan. [40.25 s. 1]

Subd. 2. PERMIT REQUIRED. The local government may appoint the zoning and planning director, building inspector, county engineer, or the soil and water conservation district to review the plan and time schedule. If the

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sedimentation control plan and time schedule will prevent excessive soil loss to the most practicable extent, the local government must issue a permit that authorizes the development activity contingent upon the implementation and completion of the sedimentation control plan. [40.25 s. 2]

Subd. 3. PENALTY. A person engaged in a development activity who does not obtain a sedimentation control plan permit or does not commence or complete the plan or make satisfactory progress to complete the plan is subject to a civil penalty. Soil conservation practices made in good faith and substantial compliance are a defense. [40.25 s. 3]

Subd. 4. APPLICATION. For counties, the provisions of this section apply only to county jurisdiction over unincorporated areas. [40.25 s. 4]

#### Sec. 66. [103F.445] COST-SHARING FUNDS.

Subdivision 1. COST-SHARE REQUIRED. Except for a development activity, a land occupier may not be required to establish soil conservation practices unless state cost-sharing funds have been specifically approved for that land and have been made available to the land occupier under sections 61 and 62, equal to at least 75 percent of the cost of the permanent conservation practices on a voluntary basis, or a 50 percent cost-share if an application for cost-share is not made within 90 days after the board approves a mediated written agreement or within 90 days after the court orders implementation of a plan and time schedule prepared by the landowner or the court. For mediated settlements, a court order that implements the landowner's alternatives or the court's alternatives must state the time schedule for application for 50 percent cost-share. If the court orders implementation of the district's plan and time schedule, a landowner is eligible only for 50 percent cost-share. [40.26 s. 1]

Subd. 2. REVIEW OF REQUIREMENTS. The board of water and soil resources shall review these requirements at least once each year, and may authorize a district to provide a higher percentage of cost-sharing than is required by this section. To aid in this determination, the board may consider the location of the affected area in relation to the priority areas as established in the soil and water conservation district annual and long-range plans. [40.26 s. 2]

Subd. 3. RECORDING. The permanent conservation practices must be recorded with the county recorder on the tracts where they occur if the cost-sharing funds are issued to the landowner. [40.26 s. 3]

#### Sec. 67. [103F.451] APPLICABILITY.

The provisions of sections 60 to 68 are not applicable without the adoption of an ordinance by the county or local government unit. [40.27]

#### Sec. 68. [103F.455] PENALTY.

A person who violates section 60, subdivision 1, is subject to a civil penalty up to \$500. [40.28]

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**Sec. 69. [103F.460] ENVIRONMENTAL AGRICULTURAL EDUCATION PROGRAM.**

Subdivision 1. PROGRAM. An environmental agricultural program is established:

- (1) to work with agricultural producers;
- (2) to advise and inform agricultural producers on the impact of certain farming practices on water quality;
- (3) to promote sustainable agriculture through use of best management practices and integrated pest management;
- (4) to demonstrate and evaluate alternative pesticide practices; and
- (5) to develop and promote farm profitability through a reduction in farm inputs.

Subd. 2. CONTRACTS. Contracts to carry out the program must be awarded by the board of water and soil resources following review by the legislative water commission. [40.31]

**REINVEST IN MINNESOTA RESOURCES ACT**

**Sec. 70. [103F.501] SHORT TITLE.**

Sections 71 to 77 may be cited as the "reinvest in Minnesota resources law." [40.40]

**Sec. 71. [103F.505] PURPOSE AND POLICY.**

It is the purpose of sections 71 to 77 to keep certain marginal agricultural land out of crop production to protect soil and water quality and support fish and wildlife habitat. It is state policy to encourage the retirement of marginal, highly erodible land, particularly land adjacent to public waters and drainage systems, from crop production and to reestablish a cover of perennial vegetation. [40.41]

**Sec. 72. [103F.511] DEFINITIONS.**

Subdivision 1. APPLICABILITY. The definitions in this section apply to sections 71 to 78. [40.42 s. 1]

Subd. 2. BOARD. "Board" means the board of water and soil resources. [40.42 s. 2]

Subd. 3. CONSERVATION EASEMENT. "Conservation easement" means a conservation easement as defined in section 84C.01. [40.42 s. 3]

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**Subd. 4. CONSERVATION RESERVE PROGRAM.** “Conservation reserve program” means the program established under section 73. [40.42 s. 4]

**Subd. 5. DRAINED WETLAND.** “Drained wetland” means a former natural wetland that has been altered by draining, dredging, filling, leveling, or other manipulation sufficient to render the land suitable for agricultural crop production. The alteration must have occurred before December 23, 1985, and must be a legal alteration as determined by the commissioner of natural resources.

**Subd. 6. LANDOWNER.** “Landowner” means individuals, family farms, family farm partnerships, authorized farm partnerships, family farm corporations and authorized farm corporations as defined under section 500.24, subdivision 2, and estates and testamentary trusts, which either own eligible land or are purchasing eligible land under a contract for deed. [40.42 s. 5]

**Subd. 7. MARGINAL AGRICULTURAL LAND.** “Marginal agricultural land” means land that is:

(1) composed of class IIIe, IVe, V, VI, VII, or VIII land as identified in the land capability classification system of the United States Department of Agriculture; or

(2) similar to land described under clause (1) and identified under a land classification system selected by the board. [40.42 s. 6]

**Subd. 8. PUBLIC WATERS.** “Public waters” means waters and wetlands as defined in article 7, section 2, and inventoried under article 7, section 13. [40.42 s. 8]

**Subd. 9. SENSITIVE GROUNDWATER AREA.** “Sensitive groundwater area” means a geographic area defined by natural features where there is a significant risk of groundwater degradation from activities conducted at or near the land surface. These areas may be identified by mapping or other appropriate methods determined by the commissioner of natural resources and the board of water and soil resources. Wellhead protection areas may be designated as a sensitive groundwater area. [40.42 s. 6a, 9]

**Subd. 10. WETLAND.** “Wetland” means land that has a predominance of hydric soils and that is inundated or saturated by surface or ground water at a frequency and duration sufficient to support, or that periodically does support, a predominance of hydrophytic vegetation typically adapted for life in saturated soil conditions. [40.42 s. 7]

**Subd. 11. WINDBREAK.** “Windbreak” means a strip or belt of trees, shrubs, or grass barriers at least six rows deep and within 300 feet of the right-of-way of a highway. [40.42 s. 8]

**Sec. 73. [103F.515] CONSERVATION RESERVE PROGRAM.**

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Subdivision 1. ESTABLISHMENT OF PROGRAM. The board, in consultation with the commissioner of agriculture and the commissioner of natural resources, shall establish and administer a conservation reserve program. The board shall implement sections 71 to 77. Selection of land for the conservation reserve program must be based on its potential for fish and wildlife production, reducing erosion, and protecting water quality. [40.43 s. 1]

Subd. 2. ELIGIBLE LAND. (a) Land may be placed in the conservation reserve program if the land meets the requirements of paragraphs (b) and (c).

(b) Land is eligible if the land:

(1) is marginal agricultural land;

(2) is adjacent to marginal agricultural land and is either beneficial to resource protection or necessary for efficient recording of the land description;

(3) consists of a drained wetland;

(4) is land that with a windbreak would be beneficial to resource protection;

(5) is land in a sensitive groundwater area;

(6) is cropland adjacent to public waters;

(7) is cropland adjacent to restored wetlands to the extent of up to four acres of cropland for each acre of wetland restored;

(8) is a woodlot on agricultural land;

(9) is abandoned building site on agricultural land, provided that funds are not used for compensation of the value of the buildings; or

(10) is land on a hillside used for pasture.

(c) Eligible land under paragraph (a) must:

(1) have been owned by the landowner on January 1, 1985, or be owned by the landowner, or a parent or other blood relative of the landowner, for at least one year before the date of application;

(2) be at least five acres in size, except for a windbreak, woodlot, or abandoned building site, or be a whole field as defined by the United States Agricultural Stabilization and Conservation Services;

(3) not be set aside, enrolled or diverted under another federal or state government program; and

(4) have been in agricultural crop production for at least two years during the period 1981 to 1985 except drained wetlands, woodlots, abandoned building sites, or land on a hillside used for pasture.

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(d) The enrolled land of a landowner may not exceed 20 percent of the average farm size in the county where the land is being enrolled according to the average farm size determined by the United States Department of Agriculture, Census of Agriculture.

(e) In selecting drained wetlands for enrollment in the program, the highest priority must be given to wetlands with a cropping history during the period 1976 to 1985.

(f) In selecting land for enrollment in the program, highest priority must be given to permanent easements that are consistent with the purposes stated in section 71. [40.43 s. 2]

Subd. 3. CONSERVATION EASEMENTS. The board may acquire conservation easements on eligible land. An easement may be permanent or of limited duration. An easement acquired on land for windbreak purposes, under subdivision 2, may be only of permanent duration. An easement of limited duration may not be acquired if it is for a period less than 20 years. The negotiation and acquisition of easements authorized by this section are exempt from the contractual provisions of chapter 16B. [40.43 s. 3]

Subd. 4. NATURE OF PROPERTY RIGHTS ACQUIRED. (a) A conservation easement must prohibit:

(1) alteration of wildlife habitat and other natural features, unless specifically approved by the board;

(2) agricultural crop production, unless specifically approved by the board for wildlife management purposes;

(3) grazing of livestock except, for agreements entered before the effective date of this act, grazing of livestock may be allowed only if approved by the board after consultation with the commissioner of natural resources, in the case of severe drought, or a local emergency declared under section 12.29; and

(4) spraying with chemicals or mowing, except as necessary to comply with noxious weed control laws or emergency control of pests necessary to protect public health.

(b) A conservation easement is subject to the terms of the agreement provided in subdivision 5.

(c) A conservation easement must allow repairs, improvements, and inspections necessary to maintain public drainage systems provided the easement area is restored to the condition required by the terms of the conservation easement. [40.43 s. 4]

Subd. 5. AGREEMENTS BY LANDOWNER. The board may enroll eligible land in the conservation reserve program by signing an agreement in recordable form with a landowner in which the landowner agrees:

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(1) to convey to the state a conservation easement that is not subject to any prior title, lien, or encumbrance;

(2) to seed the land subject to the conservation easement, as specified in the agreement, to establish and maintain perennial cover of either a grass-legume mixture or native grasses for the term of the easement, at seeding rates determined by the board; or to plant trees or carry out other long-term capital improvements approved by the board for soil and water conservation or wildlife management;

(3) to convey to the state a permanent easement for the wetland restoration;

(4) that other land supporting natural vegetation owned or leased as part of the same farm operation at the time of application, if it supports natural vegetation or has not been used in agricultural crop production, will not be converted to agricultural crop production or pasture; and

(5) that the easement duration may be lengthened through mutual agreement with the board in consultation with the commissioners of agriculture and natural resources if they determine that the changes effectuate the purpose of the program or facilitate its administration. [40.43 s. 5]

**Subd. 6. PAYMENTS FOR CONSERVATION EASEMENTS AND ESTABLISHMENT OF COVER.** (a) The board must make the following payments to the landowner for the conservation easement and agreement:

(1) to establish the perennial cover or other improvements required by the agreement, up to 75 percent of the total eligible cost not to exceed \$75 per acre for limited duration easements, 100 percent of the total eligible cost not to exceed \$100 per acre for perpetual easements, and 100 percent of the total eligible cost of wetland restoration not to exceed \$300 per acre;

(2) for the cost of planting trees required by the agreement, up to 75 percent of the total eligible cost not to exceed \$200 per acre for limited duration easements, and 100 percent of the total eligible cost not to exceed \$300 per acre for perpetual easements;

(3) for a permanent easement, 70 percent of the township average equalized estimated market value of agricultural property as established by the commissioner of revenue at the time of easement application;

(4) for an easement of limited duration, 90 percent of the present value of the average of the accepted bids for the federal conservation reserve program, as contained in Public Law Number 99-198, in the relevant geographic area and on bids accepted at the time of easement application; or

(5) an alternative payment system for easements based on cash rent or a similar system as may be determined by the board.

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(b) For hillside pasture conservation easements, the payments to the landowner in paragraph (a) for the conservation easement and agreement must be reduced to reflect the value of similar property. [40.43 s. 6]

Subd. 7. EASEMENT RENEWAL. When a conservation easement of limited duration expires, a new conservation easement and agreement for an additional period of not less than 20 years may be acquired by agreement of the board and the landowner, under the terms of this section. The board may adjust payment rates as a result of renewing an agreement and conservation easement only after examining the condition of the established cover, conservation practices, and land values. [40.43 s. 7]

Subd. 8. CORRECTION OF CONSERVATION EASEMENT BOUNDARY LINES. To correct errors in legal descriptions for easements obtained that affect the ownership interests in the state and adjacent landowners, the board may, in the name of the state, with the approval of the attorney general, convey, without consideration, interests of the state necessary to correct legal descriptions of boundaries. The conveyance must be by quitclaim deed or release in a form approved by the attorney general. [40.43 s. 8]

Subd. 9. ENFORCEMENT AND DAMAGES. (a) A landowner who violates the term of a conservation easement or agreement under this section, or induces, assists, or allows another to do so, is liable to the state for treble damages if the trespass is willful, but liable for double damages only if the trespass is not willful. The amount of damages is the amount needed to make the state whole or the amount the landowner has gained due to the violation, whichever is greater.

(b) Upon the request of the board, the attorney general may commence an action for specific performances, injunctive relief, damages, including attorney's fees, and any other appropriate relief to enforce sections 71 to 77 in district court in the county where all or part of the violation is alleged to be committed, or where the landowner resides or has a principal place of business. [40.43 s. 9]

#### Sec. 74. [103F.521] COOPERATION AND TECHNICAL ASSISTANCE.

Subdivision 1. COOPERATION. In implementing sections 71 to 77, the board must share information and cooperate with the department of agriculture, the department of natural resources, the pollution control agency, the United States Fish and Wildlife Service, the Agricultural Stabilization and Conservation Service and Soil Conservation Service of the United States Department of Agriculture, the Minnesota extension service, the University of Minnesota, county boards, and interested private organizations and individuals. [40.44 s. 1]

Subd. 2. TECHNICAL ASSISTANCE. (a) The board and the commissioners of agriculture and natural resources must provide necessary technical assistance to landowners enrolled in the conservation reserve program. The commissioner

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of natural resources must provide technical advice and assistance to the board on:

- (1) the form and content of the conservation easement and agreement;
- (2) forestry and agronomic practices; and
- (3) hydrologic and hydraulic design relating to the establishment and maintenance of permanent cover, or other conservation improvements.

(b) The commissioner of transportation must provide technical advice and assistance to the board and the commissioner of natural resources on the planting of windbreaks adjacent to highways.

(c) The board and the commissioners of agriculture and natural resources shall jointly prepare an informational booklet on the conservation reserve program and other state and federal programs for land acquisition, conservation, and retirement to be made available to eligible landowners and the general public. [40.44 s. 2]

**Sec. 75. [103F.525] SUPPLEMENTAL PAYMENTS ON FEDERAL AND STATE CONSERVATION PROGRAMS.**

The board may supplement payments made under federal land retirement programs to the extent of available appropriations other than bond proceeds. The supplemental payments must be used to establish perennial cover on land enrolled or increase payments for land enrollment in programs approved by the board, including the federal conservation reserve program and federal and state water bank program. [40.44 s. 3]

**Sec. 76. [103F.526] FOOD PLOTS IN WINDBREAKS.**

The board, in cooperation with the commissioner of natural resources, may authorize wildlife food plots on land with windbreaks. [40.44 s. 4]

**Sec. 77. [103F.531] RULEMAKING.**

The board may adopt rules to implement sections 71 to 77. The rules must include standards for tree planting so that planting does not conflict with existing electrical lines, telephone lines, rights-of-way, or drainage ditches. [40.45]

**Sec. 78. [103F.535] RESERVATION OF MARGINAL LAND AND WETLANDS.**

Subdivision 1. RESERVATION OF MARGINAL LAND AND WETLANDS. Notwithstanding any other law, marginal land and wetlands are withdrawn from sale by the state unless use of the marginal land or wetland is restricted by a conservation easement as provided in this section. This section does not apply to transfers of land by the board of water and soil resources to correct errors in

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legal descriptions under section 73, subdivision 8, or to transfers by the commissioner of natural resources for:

(1) land that is currently in nonagricultural commercial use if a conservation easement would interfere with the commercial use;

(2) land in platted subdivisions;

(3) conveyances of land to correct errors in legal descriptions under section 84.0273;

(4) exchanges of nonagricultural land with the federal government, or exchanges of Class A, Class B, and Class C nonagricultural land with local units of government under sections 94.342, 94.343, 94.344, and 94.349;

(5) land transferred to political subdivisions for public purposes under sections 84.027, subdivision 10, and 94.10; and

(6) land not needed for trail purposes that is sold to adjacent property owners and lease holders under section 85.015, subdivision 1, paragraph (b).

**Subd. 2. DELINEATION OF WETLAND OR MARGINAL LAND.** (a) Before state land is sold, the land must be submitted to the board of water and soil resources to determine and delineate the marginal land and wetlands to be reserved or restricted by a conservation easement. The delineation of the reservation or conservation easement need not be by legal description and may be a description in general terms that identifies the marginal land or wetlands.

(b) Marginal land and wetlands may not be sold unless restricted by a conservation easement with the restrictions provided in section 73, subdivision 4, paragraphs (a) and (c), and other restrictions determined necessary by the board of water and soil resources.

**Subd. 3. SCHOOL TRUST LAND.** If the sale of school trust land as defined in section 92.025 is restricted by a conservation easement and the restriction results in a reduction of the amount received from the sale, the commissioner of natural resources must determine the amount of the reduction. The amount of the reduction in sale price must be paid from appropriations to acquire conservation easements and shall be credited to the account to which the proceeds from the sale are credited.

**Subd. 4. RELEASE AND ALTERATION OF CONSERVATION EASEMENT.** The board may alter, release, or terminate a conservation easement created under this section after consultation with the commissioners of agriculture and natural resources. The board may alter, release, or terminate a conservation easement only if the board determines the public interests and general welfare are better served by the alteration, release, or termination. [40.46]

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## WATER BANK PROGRAM

## Sec. 79. [103F.601] WATER BANK PROGRAM.

Subdivision 1. ESTABLISHMENT. (a) The commissioner of natural resources shall establish a water bank program of acquiring interests in land to preserve wetlands, whether or not the wetlands are included in the definition contained in article 7, section 2, subdivision 18.

(b) The commissioner may:

(1) acquire title to wetlands under section 97A.145; or

(2) enter into easement agreements with property owners to preserve wetlands and other waters. [105.392 s. 2]

Subd. 2. EASEMENT AGREEMENTS. (a) The easement agreements must be conservation easements, as defined in section 84C.01, paragraph (1). The conservation easements may be possessory or nonpossessory if agreed upon by the property owner and the commissioner.

(b) The conservation easements must be:

(1) for a period of at least 20 years, with provision for renewal for at least 20-year periods; or

(2) permanent in duration.

(c) Highest priority must be given to property owners desiring to enter agreements for permanent easements.

(d) The commissioner may reexamine the payment rates at the beginning of a 20-year renewal period and adjust them after giving consideration to current land and crop values. [105.392 s. 2]

Subd. 3. EASEMENT AGREEMENT. In the easement agreement between the commissioner and a property owner, the property owner must agree:

(1) to designate eligible wetland areas for placement into the water bank program, which may include wetlands covered by a federal or state government easement that allows agricultural use, together with adjacent areas as determined desirable by the commissioner;

(2) to place designated eligible wetland areas in the program for the period of the agreement;

(3) not to drain, burn, fill, or otherwise destroy the wetland character of the areas, or to use them for agricultural purposes, as determined by the commissioner;

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(4) to implement the wetland conservation and development plan for the property in accordance with the agreement, unless a requirement of the agreement or plan is waived or changed by the commissioner;

(5) that upon violating the agreement during the time the property owner has control of the property covered by the agreement:

(i) to forfeit rights to further payments or grants under the agreement and to refund to the state payments or grants received under the agreement if the commissioner determines that the violation warrants termination of the agreement; or

(ii) to make refunds or accept payment adjustments the commissioner finds appropriate if the commissioner determines that the violation by the owner does not warrant termination of the agreement;

(6) not to adopt a practice specified by the commissioner in an easement as a practice that would tend to defeat the purposes of the easement; and

(7) to additional provisions that the commissioner determines are desirable and includes in the easement to implement the purposes of the program or to facilitate its administration. [105.392 s. 3]

Subd. 4. CONSERVATION AND DEVELOPMENT ADVICE. The commissioner must provide advice about conservation and development practices on the wetlands and adjacent areas to implement this section. [105.392 s. 4]

Subd. 5. EASEMENT PAYMENTS. The commissioner must make payments under this subdivision to the property owner for the water bank easement:

(1) for a permanent easement, 50 percent of the average equalized estimated market value of cropland in the township as established by the commissioner of revenue for the time period when the application is made;

(2) for an easement of limited duration, a lump sum payment equal to 65 percent of the value of the permanent easement value for the time period when the application is made; or

(3) an alternative payment system for easements based on cash rent or a similar system as may be determined by the commissioner. [105.392 s. 4]

Subd. 6. CONVERSION TO PERMANENT EASEMENT. A limited-term easement may be converted to a permanent easement or renewed at the end of the easement period for an additional 20 years by mutual agreement of the commissioner and the property owner, subject to a rate redetermination by the commissioner. [105.392 s. 5]

Subd. 7. CHANGE OF OWNERSHIP. If the property owner sells or  
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otherwise disposes of the ownership or right of occupancy of the property during the easement period, the new property owner must continue the easement under the same terms or conditions. [105.392 s. 5]

Subd. 8. TERMINATION OR CHANGING AGREEMENT. The commissioner may terminate an easement by mutual agreement with the property owner if the commissioner determines that the termination would be in the public interest, and may agree to a modification of terms of the agreement that the commissioner determines desirable to implement the water bank program or facilitate its administration. [105.392 s. 6]

Subd. 9. RULES. The commissioner may adopt rules that include the procedures and payment rates to implement this section. [105.392 s. 1]

#### CLEAN WATER PARTNERSHIP

##### Sec. 80. [103F.701] CITATION.

Sections 80 to 92 may be cited as the "clean water partnership law." [115.091]

##### Sec. 81. [103F.705] PURPOSE.

(a) It is the purpose of the legislature in enacting sections 80 to 92 to protect and improve surface and ground water in the state, through financial and technical assistance to local units of government to control water pollution associated with land use and land management activities.

(b) It is also the purpose of the legislature to:

(1) identify water quality problems and their causes;

(2) direct technical and financial resources to resolve water quality problems and to abate their causes;

(3) provide technical and financial resources to local units of government for implementation of water quality protection and improvement projects;

(4) coordinate a nonpoint source pollution control program with elements of the existing state water quality program and other existing resource management programs; and

(5) provide a legal basis for state implementation of federal laws controlling nonpoint source water pollution. [115.092]

##### Sec. 82. [103F.711] DEFINITIONS.

Subdivision 1. APPLICABILITY. The definitions in this section apply to sections 80 to 92. [115.093 s. 1]

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**Subd. 2. AGENCY.** "Agency" means the pollution control agency. [115.093 s. 2]

**Subd. 3. BEST MANAGEMENT PRACTICES.** "Best management practices" means practices, techniques, and measures, that prevent or reduce water pollution from nonpoint sources by using the most effective and practicable means of achieving water quality goals. Best management practices include, but are not limited to, official controls, structural and nonstructural controls, and operation and maintenance procedures. [115.093 s. 3]

**Subd. 4. COMMISSIONER.** "Commissioner" means the commissioner of the pollution control agency. [115.093 s. 4]

**Subd. 5. LOCAL UNIT OF GOVERNMENT.** "Local unit of government" means a statutory or home rule charter city, town, county, soil and water conservation district, watershed district, an organization formed for the joint exercise of powers under section 471.59, and any other special purpose district or authority exercising authority in water and related land resources management at the local level. [115.093 s. 5]

**Subd. 6. NONPOINT SOURCE.** "Nonpoint source" is a land management activity or land use activity that contributes or may contribute to ground and surface water pollution as a result of runoff, seepage, or percolation and that is not defined as a point source in section 115.01, subdivision 15. Nonpoint sources include rural and urban land management activities and land use activities and specialty land use activities such as transportation. [115.093 s. 6]

**Subd. 7. OFFICIAL CONTROLS.** "Official controls" means ordinances and regulations that control the physical development of the whole or part of a local government unit or that implement the general objectives of the local government unit. [115.093 s. 7]

**Subd. 8. PROJECT.** "Project" means the diagnostic study of water pollution caused by nonpoint sources of water pollution, a plan to implement best management practices, and the physical features constructed or actions taken by a local unit of government to implement best management practices. [115.093 s. 8]

**Subd. 9. WATER POLLUTION.** "Water pollution" means water pollution as defined in section 115.01, subdivision 5. [115.093 s. 9]

**Subd. 10. WATERS OF THE STATE.** "Waters of the state" means waters as defined in section 115.01, subdivision 9. [115.093 s. 10]

**Sec. 83. [103F.715] CLEAN WATER PARTNERSHIP PROGRAM ESTABLISHED.**

A clean water partnership program is established as provided in sections 80 to 92. The agency shall administer the program in accordance with these sections. As a basis for the program, the agency and the metropolitan council shall conduct an assessment of waters in accordance with section 84. The agency shall then provide financial and technical assistance in accordance with section 85 to local units of government for projects in geographical areas that contribute to surface or ground water flows. The projects shall provide for

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protection and improvement of surface and ground water from nonpoint sources of water pollution. [115.094]

Sec. 84. [103F.721] STATEWIDE RESOURCE ASSESSMENT.

The agency shall conduct an assessment of waters of the state that have been polluted by nonpoint sources and of geographical areas with waters of the state that have a high potential for water pollution caused by nonpoint sources. The metropolitan council shall conduct the assessment in the metropolitan area, as defined in section 473.121, subdivision 2, in cooperation with the agency. [115.095]

Sec. 85. [103F.725] FINANCIAL AND TECHNICAL ASSISTANCE.

Subdivision 1. FINANCIAL ASSISTANCE. (a) The agency may award grants for up to 50 percent of the eligible cost for:

- (1) the development of a diagnostic study and implementation plan; and
- (2) the implementation of that plan.

(b) The agency shall determine which costs are eligible costs and grants shall be made and used only for eligible costs. [115.096 s. 1]

Subd. 2. TECHNICAL ASSISTANCE. The agency may provide technical assistance to local units of government to ensure efficient and effective development and implementation of projects and coordination of projects with other water management activities. [115.096 s. 2]

Sec. 86. [103F.731] ELIGIBILITY FOR ASSISTANCE.

Subdivision 1. GENERALLY. To be eligible for the financial or technical assistance or both as provided in section 85, a local unit of government applying for assistance must:

- (1) have authority to coordinate and enter into contracts with local, state, and federal agencies and private organizations, raise funds, and adopt and enforce official controls; and
- (2) provide the agency with those documents required in subdivision 2. [115.097 s. 1]

Subd. 2. DOCUMENTS REQUIRED. (a) An applicant for assistance shall submit the following to the agency:

- (1) an application form as prescribed by the agency;
- (2) evidence that the applicant has consulted with the local soil and water conservation districts and watershed districts, where they exist, in preparing the application; and

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(3) one of the following documents:

(i) the comprehensive water plan authorized under article 2, sections 17 to 28;

(ii) a surface water management plan required under article 2, section 11;

(iii) an overall plan required under chapter 103D; or

(iv) any other local plan that provides an inventory of existing physical and hydrologic information on the area, a general identification of water quality problems and goals, and that demonstrates a local commitment to water quality protection or improvement.

(b) After July 1, 1991, only projects that are a part of, or are responsive to, a local water plan under the comprehensive local water management act, chapter 103D, or article 2, sections 7 to 16, will be eligible under paragraph (a), clause (3).

(c) The document submitted in compliance with paragraph (a), clause (2), must identify existing and potential nonpoint source water pollution problems and must recognize the need and demonstrate the applicant's commitment to abate or prevent water pollution from nonpoint sources in the geographic areas for which the application is submitted. [115.097 s. 2]

#### Sec. 87. [103F.735] AGENCY REVIEW OF APPLICATIONS.

Subdivision 1. RANKING OF APPLICATIONS. The agency shall rank applications for technical and financial assistance in order of priority and shall, within the limits of available appropriations, grant those applications having the highest priority. The agency shall by rule adopt appropriate criteria to determine the priority of projects. [115.098]

Subd. 2. CRITERIA. (a) The criteria shall give the highest priority to projects that best demonstrate compliance with the objectives in paragraphs (b) to (e).

(b) The project demonstrates participation, coordination, and cooperation between local units of government and other public agencies, including soil and water conservation districts or watershed districts, or both those districts.

(c) The degree of water quality improvement or protection is maximized relative to the cost of implementing the best management practices.

(d) Best management practices provide a feasible means to abate or prevent nonpoint source water pollution.

(e) The project goals and objectives are consistent with the state water quality management plans, the statewide resource assessment conducted under  
[Bracketed paragraph notes cite text sources]

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section 84, and other applicable state and local resource management programs. [115.098]

Sec. 88. [103F.741] PLAN IMPLEMENTATION.

Subdivision 1. IMPLEMENTATION ACCORDING TO LAW AND CONTRACT. A local unit of government receiving technical or financial assistance or both from the agency shall carry out the implementation plan approved by the agency according to the terms of the plan, the provisions of a contract or grant agreement made with the agency and according to sections 80 to 92, the rules of the agency, and applicable federal requirements. [115.099 s. 1]

Subd. 2. REVIEW BY AGENCY. The commissioner or the commissioner's designee may, at any reasonable time, inspect any project and review the expenditure of financial assistance funds granted by the agency to determine whether the local unit of government has complied with subdivision 1. [115.099 s. 2]

Subd. 3. ENFORCEMENT OF AGREEMENTS. The agency may bring a civil action in district court to recover from a local governmental unit any financial assistance funds used in violation of subdivision 1. [115.099 s. 3]

Sec. 89. [103F.745] RULES.

The agency shall adopt rules necessary to implement sections 80 to 92. The rules shall contain at a minimum:

(1) procedures to be followed by local units of government in applying for technical or financial assistance or both;

(2) conditions for the administration of assistance;

(3) procedures for the development, evaluation, and implementation of best management practices;

(4) requirements for a diagnostic study and implementation plan;

(5) criteria for the evaluation and approval of a diagnostic study and implementation plan;

(6) criteria for the evaluation of best management practices;

(7) criteria for the ranking of projects in order of priority for assistance;

(8) criteria for defining and evaluating eligible costs and cost-sharing by local units of government applying for assistance; and

(9) other matters as the agency and the commissioner find necessary for the proper administration of sections 80 to 92, including any rules determined by the commissioner to be necessary for the implementation of federal programs to control nonpoint source water pollution. [115.10]

[Bracketed paragraph notes cite text sources]

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**Sec. 90. [103F.751] NONPOINT SOURCE POLLUTION CONTROL PLAN AND PROGRAM EVALUATION.**

To coordinate the programs and activities used to control nonpoint sources of pollution to achieve the state's water quality goals, the agency shall:

(1) develop a state plan for the control of nonpoint source water pollution to meet the requirements of the federal Clean Water Act;

(2) work through the environmental quality board to coordinate the activities and programs of federal, state, and local agencies involved in nonpoint source pollution control and, as appropriate, develop agreements with federal and state agencies to accomplish the purposes and objectives of the state nonpoint source pollution control plan; and

(3) evaluate the effectiveness of programs in achieving water quality goals and recommend to the legislature, under section 3.195, subdivision 1, any necessary amendments to sections 80 to 92. [115.101]

**Sec. 91. [103F.755] INTEGRATION OF DATA.**

The data collected for the activities of the clean water partnership program that have common value for natural resource planning must be provided and integrated into the Minnesota land management information system's geographic and summary data bases according to published data compatibility guidelines. Costs associated with this data delivery must be borne by this activity. [115.102]

**Sec. 92. [103F.761] PUBLIC AGENCY COORDINATION.**

Subdivision 1. PROJECT COORDINATION TEAM; MEMBERSHIP. The commissioner shall establish and chair a project coordination team made up of representatives of the pollution control agency, department of natural resources, board of water and soil resources, department of agriculture, department of health, state planning agency, Minnesota extension service, University of Minnesota agricultural experiment stations, United States Army Corps of Engineers, United States Environmental Protection Agency, United States Department of Agriculture Agricultural Stabilization and Conservation Service, United States Department of Agriculture Soil Conservation Service, metropolitan council, Association of Minnesota Counties, League of Minnesota Cities, Minnesota Association of Townships, and other agencies as the commissioner may determine. [115.103 s. 1]

Subd. 2. DUTIES. The project coordination team shall advise the agency in preparation of rules, evaluate projects, and recommend to the commissioner those projects that the team believes should receive financial or technical assistance or both from the agency. After approval of assistance for a project by the agency, the team shall review project activities and assist in the coordination of the state program with other state and federal resource management programs. [115.103 s. 2]

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## LAKE PRESERVATION AND PROTECTION

Sec. 93. **[103F.801] COUNTY LAKE IMPROVEMENT PROGRAM.**

Subdivision 1. LAKE IMPROVEMENT PROGRAM ESTABLISHED. To preserve and protect lakes and to increase and enhance the use and enjoyment of lakes, a statewide lake improvement program is established to:

(1) preserve the natural character of lakes and their shoreland environment as feasible and practical;

(2) improve the quality of water in lakes;

(3) provide for reasonable assurance of water quantity in lakes, where feasible and practicable; and

(4) assure protection of the lakes from the detrimental effects of human activities and certain natural processes. [378.31 s. 1]

Subd. 2. AUTHORITY. (a) A county board of a county has the authority given in this section with respect to bodies of water located entirely or partially within the boundaries of the county and not situated entirely within the boundaries of a single city or lake conservation district established by law.

(b) After approval by an affected city or lake conservation district, a county board may assume and exercise the authority given in this section with respect to bodies of water located entirely or partially within the city or lake conservation district.

(c) Programs undertaken pursuant to the authority given in this section must be consistent with the statewide water and related land resources plan prepared under the direction of the commissioner of natural resources, and with regional water and related resources plans.

