

general shall consult with the multidisciplinary task force established under section 39 and with the commissioner of administration and the commissioner of human services in preparing the report.

Sec. 2. **EFFECTIVE DATE.**

Section 1 is effective the day following final enactment.

Presented to the governor May 31, 1991

Signed by the governor June 4, 1991, 8:37 p.m.

CHAPTER 354—H.F.No. 1

An act relating to wetlands; declaring legislative findings and stating public policy; establishing a program of wetland prioritization and planning; providing for wetland preservation areas and for cost sharing for wetland establishment and restoration; establishing a program for peatland area protection and designating peatland scientific and natural areas; regulating discharge of dredged and fill material into state waters; regulating activities altering the character of wetlands; authorizing bond sales and appropriating proceeds; amending Minnesota Statutes 1990, sections 84.085; 103A.201; 103B.155; 103B.231, subdivision 6; 103B.311, subdivision 6; 103E.701, by adding a subdivision; 103F.515, subdivision 2; 103G.005, subdivisions 13a, 15, 18, and by adding subdivisions; 103G.141; 103G.221; 103G.225; 103G.231; 103G.235; 103G.271, subdivision 6; 272.02, subdivision 1; 273.11, subdivision 1, and by adding a subdivision; 282.018, subdivision 2; 446A.12, subdivision 1; and 645.44, subdivision 8a; proposing coding for new law in Minnesota Statutes, chapters 84; 103B; 103F; and 103G; repealing Minnesota Statutes, section 103G.221, subdivisions 2 and 3.

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

ARTICLE 1

POLICY

Section 1. **CITATION.**

This act may be cited as the "wetland conservation act of 1991."

Sec. 2. Minnesota Statutes 1990, section 103A.201, is amended to read:

103A.201 **REGULATORY POLICY.**

Subdivision 1. 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:

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(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.

Subd. 2. WETLANDS FINDINGS; PUBLIC INTEREST. (a) Wetlands identified in the state under article 6, section 6, do not:

(1) grant the public additional or greater right of access to the wetlands;

(2) diminish the right of ownership or usage of the beds underlying the wetlands, except as otherwise provided by law;

(3) affect state law forbidding trespass on private lands; and

(4) require the commissioner to acquire access to the wetlands.

(b) The legislature finds that the wetlands of Minnesota provide public value by conserving surface waters, maintaining and improving water quality, preserving wildlife habitat, providing recreational opportunities, reducing runoff, providing for floodwater retention, reducing stream sedimentation, contributing to improved subsurface moisture, helping moderate climatic change, and enhancing the natural beauty of the landscape, and are important to comprehensive water management, and that it is in the public interest to:

(1) achieve no net loss in the quantity, quality, and biological diversity of Minnesota's existing wetlands;

(2) increase the quantity, quality, and biological diversity of Minnesota's wetlands by restoring or enhancing diminished or drained wetlands;

(3) avoid direct or indirect impacts from activities that destroy or diminish the quantity, quality, and biological diversity of wetlands; and

(4) replace wetland values where avoidance of activity is not feasible and prudent.

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ARTICLE 2

WETLAND PRIORITIZATION AND PLANNING

Section 1. Minnesota Statutes 1990, section 103B.155, is amended to read:

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;

(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;

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(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; and

(17) identification of high priority regions for wetland preservation, enhancement, restoration, and establishment.

Sec. 2. Minnesota Statutes 1990, section 103B.231, subdivision 6, is amended to read:

Subd. 6. CONTENTS. (a) 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) identify high priority areas for wetland preservation, enhancement, restoration, and establishment and describe any conflicts with wetlands and land use in these areas;

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

~~(7)~~ (8) 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)~~ (9) set out a procedure for amending the plan.

(b) The board shall adopt rules to establish standards and requirements for amendments to watershed plans. The rules must include:

(1) performance standards for the watershed plans, which may distinguish between plans for urban areas and rural areas;

(2) minimum requirements for the content of watershed plans and plan

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amendments, including public participation, process requirements for amendment and implementation of watershed plans;

(3) standards for the content of capital improvement programs to implement watershed plans, including a requirement that capital improvement programs identify structural and nonstructural alternatives that would lessen capital expenditures; and

(4) how watershed plans are to specify the nature of the official controls required to be adopted by the local units of government, including uniform erosion control, stormwater retention, and wetland protection ordinances in the metropolitan area.

Sec. 3. Minnesota Statutes 1990, section 103B.311, subdivision 6, is amended to read:

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, high priority areas for wetland preservation, enhancement, restoration, and establishment, and related land use conditions, and a description of actions that will be taken in affected watersheds or groundwater systems to achieve the objectives;

(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

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- (8) a procedure for amending the comprehensive water plan.

PUBLIC VALUE OF WETLANDS

Sec. 4. [103B.3355] PUBLIC VALUE CRITERIA FOR WETLANDS.

(a) The board of water and soil resources, in consultation with the commissioner of natural resources, shall adopt rules establishing criteria to determine the public value of wetlands. The rules must consider the public benefit and use of the wetlands and include:

(1) criteria to determine the benefits of wetlands for water quality, including filtering of pollutants to surface and groundwater, utilization of nutrients that would otherwise pollute public waters, trapping of sediments, and utilization of the wetland as a recharge area for groundwater;

(2) criteria to determine the benefits of wetlands for floodwater retention, including the potential for flooding in the watershed, the value of property subject to flooding, and the reduction in potential flooding by the wetland;

(3) criteria to determine the benefits of wetlands for public recreation, including wildlife habitat, hunting and fishing areas, wildlife breeding areas, wildlife viewing areas, aesthetically enhanced areas, and nature areas;

(4) criteria to determine the benefits of wetlands for commercial uses, including wild rice growing and harvesting and aquaculture; and

(5) criteria to determine the benefits of wetlands for other public uses.

(b) The criteria established under this subdivision must be used to determine the public value of wetlands in the state. The board of water and soil resources, in consultation with the commissioner of natural resources, shall also use the criteria in identifying regions of the state where preservation, enhancement, restoration, and establishment of wetlands would have high public value. Before the criteria are adopted, the board, in consultation with the commissioner, may identify high priority wetland regions using available information relating to the factors listed in paragraph (a). The board shall notify local units of government with water planning authority of these high priority regions.