(d) A body of water may not be improved under this section unless the public has access to some portion of the shoreline of the body of water. [378.31 s. 2]

Subd. 3. POWERS. The county boards shall have power to: [378.31 s. 2]

(1) acquire, in the name of the county, by gift or purchase or by condemnation under chapter 117, an existing dam or control works that may affect the level of waters; [378.31 s. 3]

(2) construct and operate water control structures if approved by the commissioner of natural resources under article 7, sections 22 and 39; [378.31 s. 4]

(3) undertake projects to change the course current or cross section of public waters if approved by the commissioner of natural resources under article 7, sections 22 and 39; [378.31 s. 5]

[Bracketed paragraph notes cite text sources]

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(4) improve navigation and to acquire by gift or purchase land, equipment, or other facilities to improve navigation; [378.31 s. 5a]

(5) contract with a board of managers of a watershed district within the county or the board of supervisors of a soil and water conservation district within the county for improvements under chapters 103C and 103D; [378.31 s. 6]

(6) undertake research to determine the condition and development of the body of water and the water entering it and to transmit these studies to the pollution control agency and other interested authorities; [378.31 s. 7]

(7) conduct a program of water improvement and conservation; [378.31 s. 7]

(8) develop and implement the comprehensive plan to eliminate water pollution, provided that construction of any water, sewer, or water and sewer system shall be undertaken in the manner provided by section 444.075 or other applicable laws and not under this section; [378.31 s. 7]

(9) receive financial assistance from and join in projects or enter into contracts with federal and state agencies for the study and treatment of related pollution problems and demonstration programs; [378.31 s. 8]

(10) maintain public beaches, public docks, and other public facilities for access to a body of water; [378.31 s. 9]

(11) make cooperative agreements with the United States or state government or another county or city to implement the provisions of this section; and [378.31 s. 10]

(12) require projects to change the course, current, or cross section of public waters within unincorporated areas to be approved by the county board before submitting an application for a permit to the commissioner as required by article 7, sections 22 and 39. [378.31 s. 11]

Subd. 4. FUNDING. (a) The county board may appropriate money from the general revenue fund of the county to implement this section and article 2, sections 31 to 46. [378.35 s. 1]

(b) The county board may apply for, receive, and disburse federal funds made available to the county by federal law or rules for any purpose related to the powers and duties of the county board. The county board shall comply with requirements of federal law to apply for, receive, and disburse the funds. [378.35 s. 2]

(c) The county board may accept any donations or grants from any public or private concern. The funds received by the county board must be deposited in the county treasury and appropriated for the purpose for which it was received. [378.35 s. 2]

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Subd. 5. TAX LEVIES. The county board may levy taxes to implement authority for water surface use regulation, lake improvement programs, and lake improvement districts on all taxable property within the county, which may be in addition to any amounts levied within a lake improvement district. [378.34]

**Sec. 94. [103F.805] STATE AID FOR LAKE IMPROVEMENTS.**

(a) The commissioner of natural resources, with the help of the pollution control agency and the commissioner of trade and economic development, must:

(1) assess the need for particular kinds of lake improvements, including improvements related to high or low water levels and any other resource management considerations, except pollution problems; and

(2) develop criteria for allocating state aid funds among proposed projects.

(b) The assessment must include provisions to ensure that any federal program of aid to local lake improvement projects reduces the local share of project costs and not only the state's share. [105.484]

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**ARTICLE 7**

**CHAPTER 103G**

**WATERS OF THE STATE**

**GENERAL PROVISIONS**

**Section 1. [103G.001] EFFECT OF CHAPTER 103G ON WATER LAW.**

Chapters 103A, 103B, 103C, 103D, 103E, 103F, and 103G constitute the water law of this state and may be cited as the water law.

**Sec. 2. [103G.005] DEFINITIONS.**

Subdivision 1. APPLICABILITY. The definitions in this section apply to this chapter. [105.37 s. 1]

Subd. 2. ABANDON. "Abandon" means to give up the use and maintenance of structures or improvements to realty and to surrender them to deterioration. Abandon does not refer to intent to surrender or relinquish title to or a possessory interest in the real property where the structures or improvements are located. [105.37 s. 8]

Subd. 3. ALTERED NATURAL WATERCOURSE. "Altered natural watercourse" means a former natural watercourse that has been affected by artificial changes to straighten, deepen, narrow, or widen the original channel. [105.37 s. 11]

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Subd. 4. APPROPRIATING. "Appropriating" means withdrawal, removal, or transfer of water from its source regardless of how the water is used. [105.37 s. 5]

Subd. 5. ARTIFICIAL WATERCOURSE. "Artificial watercourse" means a watercourse artificially constructed by human beings where a natural watercourse was not previously located. [105.37 s. 12]

Subd. 6. BASIN OF ORIGIN. "Basin of origin" means the drainage basin of the Great Lakes, the Red River of the North, the Mississippi River, or the Missouri River. [105.37 s. 17]

Subd. 7. COMMISSIONER. "Commissioner" means the commissioner of natural resources. [105.37 s. 2]

Subd. 8. CONSUMPTIVE USE. "Consumptive use" means water that is withdrawn from its source for immediate further use in the area of the source and is not directly returned to the source. [105.37 s. 18]

Subd. 9. DIRECTOR. "Director" means the director of the division of waters of the department of natural resources. [105.37 s. 4]

Subd. 10. DIVISION. "Division" means the division of waters of the department of natural resources. [105.37 s. 3]

Subd. 11. MEANDERED LAKE. "Meandered lake" means a body of water except streams located within the meander lines shown on plats made by the United States General Land Office. [105.37 s. 13]

Subd. 12. MUNICIPALITY. "Municipality" means a home rule charter or statutory city.

Subd. 13. NATURAL WATERCOURSE. "Natural watercourse" means a natural channel that has definable beds and banks capable of conducting confined runoff from adjacent land. [105.37 s. 10]

Subd. 14. ORDINARY HIGH WATER LEVEL. "Ordinary high water level" means the boundary of waterbasins, watercourses, public waters, and wetlands, and:

(1) the ordinary high water level is an elevation delineating the highest water level that has been maintained for a sufficient period of time to leave evidence upon the landscape, commonly the point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial;

(2) for watercourses, the ordinary high water level is the elevation of the top of the bank of the channel; and

(3) for reservoirs and flowages the ordinary high water level is the operating elevation of the normal summer pool. [105.37 s. 16]

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Subd. 15. PUBLIC WATERS. (a) "Public waters" means:

(1) waterbasins assigned a shoreland management classification by the commissioner under article 6, sections 25 to 29, except wetlands less than 80 acres in size that are classified as natural environment lakes;

(2) waters of the state that have been finally determined to be public waters or navigable waters by a court of competent jurisdiction;

(3) meandered lakes, excluding lakes that have been legally drained;

(4) waterbasins previously designated by the commissioner for management for a specific purpose such as trout lakes and game lakes pursuant to applicable laws;

(5) waterbasins designated as scientific and natural areas under section 84.033;

(6) waterbasins located within and totally surrounded by publicly owned lands;

(7) waterbasins where the state of Minnesota or the federal government holds title to any of the beds or shores, unless the owner declares that the water is not necessary for the purposes of the public ownership;

(8) waterbasins where there is a publicly owned and controlled access that is intended to provide for public access to the waterbasin;

(9) natural and altered watercourses with a total drainage area greater than two square miles;

(10) natural and altered watercourses designated by the commissioner as trout streams; and

(11) wetlands unless the statute expressly states otherwise.

(b) Public waters are not determined exclusively by the proprietorship of the underlying, overlying, or surrounding land or by whether it is a body or stream of water that was navigable in fact or susceptible of being used as a highway for commerce at the time this state was admitted to the union. [105.37 s. 14]

Subd. 16. WATERBASIN. "Waterbasin" means an enclosed natural depression with definable banks, capable of containing water, that may be partly filled with waters of the state and is discernible on aerial photographs. [105.37 s. 9]

Subd. 17. WATERS OF THE STATE. "Waters of the state" means surface or underground waters, except surface waters that are not confined but are spread and diffused over the land. "Waters of the state" includes boundary and inland waters. [105.37 s. 7]

Subd. 18. WETLANDS. "Wetlands" means all types 3, 4, and 5 wetlands, as defined in United States Fish and Wildlife Service Circular No. 39 (1971

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edition), not included within the definition of public waters, that are ten or more acres in size in unincorporated areas or 2-1/2 or more acres in incorporated areas. [105.37 s. 15]

### COMMISSIONER'S AUTHORITY

#### Sec. 3. [103G.101] WATER CONSERVATION PROGRAM.

Subdivision 1. DEVELOPMENT. The commissioner shall develop a water resources conservation program for the state. The program must include conservation, allocation, and development of waters of the state for the best interests of the people. [105.39 s. 1]

Subd. 2. PROGRAM TO GUIDE PERMIT ISSUANCE AND DAMS. The commissioner must be guided by the program in issuing permits for the use and appropriation of the waters of the state and the construction, reconstruction, repair, removal, or abandonment of dams, reservoirs, and other control structures. [105.39 s. 1]

#### Sec. 4. [103G.105] COOPERATION WITH OTHER AGENCIES.

Subdivision 1. COMMISSIONER MAY COOPERATE WITH OTHER STATES AND FEDERAL GOVERNMENT. The commissioner may cooperate and enter into agreements with the United States government, a state department, or a state or country adjacent to this state to implement this chapter. The commissioner may cooperate with departments of the government of the United States in the execution of surveys within the state. [105.49]

Subd. 2. STATE AND LOCAL OFFICIALS MUST COOPERATE IN ENFORCEMENT. Personnel of the pollution control agency, the health department, and county and municipal governments must cooperate with the commissioner in monitoring and enforcing water permits. County attorneys, sheriffs, and other peace officers and other officers having enforcement authority must take all action to the extent of their authority, respectively, that may be necessary or proper for the enforcement of the provisions, rules, standards, orders, or permits specified in this chapter. [105.49]

#### Sec. 5. [103G.111] REPRESENTATION OF STATE IN WATER ISSUES.

Subdivision 1. COMMISSIONER TO APPEAR IN FEDERAL WATER ISSUES. The commissioner may appear, represent, and act for the state in any matter relating to an application to be made to the federal government relating to waters of the state or their use and may act in a manner to protect the interests of the people of the state consistent with this chapter. [105.50]

Subd. 2. DIRECTOR TO APPEAR FOR STATE IN WATER PROCEEDINGS. The director may appear for the state in any matter or proceeding affecting waters of the state to give hydrologic and hydraulic engineering advice and information in connection with the proceeding. [105.40 s. 13]

[Bracketed paragraph notes cite text sources]

New language is indicated by underline, deletions by ~~strikeout~~.



**Sec. 6. [103G.115] ENJOINING WATERFLOW INTERFERENCE OUTSIDE OF STATE.**

If a person, firm, association, corporation, or a state or political subdivision, agency or commission of a state disturbs, obstructs, or interferes with the natural flow or condition of public waters beyond the boundaries of this state in a manner that seriously affects the public welfare and interests of this state, the commissioner may institute proceedings in behalf of this state in a court having jurisdiction to abate or enjoin the continuance of the disturbance, obstruction, or interference. [84.031]

**Sec. 7. [103G.121] COMMISSIONER'S AUTHORITY TO INVESTIGATE AND CONSTRUCT PROJECTS.**

Subdivision 1. SURVEYS AND INVESTIGATIONS. (a) The commissioner may conduct surveys, investigations, and studies, and prepare maps of the waters of the state and topography of the state to implement this chapter.

(b) Under the direction of the commissioner, the director shall be responsible for providing the surveys and engineering investigations required by this chapter. [105.40 s. 1] [105.39 s. 2]

Subd. 2. ACQUISITION OF PROPERTY INCLUDING BY EMINENT DOMAIN. The commissioner may acquire title to private property for an authorized purpose by purchase or by eminent domain. The use of property for projects to implement this chapter is a public purpose. On request by the commissioner, the attorney general shall acquire title to private property for projects under this chapter as provided in chapter 117. [105.39 s. 4]

Subd. 3. CONTRACTS. The commissioner may approve contracts for projects under this chapter and change the plans of the projects when necessary, and supervise, control, and accept the projects when complete. The commissioner may pay for projects and expenses incurred in connection with the projects from funds available to the commissioner. [105.39 s. 5]

**Sec. 8. [103G.125] DIRECTOR'S AUTHORITY.**

Subdivision 1. COOPERATION WITH GOVERNMENT AGENCIES. The director shall cooperate with agencies and departments of the state and federal government relating to projects affecting waters of the state and shall make recommendations to the agencies involved and to the governor about the desirability, feasibility, and practicability of the proposed projects. [105.40 s. 8]

Subd. 2. COOPERATIVE AGREEMENTS. The director, with approval of the commissioner, may make cooperative agreements with and cooperate with any person, corporation, or government authority to implement this chapter. [105.40 s. 14]

Subd. 3. STANDARDS FOR FORMS AND MAPS. The director may adopt rules to standardize forms and maps, sizes of maps, plats, drawings, and specifications in proceedings related to public waters. [105.40 s. 11]

[Bracketed paragraph notes cite text sources]

New language is indicated by underline, deletions by ~~strikeout~~.

Sec. 9. [103G.131] VENUE OF CERTAIN ACTIONS.

Subdivision 1. WATER LOCATED IN ONE COUNTY. Notwithstanding any other law to the contrary, an action for declaratory judgment that is brought under chapter 555 by or against the commissioner must be venued in the county where the water, watercourse, or waterbasin is located, if the water, watercourse, or waterbasin is located in one county. This section applies to actions to determine the validity of the commissioner's final decision regarding:

(1) the classification of waters of the state as public waters; or

(2) the drainage of waterbasins or watercourses as provided in chapter 103E. [105.471]

Subd. 2. WATER LOCATED IN MORE THAN ONE COUNTY. If the water, watercourse, or waterbasin is located in more than one county, then the venue is the judicial district where the majority of the water, watercourse, or waterbasin is located. [105.471]

Sec. 10. [103G.135] ENFORCEMENT OF COMMISSIONER'S ORDERS.

Upon application of the commissioner, the district court of a county where a project is entirely or partially located may by injunction enforce compliance with, or restrain the violation of, an order of the commissioner made under this chapter, or restrain the violation of this chapter. [105.55]

Sec. 11. [103G.141] PENALTIES.

A person is guilty of a misdemeanor who:

(1) undertakes or procures another to undertake an alteration in the course, current, or cross section of public waters or appropriates waters of the state without previously obtaining a permit from the commissioner regardless of whether the commissioner would have granted a permit had an application been filed;

(2) undertakes or procures another to undertake an alteration in the course, current, or cross section of public waters or appropriates waters of the state in violation of or in excess of authority granted under a permit issued by the commissioner, regardless of whether an application had been filed for permission to perform the act involved, or whether the act involved would have been permitted had a proper application been filed;

(3) undertakes or procures another to undertake an alteration in the course, current, or cross section of public waters or appropriates waters of the state after a permit to undertake the project has been denied by the commissioner; or

(4) violates a provision of this chapter. [105.541]

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**Sec. 12. [103G.145] APPLICATION.**

Nothing in this chapter supersedes or amends section 92.45.

**PUBLIC WATERS DESIGNATION AND USE****Sec. 13. [103G.201] PUBLIC WATERS INVENTORY.**

The commissioner shall prepare a public waters inventory map of each county that shows the waters of this state that are designated as public waters under the public waters inventory and classification procedures prescribed under Minnesota Laws 1979, chapter 199. The public waters inventory map for each county must be filed with the auditor of the county. [105.391 s.1]

**Sec. 14. [103G.205] EFFECT OF PUBLIC WATERS DESIGNATION.**

The designation of waters of this state as public waters does not:

- (1) grant the public additional or greater right of access to the waters;
- (2) diminish the right of ownership or usage of the beds underlying the designated public waters;
- (3) affect state law forbidding trespass on private lands; and
- (4) require the commissioner to acquire access to the designated public waters under section 97A.141. [105.391 s. 12]

**Sec. 15. [103G.211] DRAINAGE OF PUBLIC WATERS GENERALLY PROHIBITED WITHOUT REPLACEMENT.**

Except as provided in sections 17 to 20, public waters may not be drained, and a permit authorizing drainage of public waters may not be issued, unless the public waters to be drained are replaced by public waters that will have equal or greater public value. [105.391 s. 3]

**Sec. 16. [103G.215] AGRICULTURAL USE OF PUBLIC WATERS DURING DROUGHT.**

A property owner may use the bed of public waters for pasture or cropland during periods of drought if:

- (1) dikes, ditches, tile lines, or buildings are not constructed; and
- (2) the agricultural use does not result in the drainage of the public waters. [105.391 s. 10]

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## WETLANDS

## Sec. 17. [103G.221] DRAINAGE OF WETLANDS.

Subdivision 1. DRAINAGE OF WETLANDS GENERALLY PROHIBITED WITHOUT REPLACEMENT. Except as provided in subdivisions 2 and 3, wetlands may not be drained, and a permit authorizing drainage of wetlands may not be issued, unless the wetlands to be drained are replaced by wetlands that will have equal or greater public value. [105.391 s. 3]

Subd. 2. DRAINAGE OF WETLANDS FOR CROPLAND. (a) Wetlands that are lawful, feasible, and practical to drain and if drained would provide high quality cropland and that is the projected land use, as determined by the commissioner, may be drained without a permit and without replacement of wetlands of equal or greater public value if the commissioner does not choose, within 60 days of receiving an application for a permit to drain the wetlands to:

(1) place the wetlands in the state water bank program under article 6, section 79; or

(2) acquire them in fee under section 97A.145.

(b) If the commissioner does not make the offer under paragraph (a), clause (1) or (2), to a person applying for a permit, the wetlands may be drained without a permit. [105.391 s. 3]

Subd. 3. PERMIT TO DRAIN WETLANDS TEN YEARS AFTER PUBLIC WATERS DESIGNATION. (a) The owner of property underneath wetlands on privately owned property may apply to the commissioner for a permit to drain the wetlands after ten years from their original designation as public waters. After receiving the application, the commissioner shall review the status of the wetlands and current conditions.

(b) If the commissioner finds that the status of the wetlands and the current conditions make it likely that the economic or other benefits from agricultural use to the owner from drainage would exceed the public benefits of maintaining the wetlands, the commissioner shall grant the application and issue a drainage permit.

(c) If the application is denied, the owner may not apply again for another ten years. [105.391 s. 3]

Sec. 18. [103G.225] STATE WETLANDS AND PUBLIC DRAINAGE SYSTEMS.

If the state owns wetlands on or adjacent to existing public drainage systems, the state shall consider the use of the wetlands as part of the drainage system. If the wetlands interfere with or prevent the authorized functioning of the public drainage system, the state shall provide for necessary work to allow

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proper use and maintenance of the drainage system while still preserving the wetlands. [105.391 s. 11]

Sec. 19. [103G.231] **PROPERTY OWNER'S USE OF WETLANDS.**

Subdivision 1. AGRICULTURAL USE DURING DROUGHT. A property owner may use the bed of wetlands for pasture or cropland during periods of drought if:

(1) dikes, ditches, tile lines, or buildings are not constructed; and

(2) the agricultural use does not result in the drainage of the wetlands. [105.391 s. 10]

Subd. 2. FILLING WETLANDS FOR IRRIGATION BOOMS. A landowner may fill a wetland to accommodate wheeled booms on irrigation devices if the fill does not impede normal drainage. [105.391 s. 10]

Sec. 20. [103G.235] **RESTRICTIONS ON ACCESS TO WETLANDS.**

To protect the public health or safety, local units of government may by ordinance restrict public access to wetlands from municipality, county, or township roads that abut wetlands. [105.391 s. 9]

**WORK AFFECTING PUBLIC WATERS**

Sec. 21. [103G.241] **CONTRACTOR'S RESPONSIBILITY WHEN WORK AFFECTS PUBLIC WATERS.**

Subdivision 1. CONDITIONS FOR EMPLOYEES AND AGENTS TO AFFECT PUBLIC WATERS. An agent or employee of another may not construct, reconstruct, remove, make a change in a reservoir, dam, or waterway obstruction on a public water or in any manner change or diminish the course, current, or cross section of public waters unless the agent or employee has:

(1) obtained a signed statement from the property owner stating that the permits required for the work have been obtained or a permit is not required; and

(2) mailed a copy of the statement to the regional office of the department of natural resources where the proposed work is located. [105.463]

Subd. 2. VIOLATION IS SEPARATE OFFENSE. Violation of this section is a separate and independent offense from other violations of this chapter. [105.463]

Subd. 3. FORM FOR COMPLIANCE WITH THIS SECTION. The commissioner shall develop a form to be distributed to contractors' associations and county auditors to comply with this section. The form must include:

[Bracketed paragraph notes cite text sources]

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- (1) a listing of the activities for which a permit is required;
- (2) a description of the penalties for violating this chapter;
- (3) the mailing addresses and telephone numbers of the regional offices of the department of natural resources;
- (4) a statement that water inventory maps completed according to section 13 are on file with the auditors of the counties; and
- (5) spaces for a description of the work and the names, mailing addresses, and telephone numbers of the person authorizing the work and the agent or employee proposing to undertake it. [105.463]

**Sec. 22. [103G.245] WORK IN PUBLIC WATERS.**

**Subdivision 1. PERMIT REQUIREMENT.** Except as provided in subdivisions 2, 11, and 12, the state, a political subdivision of the state, a public or private corporation, or a person must have a public waters work permit to:

- (1) construct, reconstruct, remove, abandon, transfer ownership of, or make any change in a reservoir, dam, or waterway obstruction on public waters; or
- (2) change or diminish the course, current, or cross section of public waters, entirely or partially within the state, by any means, including filling, excavating, or placing of materials in or on the beds of public waters. [105.42 s. 1]

**Subd. 2. EXCEPTIONS.** A public waters work permit is not required for:

- (1) work in altered natural watercourses that are part of drainage systems established under chapter 103D or 103E if the work in the waters is undertaken according to chapter 103D or 103E; or
- (2) a drainage project for a drainage system established under chapter 103E that does not substantially affect public waters. [105.42 s. 1]

**Subd. 3. PERMIT APPLICATION.** Application for a public waters work permit must be in writing to the commissioner on forms prescribed by the commissioner. [105.42 s. 1]

**Subd. 4. STRUCTURES IN OR ADJACENT TO PUBLIC WATERS OUTSIDE CITIES.** The commissioner, subject to the approval of the county board, may grant and prescribe terms and conditions for granting public waters work permits to establish, construct, maintain, and control wharves, docks, piers, levees, breakwaters, basins, canals, and hangars in or adjacent to public waters of the state, except within the corporate limits of a municipality. [105.42 s. 1]

**Subd. 5. DELEGATION OF PERMIT AUTHORITY TO LOCAL UNITS OF GOVERNMENT.** The commissioner may adopt rules to identify classes of activities in waterbasins and classes of watercourses where the commissioner may delegate public waters work permit authority to the appropriate county or  
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municipality. The public waters work permit authority must be delegated under guidelines of the commissioner and the delegation must be done by agreement with the involved county or municipality and in compliance with section 37. [105.42 s. 1a]

**Subd. 6. CONFORMANCE WITH WATER AND RELATED LAND RESOURCE MANAGEMENT PLANS.** A public waters work permit may not be issued under this section if the project does not conform to state, regional, and local water and related land resources management plans. [105.42 s. 1a]

**Subd. 7. EFFECT ON ENVIRONMENT AND MITIGATION.** (a) A public waters work permit may be issued only if the project will involve a minimum encroachment, change, or damage to the environment, particularly the ecology of the waterway.

(b) If a major change in the resource is justified, public waters work permits must include provisions to compensate for the detrimental aspects of the change. [105.42 s. 1a]

**Subd. 8. EXCAVATION IN PUBLIC WATERS.** Public waters work permits for projects that involve excavation in the beds of public waters may be granted only if:

(1) the area where the excavation will take place is covered by a shoreland zoning ordinance approved by the commissioner;

(2) the work under the permit is consistent with the shoreland zoning ordinance; and

(3) the permit includes provisions for the deposition of excavated materials. [105.42 s. 1a]

**Subd. 9. PROJECT AFFECTING FLOODWATERS.** (a) A public waters work permit for a project affecting floodwaters may be granted only if:

(1) the area covered by the public waters work permit is governed by a floodplain management ordinance approved by the commissioner; and

(2) the conduct authorized by the public waters work permit is consistent with the floodplain management ordinance, if the commissioner has determined that enough information is available for the adoption of a floodplain ordinance.

(b) A public waters work permit involving the control of floodwaters by structural means, such as dams, dikes, levees, and channel improvements, may be granted only after the commissioner has considered all other flood damage reduction alternatives. In developing a policy on placing emergency levees along the banks of public waters under emergency flood conditions, the commissioner shall consult and cooperate with the office of emergency services. [105.42 s. 1a]

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**Subd. 10. CHANGE OF LEVEL OF PUBLIC WATERS.** (a) A public waters work permit that will change the level of public waters may not be issued unless:

(1) the shoreland adjacent to the waters to be changed is governed by a shoreland zoning ordinance approved by the commissioner; and

(2) the change in water level is consistent with the shoreland zoning ordinance.

(b) Standards and procedures for use in deciding the level of public waters must ensure that the rights of all persons are protected when public water levels are changed and must provide for:

(1) technical advice to persons involved;

(2) establishing alternatives to help local agencies resolve water level conflicts;  
and

(3) mechanics necessary for local resolution of water problems within the state guidelines. [105.42 s. 1a]

**Subd. 11. EMERGENCY REPAIRS.** (a) The owner of a dam, reservoir, control structure, or waterway obstruction may make repairs that are immediately necessary in case of emergency without a public waters work permit under subdivision 1. The owner must immediately notify the commissioner of the emergency and of the emergency repairs being made. The owner must apply for a public waters work permit for the emergency repairs and necessary permanent repairs as soon as practicable.

(b) This subdivision does not apply to routine maintenance not affecting the safety of the structures.

(c) If the commissioner declares there is an emergency and repairs or remedial action are immediately necessary to safeguard life and property, the repairs, remedial action, or both, must be started immediately by the owner. [105.42 s. 2]

**Subd. 12. OPERATION OF STRUCTURE PRIOR TO PERMIT REQUIREMENT.** The owner of a dam, reservoir, control structure, or waterway obstruction constructed before a public waters work permit was required by law must maintain and operate the dam, reservoir, control structure, or waterway obstruction in a manner approved and prescribed by rule by the commissioner. [105.42 s. 3]

**Sec. 23. [103G.251] INVESTIGATION OF ACTIVITIES WITHOUT PERMIT.**

**Subdivision 1. INVESTIGATIONS.** If the commissioner determines that an investigation is in the public interest, the commissioner may investigate  
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activities being conducted without a permit that may affect public waters.  
[105.462]

Subd. 2. FINDINGS AND ORDER. (a) With or without a public hearing, the commissioner may make findings and issue orders related to activities being conducted without a permit that affect public waters as otherwise authorized under this chapter.

(b) A copy of the findings and order must be served on the person to whom the order is issued.

(c) If the commissioner issues the findings and order without a hearing, the person to whom the order is issued may file a demand for a hearing with the commissioner. The demand for a hearing must be accompanied by the bond as provided in section 36, subdivision 6, and the hearing must be held in the same manner and with the same requirements as a hearing held under section 36, subdivision 5. The demand for a hearing and bond must be filed by 30 days after the person is served with a copy of the commissioner's order.

(d) The hearing must be conducted as a contested case hearing under chapter 14.

(e) If the person to whom the order is addressed does not demand a hearing or demands a hearing but fails to file the required bond:

(1) the commissioner's order becomes final at the end of 30 days after the person is served with the order; and

(2) the person may not appeal the order. [105.462]

#### WATER DIVERSION AND APPROPRIATION

#### Sec. 24. [103G.255] ALLOCATION AND CONTROL OF PUBLIC WATERS.

The commissioner shall administer:

(1) the use, allocation, and control of public waters;

(2) the establishment, maintenance, and control of lake levels and water storage reservoirs; and

(3) the determination of the ordinary high water level of public waters.  
[105.39 s. 3]

#### Sec. 25. [103G.261] WATER ALLOCATION PRIORITIES.

(a) The commissioner shall adopt rules for allocation of waters based on the following priorities for the consumptive appropriation and use of water:

[Bracketed paragraph notes cite text sources]

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(1) first priority, domestic water supply, excluding industrial and commercial uses of municipal water supply, and use for power production that meets the contingency planning provisions of section 30, subdivision 6;

(2) second priority, a use of water that involves consumption of less than 10,000 gallons of water per day;

(3) third priority, agricultural irrigation, and processing of agricultural products involving consumption in excess of 10,000 gallons per day;

(4) fourth priority, power production in excess of the use provided for in the contingency plan developed under section 30, subdivision 6; and

(5) fifth priority, other uses, involving consumption in excess of 10,000 gallons a day.

(b) For the purposes of this section, "consumption" means water withdrawn from a supply that is lost for immediate further use in the area.

(c) Appropriation and use of surface water from streams during periods of flood flows and high water levels must be encouraged subject to consideration of the purposes for use, quantities to be used, and the number of persons appropriating water.

(d) Appropriation and use of surface water from lakes of less than 500 acres in surface area must be discouraged.

(e) The treatment and reuse of water for nonconsumptive uses shall be discouraged.

(f) Diversions of water from the state for use in other states or regions of the United States or Canada must be discouraged. [105.41 s. 1a]

#### Sec. 26. [103G.265] WATER SUPPLY MANAGEMENT.

Subdivision 1. ASSURANCE OF SUPPLY. The commissioner shall develop and manage water resources to assure an adequate supply to meet long-range seasonal requirements for domestic, municipal, industrial, agricultural, fish and wildlife, recreational, power, navigation, and quality control purposes from waters of the state. [105.405 s. 1]

Subd. 2. DIVERSION GREATER THAN 2,000,000 GALLONS PER DAY. A water use permit or a plan that requires a permit or the commissioner's approval, involving a diversion of waters of the state of more than 2,000,000 gallons per day average in a 30-day period, to a place outside of this state or from the basin of origin within this state may not be granted or approved until:

(1) a determination is made by the commissioner that the water remaining in the basin of origin will be adequate to meet the basin's water resources needs during the specified life of the diversion project; and

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(2) approval of the diversion is given by the legislature. [105.405 s. 2]

**Subd. 3. CONSUMPTIVE USE OF MORE THAN 2,000,000 GALLONS PER DAY.** (a) Except as provided in paragraph (b), a water use permit or a plan that requires a permit or the commissioner's approval, involving a consumptive use of more than 2,000,000 gallons per day average in a 30-day period, may not be granted or approved until:

(1) a determination is made by the commissioner that the water remaining in the basin of origin will be adequate to meet the basin's water resources needs during the specified life of the consumptive use; and

(2) approval of the consumptive use is given by the legislature.

(b) Legislative approval under paragraph (a), clause (2), is not required for a consumptive use in excess of 2,000,000 gallons per day average in a 30-day period for:

(1) a domestic water supply, excluding industrial and commercial uses of a municipal water supply; and

(2) agricultural irrigation and processing of agricultural products. [105.405 s. 3]

**Subd. 4. DIVERSION OR CONSUMPTIVE USE FROM GREAT LAKES GREATER THAN 5,000,000 GALLONS PER DAY.** (a) A water use permit or a plan that requires a permit or the commissioner's approval, involving a diversion or consumptive use of waters of the state from the Great Lakes water basin within this state where the diversion or consumptive use of waters would be more than 5,000,000 gallons per day average in a 30-day period, may not be granted or approved until:

(1) the commissioner has notified and solicited comments on the proposed diversion or consumptive use from the offices of the governors of the Great Lakes states and premiers of the Great Lakes provinces, the appropriate water management agencies of the Great Lakes states and provinces, and the international joint commission;

(2) the commissioner has considered the comments and concerns of the offices, agencies, and commission to which notice was given under clause (1); and

(3) the diversion or consumptive use has been approved by the legislature.

(b) If an objection is made to the proposed diversion or consumptive use by an office, agency, or commission to which notice was given under paragraph (a), clause (1), the commissioner must convene a meeting with the affected office, agency, or commission to investigate and consider the issues involved, and to seek a mutually agreeable solution to be recommended to the commis-

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tioner. In making a final decision on the approval of a permit or plan subject to review under this subdivision, the commissioner shall consider the record of the meeting and the recommendation. The commissioner must send notification of the final decision to each office, agency, or commission to which notice was given under paragraph (a), clause (1). [105.405 s. 4]

Sec. 27. [103G.271] APPROPRIATION AND USE OF WATERS.

Subdivision 1. PERMIT REQUIRED. (a) Except as provided in paragraph (b), the state, a person, partnership, or association, private or public corporation, county, municipality, or other political subdivision of the state may not appropriate or use waters of the state without a water use permit from the commissioner.

(b) This section does not apply to use for a water supply by less than 25 persons for domestic purposes. [105.41 s. 1]

Subd. 2. PERMITS MUST BE CONSISTENT WITH STATE AND LOCAL PLANS. A water use permit may not be issued under this section unless it is consistent with state, regional, and local water and related land resources management plans. [105.41 s. 1]

Subd. 3. PERMIT RESTRICTION DURING SUMMER MONTHS. The commissioner must not modify or restrict the amount of appropriation from a groundwater source authorized in a water use permit issued to irrigate agricultural land under section 32, subdivision 2, between May 1 and October 1, unless the commissioner determines the authorized amount of appropriation endangers a domestic water supply. [105.41 s. 1]

Subd. 4. MINIMUM USE EXEMPTION AND LOCAL APPROVAL OF LOW USE PERMITS. (a) Except for local permits under article 2, section 7, subdivision 4, a water use permit is not required for the appropriation and use of less than a minimum amount prescribed by the commissioner by rule.

(b) Water use permits for more than the minimum amount but less than an intermediate amount prescribed by rule must be processed and approved at the municipal, county, or regional level based on rules adopted by the commissioner.

(c) The rules must include provisions for reporting to the commissioner the amounts of water appropriated under local permits. [105.41 s. 1b]

Subd. 5. CERTAIN COOLING SYSTEM PERMITS PROHIBITED. (a) The commissioner may not issue a water use permit from a groundwater source for a once-through cooling system using in excess of 5,000,000 gallons annually.

(b) For purposes of this subdivision, a once-through cooling system means a cooling or heating system for human comfort that draws a continuous stream of water from a groundwater source to remove or add heat for cooling, heating, or refrigeration.

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Subd. 6. WATER USE PERMIT PROCESSING FEE. (a) Except as described in paragraph (b), a water use permit processing fee not to exceed \$2,000 must be prescribed by the commissioner in accordance with the following schedule of fees for each water use permit in force at any time during the year:

(1) 0.05 cents per 1,000 gallons for the first 50,000,000 gallons per year; and

(2) 0.1 cents per 1,000 gallons for amounts greater than 50,000,000 gallons per year.

(b) For once-through cooling systems as defined in subdivision 5, a water use processing fee must be prescribed by the commissioner in accordance with the following schedule of fees for each water use permit in force at any time during the year:

(1) 5.0 cents per 1,000 gallons until December 31, 1991;

(2) 10.0 cents for 1,000 gallons from January 1, 1992, until December 31, 1996; and

(3) 15.0 cents per 1,000 gallons after January 1, 1997.

(c) The fee is payable based on the amount of water permitted during the year and in no case may the fee be less than \$25.

(d) Failure to pay the fee is sufficient cause for revoking a permit. [105.41 s. 5a]

Subd. 7. TRANSFER OF PERMIT. A water use permit may be transferred to a successive owner of real property if the permittee conveys the real property where the source of water is located. The new owner must notify the commissioner immediately after a water use permit is transferred under this section. [105.41 s. 6]

Sec. 28. [103G.275] INSTALLATION FOR WATER USE.

Subdivision 1. PERMIT REQUIRED. The owner of an installation for appropriating or using waters of the state may not increase the pumping capacity or make any major change in the installation without a water use permit. [105.41 s. 2]

Subd. 2. WATER USE DATA STATEMENT. The owner or person in charge of an installation for appropriating or using waters of the state, whether or not under use permit, must file a water use data statement with the commissioner. The statement must be filed at the time the commissioner determines necessary for the statewide water information system. The water use data statement must be on forms provided by the commissioner and identify the installation's location, its capacity, the purposes for which it is used, and additional information required by the commissioner. [105.41 s. 2]

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Subd. 3. COMMISSIONER'S EXAMINATIONS. The commissioner may examine an installation that appropriates or uses surface water or ground water. The owner of the installation must provide information required by the commissioner. [105.41 s. 3]

**Sec. 29. [103G.281] WATER USE PROHIBITED WITHOUT MEASURING QUANTITIES.**

Subdivision 1. MEASURING AND RECORDS REQUIRED. The state, a political subdivision of the state, a person, partnership, public or private corporation or association may not appropriate or use waters of the state without measuring and keeping a record of the quantity of water used or appropriated as provided in section 27 or 28. [105.41 s. 4]

Subd. 2. MEASURING EQUIPMENT REQUIRED. An installation for appropriating or using water must be equipped with a device or use a method to measure the quantity of water appropriated with reasonable accuracy. The commissioner's determination of the method to be used for measuring water quantity must be based on the quantity of water appropriated or used, the source of water, the method of appropriating or using water, and any other facts supplied to the commissioner. [105.41 s. 4]

Subd. 3. REPORT. (a) Records of the amount of water appropriated or used must be kept for each installation. The readings and the total amount of water appropriated must be reported annually to the commissioner on or before February 15 of the following year on forms provided by the commissioner.

(b) The records must be submitted with the annual water use permit processing fee in section 27. [105.41 s. 5]

**Sec. 30. [103G.285] SURFACE WATER APPROPRIATIONS.**

Subdivision 1. WAIVER. The commissioner may waive a limitation or requirement in subdivisions 2 to 6 for just cause. [105.417 s. 1]

Subd. 2. NATURAL AND ALTERED NATURAL WATERCOURSES. If data are available, permits to appropriate water from natural and altered natural watercourses must be limited so that consumptive appropriations are not made from the watercourses during periods of specified low flows. The purpose of the limit is to safeguard water availability for instream uses and for downstream higher priority users located reasonably near the site of appropriation. [105.417 s. 2]

Subd. 3. WATERBASINS. (a) Permits to appropriate water from waterbasins must be limited so that the collective annual withdrawals do not exceed a total volume of water amounting to one-half acre-foot per acre of waterbasin based on Minnesota department of conservation bulletin No. 25, "An Inventory of Minnesota Lakes," published in 1968.

[Bracketed paragraph notes cite text sources]

New language is indicated by underline, deletions by strikeout.

(b) As a condition to a surface water appropriation permit, the commissioner shall set a protective elevation for the waterbasin, below which an appropriation is not allowed. During the determination of the protective elevation, the commissioner shall consider:

(1) the elevation of important aquatic vegetation characteristics related to fish and wildlife habitat;

(2) existing uses of the waterbasin by the public and riparian landowners; and

(3) the total volume within the waterbasin and the slope of the littoral zone. [105.417 s. 3]

Subd. 4. WATERBASINS LESS THAN 500 ACRES. As part of an application for appropriation of water from a waterbasin less than 500 acres in surface area, the applicant shall obtain a statement of support with as many signatures as the applicant can obtain from property owners with property riparian to the waterbasin. The statement of support must:

(1) state support for the proposed appropriation; and

(2) show the number of property owners whose signatures the applicant could not obtain. [105.417 s. 3]

Subd. 5. TROUT STREAMS. Permits issued after June 3, 1977, to appropriate water from streams designated trout streams by the commissioner's orders under section 97C.021, must be limited to temporary appropriations. [105.417 s. 4]

Subd. 6. CONTINGENCY PLANNING. An application for use of surface waters of the state is not complete until the applicant submits, as part of the application, a contingency plan that describes the alternatives the applicant will use if further appropriation is restricted due to the flow of the stream or the level of a waterbasin. A surface water appropriation may not be allowed unless the contingency plan is feasible or the permittee agrees to withstand the results of not being able to appropriate water. [105.417 s. 5]

### **Sec. 31. [103G.291] PUBLIC WATER SUPPLY APPROPRIATION DURING DEFICIENCY.**

Subdivision 1. DECLARATION AND CONSERVATION. (a) If the governor determines and declares by executive order that there is a critical water deficiency, public water supply authorities appropriating water must adopt and enforce water conservation restrictions within their jurisdiction that are consistent with rules adopted by the commissioner.

(b) The restrictions must limit lawn sprinkling, vehicle washing, golf course and park irrigation, and other nonessential uses, and have appropriate penalties for failure to comply with the restrictions. [105.418]

[Bracketed paragraph notes cite text sources]

New language is indicated by underline, deletions by ~~strikeout~~.

**Subd. 2. MODIFICATION OF APPROPRIATION FOR NONCOMPLIANCE.** Disregard of critical water deficiency orders, even though total appropriation remains less than that permitted, is adequate grounds for immediate modification of a public water supply authority's water use permit. [105.418]

**Sec. 32. [103G.295] IRRIGATION OF AGRICULTURAL LAND.**

**Subdivision 1. RECOMMENDATION AND INFORMATION FOR PUBLIC WATERS APPROPRIATION.** (a) If an application is made for a permit to irrigate agricultural land from public waters, the soil and water conservation district may make recommendations to the commissioner regarding the disposition of the application and its compatibility to a comprehensive soil and water conservation plan approved under article 3, section 19, subdivision 11. The recommendations must be made within 30 days of the receipt of the application.

(b) Within 30 days of receipt of the application the commissioner may require additional specific information from the applicant. [105.44 s. 8]

**Subd. 2. ISSUANCE OR DENIAL OF PERMIT FOR APPROPRIATION FROM PUBLIC WATERS.** After receiving all requested information, the commissioner must review the application and information, consider the soil and water conservation district's recommendations, and issue or deny the permit within 60 days. If the commissioner orders a hearing, the permit must be issued or denied within ten days after receiving the report of the hearing officer. For an application for a permit to irrigate agricultural land, failure of the commissioner to issue or deny a permit within the time specified under this subdivision is considered an order issuing the permit as applied for. The order is effective ten days after the applicant has given written notice to the commissioner stating an intention to proceed with the appropriation of water to irrigate agricultural land. [105.44 s. 8]

**Subd. 3. GROUNDWATER APPROPRIATION PERMIT CLASSIFICATION AREAS.** (a) Water use permit applications required for appropriation of groundwater for agricultural irrigation must be processed in the order received and designated as either class A or class B applications. Class A applications are for wells located in areas for which the commissioner has adequate groundwater availability data. Class B applications are for wells located in other areas.

(b) The commissioner must evaluate available groundwater data, determine its adequacy, and designate class A and B application areas for the entire state. The commissioner shall request, obtain, and evaluate groundwater data from soil and water conservation districts, and where appropriate revise the class A and B application area designations.

(c) The commissioner shall file a commissioner's order with the secretary of state defining class A and B application areas by county and township. Additional areas may be added by a later order of the commissioner. [105.416 s. 1]

[Bracketed paragraph notes cite text sources]

New language is indicated by underline, deletions by ~~strikeout~~.



**Subd. 4. CLASS B PERMIT REQUIREMENTS.** (a) Class B groundwater water use permit applications are not complete until the applicant has supplied:

(1) a summary of the anticipated well depth and subsurface geologic formation expected to be penetrated by the well, including for glacial drift aquifers, the logs of test holes drilled to locate the site of the proposed production well;

(2) the formation and aquifer expected to serve as the groundwater source;

(3) the maximum daily, seasonal and annual pumpage expected;

(4) the anticipated groundwater quality in terms of the measures of quality commonly specified for the proposed water use;

(5) the results of a pumping test supervised by the commissioner or a designee of the commissioner, conducted at a rate not to exceed the proposed pumping rate for not more than 72 continuous hours for wells under water table conditions and not more than 24 continuous hours for wells under artesian conditions; and

(6) when the area of influence of the proposed well is determined, the location of existing wells within the area of influence that were reported according to section 103I.205, subdivision 9, together with readily available facts on depths, geologic formations, pumping and nonpumping water levels and details of well construction as related to the water well construction code.

(b) The commissioner may in any specific application waive any requirements of paragraph (a), clauses (4) to (6) or paragraph (c) if the necessary data are already available.

(c) Before, during, and after the pumping test required in paragraph (a), clause (5), the commissioner shall require monitoring of water levels in one observation well located at a distance from the pumping well that the commissioner has reason to believe may be affected by the new appropriation. The permit applicant is responsible for costs of the pumping tests and monitoring in the observation well. The applicant is responsible for the construction of one observation well if suitable existing wells cannot be located for this purpose. If the commissioner determines that more than one observation well is needed the commissioner shall instruct the applicant to install and monitor more observation wells. The commissioner shall reimburse the applicant for these added costs. [105.416 s. 2]

**Subd. 5. ISSUANCE OF PERMITS FOR GROUNDWATER APPROPRIATION.** The commissioner may issue water use permits for irrigation appropriation from groundwater only if the commissioner determines that:

(1) proposed soil and water conservation measures are adequate based on recommendations of the soil and water conservation districts; and

[Bracketed paragraph notes cite text sources]

New language is indicated by underline, deletions by ~~strikeout~~.

(2) water supply is available for the proposed use without reducing water levels beyond the reach of vicinity wells constructed in accordance with the water well construction code in Minnesota Rules, parts 4725.1900 to 4725.6500. [105.416 s. 3]

**Sec. 33. [103G.297] DIVERSION OR DRAINAGE OF WATER FOR MINING.**

Subdivision 1. AUTHORITY TO ISSUE PERMITS. The commissioner may issue water use permits for the diversion, drainage, control, or use of waters of the state for mining iron ore, taconite, copper, copper-nickel, or nickel as provided in this section. [105.64 s. 1]

Subd. 2. APPLICATION. (a) An owner of the iron ore, taconite, copper, copper-nickel, or nickel deposits or the owner of the right to mine the deposits must apply to the commissioner for a permit in the form prescribed by the commissioner.

(b) Except as otherwise provided in this section, the application and the proceedings related to the application and to a permit issued are governed by the applicable provisions of this chapter. [105.64 s. 2]

Subd. 3. GRANT. The permit may be granted only if the commissioner determines that:

(1) the proposed drainage, diversion, control, or use of waters will be necessary for the mining of substantial deposits of iron ore, taconite, copper, copper-nickel, or nickel, and that another feasible and economical method of mining is not reasonably available;

(2) the proposed drainage, diversion, control, or use of waters will not substantially impair the interests of the public in lands or waters or the substantial beneficial public use of lands or waters except as expressly authorized in the permit and will not endanger public health or safety; and

(3) the proposed mining operations will be in the public interest and the resulting public benefits warrant the proposed drainage, diversion, or control of waters. [105.64 s. 3]

Subd. 4. OPERATION. If the operations authorized by a permit may affect public or private property not owned by the permittee, before proceeding with the operations, the permittee must:

(1) acquire all rights or easements necessary for the operation;

(2) pay or give security for the payment of damages to the property that may result from the operations; and

(3) give evidence of compliance with this subdivision as the commissioner may require. [105.64 s. 4]

[Bracketed paragraph notes cite text sources]

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Subd. 5. LIABILITY OF STATE AND ITS OFFICIALS. The state and its officers, agents, or employees do not incur liability on account of the issuance of a permit or on account of any act or omission of the permittee, or the permittee's agents or employees, under or in connection with the permit. [105.64 s. 4]

Subd. 6. PERMIT PERIOD. (a) Notwithstanding other limitations prescribed by law, a permit must be granted for a term the commissioner finds reasonable and necessary for the completion of the proposed mining operations, and the commissioner may prescribe a time in the permit for the commencement or completion of operations or construction under the permit or the exercise of the rights granted by the permit.

(b) The commissioner may extend the original term of the permit or the time allowed for the performance of its conditions for good cause shown upon application of the permittee. [105.64 s. 5]

Subd. 7. PERMIT CONDITIONS. In a permit, the commissioner may prescribe conditions the commissioner finds necessary and practicable for restoring the waters to their former condition after completion of the mining operations or after expiration or cancellation of the permit. The commissioner may also prescribe other conditions necessary to protect the public health, safety, and welfare, and may require the permittee to furnish a bond to the state in an appropriate form and amount as security for compliance with the conditions of the permit and applicable law. [105.64 s. 5]

Subd. 8. MODIFICATION AND CANCELLATION OF PERMIT. (a) A permit issued under this section is irrevocable for the term of the permit and for any extension of the term except:

(1) the permit may be modified or canceled by the commissioner at the request or with the consent of the permittee upon conditions the commissioner finds necessary to protect the public interest;

(2) subject to appeal as provided for water use permits, the commissioner may modify or cancel a permit as provided in paragraph (b) if:

(i) the permittee or its employees or agents breach the permit's terms or conditions or violate pertinent law; or

(ii) the commissioner finds the modification or cancellation necessary to protect the public health or safety, or to protect the public interests in lands or waters against substantial injury resulting in any manner or to any extent not expressly authorized by the permit, or to prevent substantial injury to persons or property resulting in any manner or to any extent not so authorized; or

(3) the commissioner immediately suspends operations under a permit by written order to the permittee if necessary in an emergency, to protect the public health or safety or to protect public interests in lands or waters against imminent danger of substantial injury in any manner or to any extent not expressly authorized by the permit, or to protect persons or property against the danger, and may require the permittee to take any measures necessary to prevent or remedy the injury.

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(b) The commissioner may modify or cancel the permit upon at least 30 days' written notice to the permittee, stating the grounds of the proposed modification or cancellation and giving the permittee an opportunity to be heard.

(c) An order under paragraph (a), clause (3), may not remain in effect for more than 30 days from the date of the order without giving the permittee at least ten days' written notice of the order and an opportunity to be heard relating to the order. [105.64 s. 6]

Subd. 9. EFFECT ON OTHER LAW. This section does not amend, supersede, or repeal any existing law, but is supplementary to it. [105.64 s. 7]

#### GENERAL PERMIT PROCEDURE

#### Sec. 34. [103G.301] GENERAL PERMIT APPLICATION PROCEDURES.

Subdivision 1. APPLICATION DOCUMENTATION. (a) An application for a permit must be accompanied by:

(1) maps, plans, and specifications describing the proposed appropriation and use of waters;

(2) the changes, additions, repairs, or abandonment proposed to be made;

(3) the public water affected; and

(4) other data the commissioner may require.

(b) The commissioner may require a statement of the effect the actions proposed in the permit application will have on the environment, including:

(1) anticipated changes in water and related land resources;

(2) unavoidable but anticipated detrimental effects; and

(3) alternatives to the actions proposed in the permit. [105.44 s. 1]

Subd. 2. PERMIT APPLICATION FEES. (a) An application for a permit authorized under this chapter, and each request to amend or transfer an existing permit, must be accompanied by a permit application fee to defray the costs of receiving, recording, and processing the application or request to amend or transfer.

(b) The application fee for a permit to appropriate water, a permit to construct or repair a dam that is subject to dam safety inspection, or to apply for the state water bank program is \$75. The application fee for a permit to work in public waters or to divert waters for mining must be at least \$75, but not more than \$500, in accordance with a schedule of fees adopted under section 16A.128. [105.44 s. 10]

[Bracketed paragraph notes cite text sources]

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**Subd. 3. FIELD INSPECTION FEES.** (a) In addition to the application fee, the commissioner may charge a field inspection fee for:

(1) projects requiring a mandatory environmental assessment under chapter 116D;

(2) projects undertaken without a required permit or application; and

(3) projects undertaken in excess of limitations established in an issued permit.

(b) The fee must be at least \$100 but not more than actual inspection costs.

(c) The fee is to cover actual costs related to a permit applied for under this chapter or for a project undertaken without proper authorization.

(d) The commissioner shall establish a schedule of field inspection fees under section 16A.128. The schedule must include actual costs related to field inspection, including investigations of the area affected by the proposed activity, analysis of the proposed activity, consultant services, and subsequent monitoring, if any, of the activity authorized by the permit. [105.44 s. 10]

**Subd. 4. REFUND OF FEES PROHIBITED.** A permit application or field inspection fee may not be refunded for any reason, even if the application is denied or withdrawn. [105.44 s. 10]

**Subd. 5. STATE AND FEDERAL AGENCIES EXEMPT FROM FEE.** A permit application or field inspection fee may not be imposed on any state agency, as defined in section 16B.01, or federal governmental agency applying for a permit. [105.44 s. 10]

**Subd. 6. FILING APPLICATION.** (a) An application for a permit must be filed with the commissioner and if the proposed activity for which the permit is requested is within a municipality, or is within or affects a watershed district or a soil and water conservation district, a copy of the application with maps, plans, and specifications must be served on the mayor of the municipality, the secretary of the board of managers of the watershed district, and the secretary of the board of supervisors of the soil and water conservation district.

(b) If the application is required to be served on a local governmental unit under this subdivision, proof of service must be included with the application and filed with the commissioner. [105.44 s. 1]

**Subd. 7. RECOMMENDATION OF LOCAL UNITS OF GOVERNMENT.** (a) If the proposed activity for which the permit is requested is within a municipality, or is within or affects a watershed district or a soil and water conservation district, the commissioner may obtain a written recommendation of the managers of the district and the board of supervisors of the soil and water conservation district or the mayor of the municipality before issuing or denying the permit.

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(b) The managers, supervisors, or mayor must file a recommendation within 30 days after receiving of a copy of the application for permit. [105.44 s. 2]

**Sec. 35. [103G.305] TIME LIMIT TO ACT ON WATER USE PERMIT APPLICATION.**

Subdivision 1. GENERAL 30-DAY LIMIT. (a) Except as provided in subdivision 2, the commissioner must act on a water use permit within 30 days after the application for the permit and the required data are filed in the commissioner's office.

(b) The commissioner must direct a hearing to be held on a water use permit application or make an order issuing a permit or denying a permit. [105.44 s. 4]

Subd. 2. EXCEPTION. The requirements of subdivision 1 do not apply to applications for a water use permit for:

- (1) appropriations from public waters for irrigation, under section 32;
- (2) appropriations for diversion from the basin of origin of more than 2,000,000 gallons per day average in a 30-day period; or
- (3) appropriations with a consumptive use of more than 2,000,000 gallons per day average for a 30-day period. [105.44 s. 4]

**Sec. 36. [103G.311] PERMIT HEARING.**

Subdivision 1. HEARING REQUIREMENT. A hearing must be conducted as a contested case hearing under chapter 14. [105.44 s. 3]

Subd. 2. HEARING NOTICE. (a) The hearing notice on an application must state:

- (1) the date, place, and time fixed by the commissioner for the hearing; and
- (2) the waters affected, the water levels sought to be established, or control structures proposed.

(b) The hearing notice must be published by the commissioner at the expense of the applicant or, if the proceeding is initiated by the commissioner in the absence of an applicant, at the expense of the commissioner.

(c) The hearing notice must be:

(1) published once a week for two successive weeks before the day of hearing in a legal newspaper published in the county where any part of the affected waters is located;

(2) mailed by the commissioner to the county auditor, the mayor of a

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municipality, the watershed district, and the soil and water conservation district affected by the application; and

(3) made under requirements prescribed by sections 14.57 to 14.59 and rules of the chief administrative law judge. [105.44 s. 5]

**Subd. 3. SUBPOENA OF WITNESSES AND EVIDENCE.** (a) The commissioner may subpoena and compel the attendance of witnesses and the production of books and documents that are material to the purposes of the hearing.

(b) Disobedience of a subpoena is punishable in the same manner as a contempt of the district court. The commissioner must file a complaint of the disobedience of a subpoena with the district court of the county where the subpoena was disobeyed. [105.44 s. 7]

**Subd. 4. WAIVER OF HEARING.** The commissioner may waive a hearing on an application and order the permit to be issued or deny the permit. [105.44 s. 3]

**Subd. 5. DEMAND FOR HEARING.** (a) If a hearing is waived and an order is made issuing or denying the permit, the applicant, the managers of the watershed district, the board of supervisors of the soil and water conservation district, or the mayor of the municipality may file a demand for hearing on the application. The demand for a hearing must be filed within 30 days after mailed notice of the order with the bond required by subdivision 6.

(b) The commissioner must give notice as provided in subdivision 2, hold a hearing on the application, and make a determination on issuing or denying the permit as though the previous order had not been made.

(c) The order issuing or denying the permit becomes final at the end of 30 days after mailed notice of the order to the applicant, the managers of the watershed district, the board of supervisors of the soil and water conservation district, or the mayor of the municipality, and an appeal of the order may not be taken if:

(1) the commissioner waives a hearing and a demand for a hearing is not made; or

(2) a hearing is demanded but a bond is not filed as required by subdivision 6. [105.44 s. 3]

**Subd. 6. BOND FOR DEMANDING PUBLIC HEARING.** (a) An applicant filing a demand for a public hearing must execute and file a corporate surety bond or equivalent security to the state of Minnesota, to be approved by the commissioner and in an amount and form determined by the commissioner. The bond or security must be conditioned to pay the costs of the hearing if the commissioner's order issuing or denying a permit is affirmed without material modification.

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(b) A bond or security is not required of a public authority that demands a public hearing.

(c) The commissioner may waive the requirement for a bond or other security. [105.44 s. 6]

Subd. 7. HEARING COSTS. (a) Except as provided in paragraphs (b) and (c), the costs of a hearing must be paid as prescribed by chapter 14 and the chief administrative law judge.

(b) If a hearing is waived by the commissioner, but the applicant other than a public authority demands a hearing on the application and the commissioner's order is affirmed without material modification, the applicant must pay the following costs up to \$750:

- (1) costs of the stenographic record and transcript;
- (2) rental costs, if any, of the place where the hearing is held; and
- (3) costs of publication of orders made by the commissioner.

(c) If a hearing is waived by the commissioner, but a hearing is demanded by a public authority other than the applicant and the commissioner's order is affirmed without material modification, the public authority making the demand must pay:

- (1) costs of the stenographic record and transcript;
- (2) rental costs, if any, of the place where the hearing is held; and
- (3) costs of publication of orders made by the commissioner. [105.44 s. 6]

#### Sec. 37. [103G.315] DENIAL AND ISSUANCE OF PERMITS.

Subdivision 1. COMMISSIONER'S GENERAL AUTHORITY. The commissioner may deny issuing permits and issue permits with or without conditions. [105.44 s. 2]

Subd. 2. FINDINGS OF FACT. The commissioner shall make findings of fact on issues necessary for determination of the applications considered. Orders made by the commissioner must be based upon findings of fact made on substantial evidence. The commissioner may have investigations made. The facts disclosed by investigation must be put in evidence at the hearing. [105.45]

Subd. 3. ISSUANCE OF PERMIT. If the commissioner concludes that the plans of the applicant are reasonable, practical, and will adequately protect public safety and promote the public welfare, the commissioner shall grant the permit. [105.45]

Subd. 4. CONTROL LEVELS. If they are in issue, the commissioner shall also fix the control levels of public waters accordingly. [105.45]

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**Subd. 5. DENIAL; MODIFICATIONS.** Otherwise the commissioner shall reject the application or may require modification of the plan as the commissioner finds proper to protect the public interest. [105.45]

**Subd. 6. BURDEN OF PROOF; CONDITIONS.** (a) In permit applications the applicant has the burden of proving that the proposed project is reasonable, practical, and will adequately protect public safety and promote the public welfare.

(b) In granting a permit, the commissioner may include in it terms and reservations about the amount and manner of the use or appropriation or method of construction or operation of controls as appear reasonably necessary for the safety and welfare of the people of the state. [105.45]

**Subd. 7. RESTORING EFFECTS OF UNLAWFUL ACTIVITIES.** (a) The commissioner may include in an order issuing or denying a permit, a requirement for the applicant to take an action necessary to restore the public waters or their beds to the condition existing before unlawful activities, if any, were undertaken by the applicant. The restoration may include filling beds unlawfully dredged, removing fill unlawfully placed, or restoring water unlawfully appropriated.

(b) If a hearing on the application was not held, the applicant may contest the order within 30 days of receiving it and must be given a contested case hearing as prescribed by chapter 14. [105.461]

**Subd. 8. NOTICE OF PERMIT ORDER.** Notice of orders made after hearing must be given by publication of the order once a week for two successive weeks in a legal newspaper in the county where the hearing was held and by mailing copies of the order to parties who entered an appearance at the hearing. [105.45]

**Subd. 9. TIME FOR ISSUANCE OF ORDER.** The commissioner shall make an order within 60 days after the completion of the hearing. [105.45]

**Subd. 10. CHARGES FOR EXCAVATION OF MINERALS.** The commissioner must impose charges for the excavation of minerals from the beds of public waters, as provided in chapter 93. [105.44 s. 1a]

**Subd. 11. LIMITATIONS ON PERMITS.** (a) Except as otherwise expressly provided by law, a permit issued by the commissioner under this chapter is subject to:

(1) cancellation by the commissioner at any time if necessary to protect the public interests;

(2) further conditions on the term of the permit or its cancellation as the commissioner may prescribe and amend and reissue the permit; and

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(3) applicable law existing before or after the issuance of the permit.

(b) Permits issued to irrigate agricultural land under section 32, or considered issued, are subject to this subdivision, and are subject to cancellation by the commissioner upon the recommendation of the supervisors of the soil and water conservation district where the land to be irrigated is located. [105.44 s.9]

Subd. 12. PERMIT NOT ISSUED UNTIL FEES ARE PAID. Except for field inspection fees related to monitoring, the commissioner may not issue a permit until all fees required by this section relating to the issuance of a permit have been paid. The time limits prescribed by section 35, subdivision 1, do not apply to an application for which the appropriate fee has not been paid. Field inspection fees relating to monitoring of an activity authorized by a permit may be charged and collected as necessary at any time after the issuance of the permit. [105.44 s. 10]

Subd. 13. PERIOD FOR ACTIVITIES UNDER PERMIT. (a) The commissioner shall set the time period within which:

(1) construction authorized in the permit must be completed; or

(2) an appropriation or use of water must be made.

(b) The time must not exceed five years from the date of the permit.

(c) The time period may be extended by the commissioner after application and for good cause demonstrated by the permittee. [105.46]

Subd. 14. IRREVOCABILITY OF CERTAIN PERMITS RELATED TO MINING. (a) Permits granted in connection with the mining, transporting, concentration, or shipment of taconite as defined in section 93.20, subdivision 18, and permits granted in connection with the mining, production, or beneficiation of copper, copper-nickel, or nickel, are irrevocable for the term of the permits without the consent of the permittee, except for breach or nonperformance of any condition of the permit by the permittee.

(b) The commissioner may allow and prescribe in the permit any time the commissioner considers reasonable, notwithstanding the limitations under subdivision 13, limitations of time contained in this section for beginning or completing construction or operations under the permit, or exercising the rights granted under the permit.

(c) The commissioner may extend the time, for cause shown, upon the application of the permittee. [105.46]

Subd. 15. RULES FOR ISSUANCE AND DENIAL OF PERMITS. The commissioner shall adopt rules prescribing standards and criteria for issuing and denying water use permits, public waters work permits, and water level control permits issued under section 39. [105.415]

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## WATER LEVEL ESTABLISHMENT AND CONTROL

**Sec. 38. [103G.401] APPLICATION FOR ESTABLISHMENT OF LAKE LEVELS.**

(a) Applications for authority to establish and maintain levels of public waters and applications to establish the natural ordinary high water level of public waters may be made to the commissioner by a public body or authority or by a majority of the riparian owners on the public waters.

(b) To conserve or utilize the water resources of the state, the commissioner may initiate proceedings to establish and maintain the level of public waters. [105.43]

**Sec. 39. [103G.405] WATER LEVEL CONTROL FOR LANDLOCKED LAKES.**

The commissioner must issue a water level control permit to establish control elevations for landlocked lakes up to three feet below the ordinary high water level for the lake, if:

(1) the commissioner finds that control is necessary to prevent flooding of homesteads;

(2) other reasonable or cost-effective alternatives are not available; and

(3) a change in the control elevation is prescribed in an approved stormwater plan under article 2, section 12. [105.42 s. 4]

**Sec. 40. [103G.411] STIPULATION OF LOW-WATER MARK.**

If the state is a party in a civil action relating to the navigability or ownership of the bed of a body of water, river, or stream, the commissioner, in behalf of the state, with the approval of the attorney general, may agree by written stipulation with a riparian owner who is a party to the action on the location of the ordinary low-water mark on the riparian land of the party. After the stipulation is executed by all parties, it must be presented to the judge of the district court where the action is pending for approval. If the stipulation is approved, the judge shall make and enter an order providing that the final judgment when entered shall conform to the location of the ordinary, low-water mark as provided for in the stipulation as it relates to the parties to the stipulation. [84.032]

## BIG STONE LAKE

**Sec. 41. [103G.415] BIG STONE LAKE, SEASONAL WATER LEVEL.**

Subdivision 1. DESIRABLE WATER LEVEL ELEVATION DETERMINED. The most desirable and beneficial level for the waters of Big Stone  
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Lake from May 1 to October 1 is elevation 967, project datum, and the director of game and fish of South Dakota and the commissioner of natural resources of Minnesota shall maintain and operate the Big Stone control dam in conformance with this elevation. [110.46 s. 2; 114.12]

**Subd. 2. REGULATION AT LEVELS LESS THAN DESIRABLE ELEVATION.** When the water elevation of Big Stone Lake is 967, or less, project datum:

(1) stop logs must be kept in place and maintained in the outlet dam of Big Stone Lake; and

(2) the outflow from the outlet dam must be regulated not to exceed 100 cubic feet per second. [114.12]

### MISSISSIPPI HEADWATER LAKES

#### Sec. 42. [103G.421] CONTROL OF MISSISSIPPI HEADWATER LAKES.

**Subdivision 1. REASON FOR CONTROL.** The legislature finds that the regulation, control, and utilization of waters in the headwater lakes in the Mississippi river, including Leech Lake, Winnibigoshish Lake, Pokegama Lake, Pine river, the Whitefish chain, Sandy Lake and Gull Lake are of tremendous economic importance and value to the state and the utility of these lakes in aid of navigation has been very greatly diminished since the time of the establishment of the reservoirs, and that the economic values in utilization of these waters for state purposes has increased tremendously. These factors require the assertion on the part of the state of Minnesota of its rights to utilization and control of these water areas. [110.47]

**Subd. 2. JOINT FEDERAL-STATE CONTROL.** The commissioner shall enter into cooperative agreements with the United States of America acting through the Department of the Army for the joint control and regulation of the Mississippi headwater reservoirs to control the water elevations and the water discharges from the Mississippi headwaters lakes in the interests of the state, subject only to:

(1) a paramount need of waters from these sources in aid of substantial navigation requirements; and

(2) a substantial requirement of providing necessary flood control storage capacity as determined by the United States Department of the Army Corps of Engineers. [110.48]

**Subd. 3. PLAN FOR DAM OPERATION.** (a) The commissioner must develop a plan for the operation of the dams controlling each of the Mississippi headwater reservoirs that:

(1) establishes the water elevation on each of the Mississippi headwater lakes at the most desirable height, and stabilizes the stages at that point, as practicable, during the recreational use season;

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(2) considers reasonable fluctuations when desirable for the production of wild rice in the wild rice producing areas of Mississippi headwater lakes;

(3) considers the elevations most desirable for the production and maintenance of wildlife resources;

(4) considers the needs of water for recreation, agriculture, forestry, game and fish, industry, municipal water supply and sewage disposal, power generation, and other purposes in the Mississippi river headwaters and downstream;

(5) establishes stages at which the water will be maintained, as practicable, but recognizing the following minimum stages in reference to present zeros on the respective government gauges:

- (i) Leech Lake .....0.0;
- (ii) Winnibigoshish Lake ....6.0;
- (iii) Pokegama Lake .....6.0;
- (iv) Sandy Lake .....7.0;
- (v) Pine River .....9.0;
- (vi) Gull Lake .....5.0;

(6) prescribes maximum discharges when the elevations fall below the stages; and

(7) prescribes maximum elevations and amounts of discharge from each lake to stabilize and effectuate the desired stages and, as practicable, does not allow the elevation to exceed the following maximum lake stages:

- (i) Leech Lake .....3.5;
- (ii) Winnibigoshish Lake ....12.0;
- (iii) Pokegama Lake .....12.0;
- (iv) Sandy Lake .....11.0;
- (v) Pine River .....14.0;
- (vi) Gull Lake .....7.0. [110.49]

(b) The plan developed by the commissioner must consider the following conditions:

(1) the necessity for changing discharges to meet emergencies resulting from unexpected or abnormal inflows;

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(2) the possibility of overriding requirements of the federal government for substantial discharges to meet reasonable and substantial navigation requirements; and

(3) the overriding authority and needs as prescribed by the United States Department of the Army Corps of Engineers in discharging their functions of requiring additional storage capacity for flood control purposes. [110.50]

Subd. 4. NOTICE OF PLAN. Before the plan of operation for a headwater lake is effective, the commissioner must publish a notice of hearing on the plan of operation for two weeks in a newspaper in each county where the affected waters are located. [110.51]

Subd. 5. HEARING ON PLAN. (a) The hearing must be conducted by the commissioner or an appointed referee. The hearing will not be governed by legal rules of evidence, but the findings of fact and orders, to be made and formulated by the commissioner, must be predicated only on relevant, material, and competent evidence.

(b) Interested parties must have an opportunity to be heard, under oath, and are subject to cross examination by adverse parties and by the attorney general or the attorney general's representative who shall represent the commissioner at the hearing.

(c) The findings of fact and orders incorporating the plan determined by the commissioner must be published for two weeks in the same manner as the notice of hearing. [110.51]

Subd. 6. APPEAL. A riparian owner or water user aggrieved by the commissioner's findings has the right to appeal by 30 days after completion of publication of the findings and order to the district court of a county where the regulated water is located. The appeal shall be determined by the court on the record made before the commissioner. Issues on the appeal are limited to the legal rights of the parties and whether the findings of the commissioner are reasonably supported by the evidence at the hearing. [110.52]

Subd. 7. MODIFICATIONS. (a) After a plan has been put into effect, the commissioner is authorized to modify the stages sought to be maintained by modifying the plan with respect to any of the lakes involved to the extent of one foot in elevation according to the zeros of the present government gauges without holding additional hearings, except a departure from the elevation target may not be made to reduce proposed stages below the minimums prescribed by subdivision 3, paragraph (a), clause (5), during the recreational season.