ARTICLE 3

PERMANENT WETLAND PRESERVES

Section 1. [103F.516] PERMANENT WETLANDS PRESERVE.

Subdivision 1. EASEMENTS. Upon application by a landowner, the board may acquire permanent easements on land containing type 1, 2, or 3 wetlands, as defined in United States Fish and Wildlife Service Circular No. 39 (1971 edition).

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Subd. 2. NATURE OF PROPERTY RIGHTS ACQUIRED. (a) The nature of property rights acquired in an easement under this section must be consistent with the provisions of section 103F.515, subdivision 4.

(b) A permanent easement may include four adjacent upland acres of land for each acre of wetland included.

(c) The easement must require that the landowner control noxious weeds in accordance with sections 18.171 to 18.317.

(d) The permanent easement must be conveyed to the state in recordable form free of any prior title, lien, or encumbrance and must provide for a right of entry by the state for inspection and correction of violations.

Subd. 3. PAYMENT. (a) Payment for the conservation easement may be made in ten equal annual payments or, at the option of the land owner, in a lump sum at:

(1) 50 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 for wetlands located outside of the metropolitan counties, as defined in section 473.121, subdivision 4, and wetlands located on agricultural lands within a metropolitan county; or

(2) for wetlands located on nonagricultural land within the metropolitan county, 20 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.

(b) Payment for adjacent upland acreage of cropped and noncropped land under subdivision 2, paragraph (b), must be made at 90 percent and 60 percent, respectively, of the township average equalized market value of agricultural land as established by the commissioner of revenue at the time of easement application.

Subd. 4. ENFORCEMENT AND CORRECTIONS. Enforcement of the permanent easement and violation corrections is governed by section 103F.515, subdivisions 8 and 9.

Subd. 5. AVAILABLE FUNDS. A property owner eligible for payments under this section must receive payments to the extent that funds are available. If funds are not available and payments are not made, restrictions on the use of the property owner's wetlands are terminated under this section.

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ARTICLE 4

WETLAND PRESERVATION AREAS

Section 1. [103F.612] WETLAND PRESERVATION AREAS.

Subdivision 1. DEFINITION. For purposes of sections 1 to 5, "wetland" has the meaning given in article 6, section 6.

Subd. 2. APPLICATION. (a) A wetland owner may apply to the county where a wetland is located for designation of a wetland preservation area in a high priority wetland area identified in a comprehensive local water plan, as defined in section 103B.3363, subdivision 3, and located within a high priority wetland region designated by the board of water and soil resources. The application must be made on forms provided by the board. If a wetland is located in more than one county, the application must be submitted to the county where the majority of the wetland is located.

(b) The application must contain at least the following information and other information the board of soil and water resources requires:

(1) legal description of the area to be approved, which must include an upland strip at least 16-1/2 feet in width around the perimeter of wetlands within the area and may include total upland area of up to four acres for each acre of wetland;

(2) parcel identification numbers where designated by the county auditor;

(3) name and address of the owner;

(4) a witnessed signature of the owner covenanting that the land will be preserved as a wetland and will only be used in accordance with conditions prescribed by the board of water and soil resources; and

(5) a statement that the restrictive covenant will be binding on the owner and the owner's successors or assigns, and will run with the land.

(c) The upland strip required in paragraph (b), clause (1), must be planted with permanent vegetation other than a noxious weed.

(d) For registered property, the owner shall submit the owner's duplicate certificate of title with the application.

Subd. 3. REVIEW AND NOTICE. Upon receipt of an application, the county shall determine if all material required by subdivision 2 has been submitted and, if so, shall determine that the application is complete. The term "date of application" means the date the application is determined to be complete by the county. The county shall send a copy of the application to the county assessor, the regional development commission, where applicable, the board of water and soil resources, and the soil and water conservation district where the land is

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located. The soil and water conservation district shall prepare an advisory statement of existing and potential preservation problems or conflicts and send the statement to the owner of record and to the county.

Subd. 4. RECORDING. Within five days of the date of application, the county shall forward the application to the county recorder, with the owner's duplicate certificate of title in the case of registered property. The county recorder shall record the restrictive covenant and return it to the applicant. In the case of registered property, the recorder shall memorialize the restrictive covenant upon the certificate of title and the owner's duplicate certificate of title. The recorder shall notify the county that the covenant has been recorded or memorialized.

Subd. 5. COMMENCEMENT OF WETLAND PRESERVATION AREA. The wetland is a wetland preservation area commencing 30 days from the date the county determines the application is complete under subdivision 3.

Subd. 6. FEE. The county may require an application fee, not to exceed \$50.

Subd. 7. MAPS. The board of water and soil resources shall maintain wetland preservation area maps illustrating land covenanted as wetland preservation areas.

Sec. 2. [103F.613] DURATION OF WETLAND PRESERVATION AREA.

Subdivision 1. GENERAL. A wetland preservation area continues in existence until the owner initiates expiration as provided in this section. The date of expiration must be at least eight years from the date of notice under this section.

Subd. 2. TERMINATION BY OWNER. The owner may initiate expiration of a wetland preservation area by notifying the county on a form prepared by the board of water and soil resources and made available in each county. The notice must describe the property involved and must state the date of expiration. The notice may be rescinded by the owner during the first two years following notice.

Subd. 3. NOTICE AND RECORDING; TERMINATION. When the county receives notice under subdivision 2, the county shall forward the original notice to the county recorder for recording and shall notify the regional development commission, where applicable, the board of water and soil resources, and the county soil and water conservation district of the date of expiration. The benefits and limitations of the wetland preservation area and the restrictive covenant filed with the application cease on the date of expiration. For registered property, the county recorder shall cancel the restrictive covenant upon the certificate of title and the owner's duplicate certificate of title on the effective date of the expiration.

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Subd. 4. EARLY EXPIRATION. A wetland preservation area may be terminated earlier than as provided in this section only in the event of a public emergency upon petition from the owner or county to the governor. The determination of a public emergency must be made by the governor through executive order under section 4.035 and chapter 12. The executive order must identify the wetland preservation area, the reasons requiring the action, and the date of expiration.

Sec. 3. [103F.614] EMINENT DOMAIN ACTIONS.

Subdivision 1. APPLICABILITY. An agency of the state, a public benefit corporation, a local government, or any other entity with the power of eminent domain under chapter 117, except a public utility as defined in section 216B.02, a municipal electric or gas utility, a municipal power agency, a cooperative electric association organized under chapter 308A, or a pipeline operating under the authority of the Natural Gas Act, United States Code, title 15, sections 717 to 717z, shall follow the procedures in this section before:

(1) acquiring land or an easement in land with a total area over ten acres within a wetland preservation area; or

(2) advancing a grant, loan, interest subsidy, or other funds for the construction of dwellings, commercial or industrial facilities, or water or sewer facilities that could be used to serve structures in areas that are not for agricultural use, that require an acquisition of land or an easement in a wetland preservation area.

Subd. 2. NOTICE OF INTENT. At least 60 days before an action described in subdivision 1, notice of intent must be filed with the environmental quality board containing information and in the manner and form required by the environmental quality board. The notice of intent must contain a report justifying the proposed action, including an evaluation of alternatives that would not affect land within a wetland preservation area.

Subd. 3. REVIEW AND ORDER. The environmental quality board, in consultation with affected local governments, shall review the proposed action to determine its effect on the preservation and enhancement of wetlands and the relationship to local and regional comprehensive plans. If the environmental quality board finds that the proposed action might have an unreasonable effect on a wetland preservation area, the environmental quality board shall issue an order within the 60-day period under subdivision 2 for the party to refrain from the proposed action for an additional 60 days.

Subd. 4. PUBLIC HEARING. During the additional 60 days, the environmental quality board shall hold a public hearing concerning the proposed action at a place within the affected wetland preservation area or easily accessible to the wetland preservation area. Notice of the hearing must be published in a newspaper having a general circulation within the area. Individual written notice must be given to the local governments with jurisdiction over the wetland pres-

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ervation area, the agency, corporation or government proposing to take the action, the owner of land in the wetland preservation area, and any public agency having the power of review or approval of the action.

Subd. 5. JOINT REVIEW. The review process required in this section may be conducted jointly with any other environmental impact review by the environmental quality board.

Subd. 6. SUSPENSION OF ACTION. The environmental quality board may suspend an eminent domain action for up to one year if it determines that the action is contrary to wetland preservation and that there are feasible and prudent alternatives that may have a less negative impact on the wetland preservation area.

Subd. 7. TERMINATION OF WETLAND PRESERVATION AREA. The benefits and limitations of a wetland preservation area, including the restrictive covenant for the portion of the wetland preservation area taken, end on the date title and possession of the property is obtained.

Subd. 8. ACTION BY ATTORNEY GENERAL. The environmental quality board may request the attorney general to bring an action to enjoin an agency, corporation, or government from violating this section.

Subd. 9. EXCEPTION. This section does not apply to an emergency project that is immediately necessary for the protection of life and property.

Sec. 4. [103F.615] LIMITATION ON CERTAIN PUBLIC PROJECTS.

Subdivision 1. PROJECTS AND ASSESSMENTS PROHIBITED; EXCEPTION. Notwithstanding any other law, construction projects for public sanitary sewer systems, public water systems, and new public drainage systems are prohibited in wetland preservation areas. New connections between land or buildings in a wetland preservation area and public projects are prohibited. Land in a wetland preservation area may not be assessed for public projects built in the vicinity of the wetland preservation area.

Subd. 2. EXCEPTION; OWNER OPTION. Subdivision 1. does not apply to public projects if the owner of the wetland preservation area elects to use and benefit from a public project.

Sec. 5. [103F.616] SOIL CONSERVATION PRACTICES.

An owner of a wetland preservation area shall manage the area and surrounding upland areas with sound soil conservation practices that prevent excessive soil loss according to the model ordinance adopted by the board of water and soil resources. The model ordinance and soil loss provisions under sections 103F.401 to 103F.455 relating to soil loss apply to all upland areas within a wetland preservation area and to surrounding upland areas. A sound soil conservation practice prevents excessive soil loss or reduces soil loss to the most practicable extent.

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Sec. 6. Minnesota Statutes 1990, 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.
- (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

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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)~~; (i) land described in section 103G.005, subdivision 18; ~~or (2);~~ (ii) 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; or (iii) land in a wetland preservation area under sections 1 to 5. "Wetlands" ~~shall~~ shall under items (i) and (ii) include adjacent land which is not suitable for agricultural purposes due to the presence of the wetlands. ~~"Wetlands" shall, but do~~ 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.

(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)

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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 section 103G.535.

(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.

(16) Real and personal property owned and operated by a private, nonprofit corporation exempt from federal income taxation pursuant to United States

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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. 7. [275.295] WETLANDS EXEMPTION; REPLACEMENT OF REVENUE.

Subdivision 1. CERTIFICATION. The total amount of revenue lost as a result of the exemption provided in Minnesota Statutes, section 272.02, subdivision 1, paragraph (10), clause (3), must be certified by the county auditor to the commissioner of revenue and submitted to the commissioner as part of the abstract of tax lists to be filed with the commissioner under the provisions of Minnesota Statutes, section 275.29. The amount of revenue lost as a result of the exemption must be computed each year by applying the current tax rates of the taxing jurisdictions in which the wetlands are located to the assessed valuation of the wetlands. Payment to the county for lost revenue must not be less

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than the revenue that would have been received in taxes if the wetlands had an assessed value of \$5 per acre. The commissioner of revenue shall review the certification for accuracy and may make necessary changes or return the certification to the county auditor for corrections.

Subd. 2. PAYMENT. Based on current year tax data reported in the abstracts of tax lists, the commissioner of revenue shall annually determine the taxing district distribution of the amounts certified under subdivision 1. The commissioner shall pay to each taxing district, other than school districts, its total payment for the year in equal installments on or before July 15 and December 15 of each year.

Subd. 3. APPROPRIATION. There is appropriated from the general fund to the commissioner of revenue the amount necessary to make the payments required in subdivision 2.