(b) A modification of the established plan that departs by more than one foot in elevation may be placed into effect only after a hearing is held in the same manner as the hearing establishing the plan as provided under subdivisions 4 and 5. [110.53]

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## DAM CONSTRUCTION AND MAINTENANCE

## Sec. 43. [103G.501] CONSTRUCTION OF PRIVATE DAMS ON NON-NAVIGABLE WATERS.

Subdivision 1. PROCEDURE TO REQUIRE FLOWAGE RIGHTS. If a person desires to raise and extend or erect and maintain a dam on the person's property across a stream or other watercourse that is not navigable to create or improve a waterpower for milling or manufacturing purposes and property owned by other persons will be overflowed or otherwise damaged, the person desiring to erect or extend or raise the dam may acquire the right to do so by petitioning the court and having damages ascertained and paid as prescribed in chapter 117. [110.14]

Subd. 2. DAM MAY NOT DAMAGE PREVIOUS WATERPOWER. A dam may not be erected, raised, or maintained under this section that damages a waterpower previously developed. [110.14]

Subd. 3. PROJECT AND REPAIR COMPLETION TIMES. If the right to erect, raise, or extend a dam is acquired under subdivision 1, the project must be started within one year, completed, and the waterpower applied to the purpose stated in the petition within three years after the right to erect, raise, or extend the dam is acquired. If a dam or the machinery connected with the dam is destroyed, the rebuilding of the dam or machinery must be started and completed within the same periods after the destruction. [110.15]

Subd. 4. FORFEITURE. Failure to comply with subdivision 3 or failure to operate a mill or machinery for one consecutive year after it is erected forfeits the rights acquired under subdivision 1 unless the owner is an infant, or is otherwise legally disabled, in which case the periods under this section begin after the disability is removed. [110.15]

## Sec. 44. [103G.505] DAM CONSTRUCTION AND MAINTENANCE BY STATE.

Subdivision 1. AUTHORIZATION. The commissioner may construct, maintain, and operate dikes, dams, and other structures necessary to maintain uniform water levels established under this chapter to improve navigation, protect and improve domestic water supply, protect and preserve fish and other wildlife, protect the public interest in the shore and shorelines of public waters, and promote public health. [105.48]

Subd. 2. AUTHORITY TO ACQUIRE LAND. The commissioner may acquire lands or any necessary interest in lands by purchase, gift, or condemnation. [105.48]

Subd. 3. OPERATION OF DAMS ON STATE PROPERTY. Dams owned by the state or built on property owned or controlled by the state must be maintained under the direction of the commissioner and operated under the commissioner's direction and control. [105.48]

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Subd. 4. ACCEPTANCE OF LOCAL FUNDING. The commissioner may accept funds from local governmental and civic agencies or persons to acquire property for or to construct, maintain, or operate dams and control structures. [105.48]

**Sec. 45. [103G.511] PUBLICLY-OWNED DAM REPAIR.**

Subdivision 1. AUTHORIZATION. The commissioner may:

(1) repair or reconstruct state-owned dams;

(2) make engineering evaluations related to the repair or reconstruction of dams owned by local governmental units; and

(3) grant aid to local governmental units to repair or reconstruct dams owned by local governmental units. [105.482 s. 3]

Subd. 2. ENGINEERING EVALUATIONS. The engineering evaluations may include studies of the feasibility, practicality, and environmental effects of using dams for hydroelectric power generation. [105.482 s. 3]

Subd. 3. FUNDING. (a) Except as provided in this section, a grant to a local government unit may not exceed the amount contributed to the project by the local government unit from local funds.

(b) Federal general revenue sharing money may be counted as local funds, but other federal grants or loans must be used to reduce equally the state share and the local share of project costs. [105.482 s. 3]

(c) A grant to study the feasibility, practicality, and environmental effects of using a dam for hydroelectric power generation may be for an amount up to 90 percent of the costs of the study. [105.482 s. 3]

Subd. 4. INVESTIGATION. The commissioner may repair or reconstruct a state-owned dam or make a grant to a local governmental unit only after making an investigation of the dam. [105.482 s. 4]

Subd. 5. APPLICATION. A local governmental unit desiring a grant for the repair or reconstruction of a dam may apply for the grant on forms supplied by the commissioner.

Subd. 6. DETERMINATION OF GRANT. The commissioner shall consider all relevant factors in determining whether to repair or reconstruct a state-owned dam or to make a grant to a local governmental unit including:

(1) the age and type of construction of the dam;

(2) the use of the dam for water supply, flood control, navigation, hydroelectric power generation, recreation, wildlife management, scenic value, or other purposes related to public health, safety, and welfare;

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- (3) the consequences of abandonment, removal, or alteration of the dam;
- (4) prospective future uses of the dam; and
- (5) the relative importance of the dam to the statewide water resource program. [105.482 s. 4]

**Subd. 7. HEARING.** The commissioner may hold a public hearing under section 36 on the proposed repair or reconstruction after giving notice. If the hearing is held at the request of a local government unit, the costs of publishing notice and of taking and preparing the stenographic record must be paid by the local government unit. [105.482 s. 4]

**Subd. 8. OPERATION AGREEMENT.** To receive a grant the local government unit must enter into an agreement with the commissioner giving assurance that the government unit will operate and maintain the dam in a safe condition for the benefit of the public and must agree to other conditions the commissioner considers reasonable. [105.482 s. 4]

**Subd. 9. LIMITATIONS.** (a) If the cost of repair or reconstruction of a state-owned dam or a grant to a local government unit is less than \$250,000, the commissioner may direct that the state-owned dam be repaired or reconstructed or that a grant be made to repair or reconstruct a dam owned by a local government unit.

(b) If the cost of repair or reconstruction of a state-owned claim or grant to a local government unit is \$250,000 or more, the commissioner may recommend the project to the legislature for its consideration and action, except in an emergency under paragraph (c).

(c) The commissioner, with the approval of the commissioner of finance after consulting with the legislative advisory commission, may direct that a state-owned dam be repaired or reconstructed or a grant be made to a local government unit if the commissioner determines that an emergency exists and:

- (1) there is danger that life will be lost; or
- (2) that substantial property losses will be suffered if action is not promptly taken. [105.482 s. 5]

**Subd. 10. LOANS FOR LOCAL SHARE OF PROJECT COSTS.** (a) If the commissioner decides to recommend a dam repair or reconstruction grant for a local government unit to the legislature, the commissioner must notify the local government unit and the commissioner of finance of the decision. After being notified by the commissioner of natural resources, the local government unit may apply to the commissioner of finance on forms supplied by the commissioner of finance for a loan up to 90 percent of the local share of the project costs.

(b) The loan is repayable over a period not longer than 20 years, with interest at a rate sufficient to cover the cost to the state of borrowing the money.

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(c) A local government unit receiving a dam safety loan must levy for the loan payment in the year the loan proceeds were received and each later year, until the loan is paid. The levy must be for:

(1) the amount of the annual loan payment; or

(2) the amount of the loan payment less the amount the local government unit certifies is available from other sources for the loan payment.

(d) Upon approval of the project grant by the legislature, the commissioner of finance shall make the loan in an amount and on terms that are appropriate. Loans made under this subdivision do not require approval by the electors of the local government unit as provided in section 475.58.

(e) Principal and interest payments received by the commissioner of finance in repayment of these loans are appropriated to the state building bond account. [105.482 s. 5a]

**Subd. 11. COMMISSIONER'S ORDER TO REPAIR OR RECONSTRUCT A DAM.**

(a) If a local government unit fails to comply with a commissioner's order to repair or remove a dam under section 46, the commissioner may repair or remove the dam as provided in this subdivision.

(b) The commissioner must hold a hearing under section 36 on the failure of the local government unit to repair or remove the dam. After the hearing, the commissioner must make findings specifying the failure of the local government unit to act and shall, by order, assume the powers of the legislative authority of the local government unit in regard to the repair or removal of dams.

(c) After issuing the order, the commissioner has the same powers, insofar as applicable to the repair or removal of dams, as the commissioners of administration and the pollution control agency have in the construction, installation, maintenance, or operation of a municipal disposal system, or part of a system, or issuing bonds and levying taxes under section 115.48. [105.482 s. 6]

**Subd. 12. PRIORITY LIST OF DAMS NEEDING REPAIR.** After reviewing examinations of dams owned by the state and local government units, the commissioner shall prioritize the state and local government unit dams in need of repair or reconstruction and report annually to the legislature. The commissioner must prioritize projects considering danger to life, damage to property, and the factors listed in subdivision 6. [105.482 s. 7]

**Sec. 46. [103G.515] EXAMINATION AND REPAIR OF DAMS AND RESERVOIRS.**

**Subdivision 1. EXAMINATION OF STRUCTURE.** The commissioner may examine a reservoir, dam, control structure, or waterway obstruction after  
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receiving a complaint or determining an examination is needed. The commissioner, or an authorized agent, must be granted access at any reasonable time to examine the reservoir, dam, control structure, or waterway obstruction. [105.52]

Subd. 2. ADDITIONAL ENGINEERING INVESTIGATIONS. (a) After making an examination, if the commissioner determines that additional engineering investigations are necessary to determine the safety of a dam, reservoir, control structure, or waterway obstruction and the nature and extent of the necessary repairs or alterations, the commissioner must notify the owner to have investigations made at the owner's expense.

(b) The result of the investigation must be filed with the commissioner for use in determining the condition of the structures and the need for their repair, alteration, or removal. [105.52]

Subd. 3. REPAIR, ALTERATION, OR REMOVAL REQUIRED. (a) If the commissioner determines that the reservoir, dam, control structure, or waterway obstruction is unsafe or needs repair or alteration, the commissioner shall notify the owner of the structure with an order to repair, alter, or remove the structure. The order must be issued in the same manner as if the owner had applied for a permit for the repairs, alterations, or removal.

(b) The engineering investigations or the work of repair, alteration, or removal must begin and be completed within a reasonable time prescribed by the commissioner. [105.52]

Subd. 4. DAM INSPECTION FEE. (a) The commissioner shall adopt rules which must include a fee schedule to cover the cost of dam inspection and must classify structures to adequately define risks and hazards involved in relation to public health, safety, and welfare.

(b) The rules may not impose a field inspection fee on any state agency, political subdivision of the state, or federal governmental agency. [105.535]

**Sec. 47. [103G.521] TRANSFER OF AUTHORITY OVER STATE DAMS.**

Subdivision 1. APPLICATION FOR TRANSFER. (a) Upon application by resolution of the governing body of a local government unit authorized to maintain and operate dams or other control structures affecting public waters, the commissioner with the approval of the executive council, may transfer to the local government unit the custody of a dam or other control structures owned by the state and under the supervision or control of the commissioner if the commissioner determines that the transfer will promote the best interests of the public. The transfer must be made by order of the commissioner on the terms and conditions the commissioner sets for maintenance and operation of the project.

(b) In connection with the transfer, the commissioner may convey land,

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easements, or other state property pertaining to the project to the transferee by deed or another appropriate instrument in the name of the state, subject to conditions and reservations prescribed by the commissioner. A duplicate of each order, conveyance, or other instrument executed by the commissioner in connection with a transfer must be filed with the commissioner of finance. [105.63 s. 1]

Subd. 2. PAYMENT FOR TRANSFER. A transfer may be made with or without payment of money to the state, as agreed upon between the commissioner and the transferee. If a payment is received as part of the transfer, the amount must be deposited into the state treasury and credited to the general fund. [105.63 s. 2]

**Sec. 48. [103G.525] LIMITATIONS ON TRANSFERS OF OWNERSHIP OF DAMS.**

The state, a state department or agency, a county, municipality, town, or other governmental entity may not purchase or accept as a gift a privately owned dam subject to permit requirements until:

- (1) the commissioner has examined the dam;
- (2) the commissioner has prepared a report of the examination;
- (3) the report has been filed with the legislature; and
- (4) the legislature has had an opportunity to consider the report and has not prohibited the purchase or gift during the legislative session in which the report is filed, or, if the report is filed when the legislature is not in session, the legislature has not prohibited the gift or purchase at the next session. [105.521]

**Sec. 49. [103G.531] DAM PERMIT EXCEPTIONS.**

Subdivision 1. PERMIT NOT REQUIRED FOR ORIGINAL CONSTRUCTION OF STRUCTURES BEFORE JULY 1, 1937. This chapter does not authorize the commissioner to require a permit for the original construction of dams, reservoirs, or control works in existence on and before July 1, 1937. [105.53]

Subd. 2. MINOR DAM EXCLUSION. The commissioner shall adopt rules that exclude minor dams such as those less than six feet in height or that impound less than 50 acre-feet of water storage at maximum storage elevations from permit requirements. The rules do not apply to a barrier six feet or less in height, regardless of storage capacity, or to a barrier creating a storage capacity at maximum water storage elevation of 15 acre-feet or less, regardless of height. [105.535]

**Sec. 50. [103G.535] HYDROPOWER GENERATION.**

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Subdivision 1. PUBLIC PURPOSE. The legislature finds that:

(1) the public health, safety, and welfare of the state is also promoted by the use of state waters to produce hydroelectric or hydromechanical power in a manner consistent with laws relating to dam construction, reconstruction, repair, and maintenance; and

(2) the leasing of existing dams and potential dam sites primarily for power generation is a valid public purpose. [105.482 s. 8]

Subd. 2. AUTHORITY FOR LEASE OF SITES. A local government unit, or the commissioner with the approval of the state executive council for state-owned dams, may provide by a lease or development agreement for the development and operation of dams, dam sites, and hydroelectric or hydromechanical power generation plants by an individual, a corporation, an organization, or other legal entity on terms and conditions in subdivision 5. [105.482 s. 8]

Subd. 3. INSTALLATIONS LESS THAN 15,000 KILOWATTS UNUSED ON JANUARY 1, 1984. If an installation of 15,000 kilowatts or less at a dam site and reservoir was unused on January 1, 1984, in connection with the production of hydroelectric or hydromechanical power, the lease or development agreement negotiated by the local government unit and the developer constitutes full payment by the lessee and may be in lieu of all real or personal property taxes that might otherwise be due to a local government unit. [105.482 s. 8]

Subd. 4. MUNICIPALITY OR TOWN APPROVAL. If the dam, dam site, or power generation plant is located in or contiguous to a municipality or town, other than the lessor local government unit, the lease or agreement is not effective unless it is approved by the governing body of the municipality or town. [105.482 s. 8]

Subd. 5. CONTENTS OF DEVELOPMENT AGREEMENT. (a) An agreement for the development or redevelopment of a hydropower sight must contain provisions to assure the maximum financial return to the local government unit or the commissioner. [105.482 s. 9]

(b) An agreement may contain:

(1) the period of the development agreement up to 99 years, subject to negotiations between the parties, and conditions for extension, modification, or termination;

(2) provisions for a performance bond on the developer or certification that the equipment and its installation have a design life at least as long as the lease; and

(3) provisions to assure adequate maintenance and safety in impoundment structures and access to recreational sites. [105.482 s. 9]

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**Sec. 51. [103G.541] MUNICIPAL DAMS ON RED RIVER OF THE NORTH.**

**Subdivision 1. AUTHORITY TO CONSTRUCT DAM.** A municipality owning or permanently controlling property where a proposed dam is to be constructed may:

(1) construct a dam on the property and across that portion of the Red River of the North that forms a part of the boundary common to this state and the state of North Dakota to conserve water for municipal, commercial, and domestic use; and

(2) construct, in connection with the dam structures, fishways, raceways, sluiceways, and wasteways necessary or convenient for the proper construction and utility of the dam and as may be required by law. [110.18]

**Subd. 2. CONSENT OF THE UNITED STATES AND NORTH DAKOTA.** If required by law or treaty, the municipality must first obtain the consent of the United States and of the state of North Dakota for the construction. [110.18]

**Sec. 52. [103G.545] DAMS AND WATER LEVEL CONTROL IN COOK, LAKE, AND ST. LOUIS COUNTIES.**

**Subdivision 1. PURPOSE.** The purpose of this section is to preserve shorelines, rapids, waterfalls, beaches, and other natural features in an unmodified state of nature. [110.13]

**Subd. 2. LEGISLATIVE APPROVAL REQUIRED FOR CONTROL STRUCTURES AND WATER LEVELS.** Except as provided in this section, specific authority must be given by law after consideration by the legislature with regard to control structures or water levels within or bordering on the area of Cook, Lake, and St. Louis counties designated in the Act of Congress of July 10, 1930, United States Code, title 46, section 1020, before:

(1) dams or additions to existing dams may be constructed in or across public waters;

(2) alteration of the natural water level or volume of flowage of public waters may be made; or

(3) an easement for flooding or overflowing or otherwise affecting state property adjacent to public waters may be granted. [110.13]

**Subd. 3. RECREATIONAL AND LOGGING DAMS.** With the written approval of the commissioner and the signed authority of the executive council, dams for public recreational uses or dams essential for logging or for logging reservoirs that do not exceed 100 acres in size may be constructed to temporarily maintain water levels up to but not higher than the normal high-water marks.

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The approval is subject to fees recommended by the commissioner, time limitation, and other conditions designed fully to protect the public interest and purpose of this section. [110.13]

**Subd. 4. EXCEPTION AND REQUIREMENT FOR CERTAIN WATER-POWER SITES.** (a) This section does not apply to the portion of a proposed development for waterpower purposes that was actually occupied and maintained by an applicant for a license to make the development under the terms of the federal waterpower act if the application for the license was pending on or before January 1, 1928.

(b) The occupant may occupy and use the state lands and waters occupied on January 1, 1928, and used up to an elevation not exceeding two feet above the lowest crest of the spillway or overflow dam of the occupant as constructed on January 1, 1928, for as long as the land and water is needed for waterpower purposes. Water control structures may not be used higher than the structures used before January 1, 1928.

(c) The occupant shall pay to the state annual compensation determined by the commissioner after investigation for the use of the state lands affected. The occupant must promptly pay the state reasonable compensation for any further damage to state lands or timber caused by waterpower development, other than is covered by the compensation paid for the use of the lands. [110.13]

**Subd. 5. PENALTY.** Any person who willfully or knowingly violates a provision of this section or of an order made by the commissioner under this section is guilty of a gross misdemeanor. [110.13]

**Sec. 53. [103G.551] WATERPOWER DAMS USED ONLY FOR WATER LEVEL REGULATIONS.**

**Subdivision 1. APPLICABILITY.** This section and section 54 apply to public waters if:

(1) a dam constructed or maintained in any manner has existed in the outlet of the lake affecting the water level of the lake for a continuous period of at least 15 years;

(2) the lake has been used by the public for navigation, fishing, hunting, or other beneficial public purposes continuously throughout the 15-year period when allowed by natural conditions;

(3) the use of the dam for a purpose other than regulating, controlling, or maintaining the water level of the lake in aid of navigation, propagation of fish or waterfowl, or other beneficial public purposes has been discontinued;

(4) continued regulation, control, or maintenance of the water levels of the lake by the dam in the same manner as during the 15-year period would be desirable and in the public interests in navigation, propagation of fish or waterfowl, or other beneficial public uses of the lake; and

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(5) discontinuance of regulation of water levels through deterioration or removal of the dam would be detrimental to public interests in navigation, propagation of fish and waterfowl, or other beneficial public uses. [110.31]

**Subd. 2. DEDICATION OF PERPETUAL FLOWAGE EASEMENT.** (a) Owners of property and interests in property bordering on a lake or connecting waters affected by a dam are considered to have dedicated to the state for the use and benefit of the public a perpetual flowage easement on the property for all overflow and other effects of water on their property resulting from the existence, maintenance, or operation of the dam during the 15-year period.

(b) The perpetual flowage easement has the extent and effect as if the state had:

(1) owned and controlled the dam;

(2) regulated, controlled, and maintained the water levels of the lake and connecting waters affected by the dam for public use and benefit under the conditions existing during the 15-year period; and

(3) acquired the flowage easement by prescription. [110.32]

**Subd. 3. CONVEYANCE OF FLOWAGE EASEMENT TO COMMISSIONER AUTHORIZED.** The commissioner may accept a conveyance or release of a property or an interest in property that grants the state a flowage easement on the property for overflow or other effects of water resulting from the existence, maintenance, or operation of a dam, or reconstruction or improvement of a dam, or construction of a dam in the outlet of a lake to regulate, control, or maintain the water level of the lake in aid of navigation, propagation of fish or waterfowl, or other beneficial public purposes. [110.33]

**Subd. 4. DETERMINATION OF EASEMENT RIGHTS.** (a) An action may be brought in the name of the state in the district court of the county where affected property is located to determine:

(1) the extent and effect of a flowage easement obtained by the state;

(2) the title and rights of the state under the flowage easement;

(3) adverse claims to the flowage easement; and

(4) the rights of all parties interested in or affected by the flowage easement.

(b) The action may be brought by the attorney general upon the attorney general's own initiative or on request of the commissioner. On request of the attorney general, the county attorney of the county where the property affected by the flowage easement is located shall assist in bringing the action.

(c) Part or all of the property affected by the flowage easement that is

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bordering on one lake and the connecting waters of the lake and located in one county may be included in one action. The parties interested in the affected property may be joined as defendants in the action.

(d) Except as otherwise provided in this section and section 54, the law relating to actions for the determination of title to real estate in the district court governs the action.

(e) The cost of the action may be paid from money appropriated for the maintenance, operation, and control of the dam involved, or may be paid by the county where the lake and connecting waters are located. [110.34]

**Subd. 5. HIGHER ORDINARY HIGH WATER LEVELS.** (a) If the water levels maintained by a dam that has existed as provided in subdivision 1, have established an ordinary high water level above the natural ordinary high water level, the ordinary high water level reestablishes the natural ordinary high water level of the waters. Property owners and the owners of an interest in property affected by the reestablished natural ordinary high water level are presumed to have consented to the reestablished natural ordinary high water level and to have dedicated their property to the state for the use and benefit of the public. [110.36]

(b) The commissioner may determine the reestablished natural ordinary high water level in the same manner as provided by law for the determination of natural ordinary high water levels. The determination is prima facie evidence of the level and has the same effect as a determination of natural ordinary high water level by the commissioner. [110.36]

**Subd. 6. EASEMENTS, APPURTENANT TO DAM.** A flowage easement obtained by the state under this section attaches and is appurtenant to a dam that is acquired or taken over and maintained or controlled in aid of public navigation, propagation of fish or waterfowl, or other beneficial public purposes by the commissioner or another agency of the state, a county, political subdivision, or a combination authorized by law. The flowage easement attaches and is appurtenant to the reconstruction or improvement of the dam and to a new dam constructed in the outlet of the lake that is taken over and maintained or controlled by the commissioner, a state agency, a county, a political subdivision, or a combination authorized by law. [110.35]

**Subd. 7. STATE CONTROL OF ABANDONED DAMS.** (a) If a dam not owned or controlled by the state or a public agency is not used or maintained by or under the authority of the owner of the dam for a lawful purpose for a continuous period of at least 15 years, the dam and the dam site are presumed to be abandoned by the owner and dedicated to the state with flowage easements appurtenant for the use and benefit of the public. The commissioner:

(1) shall take possession of the dam and the dam site and the flowage easements on behalf of the state, and use, maintain, operate, and control the dam, dam site, and flowage easements for public purposes; or

[Bracketed paragraph notes cite text sources]

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(2) may dispose of the dam or dam site, or flowage easements for public purposes as provided in paragraph (b) or as otherwise authorized by law.

(b) The commissioner may dispose of a dam, dam site, or flowage easement after:

(1) publishing notice of a hearing on disposing of the dam, dam site, or flowage easement in a legal newspaper in the county where the dam is situated;

(2) holding a hearing; and

(3) determining that it is not in the public interest for the state to use, maintain, operate, and control the dam.

(c) The commissioner may construct other or additional control works to supplement or supplant the dam under other provisions of law.

(d) The title of the state to a dam, dam site, or flowage easements acquired under this subdivision may be established and determined by action in the district court as provided by law for actions for the determination of title to real estate.

(e) Before taking possession of an abandoned dam, dam site, or flowage easements, the commissioner must file a written certificate executed by the commissioner stating the dam is abandoned and is acquired by the state, in the office of the county recorder of the county where the dam is situated. The responsibility for a dam, dam site, or flowage easement is not on the state until the certificate is recorded or a judgment entered in an appropriate action establishing the state's title to the dam, dam site, and flowage easement. If a county or other political subdivision of the state or combination desires to take over an abandoned dam, dam site, and flowage easements and maintain, operate, control, or dispose of the dam, dam site, and flowage easement for public purposes, the commissioner may convey the dam, dam site, and flowage easement from the state to the county or other political subdivision or combination. [110.37]

**Sec. 54. [103G.555] STATUTE OF LIMITATIONS FOR ACTIONS AGAINST PUBLIC OFFICIALS.**

An action or proceeding against the state, the commissioner, a county, or political subdivision or their officers or agents relating to the taking over, construction, reconstruction, repair, improvement, maintenance, operation, or control of a dam subject to section 53 and this section or the effects of water levels regulated, controlled or maintained by a dam is barred unless the action is started within one year after the taking over or after the completion of the construction, reconstruction, repair, or improvement. [110.38]

**Sec. 55. [103G.561] STATUTE OF LIMITATIONS FOR ACTIONS ON FLOWAGE EASEMENTS AND ORDINARY HIGH WATER LEVELS.**

[Bracketed paragraph notes cite text sources]

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An action or proceeding that affects or seeks to adversely affect a perpetual flowage easement dedicated to the state for the use and benefit of the public as provided in section 53, subdivision 2, or the maintaining or the right to maintain a reestablished natural ordinary high water level above the natural ordinary high water level of waters for which the state holds a perpetual flowage easement, is barred unless the action or proceeding is commenced within one year from the date of the order of the commissioner determining the ordinary high water level of the waters under section 53, subdivision 5. [110.40]

#### FLOWAGE EASEMENTS

### Sec. 56. [103G.565] RIGHT TO OVERFLOW, OBSTRUCT, OR IMPAIR HIGHWAYS GRANTED BY GOVERNING BODY.

Subdivision 1. AUTHORITY. The governing body of a town or municipality may allow the overflow, obstruction, or impairment of a public street or other highway, or the digging of a raceway in a public street or highway if it is necessary for creating, improving, or operating a waterpower. [110.16]

Subd. 2. PROCEDURE. (a) The waterpower must petition the governing body of the town or municipality where the street or highway is located for approval.

(b) The governing body of the town or municipality must post notice of the time, location, and purpose of the meeting on the petition for ten days. At the meeting, testimony may be taken. The governing body must make an order specifying the terms and conditions of the approval.

(c) The expenses of the meeting must be paid by the petitioner, whether the petition is granted or refused. [110.16]

### Sec. 57. [103G.571] BANK REPAIR ON PROPERTY WHERE OVERFLOW RIGHTS ARE ACQUIRED.

Subdivision 1. RIGHT TO REPAIR. If the right to overflow the property of another by means of a dam is acquired by condemnation or contract and afterwards the waters of the stream are diverted because the banks of the property overflowed break away, the owner of the dam may enter the property of the person where the right to overflow is acquired and repair the banks to restore the previous flow of the stream. [110.17]

Subd. 2. DAMAGES OF ENTRY AND REPAIR. The damages caused by entry and repair under subdivision 1 must be paid by the owner of the dam. [110.17]

### Sec. 58. [103G.575] GRANT OF FLOWAGE EASEMENTS IN UPPER RED LAKE REGION.

The commissioner on behalf of the state and with the approval of the governor may grant flowage easements on state owned land, or tax-forfeited

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land, in the region of Upper Red Lake upon the terms and conditions prescribed by the commissioner. [84.158]

#### WATER AERATION AND DEICING

##### Sec. 59. [103G.601] ICE-CUTTING FENCES AND GUARDS.

Subdivision 1. FENCE AND GUARD REQUIREMENT. A person cutting ice in or on waters entirely or partly in the state to remove ice must surround the cuttings and openings with fences or guards sufficient to warn persons of the cutting before the cutting is started. The fence or guard must be maintained until the ice has formed in the openings to the thickness of at least six inches. [378.21]

Subd. 2. PENALTY. A person who fails to comply with this section is guilty of a misdemeanor. [378.21]

##### Sec. 60. [103G.605] DEICING WATER BODIES.

A county board, lake improvement district, or governing body of a municipality under section 459.20 may regulate the construction and use of mechanical and chemical means of deicing the body of water in a manner consistent with rules of the commissioner. [378.32 s. 5; 378.51 s. 3; 459.20]

##### Sec. 61. [103G.611] WATER AERATION SAFETY.

Subdivision 1. REQUIREMENT. A person operating an aeration system on public waters under a water aeration permit must comply with the sign posting requirements of this section and applicable rules of the commissioner. [378.22 s. 1]

Subd. 2. POSTING. (a) If an aeration system is used on the ice of public waters, signs must be posted by the water aeration permittee at a height of from four to six feet in a rectangular pattern at each corner of the open water, and additional signs between the corner signs so that a sign is posted at least every 100 feet.

(b) Additional signs must be posted by the permittee on the shoreline of the public waters at each public access point and other areas commonly used by the public for access to the lake.

(c) The signs must comply with the applicable rules of the commissioner. [378.22 s. 2]

Subd. 3. PUBLICATION OF NOTICE. Advance public notice of the commencement of aeration, authorized by a water aeration permit from the commissioner during periods of ice cover on public waters, must be given by the permittee. Minimum notice consists of publication of the location and date of commencement of the aeration system in a newspaper of general circulation in

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the area where the system is proposed to be operated at least two times between five and 60 days before aeration is started. [378.22 s. 3]

**Subd. 4. EVIDENCE.** In an action for negligence arising out of the conduct of aeration operations authorized by a water aeration permit from the commissioner during periods of ice cover on public waters, evidence of compliance with the posting and publication requirements of this section and applicable rules and permit provisions of the commissioner are prima facie evidence of the exercise of due care by the permittee. [378.22 s. 4]

**Subd. 5. WATER AERATION RULES.** The commissioner shall adopt rules relating to the issuance of permits for aeration, bubbler, water circulation, and similar systems used to increase dissolved oxygen or to maintain open water on the surface of public waters. [378.22 s. 5]

**Subd. 6. PUBLIC WATERS WITHOUT ACCESS.** (a) A riparian landowner may aerate public waters with a permit under this subdivision if the public waters do not have a public access and the person aerating the public waters owns all of the riparian land or all of the possessory rights to the riparian lands.

(b) The provisions of this section do not apply to the aeration under this subdivision except the public waters must be posted as provided under subdivision 2, paragraphs (a) and (c). [378.22 s. 6]

#### HARVEST AND CONTROL OF AQUATIC PLANTS

#### Sec. 62. [103G.615] PERMITS TO HARVEST OR DESTROY AQUATIC PLANTS.

**Subdivision 1. AUTHORIZATION.** (a) The commissioner may issue permits, with or without a fee, to:

(1) gather or harvest aquatic plants, or plant parts, other than wild rice from public waters;

(2) transplant aquatic plants into public waters;

(3) destroy harmful or undesirable aquatic vegetation or organisms in public waters under prescribed conditions to protect the waters, desirable species of fish, vegetation, other forms of aquatic life, and the public.

(b) Application for a permit must be accompanied by a permit fee, if required. [84.092 s. 1]

**Subd. 2. FEES.** (a) The commissioner shall establish a fee schedule for permits to harvest aquatic plants other than wild rice, by order, after holding a public hearing. The fees may not exceed \$200 per permit based upon the cost of receiving, processing, analyzing, and issuing the permit, and additional costs

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incurred after the application to inspect and monitor the activities authorized by the permit.

(b) A fee may not be charged to the state or a federal governmental agency applying for a permit.

(c) The money received for the permits under this subdivision shall be deposited in the treasury and credited to the game and fish fund. [84.092 s. 2]

Subd. 3. PERMIT STANDARDS. The commissioner shall, by order, prescribe standards to issue and deny permits under subdivision 2. The standards must ensure that aquatic plant control is consistent with shoreland conservation ordinances, lake management plans and programs, and wild and scenic river plans. [84.092 s. 3]

**Sec. 63. [103G.617] EURASIAN WATER MILFOIL EDUCATION AND MANAGEMENT.**

Subdivision 1. DEFINITION. For the purpose of this section, "Eurasian water milfoil" means myriophyllum spicatum.

Subd. 2. INVENTORY. The commissioner shall inventory and monitor the growth of Eurasian water milfoil on lakes in the state. The commissioner may use volunteers to aid in the inventory effort.

Subd. 3. EDUCATION. The commissioner shall publish and distribute informational materials to lakeshore owners and boaters on the control problems of Eurasian water milfoil.

Subd. 4. MANAGEMENT. The commissioner shall coordinate a control program to manage the growth of Eurasian water milfoil with appropriate local units of government, special purpose districts, and lakeshore associations. Technical assistance may be provided by the commissioner upon request.

Subd. 5. RESEARCH. The commissioner shall initiate cooperative research with the Freshwater Foundation and the University of Minnesota freshwater biological institute to study the use of nonchemical methods, including biological control agents, for control of Eurasian water milfoil. [84.0921]

**Sec. 64. [103G.621] COUNTY WEED AND ALGAE DESTRUCTION AND REMOVAL.**

A county board, lake improvement district, or governing body of a municipality under section 459.20 may regulate the mechanical and chemical means of removal of weeds and algae from the body of water in a manner consistent with the rules of the commissioner. [378.32 s. 5; 378.51 s. 3; 459.20]

**Sec. 65. [103G.625] MUNICIPAL CONTROL OF AQUATIC VEGETATION AND ORGANISMS.**

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Subdivision 1. AUTHORITY. The governing body of a municipality or town may expend funds for the control or destruction of harmful or undesirable aquatic vegetation or organisms in public waters and may cooperate with other governing bodies and landowners in the control or destruction. [110.71 s. 1]

Subd. 2. PERMIT REQUIRED. The control or destruction of the aquatic vegetation or organisms may not be started unless a permit has been obtained from the commissioner under section 62 and the work is done in accordance with the terms and conditions of the permit. [110.71 s. 1]

Subd. 3. FUNDING. (a) The governing body of a municipality or town may use any available funds and may levy a tax not to exceed the lesser of (1) 0.01596 percent of taxable market value, or (2) 50 cents per capita, to implement this section. [110.71 s. 2]

(b) To provide funds in advance of collection of the tax levies, the governing body may, at any time after the tax has been levied and certified to the county auditor for collection, issue certificates of indebtedness in anticipation of the collection and payment of the tax. The total amount of the certificates, including principal and interest, may not exceed 90 percent of the amount of the levy and must become payable from the proceeds of the levy not later than two years from the date of issuance. The certificates shall be issued on terms and conditions as the governing body may determine and sold as provided in section 475.60. [110.71 s. 3]

(c) If the governing body determines that an emergency exists, it may make appropriations from the proceeds of the certificates for authorized purposes without complying with statutory or charter provisions requiring that expenditures be based on a prior budget authorization or other budgeting requirement. [110.71 s. 3]

(d) The proceeds of a tax levied or an issue of certificates of indebtedness must be deposited in a separate fund and expended only for purposes authorized by this section. If a disbursement is not made from the fund for a period of five years, money remaining in the fund may be transferred to the general fund. [110.71 s. 4]

## STREAMS

### Sec. 66. [103G.701] STREAM MAINTENANCE PROGRAM.

Subdivision 1. ESTABLISHMENT. The commissioner shall establish a stream maintenance program. The program must include grants-in-aid to participating counties. [105.475 s. 2]

Subd. 2. APPLICATION. A county desiring to participate in the stream maintenance program must submit an application for the proposed work to the commissioner on forms provided by the commissioner. Unless waived by the

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commissioner, the county must submit the following information with its application:

(1) a map of the county showing the stream and the specific reaches of the stream to be maintained;

(2) photographs showing the nature and extent of the maintenance problem;  
and

(3) a resolution by the county board of commissioners asking to participate in the program and agreeing to provide at least 25 percent of the cost of the maintenance project. [105.475 s. 3]

Subd. 3. CONTRACT. After approving a stream maintenance project, the commissioner shall contract with the county for performance of work necessary to do the project. The contract may provide that the county share of the cost of the project is paid in the form of services provided by the county. [105.475 s. 4]

Subd. 4. ELIGIBLE PROJECTS. The commissioner may grant money for:

(1) cutting and removal of brush and dead or downed trees; and

(2) removal of large rocks and other debris such as concrete, asphalt, or scrap material. [105.475 s. 2]

Subd. 5. GRANTS. (a) The commissioner must apportion grant money according to the relative severity of the maintenance problem, the date of application for the grant, and the availability of funds.