Sec. 8. **EFFECTIVE DATE.**

Sections 6 and 7 are effective for taxes levied in 1992, payable in 1993, and thereafter.

ARTICLE 5

WETLAND ESTABLISHMENT AND RESTORATION PROGRAM

Section 1. [103F.901] DEFINITIONS.

Subdivision 1. APPLICABILITY. The definitions in this section apply to sections 1 to 5.

Subd. 2. BOARD. "Board" means the board of water and soil resources.

Subd. 3. COMMISSIONER. "Commissioner" means the commissioner of natural resources.

Subd. 4. COMPREHENSIVE LOCAL WATER PLAN, "Comprehensive local water plan" has the meaning given in section 103B.3363, subdivision 3.

Subd. 5. LOCAL UNIT OF GOVERNMENT. "Local unit of government" means a county board, joint county board, watershed management organization, or watershed district.

Subd. 6. WATERSHED DISTRICT. "Watershed district" means a district established under chapter 103D.

Subd. 7. WATERSHED MANAGEMENT ORGANIZATION. "Watershed management organization" has the meaning given in section 103B.205, subdivision 13.

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Subd. 8. WETLAND. "Wetland" has the meaning given in article 6, section 6.

Sec. 2. [103F.902] LOCAL PLANNING AND APPROVAL.

Subdivision 1. APPLICATION. A willing landowner may apply, on forms provided by the board, to a local unit of government for the establishment or restoration of a wetland on property owned by the landowner in an area that is:

- (1) designated by the board as a high priority wetland region; and
- (2) identified as a high priority wetland area in the local unit of government's comprehensive local water plan.

Subd. 2. NOTICE AND PRELIMINARY HEARING. (a) Within 30 days after receiving an application, the local unit of government shall hold a public hearing. At least ten days before the hearing, the local unit of government shall give notice of the hearing to the applicant and publish notice in an official newspaper of general circulation in the county.

(b) At the hearing, the local unit of government shall describe the application and hear comments from interested persons regarding the application and the planned establishment or restoration project.

Subd. 3. PRELIMINARY APPROVAL. Within 30 days of the public hearing, the local unit of government must give preliminary approval or disapproval of the application.

Subd. 4. SURVEY REPORT. After preliminary approval, the local unit of government shall direct and pay the costs of a soil and water conservation engineer to conduct a survey of the property where the wetland restoration or establishment project is proposed to be located. The engineer must file a report, including a map of the proposed wetland, that describes the effects of the proposed wetland on:

- (1) the hydrology in the area;
- (2) property of persons other than the applicant;
- (3) groundwater recharge;
- (4) flooding;
- (5) fish and wildlife habitat;
- (6) water quality; and
- (7) other characteristics as determined by the local unit of government.

Subd. 5. NOTICE AND FINAL HEARING. Within 30 days of receiving the completed survey, the local unit of government shall hold a public hearing on the proposed project. At least ten days before the hearing, the local unit of

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government shall notify the landowner and the commissioner and provide public notice of the hearing and the availability of the survey report in an official newspaper of general circulation in the county. The commissioner may provide comment on the proposed wetland.

Subd. 6. FINAL LOCAL APPROVAL. Within 30 days of the public hearing, the local unit of government shall notify the applicant and the commissioner of the final approval or disapproval of the proposed wetland.

Sec. 3. [103F.903] WETLAND ESTABLISHMENT AND RESTORATION COST-SHARE PROGRAM.

Subdivision 1. APPLICATION. A local unit of government shall apply to the board to receive cost-share funding for a proposed wetland restoration project that receives final local approval under section 2. The application must include a copy of the survey report and any comments received on the proposed wetland. Within 30 days of receiving an application, the board shall notify the local unit of government on whether the application and survey report are complete.

Subd. 2. COST-SHARE. The board may provide up to the lesser of \$20,000 or 50 percent of the cost of a wetland establishment or restoration project, including engineering costs, establishment or restoration costs, and compensation costs.

Subd. 3. CONSERVATION EASEMENT. In exchange for cost-share financing under subdivision 2, the board shall acquire a permanent conservation easement, as defined in section 84C.01, paragraph (1). The easement agreement must contain the conditions listed in section 103F.515, subdivision 4.

Subd. 4. PRIORITIES. In reviewing requests from local units of government under this section, the board must give priority to applications based on the public value of the proposed wetland. The public value of the wetland must include the value of the wetland for:

- (1) water quality;
- (2) flood protection;
- (3) recreation including fish and wildlife habitat;
- (4) groundwater recharge; and
- (5) other public uses.

Sec. 4. [103F.904] WETLAND ESTABLISHMENT.

Subdivision 1. ESTABLISHMENT ORDER. After receiving approval of cost-share funding from the board, the local unit of government shall order the establishment or restoration of the wetland. The local unit of government shall

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pay all costs of establishing or restoring the wetland including the compensation required under subdivision 2.

Subd. 2. COMPENSATION. In exchange for the permanent conservation easement on an established or restored wetland, the local unit of government shall pay the applicant the amount required under section 103F.515, subdivision 6, for a permanent conservation easement.

Sec. 5. [103F.905] RULES.

The board may adopt rules to implement sections 1 to 4.

ARTICLE 6

REGULATION OF WETLAND ACTIVITIES

Section 1. Minnesota Statutes 1990, section 103G.005, is amended by adding a subdivision to read:

Subd. 6a. BOARD. "Board" means the board of water and soil resources.

Sec. 2. Minnesota Statutes 1990, section 103G.005, is amended by adding a subdivision to read:

Subd. 10a. LOCAL GOVERNMENT UNIT. "Local government unit" means:

(1) outside of the seven-county metropolitan area, a city council or county board of commissioners; and

(2) in the seven-county metropolitan area, a city council, a town board under section 368.01, or a watershed management organization under section 103B.211.

Sec. 3. Minnesota Statutes 1990, section 103G.005, subdivision 15, is amended to read:

Subd. 15. PUBLIC WATERS. (a) "Public waters" means:

(1) waterbasins assigned a shoreland management classification by the commissioner under sections 103F.201 to 103F.221, 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

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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) public waters 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.

Sec. 4. Minnesota Statutes 1990, section 103G.005, is amended by adding a subdivision to read:

Subd. 17a. WATERSHED. "Watershed" means the 81 major watershed units delineated by the map, "State of Minnesota Watershed Boundaries - 1979"

Sec. 5. Minnesota Statutes 1990, section 103G.005, subdivision 18, is amended to read:

Subd. 18. PUBLIC WATERS WETLANDS. "Public waters wetlands" means all types 3, 4, and 5 wetlands, as defined in United States Fish and Wildlife Service Circular No. 39 (1971 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.

Sec. 6. Minnesota Statutes 1990, section 103G.005, is amended by adding a subdivision to read:

Subd. 19. WETLANDS. (a) "Wetlands" means lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. For purposes of this definition, wetlands must have the following three attributes:

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- (1) have a predominance of hydric soils;
 - (2) are inundated or saturated by surface or ground water at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and
 - (3) under normal circumstances support a prevalence of such vegetation.
- (b) Wetlands does not include public waters wetlands as defined in subdivision 18.

Sec. 7. Minnesota Statutes 1990, section 103G.221, is amended to read:

103G.221 DRAINAGE OF PUBLIC WATERS WETLANDS.

Subdivision 1. **DRAINAGE OF PUBLIC WATERS WETLANDS GENERALLY PROHIBITED WITHOUT REPLACEMENT.** Except as provided in subdivisions 2 and 3, public waters wetlands may not be drained, and a permit authorizing drainage of public waters wetlands may not be issued, unless the public waters wetlands to be drained are replaced by wetlands that will have equal or greater public value.

Subd. 2. **DRAINAGE OF PUBLIC WATERS WETLANDS FOR CROPLAND.** (a) Public waters 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~~ by 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 public waters wetlands to:

- (1) place the public waters wetlands in the state water bank program under section 103F.601; 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 public waters wetlands may be drained without a permit.

Subd. 3. **PERMIT TO DRAIN PUBLIC WATERS WETLANDS TEN YEARS AFTER PUBLIC WATERS DESIGNATION.** (a) The owner of property underneath public waters wetlands on privately owned property may apply to the commissioner for a permit to drain the public waters wetlands after ten years from their original designation as public waters. After receiving the application, the commissioner shall review the status of the public waters wetlands and current conditions.

(b) If the commissioner finds that the status of the public waters 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 bene-

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fits of maintaining the public waters 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.

Sec. 8. [103G.222] **REPLACEMENT OF WETLANDS.**

(a) After the effective date of the rules adopted under section 11 or article 2, section 4, whichever is later, wetlands must not be drained or filled, wholly or partially, unless replaced by restoring or creating wetland areas of at least equal public value under either a replacement plan approved as provided in section 11 or, if a permit to mine is required under section 93.481, under a mining reclamation plan approved by the commissioner under the permit to mine. Mining reclamation plans shall apply the same principles and standards for replacing wetlands by restoration or creation of wetland areas that are applicable to mitigation plans approved as provided in section 11.

(b) Replacement must be guided by the following principles in descending order of priority:

(1) avoiding the direct or indirect impact of the activity that may destroy or diminish the wetland;

(2) minimizing the impact by limiting the degree or magnitude of the wetland activity and its implementation;

(3) rectifying the impact by repairing, rehabilitating, or restoring the affected wetland environment;

(4) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the activity; and

(5) compensating for the impact by replacing or providing substitute wetland resources or environments.

(c) If a wetland is located in a cultivated field, then replacement must be accomplished through restoration only without regard to the priority order in paragraph (b), provided that a deed restriction is placed on the altered wetland prohibiting nonagricultural use for at least ten years.

(d) Restoration and replacement of wetlands must be accomplished in accordance with the ecology of the landscape area affected.

(e) Replacement shall be within the same watershed or county as the impacted wetlands, as based on the wetland evaluation in section 11, subdivision 2, except that counties or watersheds in which 80 percent or more of the presettlement wetland acreage is intact may accomplish replacement in counties or watersheds in which 50 percent or more of the presettlement wetland acreage has been filled, drained, or otherwise degraded. Wetlands impacted by public transportation projects may be replaced statewide, provided they are approved

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by the commissioner under an established wetland banking system, or under the rules for wetland banking as provided for under section 11.

(f) For a wetland located on nonagricultural land, replacement must be in the ratio of two acres of replaced wetland for each acre of drained or filled wetland.

(g) For a wetland located on agricultural land, replacement must be in the ratio of one acre of replaced wetland for each acre of drained or filled wetland.

(h) Wetlands that are restored or created as a result of an approved replacement plan are subject to the provisions of this section for any subsequent drainage or filling.

Sec. 9. [103G.223] CALCAREOUS FENS.

Calcareous fens, as identified by the commissioner, may not be filled, drained, or otherwise degraded, wholly or partially, by any activity, unless the commissioner, under an approved management plan, decides some alteration is necessary.

Sec. 10. [103G.2241] EXEMPTIONS.

Subdivision 1. EXEMPTIONS. (a) Subject to the conditions in paragraph (b), a replacement plan for wetlands is not required for:

(1) activities in a wetland that was planted with annually seeded crops, was in a crop rotation seeding of pasture grasses or legumes, or was required to be set aside to receive price support or other payments under United States Code, title 7, sections 1421 to 1469, in six of the last ten years prior to January 1, 1991;

(2) activities in a wetland that is or has been enrolled in the federal conservation reserve program under United States Code, title 16, section 3831, that:

(i) was planted with annually seeded crops, was in a crop rotation seeding, or was required to be set aside to receive price support or payment under United States Code, title 7, sections 1421 to 1469, in six of the last ten years prior to being enrolled in the program; and

(ii) has not been restored with assistance from a public or private wetland restoration program.