(b) A grant may not exceed 75 percent of the total cost of a stream maintenance project.

(c) Money may not be disbursed for excavation, filling, or for work performed until an application for the project is filed with the commissioner.

(d) The stream maintenance work must be performed by the county or under county supervision. [105.475 s. 2]

Subd. 6. COUNTY MATCHING FUNDS. A county may appropriate from its general revenue fund sufficient funds to match the grants in aid authorized in this section. [105.475 s. 5]

**Sec. 67. [103G.711] STATE'S OWNERSHIP OF BED OF NAVIGABLE RIVER.**

The ownership of the bed and the land under the waters of all rivers in the state that are navigable for commercial purposes are in the state in fee simple, subject only to the regulations made by the United States with regard to the public navigation and commerce and the lawful use by the public while on the waters. [465.18]

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## ARTICLE 8

RECODIFICATION AND RELOCATION OF PROVISIONS RELATING  
TO WATER AND CORRECTION OF CROSS-REFERENCES

Section 1. Minnesota Statutes 1988, section 9.071, is amended to read:

9.071 **SETTLEMENT OF CLAIMS; OTHER SPECIFIED POWERS.**

The council has the powers with respect to the:

(1) Cancellation or compromise of claims due the state provided in sections 10.11 to 10.15;

(2) Timberlands provided in sections 90.031, 90.041, 90.151;

(3) Lands acquired from the United States provided in section 94.50;

(4) Lands subject to delinquent drainage assessments provided in section 84A.20;

(5) Transfer of lands between departments of state government provided in section 15.16;

(6) Sale or exchange of lands within national forests provided in sections 92.30 and 92.31;

(7) Approval of acquisition of land for camping or parking area provided in sections 97A.135 and 97A.141;

(8) Modification of iron leases provided in section 93.191;

(9) Awarding permits to prospect for iron ore provided in section 93.17;

(10) Approval of rules for issuance of permits to prospect for minerals under state lands provided in section 93.08;

(11) Construction of dams provided in article 7, section ~~110.13~~ 52.

Sec. 2. Minnesota Statutes 1988, section 16B.62, subdivision 1, is amended to read:

Subdivision 1. **MUNICIPAL ENFORCEMENT.** The state building code applies statewide and supersedes the building code of any municipality. The state building code does not apply to agricultural buildings except with respect to state inspections required or rulemaking authorized by article 6, section 10, and sections 104.05, 326.244, and 216C.19, subdivision 8. All municipalities shall adopt and enforce the state building code with respect to new construction within their respective jurisdictions.

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If a city has adopted or is enforcing the state building code on June 3, 1977, or determines by ordinance after that date to undertake enforcement, it shall enforce the code within the city. A city may by ordinance extend the enforcement of the code to contiguous unincorporated territory not more than two miles distant from its corporate limits in any direction. Where two or more noncontiguous cities which have elected to enforce the code have boundaries less than four miles apart, each is authorized to enforce the code on its side of a line equidistant between them. Once enforcement authority is extended extra-territorially by ordinance, the authority may continue to be exercised in the designated territory even though another city less than four miles distant later elects to enforce the code. After the extension, the city may enforce the code in the designated area to the same extent as if the property were situated within its corporate limits.

A city which, on June 3, 1977, had not adopted the code may not commence enforcement of the code within or outside of its jurisdiction until it has provided written notice to the commissioner, the county auditor, and the town clerk of each town in which it intends to enforce the code. A public hearing on the proposed enforcement must be held not less than 30 days after the notice has been provided. Enforcement of the code by the city commences on the first day of January in the year following the notice and hearing.

Municipalities may provide for the issuance of permits, inspection, and enforcement within their jurisdictions by means which are convenient, and lawful, including by means of contracts with other municipalities pursuant to section 471.59, and with qualified individuals. In areas outside of the enforcement authority of a city, the fee charged for the issuance of permits and inspections for single family dwellings may not exceed the greater of \$100 or .005 times the value of the structure, addition, or alteration. The other municipalities or qualified individuals may be reimbursed by retention or remission of some or all of the building permit fee collected or by other means. In areas of the state where inspection and enforcement is unavailable from qualified employees of municipalities, the commissioner shall train and designate individuals available to carry out inspection and enforcement on a fee basis.

Sec. 3. Minnesota Statutes 1988, section 18.191, is amended to read:

#### 18.191 DESTRUCTION OF NOXIOUS WEEDS.

Except as otherwise specifically provided in sections 18.181 to 18.271, 18.281 to 18.311, and 18.321 to 18.322, it shall be the duty of every occupant of land or, if the land is unoccupied, the owner thereof, or an agent, or the public official in charge thereof, to cut down, otherwise destroy, or eradicate all noxious weeds as defined in section 18.171, subdivision 5, standing, being, or growing upon such land, in such manner and at such times as may be directed or ordered by the commissioner, the commissioner's authorized agents, the county agricultural inspector, or by a local weed inspector having jurisdiction.

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Except as provided below, an owner of nonfederal lands underlying public waters or wetlands designated under article 7, section ~~405.394~~ 13, is not required to control or eradicate purple loosestrife (*Lythrum salicaria*) below the ordinary high water level of the public water or wetland. The commissioner of natural resources is responsible for control and eradication of purple loosestrife on public waters and wetlands designated under article 7, section ~~405.394~~ 13, except those located upon lands owned in fee title or managed by the United States. The officers, employees, agents, and contractors of the commissioner may enter upon public waters and wetlands designated under article 7, section ~~405.394~~ 13, and may cross adjacent lands as necessary for the purpose of investigating purple loosestrife infestations, formulating methods of eradication, and implementing control and eradication of purple loosestrife. The responsibility of the commissioner to control and eradicate purple loosestrife on public waters and wetlands located on private lands and the authority to enter upon private lands ends ten days after receipt by the commissioner of a written statement from the landowner that the landowner assumes all responsibility for control and eradication of purple loosestrife under sections 18.171 to 18.315. State officers, employees, agents, and contractors are not liable in a civil action for trespass committed in the discharge of their duties under this section and are not liable to anyone for damages, except for damages arising from gross negligence.

Sec. 4. Minnesota Statutes 1989 Supplement, section 18B.07, subdivision 6, is amended to read:

Subd. 6. **USE OF PUBLIC WATERS FOR FILLING EQUIPMENT.** (a) A person may not fill pesticide application equipment directly from public or other waters of the state, as defined in article 7, section ~~405.37~~ 2, subdivision ~~44~~ 15, unless the equipment contains proper and functioning anti-backsiphoning mechanisms. The person may not introduce pesticides into the application equipment until after filling the equipment from the public waters.

(b) This subdivision does not apply to permitted applications of aquatic pesticides to public waters.

Sec. 5. Minnesota Statutes 1988, section 40A.13, subdivision 1, is amended to read:

Subdivision 1. **CONSERVATION PRACTICES TO PREVENT SOIL LOSS REQUIRED.** An owner of agricultural land in an exclusive agricultural use zone shall manage the land with sound soil conservation practices that prevent excessive soil loss according to the model ordinance adopted by the commissioner. The model ordinance and article 6, sections ~~40.19 to 40.28~~ 57 to 68, and sections ~~adopted under chapter 40~~ relating to soil loss apply to all land in an exclusive agricultural zone. A sound soil conservation practice prevents excessive soil loss or reduces soil loss to the most practicable extent.

Sec. 6. Minnesota Statutes 1988, section 41.65, subdivision 3, is amended to read:

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Subd. 3. **RESTRICTED AGRICULTURAL USE.** (a) Acquired property that has marginal land as defined in article 6, section 40-42 72, subdivision 6, or wetlands must be restricted from agricultural use on the marginal land or wetlands.

(b) If the commissioner determines that all or a portion of acquired property should be taken out of agricultural use or particular agricultural uses should be restricted, the commissioner shall have the attorney general prepare an easement restricting the agricultural use and file the easement with the county recorder where the property is located.

Sec. 7. **[83A.05] CHANGING AND GIVING NAMES TO WATER BODIES.**

Subdivision 1. APPLICABILITY A name of a lake, river, stream, or other body of water may be given or changed under sections 7 to 9 except that a name which has existed for 40 years may not be changed under the provisions of sections 7 to 9. [378.01]

Subd. 2. PETITION FOR NAME. (a) 15 or more legal voters residing in a county where all or a part of a body of water is located may petition the county board of the county where the petitioners reside or the body of water is located to change the name of or give a name to a previously unnamed lake, river, stream, or other body of water located within the state. [378.01]

(b) The petition may include any number of lakes, rivers, streams, or other bodies of water to have names changed, or if unnamed to be given a name by the county board. [378.02]

(c) The petition must describe:

(1) the location of the body of water;

(2) the name, if any, that the body of water has been referred to or known by, or if there is not a name, it must be stated that a known name does not exist;

(3) the name that the petitioners desire to be given to the body of water; and

(4) the reason for the change of name or for giving the designated name to a previously unnamed body of water. [378.01]

(d) The petitioners must sign their names and state their place of residence. [378.01]

(e) The petition must be filed with the auditor of the county where the petitioners reside or the body of water is located. [378.02]

Sec. 8. **[83A.06] HEARING ON PETITION.**

Subdivision 1. TIME AND LOCATION. After receiving the petition to name a body of water, the auditor must present the petition to the county board.

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The county board must, by order, set the time and location for a hearing on the petition to be held more than 30 days after the order is made. The hearing may be held at any convenient place within the county as determined by the county board. [378.03]

Subd. 2. WATER BODY IN MORE THAN ONE COUNTY. (a) If the petition describes a body of water located within more than one county, the county boards of the several affected counties must act jointly and as one body and the majority of the joint body must determine the name of the water body under sections 7 to 9 in the same manner as prescribed for the county board.

(b) For a water body located within more than one county, the county auditor with whom the petition is filed must forward by mail a certified copy of the petition to the auditor of each affected county who shall present the petition to the respective county boards, and the notice of hearing the petition determined by the joint body shall be published in each county as provided in subdivision 4.

(c) The auditor of the county where the petition was filed must make and file certified copies of the adopted resolution in the office of the county recorder of each affected county at the expense of the petitioners. [378.04]

Subd. 3. PETITIONERS' BOND. Before the notice of the hearing is given, the petitioners must give a bond to be approved by the county attorney of the county where the petition has been filed that is conditioned on the full payment of the reasonable expenses incurred by the county for the proceeding. The commissioner of natural resources is not required to give bond. [378.06]

Subd. 4. NOTICE. Notice of the hearing must be:

(1) published for at least three weeks in the newspaper designated by the county board as the official newspaper for the county; [378.02]

(2) served on the commissioner of natural resources; and [378.03]

(3) served personally on the chair of the town board of a town, on the president of a statutory city board of trustees, and on the mayor of a city that has a body of water in the petition within or adjoining the boundary of the political subdivision. [378.03]

Subd. 5. STATEMENTS AT HEARING. At the hearing, legal voters of the county and municipalities may appear, by attorney or in person, and file an answer to the petition, stating in plain concise language why the petition should not be granted in whole or in part, and in the answer may ask the county board to give to the body of water a different name than the name requested in the original petition. [378.02]

Subd. 6. DETERMINATION. At the hearing on the petition, the county board shall hear all parties desiring to be heard on the petition and make an

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order, by resolution, determining the name of the body of water described in the petition. The name determined by the board at the hearing is the legal name of the body of water. [378.04]

Sec. 9. [83A.07] NAMES NOT TO BE DUPLICATED.

Subdivision 1. DUPLICATE DISCOURAGED. In determining the name of a body of water, the county board may not, if possible, duplicate names of existing bodies of water. The county board shall select and approve a name as it determines is in the permanent, best interests of the affected county. [378.05]

Subd. 2. DIRECTOR TO CHECK NAME DUPLICATION. The auditor of the county where a petition is filed must mail a copy of the petition with a copy of the notice of hearing on the petition to the director of the division of waters of the department of natural resources. The director must compare the names suggested in the petition with the names of other bodies of water within the state and report findings and recommendations back to the auditor before the date of the hearing. [378.05]

Sec. 10. Minnesota Statutes 1988, section 84.083, is amended by adding a subdivision to read:

Subd. 3. PURCHASING. The director of the division of waters may purchase technical and scientific equipment needed for the functions and duties of the director's office. [105.40 s. 9]

Sec. 11. Minnesota Statutes 1988, section 84.083, is amended by adding a subdivision to read:

Subd. 4. APPROPRIATIONS AVAILABLE. Money appropriated to the commissioner of natural resources for the division of waters or its director, to conduct hydrologic studies, remains available until spent. [105.40 s. 12]

Sec. 12. Minnesota Statutes 1988, section 84.91, subdivision 4, is amended to read:

Subd. 4. EVIDENCE. In a prosecution for a violation of subdivision 1, paragraph (a), the admission of evidence of the amount of alcohol or a controlled substance in the person's blood, breath, or urine, is governed by article 9, section ~~361.12~~ 18, subdivision 4.

Sec. 13. Minnesota Statutes 1988, section 84.911, subdivision 5, is amended to read:

Subd. 5. CHEMICAL TESTS. Chemical tests administered under this section are governed by article 9, section ~~361.124~~ 19, subdivisions ~~5, 6, and 7~~ 8, 9, and 10.

Sec. 14. Minnesota Statutes 1988, section 84.911, subdivision 6, is amended to read:

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Subd. 6. **JUDICIAL AND ADMINISTRATIVE REVIEW; ENFORCEMENT.** Judicial and administrative review of sanctions imposed under this section is governed by article 9, section ~~361.121~~, ~~subdivision 2a, 2b, and 2e~~ 19, subdivisions 3, 4, and 5. Payment and enforcement of the civil penalty imposed under this section is governed by article 9, section ~~361.121~~ 19, subdivisions ~~8 and 9~~ 11 and 12.

Sec. 15. Minnesota Statutes 1989 Supplement, section 84.95, subdivision 2, is amended to read:

Subd. 2. **PURPOSES AND EXPENDITURES.** Money from the reinvest in Minnesota resources fund may only be spent for the following fish and wildlife conservation enhancement purposes:

(1) development and implementation of the comprehensive fish and wildlife management plan under section 84.942;

(2) implementation of the conservation reserve program established by article 6, section ~~40.43~~ 73;

(3) soil and water conservation practices to improve water quality, reduce soil erosion and crop surpluses;

(4) enhancement of fish and wildlife habitat on lakes, streams, wetlands, and public and private forest lands;

(5) acquisition and development of public access sites and recreation easements to lakes, streams, and rivers for fish and wildlife oriented recreation;

(6) matching funds with government agencies, federally recognized Indian tribes and bands, and the private sector for acquisition and improvement of fish and wildlife habitat;

(7) research and surveys of fish and wildlife species and habitat;

(8) enforcement of natural resource laws and rules;

(9) information and education;

(10) implementing the aspen recycling program under section 88.80 and for other forest wildlife management projects; and

(11) necessary support services to carry out these purposes.

Sec. 16. Minnesota Statutes 1988, section 85.33, subdivision 3, is amended to read:

Subd. 3. **RULES BELOW THE MOUTH OF THE SNAKE RIVER.** After October 1, 1974, if the commissioner of natural resources has not established rules relating to the use of watercraft on that part of the St. Croix river south of  
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the mouth of the Snake river but north of the nine foot navigational channel at mile 24.5, measured from the mouth of the St. Croix river, pursuant to the request of a local governmental unit in the manner provided by article 9, section ~~361.26~~ 10, subdivision 9, the commissioner may establish such rules pursuant to article 9, section ~~361.26~~ 10, subdivision 9, notwithstanding the absence of a request from a local governmental unit and notwithstanding the absence of approval of the rules by a majority of the counties affected.

Sec. 17. Minnesota Statutes 1988, section 86A.05, subdivision 10, is amended to read:

**Subd. 10. STATE WILD, SCENIC, AND RECREATIONAL RIVERS; PURPOSE; RESOURCE AND SITE QUALIFICATIONS; ADMINISTRATION; DESIGNATION.** (a) State wild, scenic, and recreational rivers shall be established to protect and maintain the natural characteristics of all or a portion of a river or stream, or its tributaries, or lake through which the river or stream flows which together with adjacent lands possesses outstanding scenic, scientific, historical, or recreational value, as provided by article 6, sections ~~104.31 to 104.40~~ 30 to 39.

(b) State wild, scenic, and recreational rivers shall be administered by the commissioner of natural resources in a manner which is consistent with the purposes of this subdivision and article 6, sections ~~104.31 to 104.40~~ 30 to 39.

Sec. 18. Minnesota Statutes 1988, section 88.43, subdivision 2, is amended to read:

**Subd. 2. BENEFITS; ASSESSMENT; LIEN.** If any clearing or other improvement of land made by any town or city benefits any person, or benefits some and damages others, then the amount of both such benefits and damages shall be ascertained in the same manner as provided by law with respect to damages in condemnation proceedings by right of eminent domain. All provisions of law relating to the determination of the amount of damages in condemnation proceedings shall apply to the determination of the value of benefits under this section, as far as practicable. Any benefits so found shall be assessed against, and be a lien upon, the real property so benefited and shall be noted upon the public records and collected upon the same terms and in substantially the same manner as now provided by law for the collection of ditch and drainage assessments pursuant to sections ~~106A.005 to 106A.811~~ chapter 103E.

Sec. 19. Minnesota Statutes 1988, section 93.335, subdivision 1, is amended to read:

**Subdivision 1. LAND GROUPED INTO MINING UNITS; LEASES.** Lands or minerals and mineral rights, including fractional undivided interests therein, becoming the absolute property of the state under the tax laws, may be grouped into mining units, permits to prospect for iron ore thereon shall be awarded, and mining leases thereon issued as provided by sections 93.14 to 93.33, and, except

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as otherwise specifically provided herein, all the terms, conditions and provisions of such sections shall be applicable thereto, regardless of whether or not such lands or minerals and mineral rights are held in trust for taxing districts. Leases issued hereunder shall be in the form provided by law, with only such changes as the commissioner of natural resources shall find necessary to indicate the specific interest covered by the lease and the proportion of the stipulated royalty or rental payable under subdivision 2 or otherwise to conform with the provisions hereof. In case the state owns such a fractional undivided interest and the remaining undivided interest in the property is owned or held under lease for mining purposes by another, the commissioner of natural resources, with the approval of the executive council, upon application of such owner or lessee, without public sale and without prior issuance of a prospecting permit, may enter into a mining lease with such owner or lessee covering the state's interest under the following terms and conditions:

(1) The application shall be in such form and shall contain such information as the commissioner shall prescribe;

(2) Where any of the ore to be mined under such lease lies within the bed of a public lake or stream, the lessee shall obtain an appropriate permit from the commissioner, pursuant to ~~section 105.42~~ and other applicable laws;

(3) The lease shall be in the form herein prescribed, except that it may provide for the payment of rental and royalty at such rates as may be agreed upon between the parties and may contain such additional appropriate provisions, not inconsistent with law, as may be agreed upon in furtherance of the mutual interests of the parties; provided, that the rental and royalty rates for iron ore shall not be less than the applicable minimum rates prescribed in section 93.20.

Sec. 20. Minnesota Statutes 1988, section 94.343, subdivision 4, is amended to read:

Subd. 4. There shall be reserved to the state in all Class A land conveyed in exchange all mineral and water power rights and such other rights and easements as the commissioner, with the approval of the board, shall direct. All Class A land which at the time of exchange is subject to the provisions of article 7, section ~~110.13~~ 52, shall remain subject thereto as a condition of the exchange, and all land received by the state in exchange for Class A land within the area to which those provisions apply shall become subject thereto. Land may be received in exchange subject to any mineral reservations or other reservations thereon. All such reservations and conditions shall be taken into consideration in determining the value of the lands exchanged.

Sec. 21. Minnesota Statutes 1988, section 97A.015, subdivision 41, is amended to read:

Subd. 41. **PUBLIC WATERS.** "Public waters" means waters defined in article 7, section ~~105.37~~ 2, subdivision ~~14~~ 15.

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Sec. 22. Minnesota Statutes 1988, section 97A.071, subdivision 4, is amended to read:

Subd. 4. **ASSESSMENTS TO BE PAID FROM FUND.** An assessment against the state under article 5, section ~~106A.015~~, ~~subdivision 2~~, ~~106A.025~~, or ~~106A.615~~ 5 or 80, on lands acquired for wildlife habitat shall be paid from the wildlife acquisition account.

Sec. 23. Minnesota Statutes 1988, section 97A.101, subdivision 2, is amended to read:

Subd. 2. **MANAGEMENT DESIGNATION.** (a) The commissioner may designate, reserve, and manage public waters for wildlife after giving notice and holding a public hearing. The hearing must be held in the county where the major portion of the waters are located. Notice of the hearing must be published in a legal newspaper within each county where the waters are located at least seven days before the hearing.

(b) The commissioner may contract with riparian owners for water projects under article 7, section ~~105.39~~ 7, subdivision 5 3, and may acquire land, accept local funding, and construct, maintain, and operate structures to control water levels under article 7, section ~~105.48~~ 44 to manage designated waters.

Sec. 24. Minnesota Statutes 1988, section 97A.211, subdivision 1, is amended to read:

Subdivision 1. **NOTICE TO APPEAR IN COURT.** (a) A person must be given notice to appear in court for a misdemeanor violation of the game and fish laws, chapter 84, ~~105~~, or ~~106A~~, or section 609.68 or article 5, article 6, sections 25 to 29 or section 79, or article 7, if:

(1) the person is arrested and is released from custody prior to appearing before a court; or

(2) the person is subject to a lawful arrest and is not arrested because it reasonably appears to the enforcement officer that arrest is unnecessary to prevent further criminal conduct and that there is a substantial likelihood that the person will respond to a notice.

(b) The enforcement officer shall prepare, in quadruplicate, a written notice to appear in court. The notice must be in the form and has the effect of a summons and complaint. The notice must contain the name and address of the person charged, the offense, and the time and the place to appear in court. The court must have jurisdiction within the county where the offense is alleged to have been committed.

Sec. 25. Minnesota Statutes 1988, section 97A.211, subdivision 2, is amended to read:

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Subd. 2. **RELEASE AFTER ARREST.** A person arrested for a misdemeanor violation of the game and fish laws, chapter 84, ~~105, or 106A~~ or section 609.68 or article 5, article 6, sections 25 to 29 or section 79, or article 7, may obtain release by signing the written notice prepared by the arresting officer promising to appear in court. The officer shall deliver a copy marked "SUMMONS" to the person arrested. The officer must then release the person from custody.

Sec. 26. [97C.077] FISH SCREENS IN LAKES.

Subdivision 1. LAKE IN ONE COUNTY. If all or a major part of a navigable lake is located within a single county and has been stocked with fish by the United States government, the county board in order to maintain fish in the lake and prevent their escape from the lake may erect and maintain screens at the inlets and outlets of the lake. The county board may appropriate from the county treasury money for the erection and maintenance of the screens. [378.09]

Subd. 2. LAKE IN MORE THAN ONE COUNTY. If a lake is located in more than one county, the county boards of the affected counties may jointly provide for the erection and maintenance of screens. The expense of the screens and maintenance must be paid equally between the counties, and the county boards must appropriate money from the county treasury of their respective counties to pay the expenses of the screens and maintenance. [378.09]

Sec. 27. Minnesota Statutes 1988, section 116D.04, subdivision 1a, is amended to read:

Subd. 1a. For the purposes of sections 116D.01 to 116D.07, the following terms have the meanings given to them in this subdivision.

(a) "Natural resources" has the meaning given it in section 116B.02, subdivision 4.

(b) "Pollution, impairment or destruction" has the meaning given it in section 116B.02, subdivision 5.

(c) "Environmental assessment worksheet" means a brief document which is designed to set out the basic facts necessary to determine whether an environmental impact statement is required for a proposed action.

(d) "Governmental action" means activities, including projects wholly or partially conducted, permitted, assisted, financed, regulated or approved by units of government including the federal government.

(e) "Governmental unit" means any state agency and any general or special purpose unit of government in the state including, but not limited to, watershed districts organized under ~~chapter 112~~ article 4, counties, towns, cities, port authorities, housing authorities, and economic development authorities established under sections 458C.01 to 458C.23, but not including courts, school

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districts and regional development commissions other than the metropolitan council.

Sec. 28. Minnesota Statutes 1988, section 116J.70, subdivision 2a, is amended to read:

Subd. 2a. **LICENSE; EXCEPTIONS.** "Business license" or "license" does not include the following:

(1) Any occupational license or registration issued by a licensing board listed in section 214.01 or any occupational registration issued by the commissioner of health pursuant to section 214.13;

(2) Any license issued by a county, home rule charter city, statutory city, township or other political subdivision;

(3) Any license required to practice the following occupation regulated by the following sections:

(a) Abstracters regulated pursuant to chapter 386;

(b) Accountants regulated pursuant to chapter 326;

(c) Adjusters regulated pursuant to chapter 72B;

(d) Architects regulated pursuant to chapter 326;

(e) Assessors regulated pursuant to chapter 270;

(f) Attorneys regulated pursuant to chapter 481;

(g) Auctioneers regulated pursuant to chapter 330;

(h) Barbers regulated pursuant to chapter 154;

(i) Beauticians regulated pursuant to chapter 155A;

(j) Boiler operators regulated pursuant to chapter 183;

(k) Chiropractors regulated pursuant to chapter 148;

(l) Collection agencies regulated pursuant to chapter 332;

(m) Cosmetologists regulated pursuant to chapter 155A;

(n) Dentists, registered dental assistants, and dental hygienists regulated pursuant to chapter 150A;

(o) Detectives regulated pursuant to chapter 326;

(p) Electricians regulated pursuant to chapter 326;

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- (q) Embalmers regulated pursuant to chapter 149;
- (r) Engineers regulated pursuant to chapter 326;
- (s) Insurance brokers and salespersons regulated pursuant to chapter 60A;
- (t) Midwives regulated pursuant to chapter 148;
- (u) Morticians regulated pursuant to chapter 149;
- (v) Nursing home administrators regulated pursuant to chapter 144A;
- (w) Optometrists regulated pursuant to chapter 148;
- (x) Osteopathic physicians regulated pursuant to chapter 147;
- (y) Pharmacists regulated pursuant to chapter 151;
- (z) Physical therapists regulated pursuant to chapter 148;
- (aa) Physicians and surgeons regulated pursuant to chapter 147;
- (bb) Plumbers regulated pursuant to chapter 326;
- (cc) Podiatrists regulated pursuant to chapter 153;
- (dd) Practical nurses regulated pursuant to chapter 148;
- (ee) Professional fundraisers regulated pursuant to chapter 309;
- (ff) Psychologists regulated pursuant to chapter 148;
- (gg) Real estate brokers, salespersons and others regulated pursuant to chapters 82 and 83;
- (hh) Registered nurses regulated pursuant to chapter 148;
- (ii) Securities brokers, dealers, agents and investment advisers regulated pursuant to chapter 80A;
- (jj) Steamfitters regulated pursuant to chapter 326;
- (kk) Teachers and supervisory and support personnel regulated pursuant to chapter 125;
- (ll) Veterinarians regulated pursuant to chapter 156;
- (mm) Watchmakers regulated pursuant to chapter 326;
- (nn) Water conditioning contractors and installers regulated pursuant to chapter 326;

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- (oo) Water well contractors regulated pursuant to chapter 156A;
- (pp) Water and waste treatment operators regulated pursuant to chapter 115;
- (qq) Motor carriers regulated pursuant to chapter 221;
- (rr) Professional corporations regulated pursuant to chapter 319A;
- (4) Any driver's license required pursuant to chapter 171;
- (5) Any aircraft license required pursuant to chapter 360;
- (6) Any watercraft license required pursuant to ~~chapter 364~~ article 9;
- (7) Any license, permit, registration, certification, or other approval pertaining to a regulatory or management program related to the protection, conservation, or use of or interference with the resources of land, air or water, which is required to be obtained from a state agency or instrumentality; and
- (8) Any pollution control rule or standard established by the pollution control agency or any health rule or standard established by the commissioner of health or any licensing rule or standard established by the commissioner of human services.

Sec. 29. Minnesota Statutes 1988, section 144.95, subdivision 4, is amended to read:

Subd. 4. **RESEARCH TRIALS.** Research trials of mosquito management methods and materials are subject to the following laws and rules unless a specific written exemption, license, or waiver is granted; sections 84.0895, 84.092, 97A.045, subdivision 1; ~~105.38, 105.41, and 105.463~~; article 1, section 2; article 7, sections 24 and sections 28 to 30; and Minnesota Rules, chapters 1505, 6115, 6120, 6134, and 6140.

Sec. 30. Minnesota Statutes 1988, section 161.28, subdivision 1, is amended to read:

Subdivision 1. **PETITION.** Upon the filing of a petition by the commissioner with the appropriate county auditor setting forth that it would be advantageous or desirable in the construction or maintenance of a trunk highway to make a minor alteration or change in a public drainage system directly affecting a trunk highway and that the alteration or change will not affect the functioning or efficiency of the public drainage system, the auditor shall fix a time and place for hearing and give notice of the hearing by publication, as defined in article 5, section 106A.325 54. Upon the filing of the petition the commissioner shall also file a plan showing in detail the alteration or change petitioned for. If upon the hearing it appears to the county board or joint county ditch authority that the alteration or change in the public drainage system will not affect or impair the

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efficiency of the drainage system, the board or authority shall make its order allowing the commissioner to make the alteration or change petitioned for. Upon the making of the order by the county board or the joint county ditch authority, the commissioner may proceed at the sole cost and expense of the state to make the alterations or changes as may be in the order allowed, damages, if any, for any additional lands necessary for the change or alteration being first duly paid or secured. Upon completion of the alteration or change the commissioner shall file with the appropriate auditor a map drawn to scale showing the change or alteration made and shall also file a profile of all lines of the alteration or change in the ditch showing graphically the elevation of the ground and gradient, whether open or tiled, the size of tile, and the bottom width and side slope of open ditch sections, and such other information as may appear necessary for understanding. Upon the completion of the alteration or change herein provided for, the ditch shall thereafter include such alteration or change as a part of it with the same force and effect as though it had been originally so constructed and established.

Sec. 31. Minnesota Statutes 1988, section 163.17, is amended to read:

**163.17 DRAINAGE SYSTEMS AFFECTING HIGHWAYS; ALTERATIONS.**

Upon the filing of a resolution by the county board of any county with the county auditor, in the case of a public ditch system lying wholly within a county, or with the court administrator of the district court having jurisdiction over said ditch in the case of a ditch system affecting two or more counties, therein setting forth that it would be advantageous or desirable in the construction or maintenance of a highway under the jurisdiction of the county to make a minor alteration or change in a public ditch system directly affecting the highway, and that the alteration or change will not affect the functioning or efficiency of the ditch system, it shall be the duty of the auditor, or the clerk with the approval of the judge, to fix a time and place for hearing thereon and to give notice of hearing by publication as defined by article 5, section ~~106A.005~~ 1, subdivision ~~2+~~ 24. Upon the filing of the resolution, the board shall also cause to be filed a plan showing in detail the alteration or change therein described. If upon the hearing it shall appear to the county board or district court that the alteration or change in the public ditch system will not affect or impair the efficiency of the ditch system, the board or court shall make its order authorizing the county to cause the alteration or change to be made. Upon the making of the order by the county board or the court, the county board may proceed at the sole cost and expense of the county to make the alterations or changes as may be in the order allowed; damages, if any, occasioned thereby being first duly paid or secured by the county. Upon completion of the alteration or change, the county board shall cause to be filed with the auditor or court administrator, a map and profile drawn to scale showing thereon the change or alteration made. If the map and profile be filed with the court administrator, duplicates thereof shall also be filed with the auditor of each county affected. Upon the completion of the alteration

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or change herein provided for, the ditch shall thereafter include the alteration or change as part thereof with the same force and effect as though it had been originally so constructed and established.

Sec. 32. Minnesota Statutes Second 1989 Supplement, section 272.02, subdivision 1, is amended to read:

Subdivision 1. All property described in this section to the extent herein limited shall be exempt from taxation:

- (1) all public burying grounds;
- (2) all public schoolhouses;
- (3) all public hospitals;
- (4) all academies, colleges, and universities, and all seminaries of learning;
- (5) all churches, church property, and houses of worship;
- (6) institutions of purely public charity except parcels of property containing structures and the structures described in section 273.13, subdivision 25, paragraph (c), clauses (1), (2), and (3), or paragraph (d);
- (7) all public property exclusively used for any public purpose;
- (8) except for the taxable personal property enumerated below, all personal property and the property described in section 272.03, subdivision 1, paragraphs (c) and (d), shall be exempt.

The following personal property shall be taxable:

- (a) personal property which is part of an electric generating, transmission, or distribution system or a pipeline system transporting or distributing water, gas, crude oil, or petroleum products or mains and pipes used in the distribution of steam or hot or chilled water for heating or cooling buildings and structures;
- (b) railroad docks and wharves which are part of the operating property of a railroad company as defined in section 270.80;
- (c) personal property defined in section 272.03, subdivision 2, clause (3);
- (d) leasehold or other personal property interests which are taxed pursuant to section 272.01, subdivision 2; 273.124, subdivision 7; or 273.19, subdivision 1; or any other law providing the property is taxable as if the lessee or user were the fee owner;
- (e) manufactured homes and sectional structures; and
- (f) flight property as defined in section 270.071.