(3) activities necessary to repair and maintain existing public or private drainage systems as long as wetlands that have been in existence for more than 20 years are not drained;

(4) activities in a wetland that has received a commenced drainage determination provided for by the federal Food Security Act of 1985, that was made to the county agricultural stabilization and conservation service office prior to Sep-

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tember 19, 1988, and a ruling and any subsequent appeals or reviews have determined that drainage of the wetland had been commenced prior to December 23, 1985;

(5) activities exempted from federal regulation under United States Code, title 33, section 1344(f);

(6) activities authorized under, and conducted in accordance with, an applicable general permit issued by the United States Army Corps of Engineers under section 404 of the federal Clean Water Act, United States Code, title 33, section 1344, except the nationwide permit in Code of Federal Regulations, title 33, section 330.5, paragraph (a), clause (14), limited to when a new road crosses a wetland, and all of clause (26);

(7) activities in a type 1 wetland on agricultural land, as defined in United States Fish and Wildlife Circular No. 39 (1971 edition) except for bottomland hardwood type 1 wetlands;

(8) activities in a type 2 wetland that is two acres in size or less located on agricultural land;

(9) activities in a wetland restored for conservation purposes under a contract or easement providing the landowner with the right to drain the restored wetland;

(10) activities in a wetland created solely as a result of:

(i) beaver dam construction;

(ii) blockage of culverts through roadways maintained by a public or private entity;

(iii) actions by public entities that were taken for a purpose other than creating the wetland; or

(iv) any combination of (i) to (iii);

(11) placement, maintenance, repair, enhancement, or replacement of utility or utility-type service, including the transmission, distribution, or furnishing, at wholesale or retail, of natural or manufactured gas, electricity, telephone, or radio service or communications if:

(i) the impacts of the proposed project on the hydrologic and biological characteristics of the wetland have been avoided and minimized to the extent possible; and

(ii) the proposed project significantly modifies or alters less than one-half acre of wetlands;

(12) activities associated with routine maintenance of utility and pipeline rights-of-way, provided the activities do not result in additional intrusion into the wetland;

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(13) alteration of a wetland associated with the operation, maintenance, or repair of an interstate pipeline;

(14) temporarily crossing or entering a wetland to perform silvicultural activities, including timber harvest as part of a forest management activity, so long as the activity limits the impact on the hydrologic and biologic characteristics of the wetland; the activities do not result in the construction of dikes, drainage ditches, tile lines, or buildings; and the timber harvesting and other silvicultural practices do not result in the drainage of the wetland or public waters;

(15) permanent access for forest roads across wetlands so long as the activity limits the impact on the hydrologic and biologic characteristics of the wetland; the construction activities do not result in the access becoming a dike, drainage ditch or tile line; with filling avoided wherever possible; and there is no drainage of the wetland or public waters;

(16) activities associated with routine maintenance of existing public highways, roads, streets, and bridges, provided the activities do not result in additional intrusion into the wetland and do not result in the draining or filling, wholly or partially, of a wetland;

(17) emergency repair and normal maintenance and repair of existing public works, provided the activity does not result in additional intrusion of the public works into the wetland and do not result in the draining or filling, wholly or partially, of a wetland;

(18) normal maintenance and minor repair of structures causing no additional intrusion of an existing structure into the wetland, and maintenance and repair of private crossings that do not result in the draining or filling, wholly or partially, of a wetland;

(19) duck blinds;

(20) aquaculture activities, except building or altering of docks and activities involving the draining or filling, wholly or partially, of a wetland;

(21) wild rice production activities, including necessary diking and other activities authorized under a permit issued by the United State Army Corps of Engineers under section 404 of the federal Clean Water Act, United States Code, title 33, section 1344;

(22) normal agricultural practices to control pests or weeds, defined by rule as either noxious or secondary weeds, in accordance with applicable requirements under state and federal law, including established best management practices;

(23) activities in a wetland that is on agricultural land annually enrolled in the federal Food, Agricultural, Conservation, and Trade Act of 1990, United States Code, title 16, section 3821, subsection (a), clauses (1) to (3), as amended, and is subject to sections 1421 to 1424 of the federal act in effect on January 1,

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1991, except that land enrolled in a federal farm program is eligible for easement participation for those acres not already compensated under a federal program;

(24) development projects and ditch improvement projects in the state that have received preliminary or final plat approval, or infrastructure that has been installed, or having local site plan approval, conditional use permits, or similar official approval by a governing body or government agency, within five years before the effective date of this article. In the seven-county metropolitan area and in cities of the first and second class, plat approval must be preliminary as approved by the appropriate governing body.

(b) A person conducting an activity in a wetland under an exemption in paragraph (a) shall ensure that:

(1) appropriate erosion control measures are taken to prevent sedimentation of the water;

(2) the activity does not block fish passage in a watercourse; and

(3) the activity is conducted in compliance with all other applicable federal, state, and local requirements, including best management practices and water resource protection requirements established under chapter 103H.

Sec. 11. [103G.2242] WETLAND VALUE REPLACEMENT PLANS.

Subdivision 1. RULES. (a) By July 1, 1993, the board, in consultation with the commissioner, shall adopt rules governing the approval of wetland value replacement plans under this section. These rules must address the criteria, procedure, timing, and location of acceptable replacement of wetland values; may address the state establishment and administration of a wetland banking program for public and private projects, which may include provisions allowing monetary payment to the wetland banking program for alteration of wetlands on agricultural land; the methodology to be used in identifying and evaluating wetland functions; the administrative, monitoring, and enforcement procedures to be used; and a procedure for the review and appeal of decisions under this section. In the case of peatlands, the replacement plan rules must consider the impact on carbon balance described in the report required by Laws 1990, chapter 587, and include the planting of trees or shrubs.

(b) After the adoption of the rules, a replacement plan must be approved by a resolution of the governing body of the local government unit, consistent with the provisions of the rules.

(c) If the local government unit fails to apply the rules, the government unit is subject to penalty as determined by the board.

Subd. 2. EVALUATION. Questions concerning the public value, location, size, or type of a wetland shall be submitted to and determined by a technical evaluation panel after an on-site inspection. The technical evaluation panel shall

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be composed of a technical professional employee of the board, a technical professional employee of the local soil and water conservation district or districts, and an engineer for the local government unit. The panel shall use the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands" (January 1989). The panel shall provide the wetland determination to the local government unit that must approve a replacement plan under this section, and may recommend approval or denial of the plan. The authority must consider and include the decision of the technical evaluation panel in their approval or denial of a plan.