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(9) Personal property used primarily for the abatement and control of air, water, or land pollution to the extent that it is so used, and real property which is used primarily for abatement and control of air, water, or land pollution as part of an agricultural operation or as part of an electric generation system. For purposes of this clause, personal property includes ponderous machinery and equipment used in a business or production activity that at common law is considered real property.

Any taxpayer requesting exemption of all or a portion of any equipment or device, or part thereof, operated primarily for the control or abatement of air or water pollution shall file an application with the commissioner of revenue. The equipment or device shall meet standards, rules, or criteria prescribed by the Minnesota pollution control agency, and must be installed or operated in accordance with a permit or order issued by that agency. The Minnesota pollution control agency shall upon request of the commissioner furnish information or advice to the commissioner. On determining that property qualifies for exemption, the commissioner shall issue an order exempting the property from taxation. The equipment or device shall continue to be exempt from taxation as long as the permit issued by the Minnesota pollution control agency remains in effect.

(10) Wetlands. For purposes of this subdivision, "wetlands" means (1) land described in article 7, section ~~105.37~~ 2, subdivision ~~45~~ 18, or (2) land which is mostly under water, produces little if any income, and has no use except for wildlife or water conservation purposes, provided it is preserved in its natural condition and drainage of it would be legal, feasible, and economically practical for the production of livestock, dairy animals, poultry, fruit, vegetables, forage and grains, except wild rice. "Wetlands" shall include adjacent land which is not suitable for agricultural purposes due to the presence of the wetlands. "Wetlands" shall not include woody swamps containing shrubs or trees, wet meadows, meandered water, streams, rivers, and floodplains or river bottoms. Exemption of wetlands from taxation pursuant to this section shall not grant the public any additional or greater right of access to the wetlands or diminish any right of ownership to the wetlands.

(11) Native prairie. The commissioner of the department of natural resources shall determine lands in the state which are native prairie and shall notify the county assessor of each county in which the lands are located. Pasture land used for livestock grazing purposes shall not be considered native prairie for the purposes of this clause. Upon receipt of an application for the exemption provided in this clause for lands for which the assessor has no determination from the commissioner of natural resources, the assessor shall refer the application to the commissioner of natural resources who shall determine within 30 days whether the land is native prairie and notify the county assessor of the decision. Exemption of native prairie pursuant to this clause shall not grant the public any additional or greater right of access to the native prairie or diminish any right of ownership to it.

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(12) Property used in a continuous program to provide emergency shelter for victims of domestic abuse, provided the organization that owns and sponsors the shelter is exempt from federal income taxation pursuant to section 501(c)(3) of the Internal Revenue Code of 1986, as amended through December 31, 1986, notwithstanding the fact that the sponsoring organization receives funding under section 8 of the United States Housing Act of 1937, as amended.

(13) If approved by the governing body of the municipality in which the property is located, property not exceeding one acre which is owned and operated by any senior citizen group or association of groups that in general limits membership to persons age 55 or older and is organized and operated exclusively for pleasure, recreation, and other nonprofit purposes, no part of the net earnings of which inures to the benefit of any private shareholders; provided the property is used primarily as a clubhouse, meeting facility, or recreational facility by the group or association and the property is not used for residential purposes on either a temporary or permanent basis.

(14) To the extent provided by section 295.44, real and personal property used or to be used primarily for the production of hydroelectric or hydromechanical power on a site owned by the state or a local governmental unit which is developed and operated pursuant to the provisions of article 7, section ~~105.482~~, subdivisions ~~1, 8, and 9~~ 50.

(15) If approved by the governing body of the municipality in which the property is located, and if construction is commenced after June 30, 1983:

(a) a "direct satellite broadcasting facility" operated by a corporation licensed by the federal communications commission to provide direct satellite broadcasting services using direct broadcast satellites operating in the 12-ghz. band; and

(b) a "fixed satellite regional or national program service facility" operated by a corporation licensed by the federal communications commission to provide fixed satellite-transmitted regularly scheduled broadcasting services using satellites operating in the 6-ghz. band.

An exemption provided by clause (15) shall apply for a period not to exceed five years. When the facility no longer qualifies for exemption, it shall be placed on the assessment rolls as provided in subdivision 4. Before approving a tax exemption pursuant to this paragraph, the governing body of the municipality shall provide an opportunity to the members of the county board of commissioners of the county in which the facility is proposed to be located and the members of the school board of the school district in which the facility is proposed to be located to meet with the governing body. The governing body shall present to the members of those boards its estimate of the fiscal impact of the proposed property tax exemption. The tax exemption shall not be approved by the governing body until the county board of commissioners has presented its written comment on the proposal to the governing body, or 30 days has passed from the date of the transmittal by the governing body to the board of the information on the fiscal impact, whichever occurs first.

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(16) Real and personal property owned and operated by a private, nonprofit corporation exempt from federal income taxation pursuant to United States Code, title 26, section 501(c)(3), primarily used in the generation and distribution of hot water for heating buildings and structures.

(17) Notwithstanding section 273.19, state lands that are leased from the department of natural resources under section 92.46.

(18) Electric power distribution lines and their attachments and appurtenances, that are used primarily for supplying electricity to farmers at retail.

(19) Transitional housing facilities. "Transitional housing facility" means a facility that meets the following requirements. (i) It provides temporary housing to parents and children who are receiving AFDC or parents of children who are temporarily in foster care. (ii) It has the purpose of reuniting families and enabling parents to obtain self-sufficiency, advance their education, get job training, or become employed in jobs that provide a living wage. (iii) It provides support services such as child care, work readiness training, and career development counseling; and a self-sufficiency program with periodic monitoring of each resident's progress in completing the program's goals. (iv) It provides services to a resident of the facility for at least six months but no longer than three years, except residents enrolled in an educational or vocational institution or job training program. These residents may receive services during the time they are enrolled but in no event longer than four years. (v) It is sponsored by an organization that has received a grant under either section 256.7365 for the biennium ending June 30, 1989, or section 462A.07, subdivision 15, for the biennium ending June 30, 1991, for the purposes of providing the services in items (i) to (iv). (vi) It is sponsored by an organization that is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code of 1986, as amended through December 31, 1987. This exemption applies notwithstanding the fact that the sponsoring organization receives financing by a direct federal loan or federally insured loan or a loan made by the Minnesota housing finance agency under the provisions of either Title II of the National Housing Act or the Minnesota housing finance agency law of 1971 or rules promulgated by the agency pursuant to it, and notwithstanding the fact that the sponsoring organization receives funding under Section 8 of the United States Housing Act of 1937, as amended.

Sec. 33. Minnesota Statutes 1988, section 272.02, subdivision 6, is amended to read:

Subd. 6. Notwithstanding the provisions of subdivision 5, real and personal property used or to be used primarily for the production of hydroelectric or hydromechanical power and leased from the state or a local governmental unit pursuant to article 7, section ~~105.482~~, ~~subdivisions 1, 8, and 9~~ 50, may be exempt from taxation or payments in lieu of taxes.

The exemption from taxation or payments in lieu of taxes provided by this  
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subdivision does not apply to hydroelectric or hydromechanical facilities operated at any time between January 1, 1980 and January 1, 1984.

Sec. 34. Minnesota Statutes 1988, section 273.19, subdivision 5, is amended to read:

Subd. 5. Notwithstanding the provisions of subdivision 4, real and personal property used or to be used primarily for the production of hydroelectric or hydromechanical power and leased from the state or a local governmental unit pursuant to article 7, section ~~105.482~~, ~~subdivisions 1, 8, and 9~~ 50, may be exempt from taxation or payments in lieu of taxes.

The exemption from taxation or payments in lieu of taxes provided by this subdivision does not apply to hydroelectric or hydromechanical facilities operated at any time between January 1, 1980 and January 1, 1984.

Sec. 35. Minnesota Statutes 1988, section 295.44, subdivision 1, is amended to read:

Subdivision 1. **EXEMPTION.** Notwithstanding the provisions of sections 272.01, subdivision 2, 272.02, subdivision 5, and 273.19, subdivision 1, real or personal property used or to be used primarily for the production of hydroelectric or hydromechanical power on a site owned by the state or a local governmental unit and developed and operated pursuant to article 7, section ~~105.482~~, ~~subdivisions 1, 8 and 9~~ 50, may be exempt from property taxation for all years during which the site is developed and operated under the terms of a lease or agreement authorized by article 7, section ~~105.482~~, ~~subdivisions 1, 8, and 9~~ 50.

Sec. 36. Minnesota Statutes 1988, section 355.11, subdivision 4, is amended to read:

Subd. 4. "Employee" means any employee, other than elected officials, of municipal housing and redevelopment authorities or of any soil and water conservation district organized pursuant to ~~chapter 40~~ article 3, or any port authority organized pursuant to chapter 458, or any hospital district organized or reorganized pursuant to sections 447.31 to 447.37.

Sec. 37. Minnesota Statutes 1988, section 355.11, subdivision 5, is amended to read:

Subd. 5. "Employing unit" means any municipal housing and redevelopment authorities organized pursuant to sections 469.001 to 469.047 and any soil and water conservation district organized pursuant to ~~chapter 40~~ article 3 or any port authority organized pursuant to sections 469.048 to 469.068, or any economic development authority organized pursuant to sections 469.090 to 469.108, or any hospital district organized or reorganized pursuant to sections 447.31 to 447.37.

Sec. 38. Minnesota Statutes 1989 Supplement, section 357.021, subdivision 2, is amended to read:

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Subd. 2. **FEE AMOUNTS.** The fees to be charged and collected by the court administrator shall be as follows:

(1) In every civil action or proceeding in said court, the plaintiff, petitioner, or other moving party shall pay, when the first paper is filed for that party in said action, a fee of \$55, except that in an action for marriage dissolution, the fee is \$75.

The defendant or other adverse or intervening party, or any one or more of several defendants or other adverse or intervening parties appearing separately from the others, shall pay, when the first paper is filed for that party in said action, a fee of \$55, except that in an action for marriage dissolution, the fee for the respondent is \$75.

The party requesting a trial by jury shall pay \$30.

The fees above stated shall be the full trial fee chargeable to said parties irrespective of whether trial be to the court alone, to the court and jury, or disposed of without trial, and shall include the entry of judgment in the action, but does not include copies or certified copies of any papers so filed or proceedings under ~~sections 106A.005 to 106A.811~~ chapter 103E, except the provisions therein as to appeals.

(2) Certified copy of any instrument from a civil or criminal proceeding \$5, plus 25 cents per page after the first page and \$3.50, plus 25 cents per page after the first page for an uncertified copy.

(3) Issuing a subpoena \$3 for each name.

(4) Issuing an execution and filing the return thereof; issuing a writ of attachment, injunction, habeas corpus, mandamus, quo warranto, certiorari, or other writs not specifically mentioned, \$5.

(5) Issuing a transcript of judgment, or for filing and docketing a transcript of judgment from another court, \$5.

(6) Filing and entering a satisfaction of judgment, partial satisfaction or assignment of judgment, \$5.

(7) Certificate as to existence or nonexistence of judgments docketed, \$1 for each name certified to and \$3 for each judgment certified to.

(8) Filing and indexing trade name; or recording notary commission; or recording basic science certificate; or recording certificate of physicians, osteopaths, chiropractors, veterinarians or optometrists, \$5.

(9) For the filing of each partial, final, or annual account in all trusteeships, \$10.

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(10) All other services required by law for which no fee is provided such fee as compares favorably with those herein provided, or such as may be fixed by rule or order of the court.

Sec. 39. Minnesota Statutes 1988, section 375.471, is amended to read:

**375.471 LAND CONSERVATION AND UTILIZATION; FEDERAL AID.**

The county boards of the several counties which have been designated as a resource conservation and development project area under United States Code, title 7, section 1011(e) and acts amendatory thereof, may enter into agreements as necessary with the secretary of agriculture of the United States and other agencies of the federal government for the program of land conservation and land utilization authorized by United States Code, title 7, section 1010 and acts amendatory thereof, to accept assistance for the program under United States Code, title 7, section 1011 and acts amendatory thereof, to engage in works of improvement as necessary for the purpose of the acts and to cooperate with the secretary of agriculture and federal agencies so that residents of this state obtain the benefits and advantages available to them and intended by congress to be available by the acts. The county boards shall comply with the requirements of federal law and any rules and regulations promulgated under it and with appropriate state laws to accomplish the purposes intended by this section. If a proceeding is instituted by petition for an improvement under this section, it may be conducted by a board in the same manner provided for the establishment of a drainage system under ~~sections 106A.005 to 106A.811~~ chapter 103E. A majority of the landowners as defined in article 5, section ~~106A.201~~ 28, subdivision ~~3~~ 2, shall be required for a valid petition. They may also proceed under authority provided by other law.

Sec. 40. Minnesota Statutes 1988, section 383A.602, subdivision 3, is amended to read:

Subd. 3. **DISTRICT.** "District" means the soil and water conservation district operating under ~~chapter 40~~ article 3.

Sec. 41. Minnesota Statutes 1988, section 383A.602, subdivision 5, is amended to read:

Subd. 5. **ORGANIZATION.** "Organization" means a watershed management organization as defined in article 2, section ~~473.876~~ 6, that has more than 25 percent of its area within Ramsey county.

Sec. 42. Minnesota Statutes 1988, section 383A.604, subdivision 1, is amended to read:

Subdivision 1. **ADOPTION.** Each organization must, within one year after the adoption of the district program under section 383A.603, develop and adopt an organization soil erosion and sediment control program, as part of its watershed

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plan under article 2, section 473.878 11. The organization program must be consistent with the district program and must be submitted to the district for approval or disapproval. Upon written request of an organization, the district shall assist in the preparation of the organization program. The organization may choose to implement the program throughout its area of jurisdiction or only within the territory of the district.

Sec. 43. **[383B.78] BATHING BEACHES.**

Subdivision 1. BATHING BEACH DEFINITION. For purposes of this section, a public bathing beach means public land, roads, and highways adjoining public waters that have been or may be used for bathing or swimming, and privately owned places that the public is allowed to frequent or use for bathing. [378.20 s. 1]

Subd. 2. UNLAWFUL TO BATHE AT PUBLIC BEACHES AT CERTAIN TIMES. In counties that have a population of 450,000 or more, a person may not frequent, swim, bathe, or congregate at a public bathing beach or public waters adjacent to a public bathing beach for the purpose of swimming or bathing, or congregating with others, from 10:30 p.m. to 5:00 a.m. of the next day. [378.20 s. 2]

Subd. 3. REGULATORY ORDINANCES. (a) The governing bodies of counties having a population of more than 450,000, and all cities and towns located in the counties may, by ordinance, resolution, or bylaw, regulate the use of public bathing beaches and public waters where a public bathing beach immediately borders for the purpose of bathing, swimming, or congregating with others, within their respective territorial limits, in a manner that is not inconsistent with this section. [378.20 s. 3]

(b) If a governing body determines that the safety, health, morals, or general welfare of the public require, the governing body may, by ordinance, resolution, or bylaw, provide that a public bathing beach is closed to bathing, swimming, and congregating after 9:00 a.m. [378.20 s. 4]

Subd. 4. NOT RESTRICTIVE. This section does not limit or abrogate any of the existing powers of a body or governing board of a county, home rule charter or statutory city, or town. [378.20 s. 5]

Subd. 5. PENALTY. A person who violates a provision of this section is guilty of a misdemeanor. [378.20 s. 6]

Sec. 44. Minnesota Statutes 1988, section 394.25, subdivision 2, is amended to read:

Subd. 2. Zoning ordinances establishing districts within which the use of land or the use of water or the surface of water pursuant to article 9, section 378.32 10, for agriculture, forestry, recreation, residence, industry, trade, soil

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conservation, water supply conservation, surface water drainage and removal, conservation of shorelands, as defined in ~~section 105.485~~ article 6, sections 25 to 29, and additional uses of land and of the surface of water pursuant to article 9, section 378.32 10, may be by official controls encouraged, regulated, or prohibited and for such purpose the board may divide the county into districts of such number, shape, and area as may be deemed best suited to carry out the comprehensive plan. Official controls may also be applied to wetlands preservation, open space, parks, sewage disposal, protection of ~~ground water~~ groundwater, protection of ~~flood plains~~ floodplains as defined in article 6, section 104.02 4, protection of wild, scenic or recreational rivers as defined in ~~section 104.33~~ article 6, sections 32 and 33, protection of slope, soils, unconsolidated materials or bedrock from potentially damaging development, preservation of forests, woodlands and essential wildlife habitat, reclamation of nonmetallic mining lands; protection and encouragement of access to direct sunlight for solar energy systems as defined in section 116J.06, subdivision 9; and the preservation of agricultural lands.

Sec. 45. Minnesota Statutes Second 1989 Supplement, section 444.075, subdivision 1a, is amended to read:

Subd. 1a. **AUTHORIZATION.** Any municipality may build, construct, reconstruct, repair, enlarge, improve, or in any other manner obtain

(i) waterworks systems, including mains, valves, hydrants, service connections, wells, pumps, reservoirs, tanks, treatment plants, and other appurtenances of a waterworks system,

(ii) sewer systems, sewage treatment works, disposal systems, and other facilities for disposing of sewage, industrial waste, or other wastes, and

(iii) storm sewer systems, including mains, holding areas and ponds, and other appurtenances and related facilities for the collection and disposal of storm water, all hereinafter called facilities, and maintain and operate the facilities inside or outside its corporate limits, and acquire by gift, purchase, lease, condemnation or otherwise any and all land and easements required for that purpose. The authority hereby granted is in addition to all other powers with reference to the facilities otherwise granted by the laws of this state or by the charter of any municipality. The authority granted in clause (iii) to municipalities which have territory within a watershed which has adopted a watershed plan pursuant to article 2, section 473.878 11, shall be exercised, with respect to facilities acquired following the adoption of the watershed plan, only for facilities which are not inconsistent with the watershed plan. The authority granted in clause (iii) to municipalities which have adopted local water management plans pursuant to article 2, section 473.879 12, shall be exercised, with respect to facilities acquired following the adoption of a local plan, only for facilities which are not inconsistent with the local plan. Counties, except counties in the seven county metropolitan area, shall have the same authority granted to munic-

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ipalities by this subdivision except for areas of the county organized into cities and areas of the county incorporated within a sanitary district established by special act of the legislature.

Sec. 46. Minnesota Statutes 1988, section 459.20, is amended to read:

**459.20 AUTHORITY OVER PUBLIC WATERS.**

The governing body of any home rule charter or statutory city or town in the state has, with respect to any body of water situated wholly within its boundaries, all the powers to improve and regulate the use of such body of water subject to ~~section 378.321~~ article 9, section 10, subdivision 6, as are conferred on county boards by ~~sections 378.31 and 378.32~~ article 6, section 93, and article 9, section 10, and to establish and administer lake improvement districts under article 2, sections ~~378.401 to 378.56~~ 30 to 46. With respect to any body of water situated wholly within the contiguous boundaries of two or more home rule charter or statutory cities or towns or any combination thereof, the city councils and town boards may, under the provisions of section 471.59, jointly exercise such powers to improve and regulate the use of the body of water subject to article 6, section 378.321 90, as are conferred on county boards by ~~sections 378.31 and 378.32~~ article 6, section 93, and article 9, section 10, and to establish and administer lake improvement districts as provided under article 2, sections ~~378.401 to 378.56~~ 30 to 46, provided that, no home rule charter or statutory city or town may establish and administer a lake improvement district or exercise any of the powers granted in this section if a lake improvement district covering the same territory has been created by a county board under article 2, sections ~~378.401 to 378.56~~ 30 to 46. References in ~~sections 378.31 to 378.35 and 378.401 to 378.56~~ article 6, section 93, article 9, section 10, and article 2, sections 30 to 46, to the county board shall be construed to refer to the governing body of a home rule charter or statutory city or the board of supervisors of a town.

Sec. 47. Minnesota Statutes 1989 Supplement, section 462.357, subdivision 1, is amended to read:

Subdivision 1. **AUTHORITY FOR ZONING.** For the purpose of promoting the public health, safety, morals, and general welfare, a municipality may by ordinance regulate on the earth's surface, in the air space above the surface, and in subsurface areas, the location, height, width, bulk, type of foundation, number of stories, size of buildings and other structures, the percentage of lot which may be occupied, the size of yards and other open spaces, the density and distribution of population, the uses of buildings and structures for trade, industry, residence, recreation, public activities, or other purposes, and the uses of land for trade, industry, residence, recreation, agriculture, forestry, soil conservation, water supply conservation, conservation of shorelands, as defined in ~~section 105.485~~ article 6, sections 25 to 29, access to direct sunlight for solar energy systems as defined in section 216C.06, flood control or other purposes,

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and may establish standards and procedures regulating such uses. No regulation may prohibit earth sheltered construction as defined in section 216C.06, subdivision 2, relocated residential buildings, or manufactured homes built in conformance with sections 327.31 to 327.35 that comply with all other zoning ordinances promulgated pursuant to this section. The regulations may divide the surface, above surface, and subsurface areas of the municipality into districts or zones of suitable numbers, shape, and area. The regulations shall be uniform for each class or kind of buildings, structures, or land and for each class or kind of use throughout such district, but the regulations in one district may differ from those in other districts. The ordinance embodying these regulations shall be known as the zoning ordinance and shall consist of text and maps. A city may by ordinance extend the application of its zoning regulations to unincorporated territory located within two miles of its limits in any direction, but not in a county or town which has adopted zoning regulations; provided that where two or more noncontiguous municipalities have boundaries less than four miles apart, each is authorized to control the zoning of land on its side of a line equidistant between the two noncontiguous municipalities unless a town or county in the affected area has adopted zoning regulations. Any city may thereafter enforce such regulations in the area to the same extent as if such property were situated within its corporate limits, until the county or town board adopts a comprehensive zoning regulation which includes the area.

Sec. 48. Minnesota Statutes 1988, section 465.20, is amended to read:

**465.20 APPLICATION.**

Sections ~~465.18 to~~ 465.19 and 465.20 shall apply to all cities including those now or hereafter governed by a charter adopted pursuant to the Constitution of the state of Minnesota, article IV, section 36.

Sec. 49. Minnesota Statutes 1988, section 469.141, subdivision 4, is amended to read:

Subd. 4. **PERMITS FOR WATER REMOVAL.** No mined underground space project involving or affecting the quality and quantity of underground waters may be developed until a water use permit for the appropriation of waters pursuant to section ~~105.41~~, has been granted by the commissioner of natural resources under chapter 103G.

Sec. 50. Minnesota Statutes 1988, section 469.174, subdivision 19, is amended to read:

Subd. 19. **SOILS CONDITION DISTRICTS.** (a) "Soils condition district" means a type of tax increment financing district consisting of a project, or portions of a project, within which the authority finds by resolution that the following conditions exist:

(1) less than 70 percent of the parcels in the district are occupied by buildings, streets, utilities, or other improvements;

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(2) unusual terrain or soil deficiencies for 80 percent of the acreage in the district require substantial filling, grading, or other physical preparation for use;

(3) the estimated cost of the physical preparation under clause (2), but excluding costs directly related to roads as defined in section 160.01 and local improvements as described in section 429.021, subdivision 1, clauses (1) to (7), (11) and (12), and 430.01, when added to the fair market value of the land upon inclusion in the district exceeds the anticipated fair market value of the land upon completion of the preparation.

(b) An area does not qualify as a soils condition district if it contains a wetland, as defined in article 7, section ~~105.37~~ 2, unless the development agreement prohibits draining, filling, or other alteration of the wetland or other binding legal assurances for preservation of the wetland are provided.

(c) If the district is located in the metropolitan area, the proposed development of the district in the tax increment financing plan must be consistent with the municipality's land use plan adopted in accordance with sections 473.851 to 473.872 and reviewed by the metropolitan council under section 473.175. If the district is located outside of the metropolitan area, the proposed development of the district must be consistent with the municipality's comprehensive municipal plan.

(d) No parcel shall be included in the district unless the authority has concluded an agreement or agreements for the development of at least 50 percent of the acreage having the unusual soil or terrain deficiencies. The agreement must provide recourse for the authority if the development is not completed.

Sec. 51. Minnesota Statutes 1988, section 471.345, subdivision 3, is amended to read:

Subd. 3. **CONTRACTS OVER \$15,000.** If the amount of the contract is estimated to exceed \$15,000, sealed bids shall be solicited by public notice in the manner and subject to the requirements of the law governing contracts by the particular municipality or class thereof provided that with regard to repairs and maintenance of ditches, bids shall not be required if the estimated amount of the contract does not exceed the amount specified in article 5, section ~~106A.705~~ 91, subdivisions ~~4, 5, and 6,~~ and 7.

Sec. 52. Minnesota Statutes 1988, section 471.591, subdivision 1, is amended to read:

Subdivision 1. In the beginning stage of the planning process, and before preparation of any detailed technical plans for the extension of municipal services into an unincorporated area, a city shall meet at least once with the town board of the affected area and the county planning commission, in joint session, to review the plans and consider the comments of the town board and the county planning commission. The city may thereafter proceed to undertake the

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proposed extension in accordance with applicable law. Any duly organized sewer district or sanitary district created pursuant to special law or pursuant to chapter 115 or 116A, sections 473.501 to 473.549, or ~~378.31~~ article 6, section 93, is not affected by this section.

Sec. 53. Minnesota Statutes 1988, section 471.98, subdivision 2, is amended to read:

Subd. 2. **POLITICAL SUBDIVISION.** "Political subdivision" includes a statutory or home rule charter city, a county, a school district, a town, a watershed management organization as defined in article 2, section 473.876 6, subdivision 9 13, or an instrumentality thereof, including but not limited to instrumentalities incorporated under chapter 317, having independent policy making and appropriating authority. For the purposes of this section and section 471.981, the governing body of a town is the town board.

Sec. 54. Minnesota Statutes 1988, section 473.191, subdivision 2, is amended to read:

Subd. 2. The metropolitan council may provide technical assistance to cities, counties and towns to expedite adoption and enforcement of local ordinances under article 6, section 6, and sections ~~104.04, 105.485~~ 25 to 29 and 473.204 to 473.208.

Sec. 55. Minnesota Statutes 1988, section 500.24, subdivision 3b, is amended to read:

Subd. 3b. **PROTECTION OF CONSERVATION PRACTICES.** If a corporation, pension or investment fund, or limited partnership, other than a family farm corporation, an authorized farm corporation, a family farm partnership, or authorized farm partnership, during the period of time it holds agricultural land under subdivision 3, clause (i), intentionally destroys a conservation practice as defined in article 6, section 40-19 57, subdivision 5 3, to which the state has made a financial contribution, the corporation, pension or investment fund, or limited partnership must pay the commissioner of agriculture, for deposit in the general fund, an amount equal to the state's total contributions to that conservation practice plus interest from the time of investment in the conservation practice. Interest must be calculated at an annual percentage rate of 12 percent.

Sec. 56. Minnesota Statutes 1988, section 609.68, is amended to read:

**609.68 UNLAWFUL DEPOSIT OF GARBAGE, LITTER OR LIKE.**

Whoever unlawfully deposits garbage, rubbish, offal, or the body of a dead animal, or other litter in or upon any public highway, public waters or the ice thereon, shoreland areas adjacent to rivers or streams as defined by article 6, section 105.485; subdivision 2 26, public lands, or, without the consent of the owner, private lands or water or ice thereon, is guilty of a misdemeanor.

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Sec. 57. Minnesota Statutes 1988, section 645.44, is amended by adding a subdivision to read:

Subd. 8a. PUBLIC WATERS. "Public waters" means public waters as defined in article 7, section 2, subdivision 15, and includes "wetlands" as defined in article 7, section 2, subdivision 18. [105.37 s. 14]

Sec. 58. Laws 1987, chapter 404, section 22, subdivision 7, is amended to read:

Subd. 7. Fish and Wildlife Management		
\$25,734,700	\$25,985,500	
Summary by Fund		
General	\$ 788,600	\$ 795,900
Nongame Wildlife	\$ 1,179,800	\$ 1,183,600
Water Recreation	\$ 150,000	\$ 150,000
Wildlife Acquis.	\$ 961,500	\$ 836,500
Game and Fish	\$22,624,800	\$22,989,500
Wild Rice Management	\$ 30,000	\$ 30,000

\$685,700 in the first year and \$685,700 the second year are appropriated from the game and fish fund for payments to counties in lieu of taxes on acquired wildlife lands and is not subject to transfer.

\$1,179,800 the first year and \$1,183,600 the second year are from the nongame wildlife management account in the special revenue fund for the purpose of nongame wildlife management. Any unencumbered balance remaining in the first year does not cancel but is available the second year.

\$54,400 in the first year and \$54,200 the second year are for acid rain research.

\$40,000 the first year and \$40,000 the second year is from the general fund for one complement position to serve as a native prairie biologist.

\$127,900 the first year and \$127,900 the second year are for emergency deer feeding. If the appropriation for either year is insufficient, the appropriation for the other year is available for it.

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\$30,000 is appropriated each year from the wild rice management account project to improve natural wild rice production on public waters pursuant to Minnesota Statutes, section 97A.065, subdivision 4.

\$40,000 for the first year and \$40,000 for the second year is from the general fund to be transferred to the commissioner of agriculture to compensate landowners for agricultural crops damaged by elk.

\$10,000 each year is appropriated from the general fund to be used as an additional payment to the Leech Lake Indian Reservation for enforcement activities. The reservation may also use \$40,000 of the increased annual payment that it receives as a result of the fee increases in this act for enforcement. The department of natural resources shall also make surplus equipment available to the reservation.

Effective July 1, 1987, aquatic plant control permit fees established under Minnesota Statutes, section 84.092, subdivision 1, are doubled. Notice of the revised fees must be published in the State Register as soon as practical.

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## ARTICLE 9

### RECODIFICATION AND RELOCATION OF PROVISIONS RELATING TO WATER SAFETY, WATER SURFACE USE, AND WATERCRAFT

#### CHAPTER 86B

#### WATER SAFETY AND WATERCRAFT

##### Section 1. [86B.001] WATER USE POLICY.

It is the policy of this state, which is blessed with an abundance of water, to

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promote its full use and enjoyment by all of the people, now and in the future, to promote safety for persons and property in connection with the use of the waters of the state, to promote uniformity of laws relating to the use and to conform with use requirements of the United States. [361.01]

Sec. 2. [86B.005] DEFINITIONS.

Subdivision 1. APPLICABILITY. The definitions in this section apply to this chapter. [361.02 s. 1]

Subd. 2. CITY. "City" means a home rule charter or statutory city.

Subd. 3. COMMISSIONER. "Commissioner" means the commissioner of natural resources. [361.02 s. 10]

Subd. 4. DEALER. "Dealer" means a person:

(1) engaged in the business of manufacturing or selling new or used watercraft;

(2) having an established place of business for the sale, trade, and display of the watercraft; and

(3) having in possession watercraft for the purpose of sale or trade. [361.02 s. 4]

Subd. 5. HORSEPOWER. "Horsepower" means the power rating established for a motor by the manufacturer, or, if a rating is not established, the power rating established by the commissioner. [361.02 s. 13]

Subd. 6. LENGTH. "Length" of a watercraft means the straight-line distance from the foremost part of the craft to the aftermost part of the craft, measured parallel to the centerline, excluding sheer. Bowsprits, outboard motor brackets, rudders, and other attachments are not included in the length measurement. [361.02 s. 14]

Subd. 7. LICENSE. "License" means the authentic document used to designate the numbers assigned a watercraft and to renew the designation. [361.02 s. 11]

Subd. 8. LICENSE AGENT. "License agent" means the commissioner of natural resources, the commissioner of public safety, and deputy registrars of motor vehicles acting under section 168.33. [361.03 s. 2]

Subd. 9. MOTORBOAT. "Motorboat" means a watercraft propelled in any manner by machinery, including watercraft temporarily equipped with detachable motors. [361.02 s. 8]

Subd. 10. OPERATE. "Operate" means to navigate or otherwise use a watercraft. [361.02 s. 5]

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**Subd. 11. OPERATOR.** “Operator” means the person who operates or controls the navigation or use of a watercraft. [361.02 s. 6]

**Subd. 12. OWNER.** “Owner” means a person having a property right or title to a watercraft other than a security interest. Owner includes a person entitled to the use or possession of a watercraft, subject to an interest in another person, reserved or created by agreement that secures payment or performance of an obligation, but owner does not include a lessee under a lease not intended as security. [361.02 s. 3]

**Subd. 13. PADDLE BOAT.** “Paddle boat” means a nonmotorized watercraft 19 feet in length or less that is propelled solely by a paddle wheel peddled by an operator or passenger. [361.02 s. 17]

**Subd. 14. PERSON.** “Person” means an individual, partnership, corporation, the state and its agencies and subdivisions, and any other legal entity. [361.02 s. 2]

**Subd. 15. RENT.** “Rent” watercraft means to make a watercraft available for the use of others in connection with a business. [361.02 s. 15]

**Subd. 16. SAILBOARD.** “Sailboard” means a single passenger, nonmotorized watercraft using a surfboard type hull and a free sail system which, without capsizing, allows the sail to lie flat in the water when not being supported by the operator. [361.02 s. 16]

**Subd. 17. UNDERWAY OR IN USE.** “Underway or in use” means a watercraft in operation or use unless it is securely fastened to a dock or other permanent mooring. [361.02 s. 9]

**Subd. 18. WATERCRAFT.** “Watercraft” means any contrivance used or designed for navigation on water except:

- (1) a duck boat during the duck hunting season;
- (2) a rice boat during the harvest season; or
- (3) a seaplane. [361.02 s. 7]

**Subd. 19. WATERS OF THIS STATE.** “Waters of this state” means waters capable of substantial beneficial public use, and waters to which the public has access that are within the territorial limits of this state, including boundary waters. [361.02 s. 12]

#### GENERAL PROVISIONS

### Sec. 3. [86B.101] WATERCRAFT SAFETY PROGRAM.

**Subdivision 1. SAFETY PROGRAM.** The commissioner shall continue  
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and expand the comprehensive boat safety and education program. The commissioner shall cooperate with boaters, governmental subdivisions, state agencies, other states, and the federal government in the operation of the program. [361.041 s. 1]

**Subd. 2. YOUTH WATERCRAFT SAFETY COURSE.** (a) The commissioner shall establish an educational course and a testing program for watercraft operators and for persons age 13 or older but younger than age 18 required to take the watercraft safety course. The commissioner shall prescribe a written test as part of the course.

(b) The commissioner shall issue a watercraft operator's permit to a person age 13 or older but younger than age 18 who successfully completes the educational program and the written test. [361.041 s. 1, s. 2]

**Subd. 3. OPERATOR'S PERMIT.** The commissioner shall issue a watercraft operator's permit to a person who successfully qualifies for a watercraft operator's permit under the boat safety education program. [361.041 s. 1, s. 2]

#### Sec. 4. [86B.105] SHERIFF'S SAFETY PROGRAM.

(a) The sheriff of each county shall maintain a program of search, rescue, buoying or marking, patrol, removal of hazards to navigation, and inspection of watercraft for rent, lease, or hire. The sheriff shall prohibit the use of any watercraft or safety equipment for rent, lease, or hire that does not comply with the standards of safety for the watercraft or equipment prescribed by the commissioner. The sheriff shall investigate watercraft accidents and drownings and report findings to the commissioner on a form prescribed by the commissioner.

(b) The county board may authorize the employment of additional personnel to carry out the provisions of this section. [361.24 s. 1]

#### Sec. 5. [86B.111] NAVIGATION MARKERS AND BUOYS.

**Subdivision 1. PERMIT FOR PLACEMENT OF NAVIGATION HAZARDS.** The commissioner may require that a permit is obtained for the placement of a structure or device determined by the commissioner to constitute a hazard to navigation. [361.21 s. 1]

**Subd. 2. REMOVAL AND DAMAGE TO BUOYS PROHIBITED.** Except as authorized by the commissioner, a person may not obstruct, remove, damage, or destroy a buoy or structure placed in the waters of this state in accordance with this chapter or by authority of the United States. [361.21 s. 2]

**Subd. 3. UNIFORM MARKING REQUIRED FOR BUOYS.** A person may not place buoys or other waterway markers unless the markers conform with the uniform marking system established by the commissioner. [361.21 s. 3]

#### **Subd. 4. GOVERNMENT DOES NOT HAVE DUTY TO MARK ALL**

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**HAZARDS.** The marking of certain hazards to navigation on, in, or adjacent to the waters of this state by a governmental agency does not incur a duty to mark all navigational hazards by the agency or another agency. [361.21 s. 4]

**Sec. 6. [86B.115] USE OF DOCKS AND STRUCTURES FOR ADVERTISING PROHIBITED.**

A person may not use a fixed or anchored structure on the waters of this state or a pier or dock extending from shore for advertising purposes. [361.07]

**Sec. 7. [86B.121] RACES, COMPETITIONS, AND EXHIBITIONS.**

(a) A person may not hold or sponsor any scheduled or public race, regatta, tournament or other competition or exhibition, or trial race, on water or ice, whether or not involving watercraft, without first having obtained a written permit from the sheriff of the county where the event is to originate.

(b) The sheriff, in the permit, may exempt watercraft from any of the provisions of this chapter relating to the licensing, operation and equipment of watercraft while participating in the event authorized.

(c) If the sheriff refuses the permit, the person applying for the permit may appeal the refusal to the commissioner. [361.20]

**Sec. 8. [86B.125] LEASED WATERCRAFT.**

Subdivision 1. SAFETY STANDARDS. The commissioner shall prescribe safety standards for watercraft offered for lease, rent, or hire. [361.03 s. 11]

Subd. 2. SUSPENSION OR REVOCATION OF LICENSE. (a) The commissioner may suspend or revoke the license of a watercraft offered for rent, lease, or hire:

(1) that does not comply with the safety standards for the watercraft; and

(2) for which the watercraft owner fails to keep a record of the name and address of the person renting, leasing, or hiring the watercraft, the license number of the watercraft, the date and time the person takes possession, and the expected time of return of the watercraft.

(b) The record of renting, leasing, or hiring must be preserved for at least six months. [361.03 s. 11]

**REGULATION OF SURFACE WATER USE**

**Sec. 9. [86B.201] STATE LAW AND LOCAL ORDINANCE AUTHORITY.**

Subdivision 1. APPLICATION OF STATE LAW. The provisions of this chapter, and of other applicable laws of this state shall govern the operation, equipment, numbering, and all other related matters for a watercraft operated  
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on the waters of this state, or the time when an activity regulated by this chapter may take place. [361.26 s. 1]

Subd. 2. LOCAL AUTHORITY TO ADOPT ORDINANCE. (a) This chapter does not limit the authority of a political subdivision of this state to adopt regulations that are not inconsistent with this chapter and the rules of the commissioner, relating to the use of waters of this state that are wholly or partly within the territorial boundaries of a county, or entirely within the boundaries of a city.

(b) A city of the first class of over 200,000 or the park board of the city may forbid the use of motorboats or boats with attached motors on its lakes. [361.26 s. 1]

Sec. 10. [86B.205] WATER SURFACE USE ORDINANCE.

Subdivision 1. ASSISTANCE. The commissioner shall develop and publish guidelines to assist counties adopting water surface use ordinances for waters within their jurisdiction. [361.26 s. 1a]

Subd. 2. SURFACE USE ORDINANCES. (a) A county board may, by ordinance, regulate the surface use of bodies of water located entirely or partially within the county and not located entirely within the boundary of a single city or lake conservation district established by law.

(b) If a body of water is located within more than one county, a surface use ordinance is not effective until adopted by the county boards of all the counties where the body of water lies under section 471.59 or placed into effect by order of the commissioner under subdivision 9.

(c) With the authorization of an affected city or lake conservation district, a county board may assume and exercise the powers in subdivisions 2 to 5 with respect to bodies of water lying entirely within that city or lake conservation district. The regulation by the county of the surface use of a portion of a body of water located within the boundary of a city must be consistent with any city regulation existing on May 25, 1973, of the surface use of that portion of the body of water. After January 1, 1975, the ordinance must be consistent with the provisions of this chapter and rules of the commissioner under this chapter. [378.32 s. 1]

Subd. 3. PRIOR ORDINANCES INVALID WITHOUT APPROVAL. A surface use zoning ordinance adopted under subdivisions 2 to 5 by a local governmental unit after May 25, 1973, is invalid unless it is approved by the commissioner. [378.32 s. 1]

Subd. 4. APPROVAL OF ORDINANCES. A proposed surface use zoning ordinance must be submitted to the commissioner for review and approval before adoption. The commissioner must approve or disapprove the proposed ordinance within 120 days after receiving it. If the commissioner disapproves

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the proposed ordinance, the commissioner must return it to the local governmental unit with a written statement of the reasons for disapproval. [378.32 s. 1]

Subd. 5. COUNTY REGULATORY AUTHORITY. A county board may:

(1) regulate and police public beaches, public docks, and other public facilities for access to a body of water, except:

(i) regulations are subject to subdivision 6;

(ii) a county board may not regulate state accesses; and

(iii) a municipality may by ordinance preempt the county from exercising power under this subdivision within its jurisdiction; [378.32 s. 2]

(2) regulate the construction, configuration, size, location and maintenance of commercial marinas and their related facilities including parking areas and sanitary facilities in a manner consistent with other state law and the rules of the commissioner of natural resources, the pollution control agency, and the commissioner of health, and with the applicable municipal building codes and zoning ordinances where the marinas are located; [378.32 s. 3]

(3) regulate the construction, installation and maintenance of permanent and temporary docks and moorings in a manner consistent with state and federal law, permits required under chapter 103G, and sections 5 and 6; [378.32 s. 4]

(4) except as provided in subdivision 6, regulate the type and size of watercraft allowed to use the body of water and set access fees; [378.32 s. 6]

(5) subject to subdivision 6, limit the types and horsepower of motors used on the body of water; [378.32 s. 7]

(6) limit the use of the body of water at various times and the use of various parts of the body of water; [378.32 s. 8]

(7) regulate the speed of watercraft on the body of water and the conduct of other activities on the body of water to secure the safety of the public and the most general public use; and [378.32 s. 9]

(8) contract with other law enforcement agencies to police the body of water and its shore. [378.32 s. 10]

Subd. 6. PUBLIC ACCESS RESTRICTIONS. The county board must allow the same types and sizes of watercraft and horsepower of motors to access and enter the lake or water body as are generally allowed to be operated on the lake or water body. Special use exceptions that are not dependent on lakeshore or property ownership may be granted by permit. [378.321]

Subd. 7. COUNTY ACQUISITION OF PUBLIC ACCESS. A county  
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board may acquire by purchase, gift, or devise, land for public access to a lake or stream and may improve the land as a park or playground if the land is less than ten acres and is contiguous to the meander line of a navigable lake or stream wholly or partly within the county and not entirely within the corporate limits of a city. [378.08]

Subd. 8. ADVISORY ASSISTANCE. The county board may invite any municipal council or town board or the soil and water conservation district board of supervisors or watershed district board of managers to designate a representative to advise and consult with the county board on water use regulation and improvement. [378.33]

Subd. 9. WATERCRAFT USE RULES FOR LOCAL WATERS. (a) On request of a county, city, or town, the commissioner may, after determining it to be in the public interest, establish rules relating to the use of watercraft on waters of this state that border upon or are within, in whole or in part, the territorial boundaries of the governmental unit.

(b) The rules shall be established in the manner provided by sections 14.02 to 14.62, but may not be submitted to the attorney general nor filed with the secretary of state until first approved by resolutions of the county boards of a majority of the counties affected by the proposed rules.

(c) The rules may restrict:

(1) the type and size of watercraft and size of motor that may use the waters affected by the rule;

(2) the areas of water that may be used by watercraft;

(3) the speed of watercraft;

(4) the times permitted for use of watercraft; or

(5) the minimum distance between watercraft.

(d) When establishing rules the commissioner shall consider the physical characteristics of the waters affected, their historical uses, shoreland uses and classification, and other features unique to the waters affected by the rules.

(e) The commissioner shall inform the users of the waters of the rules affecting them at least two weeks before the effective date of the rules by distributing copies of the rules and by posting of the public accesses of the waters. The failure of the commissioner to comply with this paragraph does not affect the validity of the rules or a conviction for violation of the rules.

(f) The cost of publishing rules and of marking and posting waters under this subdivision shall be paid by the counties affected by the rules, as apportioned by the commissioner.

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(g) Regulations or ordinances relating to the use of waters of this state enacted by a local governmental unit before January 1, 1972, shall continue in effect until repealed by the local governmental unit or superseded by a rule of the commissioner adopted under this subdivision. [361.26 s. 2]

Sec. 11. [86B.211] WATER SAFETY RULES.

The commissioner shall adopt rules and publish the rules in the manner prescribed in section 97A.051, subdivision 3, that relate to:

- (1) the application for, form, and numbering of watercraft licenses;
- (2) the size, form, reflectorized material, and display of watercraft license numbers, which must comply with the requirements of the federal watercraft numbering system;
- (3) placement and regulation of docks, piers, buoys, mooring or marking devices, and other structures in the waters of this state;
- (4) rules of the road for watercraft navigation;
- (5) standards for equipment used in the towing of persons on water skis, aquaplanes, surfboards, saucers, and other devices;
- (6) standards for lights, signals, fire extinguishers, bilge ventilation, and lifesaving equipment;
- (7) standards of safe load and power capacity;
- (8) accounting, procedural, and reporting requirements for county sheriff;
- (9) designation of swimming or bathing areas;
- (10) standards of safety for watercraft offered for rent, lease, or hire;
- (11) the use of surface waters of this state by watercraft as provided and in accordance with section 10, subdivision 9, paragraphs (c) and (d), including:
  - (i) standards and criteria for resolving conflicts in the use of water surfaces by watercraft;
  - (ii) procedures for dealing with problems involving more than one local governmental unit;
  - (iii) procedures for local enforcement; and
  - (iv) procedures for enforcing the restrictions in section 10, subdivision 9, paragraph (c); and
- (12) other rules determined by the commissioner to be necessary to implement the provisions of this chapter. [361.25]

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## WATERCRAFT OPERATION

## Sec. 12. [86B.301] WATERCRAFT LICENSES REQUIRED.

Subdivision 1. REQUIREMENT. Except as provided in subdivisions 2 and 3, a person may not operate or give permission for the operation of a watercraft that requires a watercraft license on the waters of this state unless:

(1) a watercraft license for the watercraft has been issued and is valid during the period of operation;

(2) the license number is affixed to the watercraft as prescribed by the commissioner; and

(3) a valid registration sticker is affixed to the watercraft as prescribed by the commissioner. [361.03 s. 1, s. 2]

Subd. 2. EXEMPTIONS. A watercraft license is not required for:

(1) a watercraft that is covered by a license or number in full force and effect under federal law or a federally approved licensing or numbering system of another state, and has not been within this state for more than 90 consecutive days, which does not include days that a watercraft is laid up at dock over winter or for repairs at a Lake Superior port, or another port in the state;

(2) a watercraft from a country other than the United States that has not been within this state for more than 90 consecutive days, which does not include days that a watercraft is laid up at dock over winter or for repairs at a Lake Superior port, or another port in the state;

(3) a watercraft owned by the United States, a state, or a political subdivision of a state, except watercraft used for recreational purposes;

(4) a ship's lifeboat;

(5) a watercraft that has been issued a valid marine document by the United States government;

(6) a duck boat during duck hunting season;

(7) a rice boat during the harvest season;

(8) a seaplane; and

(9) a nonmotorized watercraft nine feet in length or less. [361.03 s. 12; 361.02 s. 7]

Subd. 3. TEMPORARY CERTIFICATE. A person may operate a watercraft and allow another person to operate a watercraft for which a temporary license certificate has been issued during the period the certificate is valid. [361.03 s. 14]

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Sec. 13. [86B.305] YOUTH OPERATORS.

Subdivision 1. UNDER AGE 13. Except in case of an emergency, a person under age 13 may not operate or be allowed to operate a watercraft propelled by a motor with a factory rating of more than 24 horsepower unless there is present in the watercraft in addition to the operator, the operator's parent or legal guardian, or at least one person of the age 18 or older. [361.055]

Subd. 2. AGE 13 TO 17; PERMIT REQUIRED. Except as provided in this subdivision, a person age 13 or older and younger than age 18 may not operate a motorboat powered by a motor over 24 horsepower without possessing a valid watercraft operator's permit from this state or from the operator's state of residence, unless there is a person age 18 or older in the motorboat. [361.041 s. 2]

Subd. 3. OWNERS MAY NOT ALLOW CERTAIN USES. An owner of a watercraft may not allow a watercraft to be operated contrary to the provisions of subdivision 2. [361.041 s. 3]

Sec. 14. [86B.311] GENERAL RULES FOR OPERATION.

Subdivision 1. SAFE OPERATION. A person may not operate or allow the operation of a watercraft or use a device relating to the use of the watercraft:

(1) in a careless or heedless manner in disregard of the rights or safety of others;

(2) in a reckless or grossly negligent manner that causes personal injury to another or damage to the property of another;

(3) upon the waters of this state without the equipment required by this chapter and the rules adopted under this chapter; or

(4) that is loaded with passengers or cargo beyond the watercraft's safe carrying capacity, or is equipped with a motor or other propulsion machinery beyond the watercraft's safe power capacity. [361.05]

Subd. 2. OBSTRUCTION TO NAVIGATION. A person may not operate a watercraft in a manner that obstructs or tends to obstruct normal and ordinary navigation on the waters of this state. [361.07]

Subd. 3. UNAUTHORIZED MOORING PROHIBITED. A person may not moor, attach, or hold in any manner a watercraft to a buoy or any other marking device or guide placed in the waters of this state pursuant to lawful authority. This subdivision does not apply to a mooring buoy. [361.07]

Subd. 4. SWIMMING OR BATHING AREAS. A person may not operate a watercraft within a water area that has been marked off or set aside as a swimming or bathing area as prescribed by the commissioner's rules. [361.08]

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**Subd. 5. RIDING ON GUNWALES OR DECKING.** A person may not ride or sit and a person may not operate a motorboat while a person is riding or sitting on the starboard or port gunwales, the decking over the bow, or transom of a motorboat while underway, unless the motorboat is provided with adequate guards or railing to prevent passengers from falling overboard. [361.11]

**Sec. 15. [86B.315] TOWING PERSON ON WATER SKIS OR OTHER DEVICE.**

**Subdivision 1. OBSERVER OR MIRROR REQUIRED.** A person may not operate a watercraft on waters of this state and tow a person on water skis, an aquaplane, a surfboard, a saucer, or a similar device unless:

(1) there is another person in the watercraft in addition to the operator who is in a position to continually observe the person being towed; or

(2) the boat is equipped with a mirror providing the operator a wide field of vision to the rear. [361.09 s. 1]

**Subd. 2. NIGHT SKIING OR TOWING PROHIBITED.** A person may not be towed or operate a watercraft towing a person on water skis, an aquaplane, a surfboard, a saucer, or another device on waters of this state from one hour after sunset to sunrise of the following day. [361.09 s. 2]

**Sec. 16. [86B.321] NOISE LIMITS.**

**Subdivision 1. OPERATION IN EXCESS OF NOISE LIMITS PROHIBITED.** A person may not operate a motorboat under a condition of load, acceleration, or deceleration in a manner that exceeds the noise limits contained in subdivision 2. [361.17 s. 2]

**Subd. 2. NOISE LIMITS.** (a) The noise limits for the total noise from the marine engine or motorboat may not exceed:

(1) for marine engines or motorboats manufactured before January 1, 1982, a noise level of 84 decibels on the A scale measured at a distance of 50 feet from the motorboat or equivalent noise levels at other distances as specified by the commissioner; and

(2) for marine engines or motorboats manufactured on or after January 1, 1982, a noise level of 82 decibels on the A scale measured at a distance of 50 feet from the motorboat or equivalent noise levels at other distances as specified by the commissioner.

(b) The noise limits in paragraph (a) do not preclude enforcement of other laws relating to motorboat noise. [361.17 s. 6]

**Subd. 3. APPLICABILITY.** The provisions of this section do not apply to motorboats operating under a permit issued under section 7 or a United States coast guard marine event permit in a regatta, or race, while on trial runs, or while on official trials for speed records during the time and in the designated area authorized by the permit. [361.17 s. 7]

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Sec. 17. **[86B.325] DISCHARGE FROM MARINE TOILETS PROHIBITED.**

(a) A person owning or operating a watercraft or other marine conveyance on the waters of this state may not use, operate, or allow the use or operation of a marine toilet or similar device for the disposition of sewage or other wastes, unless the toilet wastes are retained for disposition on land by means of facilities constructed and operated in accordance with rules adopted by the state commissioner of health and approved by the pollution control agency.

(b) A person may not:

(1) discharge sewage or other wastes into the waters of this state directly or indirectly from a watercraft or other marine conveyance; or

(2) place, leave, discharge, or cause to be placed, left, or discharged a container of sewage or other wastes into waters of this state by a person whether or not the owner, operator, guest, or occupant of a watercraft or other marine conveyance.

(c) Toilets must be sealed or otherwise rendered inoperative so that human or other waste cannot be discharged from the toilet into waters of this state. [361.29 s. 1]

Sec. 18. **[86B.331] OPERATION WHILE USING ALCOHOL OR DRUGS OR WITH A PHYSICAL OR MENTAL DISABILITY.**

Subdivision 1. ACTS PROHIBITED. (a) A person may not operate or be in physical control of a motorboat in operation on the waters of this state while under the influence of:

(1) alcohol, as provided in section 169.121, subdivision 1, paragraphs (a) and (d);

(2) a controlled or other substance, as provided in section 169.121, subdivision 1; or

(3) a combination of any two or more of the elements named in clauses (1) and (2).

(b) An owner or other person having charge or control of a motorboat may not authorize or allow an individual the person knows or has reason to believe is under the influence of alcohol or a controlled or other substance, as provided under paragraph (a), to operate the motorboat in operation on the waters of this state.

(c) An owner or other person having charge or control of a motorboat may not knowingly authorize or allow a person, who by reason of a physical or mental disability is incapable of operating the motorboat, to operate the motorboat in operation on the waters of this state. [361.12 s. 1]

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(d) For purposes of this subdivision, a motorboat "in operation" does not include a motorboat that is anchored, beached, or securely fastened to a dock or other permanent mooring.

Subd. 2. ARREST. Conservation officers of the department of natural resources, sheriffs, sheriff's deputies, and other peace officers may arrest a person for a violation under subdivision 1 without a warrant upon probable cause, if the violation was committed in the officer's presence. If the violation did not occur in the officer's presence, the officer may arrest the person if the person was involved in a motorboat accident resulting in death, personal injury, or property damage. [361.12 s. 2]

Subd. 3. PRELIMINARY SCREENING TEST. (a) If an officer authorized under subdivision 2 to make arrests has reason to believe from the manner in which a person is operating, controlling, or acting upon departure from a motorboat, or has operated or been in control of a motorboat, that the operator may be violating or has violated subdivision 1, paragraph (a), the officer may require the operator to provide a breath sample for a preliminary screening test using a device approved by the commissioner of public safety for this purpose.

(b) The results of the preliminary screening test shall be used for the purpose of deciding whether an arrest should be made under this section and whether to require the chemical tests authorized in section 19, but may not be used in a court action except to prove that a test was properly required of an operator pursuant to section 19.

(c) Following the preliminary screening test, additional tests may be required of the operator as provided under section 19.

(d) An operator who refuses a breath sample is subject to the provisions of section 19 unless, in compliance with that section, the operator submits to a blood, breath, or urine test to determine the presence of alcohol or a controlled substance. [361.12 s. 3]

Subd. 4. EVIDENCE. (a) Upon the trial of a prosecution arising out of acts alleged to have been committed by a person arrested for operating or being in physical control of a motorboat in violation of subdivision 1, paragraph (a), the court may admit evidence of the amount of alcohol or a controlled substance in the person's blood, breath, or urine as shown by an analysis of those items.

(b) For the purposes of this subdivision:

(1) evidence that there was at the time an alcohol concentration of 0.05 or less is prima facie evidence that the person was not under the influence of alcohol; and

(2) evidence that there was at the time an alcohol concentration of more than 0.05 and less than 0.10 is relevant evidence in indicating whether or not the person was under the influence of alcohol.

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(c) Evidence of the refusal to take a preliminary screening test required under subdivision 3 or a chemical test required under section 19 is admissible into evidence in a prosecution under this section.

(d) This subdivision does not limit the introduction of other competent evidence bearing upon the question of whether or not the person violated this section, including results obtained from partial tests on an infrared breath-testing instrument. A result from a partial test is the measurement obtained by analyzing one adequate breath sample. A sample is adequate if the instrument analyzes the sample and does not indicate the sample is deficient. [361.12 s. 4]

Subd. 5. PENALTIES. (a) A person who violates a prohibition contained in subdivision 1 is guilty of a misdemeanor; except that a person who violates a prohibition contained in subdivision 1 within five years of a prior conviction under that subdivision or civil liability under section 19, subdivision 2, or within ten years of two or more prior convictions under that subdivision or civil liability under section 19, subdivision 2, is guilty of a gross misdemeanor. The attorney in the jurisdiction where the violation occurred who is responsible for prosecution of misdemeanor violations of this section is also responsible for prosecution of gross misdemeanor violations of this section.

(b) A person who operates a motorboat on the waters of this state during the period the person is prohibited from operating any motorboat or after the person's motorboat operator's permit has been revoked, as provided under subdivision 6, is guilty of a misdemeanor. [361.12 s. 5]

Subd. 6. SUSPENSION AND REVOCATION OF OPERATING PRIVILEGES. (a) Upon conviction, and in addition to any penalty imposed under subdivision 5, the person is prohibited from operating any motorboat on the waters of this state for a period of 90 days between May 1 and October 31, extending over two consecutive years if necessary.

(b) A person with a motorboat operator's permit 13 years of age or older but less than 18 years of age and who violates any prohibition contained in subdivision 1 shall have the permit revoked by the commissioner as required by section 39, subdivision 2, in addition to any other penalty imposed by the court. [361.12 s. 6]

Subd. 7. DUTIES OF COMMISSIONER. The court shall promptly forward copies of all convictions and criminal and civil penalties imposed under subdivision 5 and section 19, subdivision 2, to the commissioner. The commissioner shall notify the convicted person of the period when the person is prohibited from operating a motorboat as provided under subdivision 6 or section 19, subdivision 2. The commissioner shall also periodically circulate to appropriate law enforcement agencies a list of all persons who are prohibited from operating any motorboat or have had their motorboat operator's permits revoked pursuant to subdivision 6 or section 19, subdivision 2. [361.12 s. 7]

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**Subd. 8. GOVERNMENT IMMUNITY FROM LIABILITY FOR BOAT CARE.** The state or political subdivision that is the employer of an officer authorized under subdivision 2 to make an arrest for violations of subdivision 1 is immune from any liability, civil or criminal, for the care or custody of the motorboat being operated by or in the physical control of the person arrested if the officer acts in good faith and exercises due care. [361.12 s. 8]

**Sec. 19. [86B.335] TESTING FOR ALCOHOL AND CONTROLLED SUBSTANCES.**

**Subdivision 1. CHEMICAL TESTING.** A person who operates or is in physical control of a motorboat in operation on the waters of this state is required, subject to the provisions of this section, to take or submit to a test of the person's blood, breath, or urine for the purpose of determining the presence and amount of alcohol or a controlled substance. A motorboat "in operation" does not include a motorboat that is anchored, beached, or securely fastened to a dock or other permanent mooring. The test shall be administered at the direction of an officer authorized to make arrests under section 18, subdivision 2. Taking or submitting to the test is mandatory when requested by an officer who has probable cause to believe the person was operating or in physical control of a motorboat in violation of section 18, subdivision 1, paragraph (a), and one of the following conditions exist:

(1) the person has been lawfully placed under arrest for violating section 18, subdivision 1, paragraph (a);

(2) the person has been involved in a motorboat accident resulting in property damage, personal injury, or death;

(3) the person has refused to take the preliminary screening test provided for in section 18, subdivision 3; or

(4) the screening test was administered and recorded an alcohol concentration of 0.10 or more. [361.121 s. 1]

**Subd. 2. REFUSAL TO TAKE TEST.** (a) If a person refuses to take a test required under subdivision 1, a test is not to be given, but the officer authorized to make arrests under section 18, subdivision 2, shall report the refusal to the commissioner of natural resources and to the authority having responsibility for prosecution of misdemeanor offenses for the jurisdiction where the incident occurred that gave rise to the test demand and refusal.

(b) On certification by the officer that probable cause existed to believe the person had been operating or in physical control of a motorboat while under the influence of alcohol or a controlled substance, and that the person refused to submit to testing, the commissioner shall impose a civil penalty of \$500 and shall prohibit the person from operating any motorboat on the waters of this state for a period of one year. If the person refusing to submit to testing is under the age of 18 years at the time of the refusal, the person's water-

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craft operator's permit shall be revoked by the commissioner as set forth in this subdivision and a new permit after the revocation must be issued only after the person successfully completes a watercraft safety course.

(c) On behalf of the commissioner, an officer requiring a test or directing the administration of a test shall serve on a person who refused to permit a test immediate notice of intention to impose the civil penalty set forth in this subdivision, to prohibit the operation of motorboats, and to revoke a watercraft operator's permit. The officer shall take a watercraft operator's permit held by the person, and shall send the permit to the commissioner along with the certification provided for in this subdivision. If the officer fails to serve a notice of intent to revoke, the commissioner may notify the person by mail, and the notice is deemed received three days after mailing. The notice must advise the person of the right to obtain administrative and judicial review as provided in this section. The prohibition and revocation, if any, shall take effect ten days after receipt of the notice. The civil penalty is imposed on receipt of the notice, and shall be paid within 30 days of imposition.

(d) A person who operates a motorboat on the waters of this state during the period the person is prohibited from operating a motorboat as provided under paragraph (b) or (c) is guilty of a misdemeanor. [361.121 s. 2]

Subd. 3. ADMINISTRATIVE REVIEW. (a) At any time during the period of prohibition or revocation imposed under this section, the person may request in writing a review of the order imposing sanctions under this section. If the person makes a request for administrative review within 30 days following receipt of a notice and order imposing sanctions, the request shall stay imposition of the civil penalty. Upon receiving the request for review, the commissioner or the commissioner's designee shall review the order, the evidence upon which the order was based, and other material information brought to the attention of the commissioner, and determine whether sufficient cause exists to sustain the order.

(b) Within 15 days after receiving the request, the commissioner shall issue a written report ordering that the prohibition, revocation, or civil penalty be either sustained or rescinded. The review provided in this subdivision is not subject to the contested case provisions of the administrative procedure act under chapter 14. The availability of administrative review does not have an effect upon the availability of judicial review under this section. [361.121 s. 2a]

Subd. 4. JUDICIAL REVIEW. (a) Within 30 days following receipt of a notice and order imposing sanctions under this section, a person may petition the court for review. The petition must be filed with the court administrator of the county, municipal, or unified trial court in the county where the incident occurred which gave rise to the test demand and refusal, together with proof of service of a copy on the commissioner and the prosecuting authority for misdemeanor offenses for the jurisdiction in which the incident occurred. A respon-

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sive pleading is not required of the commissioner of natural resources, and court fees may not be charged for the appearance of the representative of the commissioner in the matter.

(b) The petition must be captioned in the name of the person making the petition as petitioner and the commissioner as respondent. The petition must state specifically the grounds upon which the petitioner seeks rescission of the order imposing sanctions.

(c) The filing of the petition does not stay the revocation or prohibition against operation of a motorboat. However, the filing of a petition stays imposition of the civil penalty. The judicial review shall be conducted according to the rules of civil procedure. [361.121 s. 2b]

Subd. 5. HEARING. (a) A hearing under this section must be before a municipal, county, or unified court judge in the county where the incident occurred which gave rise to the test demand and refusal. The hearing must be to the court, and may be conducted at the same time as hearings upon pretrial motions in the criminal prosecution under section 18. The hearing must be recorded. The commissioner must be represented by the prosecuting authority for misdemeanor offenses for the jurisdiction in which the incident occurred which gave rise to the test demand and refusal.

(b) The hearing must be held at the earliest practicable date and in any event no later than 60 days following the filing of the petition for review. The reviewing court may order a temporary stay of the balance of the prohibition or revocation if the hearing has not been conducted within 60 days after filing of the petition, upon the application of the petitioner and upon terms the court deems proper.

(c) The scope of the hearing must be limited to the issues of:

(1) whether the officer had probable cause to believe that the person was operating or in physical control of a motorboat in violation of section 18;

(2) whether one of the conditions in subdivision 1 existed;

(3) whether the person was informed as prescribed in subdivision 6; and

(4) whether the person refused to submit to testing.

(d) It is an affirmative defense for the petitioner to prove that, at the time of the refusal, the petitioner's refusal to permit the test was based upon reasonable grounds.

(e) The court shall order that the prohibition or revocation be either sustained or rescinded, and shall either sustain or rescind the civil penalty. The court shall forward a copy of the order to the commissioner. [361.121 s. 2c]

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**Subd. 6. RIGHTS AND OBLIGATIONS.** At the time a test is requested, the person must be informed:

(1) that Minnesota law requires a person to take a test to determine if the person is under the influence of alcohol or a controlled substance;

(2) that a person is subject to a civil penalty of \$500 for refusing to take the test and, in addition, the person is prohibited from operating any motorboat, as provided under subdivision 2, for refusing to take the test;

(3) that if testing is refused it will not affect the person's motor vehicle driver's license;

(4) that if the test is taken and the results indicate that the person is under the influence of alcohol or a controlled substance, the person will be subject to criminal penalties and, in addition to any other penalties the court may impose, the person's operating privileges will be suspended as provided under section 18, subdivision 6, paragraph (a);

(5) that, after submitting to testing, the person has the right to have additional tests made by someone of the person's own choosing; and

(6) that a refusal to take a test will be offered into evidence against the person at trial. [361.121 s. 3]

**Subd. 7. REQUIREMENT OF URINE TEST.** Notwithstanding subdivision 1, if there are reasonable and probable grounds to believe there is impairment by a controlled substance which is not subject to testing by a blood or breath test, a urine test may be required even after a blood or breath test has been administered. [361.121 s. 4]

**Subd. 8. BREATH TEST USING AN INFRARED BREATH-TESTING INSTRUMENT.** In the case of a breath test administered using an infrared breath-testing instrument, the test shall consist of analyses in the following sequence: one adequate breath sample analysis, one calibration standard analysis, and a second adequate breath sample analysis. In the case of a test administered using an infrared breath-testing instrument, a sample is adequate if the instrument analyzes the sample and does not indicate the sample is deficient. For purposes of this section, when a test is administered using an infrared breath-testing instrument, failure of a person to provide two separate adequate breath samples in the proper sequence constitutes a refusal to take the test. [361.121 s. 5]

**Subd. 9. CONSENT OF PERSON INCAPABLE OF REFUSAL NOT WITHDRAWN.** A person who is unconscious or who is otherwise in a condition rendering the person incapable of refusal is deemed not to have withdrawn the consent provided by subdivision 1 and the test may be given. [361.121 s. 6]

**Subd. 10. MANNER OF MAKING TESTS.** (a) Only a physician, medical

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technician, physician's trained mobile intensive care paramedic, registered nurse, medical technologist, or laboratory assistant acting at the request of a peace officer authorized to make arrests under section 18, subdivision 2, may withdraw blood for the purpose of determining the presence of alcohol or controlled substance. This limitation does not apply to the taking of a breath or urine sample. The person tested has the right to have someone of the person's own choosing administer a chemical test or tests in addition to any administered at the direction of a peace officer; provided, that the additional test sample on behalf of the person is obtained at the place where the person is in custody, after the test administered at the direction of a peace officer, and at no expense to the state.

(b) The failure or inability to obtain an additional test or tests by a person shall not preclude the admission in evidence of the test taken at the direction of a peace officer unless the additional test was prevented or denied by the peace officer.

(c) The physician, medical technician, physician's trained mobile intensive care paramedic, medical technologist, laboratory assistant, or registered nurse drawing blood at the request of a peace officer for the purpose of determining alcohol concentration shall in no manner be liable in any civil or criminal action except for negligence in drawing the blood. The person administering a breath test shall be fully trained in the administration of breath tests pursuant to training given by the commissioner of public safety. [361.121 s. 7]

Subd. 11. PAYMENT OF CIVIL PENALTY. The civil penalty imposed under subdivision 2 must be paid to the political subdivision that represents the commissioner on the petition for judicial review or, in the event that a petition is not filed, to the political subdivision that would have represented the commissioner had a petition been filed. If a person does not pay the civil penalty, the prohibition against operating motorboats is automatically extended until the political subdivision reports in writing to the commissioner that the penalty has been paid. [361.121 s. 8]

Subd. 12. ENFORCEMENT OF CIVIL PENALTY. (a) If a person does not pay the civil penalty imposed under subdivision 2 within 30 days of the time the penalty was imposed, the prosecuting authority representing the commissioner may petition the municipal, county, or unified court in the jurisdiction where the incident occurred to file the order imposing the civil penalty as an order of the court.

(b) Once entered, the order may be enforced in the same manner as a final judgment of the court. In addition to the penalty, attorney fees, costs, and interest may be assessed against any person who fails to pay the civil penalty. [361.121 s. 9]

**Sec. 20. [86B.341] DUTIES AND LIABILITIES AT ACCIDENT OR INCIDENT.**

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Subdivision 1. OPERATOR'S DUTY AT ACCIDENT OR INCIDENT. (a) The operator of a watercraft involved in an accident or incident resulting in injury or death to a person or in damage to property shall, if possible without serious danger to the watercraft or the persons aboard, immediately stop at the scene of the accident or incident and render assistance as may be practicable and necessary.