Subd. 3. REPLACEMENT COMPLETION. Replacement of wetland values must be completed prior to or concurrent with the actual draining or filling of a wetland, or an irrevocable bank letter of credit or other security acceptable to the local government unit must be given to the local government unit to guarantee the successful completion of the replacement.

Subd. 4. DECISION. Upon receiving and considering all required data, the local government unit approving a replacement plan must act on all applications for plan approval within 60 days.

Subd. 5. PROCESSING FEE. The local government unit may charge a processing fee of up to \$75.

Subd. 6. NOTICE OF APPLICATION. Within ten days of receiving an application for approval of a replacement plan under this section, a copy of the application must be submitted to the board for publication in the Environmental Quality Board Monitor and separate copies mailed to individual members of the public who request a copy, the board of supervisors of the soil and water conservation district, the managers of the watershed district, the board of county commissioners, the commissioner of agriculture, and the mayors of the cities within the area watershed. At the same time, the local government unit must give general notice to the public in a general circulation newspaper within the area affected.

Subd. 7. NOTICE OF DECISION. At least 30 days prior to the effective date of the approval or denial of a replacement plan under this section, a copy of the approval or denial must be submitted for publication in the Environmental Quality Board Monitor and separate copies mailed to the applicant, the board, individual members of the public who request a copy, the board of supervisors of the soil and water conservation district, the managers of the watershed district, the board of county commissioners, the commissioner of agriculture, and the mayors of the cities within the area watershed.

Subd. 8. PUBLIC COMMENT PERIOD. Before approval or denial of a replacement plan under this section, comments may be made by the public to the local government unit for a period of 30 days.

Subd. 9. APPEAL. Appeal of the decision may be obtained by mailing a notice of appeal to the board within 30 days after the postmarked date of the mailing specified in subdivision 7. If appeal is not sought within 30 days, the decision becomes final. Appeal may be made by the wetland owner, by any of those to whom notice is required to be mailed under subdivision 7, or by 100

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residents of the county in which a majority of the wetland is located. All appeals must be heard by the committee for dispute resolution of the board, and a decision made within 60 days of the appeal. The decision must be served by mail on the parties to the appeal, and is not subject to the provisions of chapter 14. The decision must be considered the decision of an agency in a contested case for purposes of judicial review under sections 14.63 to 14.69.

Subd. 10. LOCAL REQUIREMENTS. The rules adopted under subdivision 1 shall allow for local government units to use their own notice and public comment procedures so long as the requirements of this section are satisfied.

Subd. 11. WETLAND HERITAGE ADVISORY COMMITTEE. The governor shall establish a wetland heritage advisory committee consisting of a balanced diversity of interests including agriculture, environmental, and sporting organizations, land development organizations, local government organizations, and other agencies. The committee must consist of nine members including the commissioner of agriculture, or a designee of the commissioner, the commissioner of natural resources, and seven members appointed by the governor. The governor's appointees must include one county commissioner, one representative each from a statewide sporting organization, a statewide conservation organization, an agricultural commodity group, one faculty member of an institution of higher education with expertise in the natural sciences, and one member each from two statewide farm organizations. The committee shall advise the board on the development of rules under this section and, after rule adoption, shall meet twice a year to review implementation of the program, to identify strengths and weaknesses, and to recommend changes to the rules and the law to improve the program.

Subd. 12. REPLACEMENT CREDITS. No public or private wetland restoration, enhancement, or construction may be allowed for replacement unless specifically designated for replacement and paid for by the individual or organization performing the wetland restoration, enhancement, or construction, and is completed prior to any draining or filling of the wetland.

This subdivision does not apply to a wetland whose owner has paid back with interest the individual or organization restoring, enhancing, or constructing the wetland.

Subd. 13. REPLACEMENT WETLAND ELIGIBLE FOR RIM. A wetland replaced under this section, in which the replacement is located on the wetland owner's land, is eligible for enrollment under section 103F.515 one year after the completion of replacement.

Sec. 12. Minnesota Statutes 1990, section 103G.225, is amended to read:

103G.225 STATE WETLANDS AND PUBLIC DRAINAGE SYSTEMS.

If the state owns public waters wetlands on or adjacent to existing public drainage systems, the state shall consider the use of the public waters wetlands

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as part of the drainage system. If the public waters wetlands interfere with or prevent the authorized functioning of the public drainage system, the state shall provide for necessary work to allow proper use and maintenance of the drainage system while still preserving the public waters wetlands.

Sec. 13. Minnesota Statutes 1990, section 103G.231, is amended to read:

103G.231 PROPERTY OWNER'S USE OF PUBLIC WATERS WETLANDS.

Subdivision 1. **AGRICULTURAL USE DURING DROUGHT.** A property owner may use the bed of public waters 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 public waters wetlands.

Subd. 2. **FILLING PUBLIC WATERS WETLANDS FOR IRRIGATION BOOMS.** A landowner may fill a public waters wetland to accommodate wheeled booms on irrigation devices if the fill does not impede normal drainage.

Sec. 14. Minnesota Statutes 1990, section 103G.235, is amended to read:

103G.235 RESTRICTIONS ON ACCESS TO PUBLIC WATERS WETLANDS.

To protect the public health or safety, local units of government may by ordinance restrict public access to public waters wetlands from municipality, county, or township roads that abut public waters wetlands.

Sec. 15. **[103G.2364] PROPERTY OWNER'S USE OF WETLANDS.**

(a) 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.
- (b) A landowner may fill a wetland to accommodate wheeled booms on irrigation devices if the fill does not impede normal drainage.

Sec. 16. **[103G.2365] CONTROL OF NOXIOUS WEEDS.**

Noxious weeds, as defined in section 18.171, subdivision 5, must be controlled on wetlands as required in section 18.191.

Sec. 17. **[103G.237] COMPENSATION FOR LOSS OF PRIVATE USE.**

Subdivision 1. GENERAL. A person whose replacement plan is not approved must be compensated as provided in this section. The person may drain or fill the wetland without an approved replacement plan if the person:

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- (1) is eligible for compensation under subdivision 2;
- (2) applies for compensation in accordance with subdivision 3; and
- (3) does not receive the compensation required in subdivision 4 within 90 days after the application for compensation is received by the board.