(b) The operator must give the operator's name, address and license number of the watercraft and the name and address of the owner of the watercraft to the person injured or the operator or occupants of the other watercraft or owner or occupant of the property involved. The operator must promptly report the accident or incident to the sheriff of the county where the accident or incident occurred. Sheriffs are required to report all accidents and incidents to the commissioner of natural resources, who shall transmit statistics on boating accidents and incidents to the United States Coast Guard. [361.13 s. 1]

Subd. 2. OWNER'S AND OPERATOR'S LIABILITY. (a) The owner and operator of a watercraft are jointly and severally liable for any injury or damage caused by the negligent operation of a watercraft whether the negligence consists of a violation of the provisions of the statutes of this state, or neglecting to observe ordinary care in the operation as the common law requires. The owner is not liable if the watercraft is being operated without the owner's express or implied consent. It is presumed that the operation of a watercraft is with the knowledge and consent of the owner if at the time of the injury or damage the watercraft is under the control of the owner's spouse, father, mother, brother, sister, son, daughter or other member of the owner's immediate family.

(b) This subdivision may not be construed to:

(1) relieve other persons from liability which the persons would otherwise have; or

(2) authorize or allow recovery in excess of the injury or damage actually incurred. [361.13 s. 2]

## LICENSES

### Sec. 21. [86B.401] WATERCRAFT LICENSES.

Subdivision 1. APPLICATION. (a) A person may apply to the commissioner of natural resources, the commissioner of public safety, or an authorized deputy registrar of motor vehicles to license a watercraft in a form as prescribed by the commissioner of public safety.

(b) The application must state the names and addresses of all owners of the watercraft and be signed by at least one owner. [361.03 s. 2]

(c) The installation or presence of a marine toilet in a watercraft must be

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indicated by the owner upon application for licensing of the watercraft or marine conveyance, and a license for watercraft bearing a marine toilet may not be issued except upon certification by the owner of the installation of an acceptable retention device for use with the marine toilet. [361.29 s. 4]

**Subd. 2. TEMPORARY CERTIFICATE.** A person who applies for a watercraft license may be issued a temporary license certificate to operate the watercraft. The temporary license certificate is valid for the period of time specified by the commissioner. [361.03 s. 14]

**Subd. 3. LICENSING.** The license agent shall register the watercraft on receiving an application and the license fee. A license and registration sticker with a registration number shall be issued and must be affixed to the watercraft as prescribed by the commissioner of natural resources. [361.03 s. 1, s. 2]

**Subd. 4. LICENSE NUMBER.** Each watercraft must be assigned a license number. The license number assigned a watercraft shall remain the same if continually renewed. The owner of a watercraft must purchase the watercraft license numbers assigned and affix the license numbers as prescribed by the commissioner. [361.03 s. 1, s. 2]

**Subd. 5. LICENSE PERIOD.** A watercraft license is valid for three calendar years or a portion of the three-year period beginning in the calendar year the license is issued. The watercraft license expires on December 31 of the last calendar year of the license period. [361.03 s. 3, s. 6]

**Subd. 6. RENEWAL.** Watercraft licenses may be renewed in the same manner as applying for the original license. [361.03 s. 6]

**Subd. 7. NOTIFICATION OF CHANGE OF ADDRESS BY LICENSEE.** If the address of an owner of a licensed watercraft changes so that it does not conform with the address on the watercraft license, the owner must notify the commissioner, in writing, by 30 days after the address change occurs on a form prescribed by the commissioner. [361.03 s. 6]

**Subd. 8. NOTICE OF OWNERSHIP CHANGE, DESTRUCTION, OR ABANDONMENT OF WATERCRAFT.** (a) An owner of a watercraft must provide written notice to the commissioner on a form prescribed by the commissioner by 15 days after abandonment, destruction, or a change in ownership of a licensed watercraft.

(b) A change in ownership does not include the transfer of a security interest.

(c) After a change of ownership:

(1) the new owners are subject to the penalties imposed by this chapter if they fail to give notice as required by this subdivision; and

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(2) the commissioner shall terminate the license without further action for failure to give the notice of ownership change.

(d) A notice of ownership change must be accompanied by the duplicate license fee. The commissioner shall issue a duplicate license on receipt of the notice of ownership change and the duplicate license fee. [361.03 s. 8]

Subd. 9. LOSS OR DESTRUCTION OF LICENSE. The commissioner shall issue a duplicate watercraft license if an owner provides to the commissioner an affidavit of loss or destruction of the watercraft license previously issued and pays the duplicate license fee. [361.03 s. 7]

Subd. 10. NEW LICENSE FOR PREVIOUSLY LICENSED WATERCRAFT. A new license may not be issued for a watercraft that has previously been issued a watercraft license by this state unless:

(1) a notice of abandonment of the watercraft has been given at least one year before the date of application for the license; or

(2) the application is accompanied by satisfactory proof that the watercraft has been continually outside this state at least one year before the date of the application. [361.03 s. 6]

#### Sec. 22. [86B.405] DEALER'S LICENSE.

Subdivision 1. APPLICATION. A dealer may apply for a watercraft dealer license on a form prescribed by the commissioner. A watercraft dealer's license shall be issued to a dealer after receipt of an application and payment of the dealer license fee.

Subd. 2. WATERCRAFT COVERED. Watercraft owned by the dealer may be operated under the dealer's license on the waters of this state without watercraft licenses for demonstration purposes or other purposes incident to the usual and customary conduct of the business of manufacturing, selling, or trading of watercraft. [361.03 s. 9]

#### Sec. 23. [86B.411] GOVERNMENT WATERCRAFT LICENSES.

The commissioner shall issue distinguishable government watercraft licenses without a fee for watercraft owned by the state or a political subdivision of the state on receipt of an application for the license on a form prescribed by the commissioner. [361.03 s. 10]

#### Sec. 24. [86B.415] LICENSE FEES.

Subdivision 1. WATERCRAFT LESS THAN 19 FEET. The fee for a watercraft license for watercraft less than 19 feet in length is \$12 except:

(1) for watercraft 19 feet in length or less that is offered for rent or lease, the fee is \$6;

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(2) for a canoe, kayak, sailboat, sailboard, paddle boat, or rowing shell 19 feet in length or less, the fee is \$7;

(3) for a watercraft 19 feet in length or less used by a nonprofit corporation for teaching boat and water safety, the fee is as provided in subdivision 4; and

(4) for a watercraft owned by a dealer under a dealer's license, the fee is as provided in subdivision 5. [361.03 s. 3]

Subd. 2. WATERCRAFT OVER 19 FEET. Except as provided in subdivisions 3, 4, and 5, the watercraft license fee:

(1) for a watercraft more than 19 feet but less than 26 feet in length is \$20;

(2) for a watercraft 26 feet but less than 40 feet in length is \$30; and

(3) for a watercraft 40 feet in length or longer is \$40. [361.03 s. 3]

Subd. 3. WATERCRAFT OVER 19 FEET FOR HIRE. The license fee for a watercraft more than 19 feet in length for hire with an operator is \$50 each. [361.03 s. 3]

Subd. 4. WATERCRAFT USED BY NONPROFIT CORPORATION FOR TEACHING. The watercraft license fee for a watercraft used by a nonprofit organization for teaching boat and water safety is \$3 each. [361.03 s. 3]

Subd. 5. DEALER'S LICENSE. There is no separate fee for watercraft owned by a dealer under a dealer's license. The fee for a dealer's license is \$30. [361.03 s. 3]

Subd. 6. TRANSFER OR DUPLICATE LICENSE. The fee to transfer a watercraft license or be issued a duplicate license is \$3.

Subd. 7. WATERCRAFT SURCHARGE. A surcharge of \$2 is placed on each watercraft licensed under subdivisions 1 to 6, that is 17 feet in length or longer, for management of purple loosestrife and Eurasian water milfoil according to law.

Subd. 8. REGISTRAR'S FEE. (a) In addition to the license fee, a fee of 50 cents shall be charged for a watercraft license issued through the registrar or a deputy registrar of motor vehicles.

(b) The additional fee shall be disposed of in the manner provided in section 168.33, subdivision 2. [361.03 s. 2]

Subd. 9. DISPOSITION OF RECEIPTS. Money received for watercraft licenses shall be deposited in the state treasury and credited to the water recreation account. [361.03 s. 5]

Subd. 10. ACCOUNTING. The commissioner of natural resources in agreement with the commissioner of public safety may prescribe the accounting and

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procedural requirements necessary to assure efficient handling of watercraft registrations and license fees by deputy registrars. Deputy registrars shall strictly comply with these accounting and procedural requirements. [361.03 s. 2]

Sec. 25. [86B.421] LICENSING BY POLITICAL SUBDIVISIONS.

A political subdivision may not require watercraft to be licensed. [361.03 s. 13]

WATERCRAFT EQUIPMENT

Sec. 26. [86B.501] PERSONAL FLOTATION AND LIFESAVING DEVICES.

Subdivision 1. PERSONAL FLOTATION OR LIFESAVING DEVICES. (a) Watercraft and duck boats using the waters of this state must be equipped with the number and type of personal flotation or lifesaving devices prescribed by the commissioner.

(b) The commissioner may not:

(1) require sailboards to be equipped with personal flotation or lifesaving devices; or

(2) require persons on sailboards to wear personal flotation or lifesaving devices or have them readily available. [361.141 s. 1]

Subd. 2. RENTED WATERCRAFT RESPONSIBILITY FOR LIFESAVING DEVICES. The owner of a business that rents, leases, or hires out watercraft must provide a personal flotation or lifesaving device of the type required by this section for each person on board the watercraft. [361.141 s. 2]

Sec. 27. [86B.505] WATERCRAFT CAPACITY PLATES.

Subdivision 1. REQUIREMENT. (a) A watercraft 20 feet or less in length manufactured for sale in this state after December 31, 1980, except canoes, kayaks, sailboats, sailboards, and inflatable boats, must have a capacity plate permanently affixed to the watercraft by the manufacturer. The capacity plate must contain information relating to maximum safe carrying and power capacity specifications prescribed by the commissioner. The information contained on the capacity plate must, at a minimum, comply with the established standards and regulations of the United States Coast Guard.

(b) For purposes of this section "manufacture" means to construct or assemble a watercraft or alter a watercraft in a manner that changes its weight and carrying capacity. [361.10 s. 1]

Subd. 2. CERTIFICATION OF CORRECT INFORMATION. The information appearing on a capacity plate is deemed to certify that the manufacturer

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has correctly and faithfully specified the maximum safe carrying and horsepower capacity and that the information is not a deliberate or negligent misrepresentation. [361.10 s. 2]

Subd. 3. VIOLATION. A person who does not comply with provisions of this section commits a violation for each watercraft for which this section is not complied with. [361.10 s. 3]

Sec. 28. [86B.511] LIGHTS.

A watercraft using the waters of this state, when underway or in use between sunset and sunrise, must carry and display the lights prescribed by the commissioner for the watercraft. [361.15 s. 1]

Sec. 29. [86B.515] SIRENS AND SOUND-PRODUCING DEVICES.

Subdivision 1. SOUND-PRODUCING DEVICES. Motorboats 16 feet or more in overall length using the waters of this state must carry sound-producing devices as prescribed by the commissioner. The operator of a motorboat shall sound these devices only when reasonably necessary to insure safe operation. [361.16 s. 1]

Subd. 2. SIRENS. (a) A siren may not be carried or used on a watercraft other than patrol watercraft.

(b) A siren carried or used in violation of this subdivision may be removed and seized by the sheriff. A seized siren becomes the property of the county where it was seized and may be used or disposed of as the county board determines. [361.16 s. 2]

Sec. 30. [86B.521] MOTORBOAT NOISE CONTROL.

Subdivision 1. EXHAUST MUFFLING SYSTEM REQUIRED. A motor may not be used on a motorboat unless it is equipped with an efficient muffler, underwater exhaust or other device that adequately muffles or suppresses the sound of the exhaust of the motor so as to prevent excessive or unusual noise. A motor may not be equipped with a cut-out. [361.17 s. 1]

Subd. 2. SALE OF MOTOR THAT EXCEEDS NOISE LIMITS PROHIBITED. A person may not sell or offer for sale a new marine engine or motorboat that would exceed the noise limits contained in section 16, subdivision 2, under a test procedure approved by the commissioner if the motor is maintained according to the manufacturer's specifications. [361.17 s. 3]

Subd. 3. MODIFICATION OF ENGINE TO EXCEED NOISE LIMITS PROHIBITED. (a) A person may not modify a marine engine or motorboat in a manner that will amplify or increase the noise emitted by the marine engine or motorboat above the noise limits contained in section 16, subdivision 2, under a test procedure approved by the commissioner.

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(b) A person may not operate a motorboat with an engine modified to increase noise above the noise limits. [361.17 s. 4]

**Subd. 4. SALE OF PARTS THAT CAUSE EXCESSIVE NOISE PROHIBITED.** (a) A person may not sell or offer for sale replacement or additional parts for a marine engine or motorboat which when installed in the marine engine or motorboat will amplify or increase the noise emitted by the marine engine or motorboat above the noise limits contained in section 16, subdivision 2, under a test procedure approved by the commissioner.

(b) A person may not operate a motorboat incorporating parts prohibited to be sold under paragraph (a). [361.17 s. 5]

**Subd. 5. APPLICABILITY.** The provisions of this section do not apply to motorboats operating under a permit issued under section 7 or a United States coast guard marine event permit in a regatta, or race, while on trial runs, or while on official trials for speed records during the time and in the designated area authorized by the permit. [361.17 s. 7]

**Sec. 31. [86B.525] DEVICE FOR ARRESTING BACKFIRE.**

A motor other than a detachable outboard motor may not be used on a watercraft unless each carburetor is fitted with a device for arresting or safely deflecting backfire which is approved or prescribed by the United States Coast Guard. The devices must be maintained in serviceable condition. [361.18]

**Sec. 32. [86B.531] FIRE EXTINGUISHERS AND FUEL AREA VENTILATION.**

**Subdivision 1. FIRE EXTINGUISHERS.** Inboard motorboats, houseboats, and other motorboats carrying or using fuel or other inflammable or toxic fluid in an enclosure of the boat must be provided with the number, size, and type of fire extinguishers as may be provided by the commissioner. Fire extinguishers approved by the commissioner shall comply with requirements of the United States Coast Guard. The extinguishers shall be at all times kept in condition for immediate and effective use and shall be so placed as to be readily accessible. [361.19 s. 1]

**Subd. 2. FUEL AREA VENTILATION.** Inboard motorboats, houseboats, and other motorboats carrying or using fuel or other inflammable or toxic fluid in an enclosure of the boat must be provided with means for properly and efficiently ventilating the bilges of the engine and fuel tank compartments as prescribed by the commissioner to remove explosive or flammable gases. [361.19 s. 2]

**Sec. 33. [86B.535] MARINE TOILETS.**

**Subdivision 1. RETENTION DEVICE REQUIRED.** A watercraft or other marine conveyance on the waters of the state may not be equipped with a marine toilet unless also equipped with a retention device acceptable to the pollution control agency. [361.29 s. 3]

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Subd. 2. LIST OF RETENTION DEVICES. (a) The pollution control agency shall, upon request, furnish a list of the types of retention devices currently available and considered acceptable for the purposes of this section for use with marine toilets.

(b) The commissioner of natural resources shall furnish the sheriff of each county with a list of retention facilities acceptable to the pollution control agency. [361.29 s. 2]

## SCUBA DIVING

### Sec. 34. [86B.601] SCUBA DIVING.

Subdivision 1. FLAG REQUIRED. (a) A person who swims in waters of the state, except designated swimming areas under section 14, subdivision 4, while wearing or carrying a breathing apparatus allowing the swimmer to breathe while under water, except a snorkel that is not attached to an artificial container of compressed air, must display a diver's flag above the surface of the water.

(b) A person who places a diver's flag must remain within 50 feet of the flag, measured on the surface of the water.

(c) A person shall place a diver's flag where it will obstruct navigation.

(d) A diver's flag shall measure at least 15 inches horizontally and 12 inches vertically, and both sides shall have a red-colored background bisected diagonally by a three-inch wide white stripe having its upper end adjacent to the flagstaff.

(e) A diver's flag shall be displayed in a vertical plane extended from a rigid flagstaff equipped to maintain the upper edge of the flag at least 30 inches above the water surface.

(f) A diver's flag may be reflectorized or fluorescent provided the entire surface is uniformly reflectorized or fluorescent.

(g) A diver's flag may be anchored or secured to the bottom when a safety hazard would result from towing the flag.

(h) If at the discretion of the diver it would be safer and more visible, the flag may be displayed on a watercraft. If the flag is displayed on the watercraft, the craft must be at anchor or, if not at anchor, attended by a diver or a person appointed by the diver to tend the craft. Only watercraft displaying an official diver's flag are authorized in the diving area. [361.085 s. 1]

Subd. 2. GROUP DIVING. (a) Not more than four divers may dive under one flag.

(b) If a group of divers is operating in a contained area, the perimeter must be marked and be outside of the normal area of navigation. The markings shall consist of the official diver's flag and be placed on the perimeter of the diving area at intervals not exceeding 150 feet. [361.085 s. 1]

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Subd. 3. LIGHT REQUIRED FOR NIGHT DIVING. A person may not scuba or skin dive in waters of this state from one hour after sunset to sunrise on the following day unless the diver has in possession a diver's light that is visible from above the water at a distance of at least 150 feet, except that a diver's light is not required in an emergency, salvage, repair, or construction operation. [361.085 s. 2]

Subd. 4. NIGHT DIVING WITH SPEAR PROHIBITED. A person may not scuba or skin dive while in possession of a spear from sunset to sunrise. [361.085 s. 2]

#### WATER SAFETY FUNDING

##### Sec. 35. [86B.701] FUNDING COUNTY WATER SAFETY.

Subdivision 1. WATER AND WATERCRAFT SAFETY AND ENFORCEMENT BUDGET. (a) On or before September 1 of each even-numbered year, the county board of each county shall submit to the commissioner its proposed budget to carry out the provisions of this chapter, during the biennium beginning on the following July 1. [361.24 s. 2]

(b) The commissioner shall require a county to submit a budget containing proposed activities that would adequately carry out this chapter. [361.24 s. 3]

(c) The commissioner shall review the proposed budgets and incorporate into the budget for the department of natural resources the parts that the commissioner determines necessary and equitable for each county. The amount allocated for each county shall be paid to the county and a separate accounting maintained. [361.24 s. 2]

(d) The commissioner may require each county to make reports as to the expenditure of the funds. [361.24 s. 2]

(e) The commissioner shall publish a report annually showing the expenditures, and distribute copies to all participating counties. [361.24 s. 2]

Subd. 2. FAILURE OF COUNTY TO SUBMIT BUDGET. (a) If the county fails to submit a budget or fails to carry out the proposed activities after submitting a budget, the commissioner may allocate all or a portion of the county's share back to the department of natural resources or to political subdivisions within the county, including lake conservation districts in part or in whole within the county, that the commissioner determines will provide watercraft safety enforcement, supervision, marking, regulation, search and rescue, and information on waters wholly or partially within their boundaries.

(b) The commissioner may require budgets or reports on the expenditure of the funds.

(c) If the county sheriff determines that additional outside assistance is

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necessary on a temporary, nonrecurring basis for the purposes of boat and water safety, the sheriff may request the assistance from the commissioner. The commissioner may allocate emergency funding to the county, provide materials or equipment on a temporary loan basis, or hire temporary personnel. [361.24 s. 3]

Subd. 3. ALLOCATION OF FUNDING. (a) The amount of funds to be allocated under subdivisions 1 and 2 and shall be determined by the commissioner on the basis of the following criteria:

(1) the number of watercraft using the waters wholly or partially within the county;

(2) the number of watercraft using particular bodies of water, wholly or partially within the county, in relation to the size of the body of water and the type, speed and size of the watercraft utilizing the water body;

(3) the amount of water acreage wholly or partially within the county;

(4) the overall performance of the county in the area of boat and water safety;

(5) special considerations, such as volume of transient or nonresident watercraft use, number of rental watercraft, extremely large bodies of water wholly or partially in the county; or

(6) any other factor as determined by the commissioner.

(b) The commissioner may require reports from the counties, make appropriate surveys or studies or utilize local surveys or studies to determine the criteria required in allocation funds. [361.24 s. 4]

**Sec. 36. [86B.705] ALLOCATION OF WATER RECREATION ACCOUNT AND FINES AND FORFEITED BAIL MONEY.**

Subdivision 1. WATER RECREATION ACCOUNT. (a) A portion of the money in the water recreation account shall be utilized by the commissioner of natural resources to implement this chapter and a portion shall be paid to counties and in an amount the commissioner shall determine and be used to defray the expenses of enforcement of the provisions of this chapter and the expenses of a county sponsored or administered watercraft and swimming safety instructional program.

(b) The commissioner may withhold up to \$25,000 per biennium of the allocation for the purpose of payments to counties and other political subdivisions for specific boat and water safety projects beyond the capability of previously allocated funds.

(c) Counties and other political subdivisions shall make application for

[Bracketed paragraph notes cite text sources]

New language is indicated by underline, deletions by ~~strikeout~~.

payment of the funds on forms and for purposes as prescribed by the commissioner. [361.27 s. 1]

Subd. 2. FINES AND BAIL MONEY. (a) All fines, installment payments, and forfeited bail money collected from persons convicted of violations of this chapter shall be paid to the county treasurer of the county where the violation occurred by the court administrator or other person collecting the money within 15 days after the last day of the month the money was collected.

(b) One-half of the receipts shall be credited to the general revenue fund of the county. The other one-half of the receipts shall be transmitted by the county treasurer to the commissioner of natural resources to be deposited in the state treasury and credited to the water recreation account for the purpose of boat and water safety. [361.27 s. 2]

## ENFORCEMENT

### Sec. 37. [86B.801] ENFORCEMENT AUTHORITY.

Subdivision 1. AUTHORITY. (a) A sheriff or conservation officer may stop, inspect, and detain for a reasonable time a watercraft observed in violation of Minnesota Statutes or rules, and is empowered to issue a summons and complaint for violations of this chapter in the same manner as for violations of game and fish laws.

(b) As used in this subdivision, "inspect" does not mean the authority to board a watercraft. [361.215]

Subd. 2. ENFORCEMENT DUTIES. The sheriff of each county and conservation officers shall enforce the provisions of this chapter. [361.24 s. 1]

### Sec. 38. [86B.805] ENFORCEMENT WATERCRAFT.

Subdivision 1. WATER SAFETY ENFORCEMENT WATERCRAFT. Watercraft used primarily for enforcement shall be marked to be visible from both sides of the watercraft. The markings shall at a minimum identify the operating agency and be of a contrasting color to the background. Lettering used for identification, other than that used in an agency symbol, shall be of block character and not less than three inches in height. [361.215]

Subd. 2. GAME AND FISH ENFORCEMENT WATERCRAFT. Watercraft that are used primarily for enforcement of game and fish laws, when coincidentally enforcing this section, shall either be marked through the flying of a pennant of a size and marking prescribed by the commissioner, or through marking of the watercraft itself under this section. [361.215]

### Sec. 39. [86B.811] CRIMINAL PENALTIES.

Subdivision 1. MISDEMEANORS. Unless a different penalty is specified, a person is guilty of a misdemeanor who:

[Bracketed paragraph notes cite text sources]

New language is indicated by underline, deletions by ~~strikeout~~.

(1) violates a provision of this chapter, or a rule of the commissioner adopted under this chapter;

(2) operates any watercraft that does not conform to the requirements of this chapter; or

(3) operates a watercraft if the operation is prohibited under subdivision 2. [361.22 s. 1, s. 3; 361.29 s. 6]

Subd. 2. YOUTH OPERATOR VIOLATIONS. (a) An operator age 13 or older but younger than age 18, adjudicated by a juvenile court as having violated section 14, subdivision 1, section 18, or section 20, shall have the operator's permit revoked by the commissioner.

(b) The commissioner shall issue a new permit to the operator one year after the revocation upon successful completion by the operator of a watercraft safety course.

(c) The judge of a juvenile court, that adjudicates an operator of violating any of the laws or rules listed above, shall require the surrender of the person's watercraft operator's permit and shall forward the operator's permit to the commissioner, with a record of the adjudication. [361.22 s. 2]

#### Sec. 40. [86B.815] VIOLATION AS EVIDENCE IN CIVIL ACTION.

Subdivision 1. PRIMA FACIE EVIDENCE OF NEGLIGENCE. In all civil actions a violation of this chapter by a party is not negligence per se but is prima facie evidence of negligence. [361.23]

Subd. 2. CONVICTION RECORD NOT ADMISSIBLE. The record of the conviction of a person for a violation of this chapter is not admissible as evidence in a court in a civil action. [361.23]

#### Sec. 41. EFFECTIVE DATE.

Article 9 is effective January 1, 1991.

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### ARTICLE 10

#### Section 1. EFFECT OF CHANGES IN THIS ACT.

The legislature intends this act to be a clarification and reorganization of provisions of laws affecting water. The changes that have been made are not intended to alter the laws affecting water and shall not be construed by a court or other authority, to alter the meaning of the law. It is intended that decisions construing laws that are recodified by articles 1 to 10 are not affected by the recodification. The revisor of statutes shall publish the statutory derivation of

[Bracketed paragraph notes cite text sources]

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the laws recodified by articles 1 to 10 in Laws of Minnesota but may omit them from Minnesota Statutes.

**Sec. 2. EFFECT ON ADMINISTRATIVE RULES.**

Notwithstanding the provisions of Minnesota Statutes, section 14.05, subdivision 1, or other law to the contrary, the repeal in this article of a law authorizing an agency to adopt administrative rules, does not repeal the rules authorized. The revisor need not recodify administrative rules solely because of the enactment of articles 1 to 10.

**Sec. 3. INSTRUCTION TO REVISOR.**

(a) The revisor of statutes shall correct cross-references to provisions contained in this act and, if amendments are passed by the 1990 legislature using coding that is made obsolete by articles 1 to 10, shall codify the amendments in a manner that is consistent with this act. The revisor shall prepare and provide a chart to show the reorganization of law under this act.

(b) In the next edition of Minnesota Statutes, the revisor of statutes shall renumber the sections in Column A with the numbers in Column B.

<u>Column A</u>	<u>Column B</u>
<u>361A.01</u>	<u>86B.820</u>
<u>361A.02</u>	<u>86B.825</u>
<u>361A.03</u>	<u>86B.830</u>
<u>361A.04</u>	<u>86B.835</u>
<u>361A.05</u>	<u>86B.840</u>
<u>361A.06</u>	<u>86B.845</u>
<u>361A.07</u>	<u>86B.850</u>
<u>361A.08</u>	<u>86B.855</u>
<u>361A.09</u>	<u>86B.860</u>
<u>361A.10</u>	<u>86B.865</u>
<u>361A.11</u>	<u>86B.870</u>
<u>361A.12</u>	<u>86B.875</u>
<u>361A.13</u>	<u>86B.880</u>
<u>361A.14</u>	<u>86B.885</u>
<u>361A.15</u>	<u>86B.890</u>
<u>361A.16</u>	<u>86B.895</u>
<u>361A.17</u>	<u>86B.900</u>
<u>361A.18</u>	<u>86B.905</u>
<u>361A.19</u>	<u>86B.910</u>
<u>361A.20</u>	<u>86B.915</u>
<u>361A.21</u>	<u>86B.920</u>

**REPEAL OF RECODIFIED AND RELOCATED PROVISIONS**

**Sec. 4. GENERAL REPEALER.**

New language is indicated by underline, deletions by ~~strikeout~~.

Minnesota Statutes 1988, sections 40.01; 40.02; 40.03; 40.035; 40.036; 40.038; 40.04; 40.05; 40.06; 40.07; 40.071; 40.072; 40.073; 40.12; 40.13; 40.14; 40.15; 40.19; 40.20; 40.21; 40.22; 40.23; 40.242; 40.244; 40.246; 40.25; 40.26; 40.27; 40.28; 40.40; 40.41; 84.031; 84.032; 84.092; 84.158; 104.01; 104.02; 104.03; 104.04; 104.05; 104.06; 104.07; 104.08; 104.10; 104.11; 104.25; 104.31; 104.32; 104.33; 104.34; 104.35; 104.36; 104.37; 104.38; 104.39; 104.40; 104.42; 104.43; 104.44; 104.45; 104.46; 104.47; 104.48; 104.49; 104.50; 105.37; 105.38; 105.39; 105.391; 105.392; 105.40; 105.403; 105.405; 105.41, as amended; 105.415; 105.416; 105.417; 105.42; 105.43; 105.44; 105.45; 105.46; 105.461; 105.462; 105.463; 105.471; 105.475; 105.48; 105.482; 105.484; 105.485; 105.49; 105.50; 105.51; 105.52; 105.521; 105.53; 105.535; 105.541; 105.55; 105.63; 105.64; 105.72; 105.73; 105.74; 105.75; 105.751; 105.76; 105.77; 105.78; 105.79; 106A.005; 106A.011; 106A.015; 106A.021; 106A.025; 106A.031; 106A.035; 106A.041; 106A.043; 106A.045; 106A.051; 106A.055; 106A.061; 106A.065; 106A.071; 106A.075; 106A.081; 106A.085; 106A.091; 106A.095; 106A.097; 106A.101; 106A.202; 106A.212; 106A.215; 106A.221; 106A.225; 106A.231; 106A.235; 106A.238; 106A.241; 106A.245; 106A.251; 106A.255; 106A.261; 106A.265; 106A.271; 106A.275; 106A.281; 106A.285; 106A.291; 106A.295; 106A.301; 106A.305; 106A.311; 106A.315; 106A.321; 106A.323; 106A.325; 106A.331; 106A.335; 106A.341; 106A.345; 106A.351; 106A.401; 106A.405; 106A.411; 106A.501; 106A.505; 106A.511; 106A.515; 106A.521; 106A.525; 106A.526; 106A.531; 106A.535; 106A.541; 106A.545; 106A.551; 106A.555; 106A.601; 106A.605; 106A.611; 106A.615; 106A.621; 106A.625; 106A.631; 106A.635; 106A.641; 106A.645; 106A.651; 106A.655; 106A.661; 106A.701; 106A.705; 106A.711; 106A.715; 106A.721; 106A.725; 106A.728; 106A.731; 106A.735; 106A.741; 106A.745; 106A.801; 106A.805; 106A.811; 110.13; 110.14; 110.15; 110.16; 110.17; 110.18; 110.31; 110.32; 110.33; 110.34; 110.35; 110.36; 110.37; 110.38; 110.39; 110.40; 110.46; 110.47; 110.48; 110.49; 110.50; 110.51; 110.52; 110.53; 110.71, as amended; 110.72; 110B.01; 110B.02; 110B.04, as amended; 110B.08; 110B.10; 110B.12; 110B.15, as amended; 110B.22; 110B.25; 110B.28; 110B.30; 110B.35, as amended; 112.34; 112.35; 112.36; 112.37; 112.38; 112.39; 112.40; 112.401; 112.41; 112.411; 112.42; 112.421; 112.43; 112.431; 112.44; 112.45; 112.46; 112.47; 112.48; 112.49; 112.50; 112.501; 112.51; 112.52; 112.53; 112.54; 112.541; 112.55; 112.57; 112.58; 112.59; 112.60; 112.61, as amended; 112.611, as amended; 112.62; 112.63; 112.64; 112.65; 112.66; 112.67; 112.68; 112.69; 112.71; 112.72; 112.73, as amended; 112.74; 112.76; 112.761; 112.78; 112.79; 112.801; 112.82; 112.84; 112.85; 112.86; 112.87; 112.88; 112.89; 114.12; 114.13; 114B.01; 114B.02; 114B.03; 114B.031; 114B.04; 114B.05; 114B.06; 114B.07; 115.091; 115.092; 115.093; 115.094; 115.095; 115.096; 115.097; 115.098; 115.099; 115.10; 115.101; 115.102; 115.103; 116C.40; 116C.41, as amended; 361.01; 361.02; 361.03, as amended; 361.041; 361.05; 361.055; 361.07; 361.08; 361.085; 361.09; 361.10; 361.11; 361.12; 361.121; 361.13; 361.141; 361.15; 361.16; 361.17; 361.18; 361.19; 361.20; 361.21; 361.215; 361.22; 361.23; 361.24; 361.25; 361.26; 361.27; 361.28; 361.29; 378.01; 378.02; 378.03; 378.04; 378.05; 378.06; 378.08; 378.09; 378.20; 378.21; 378.22; 378.31; 378.32; 378.321; 378.33; 378.34; 378.35; 378.401; 378.405; 378.41;

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378.42; 378.43; 378.44; 378.45; 378.455; 378.46; 378.47; 378.51; 378.52; 378.53; 378.54; 378.545; 378.55; 378.56; 378.57; 465.18; 473.875; 473.876; 473.877, as amended; 473.8771; 473.878; 473.8785; 473.879; 473.881; 473.882, as amended; and 473.883, as amended; Minnesota Statutes 1989 Supplement, sections 40.31; 40.42; 40.43; 40.44; 40.45; 40.46; 84.0921; 105.418; 105.81; and 110B.20; Laws 1967, chapter 907; Laws 1969, chapter 272; Laws 1971, chapter 355; Laws 1974, chapter 111; Laws 1977, chapter 322; and Laws 1982, chapter 627 are repealed.

**Sec. 5. REPEAL OF JUDICIAL WATER LEVEL STABILIZATION PROJECT AUTHORITY.**

(a) Minnesota Statutes 1988, sections 110.55; 110.56; 110.57; 110.58; 110.59; 110.60; 110.61; 110.62; 110.63; 110.64; 110.65; 110.66; 110.67; 110.68; and 110.69; and Minnesota Statutes 1989 Supplement, section 110.70 are repealed.

(b) These sections contain obsolete provisions relating to petition and judicial establishment of improvements to control water levels; however, petitions received, proceedings, and projects commenced before August 1, 1989, under the sections repealed in paragraph (a) may continue until their completion.

Presented to the governor April 5, 1990

Signed by the governor April 6, 1990, 6:52 p.m.

**CHAPTER 392—H.F.No. 1989**

*An act relating to motor vehicles; allowing tax-exempt license plates for vehicles used for driver education programs at nonpublic high schools; amending Minnesota Statutes 1989 Supplement, section 168.012, subdivision 1.*

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

Section 1. Minnesota Statutes 1989 Supplement, section 168.012, subdivision 1, is amended to read:

Subdivision 1. (a) The following vehicles are exempt from the provisions of this chapter requiring payment of tax and registration fees, except as provided in subdivision 1c:

(1) vehicles owned and used solely in the transaction of official business by representatives of foreign powers, by the federal government, the state, or any political subdivision;

(2) vehicles owned and used exclusively by educational institutions and used solely in the transportation of pupils to and from such institutions;

New language is indicated by underline, deletions by ~~strikeout~~.