Subd. 2. ELIGIBILITY. A person is eligible for compensation if:

- (1) the person applies for replacement plan approval under section 11;
- (2) the replacement plan is not approved or the plan conditions make the proposed use unworkable or not feasible;
- (3) the person appeals the disapproval of the plan;
- (4) the proposed use would otherwise be allowed under federal, state, and local laws, rules, ordinances, and other legal requirements;
- (5) the person has suffered or will suffer damages;
- (6) disallowing the proposed use will enhance the public value of the wetland; and
- (7) the person applies to the board for compensation.

Subd. 3. APPLICATION. An application for compensation must be made on forms prescribed by the board and include:

- (1) the location and public value of the wetland where the use was proposed;
- (2) a description and reason for the proposed wetland use; and
- (3) the objection to the replacement plan, if any.

Subd. 4. COMPENSATION. The board shall award compensation in an amount equal to 50 percent of the average equalized estimated market value of agricultural property in the township as established by the commissioner of revenue at the time application for compensation is made.

Sec. 18. [103G.2372] ENFORCEMENT.

Subdivision 1. COMMISSIONER OF NATURAL RESOURCES. The commissioner of natural resources, conservation officers, and peace officers shall enforce laws preserving and protecting wetlands. The commissioner of natural resources, a conservation officer, or a peace officer may issue a cease and desist order to stop any illegal activity adversely affecting a wetland. In the order, or by separate order, the commissioner, conservation officer, or peace officer may require restoration or replacement of the wetland, as determined by the local soil and water conservation district.

Subd. 2. MISDEMEANOR. A violation of an order issued under subdivi-

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sion 1 is a misdemeanor and must be prosecuted by the county attorney where the wetland is located or the illegal activity occurred.

Subd. 3. RESTITUTION. The court may, as part of sentencing, require a person convicted under subdivision 2 to restore or replace the wetland, as determined by the local soil and water conservation district.

Sec. 19. Minnesota Statutes 1990, section 645.44, subdivision 8a, is amended to read:

Subd. 8a. **PUBLIC WATERS.** "Public waters" means public waters as defined in section 103G.005, subdivision 15, and includes "public waters wetlands" as defined in section 103G.005, subdivision 18.

Sec. 20. **REGULATORY SIMPLIFICATION REPORT.**

The board of water and soil resources and the commissioner of the department of natural resources, in consultation with the appropriate federal agencies, shall jointly develop a plan to simplify and coordinate state and federal regulatory procedures related to wetland use and shall report on the plan to the legislature by January 1, 1992.

Sec. 21. **AVAILABILITY OF NATIONAL WETLANDS INVENTORY MAPS.**

By February 1, 1993, the commissioner of natural resources shall file with each soil and water conservation district copies of the national wetlands inventory maps covering the district and shall publish notice of the availability of the maps in an official newspaper of general circulation in each county.

For purposes of this paragraph, "notice" means the following information in 8-point or larger type:

"NOTICE OF AVAILABILITY OF NATIONAL WETLANDS INVENTORY MAPS

National wetlands inventory maps for (name of county) county are available from the Minnesota Department of Natural Resources. The national wetlands inventory maps are for general informational use only, and should not be relied upon in determining the exact location or boundaries of wetlands. Persons wishing to obtain further information regarding the maps should contact (name, address, and telephone number of regional contact person at the department) or their local soil and water conservation district office. **WETLANDS ARE SUBJECT TO REGULATION BY THE STATE AND ACTIVITIES AFFECTING WETLANDS MAY BE RESTRICTED OR PROHIBITED UNDER RULES TO BE ADOPTED BY THE BOARD OF WATER AND SOIL RESOURCES AND THE DEPARTMENT OF NATURAL RESOURCES.** Persons wishing to participate in the rulemaking process should contact (name, address, and telephone number of contact person at the board) or (name, address, and telephone number of contact person at the department).

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THE NATIONAL WETLANDS INVENTORY MAPS, MAPS PREPARED BY THE UNITED STATES SOIL CONSERVATION SERVICE, AND OTHER AVAILABLE MAPS MAY PROVIDE USEFUL INFORMATION, BUT PERSONS PLANNING TO CONDUCT ACTIVITIES THAT MAY AFFECT WETLANDS SHOULD FIRST CONSULT THEIR LOCAL SOIL AND WATER CONSERVATION DISTRICT OFFICE."

Sec. 22. LEGISLATIVE REVIEW OF RULES.

Before adoption of the rules required in article 2, section 4, and article 6, section 11, and no later than March 1, 1993, the proposed rules and any public comments on the proposed rules must be submitted to the agriculture and environment committees of the legislature. The rules must not be adopted earlier than 60 days after submittal to the legislature under this section.

ARTICLE 7

INTERIM WETLAND ACTIVITIES

Section 1. [103G.2369] INTERIM.

Subdivision 1. DELINEATION. The "Federal Manual for Identifying and Delineating Jurisdictional Wetlands" (January 1989) must be used in identifying and delineating wetlands.

Subd. 2. PROHIBITED ACTIVITIES. (a) Except as provided in subdivision 3, until July 1, 1993, a person may not drain, burn, or fill a wetland.

(b) Except as provided in subdivision 3, until July 1, 1993, a state agency or local unit of government may not issue a permit for an activity prohibited in paragraph (a) or for an activity that would include an activity prohibited in paragraph (a).

Subd. 3. EXEMPTIONS. The prohibitions in subdivision 2 do not apply to:

(1) activities exempted under, and conducted in accordance with, article 6, section 10;

(2) development projects and drainage system improvement projects that have received preliminary or final plat approval or for which infrastructure has been installed, or that have received site plan approval or a conditional use permit, within five years before the effective date of this section;

(3) activities for which the local soil and water conservation district or other local permitting authority certifies that any loss of wetland area resulting from the activity will be replaced; and

(4) a person who is enrolled or participating in a program listed in United States Code, title 16, section 3821, subsection (a), clauses (1) to (3).

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

Subd. 4. CERTIFICATION FEE. A soil and water conservation district or other local permitting authority may charge a fee of up to \$75 for a certification under subdivision 3, clause (3).

Subd. 5. ENFORCEMENT. This section must be enforced as provided in article 6, section 18.

Sec. 2. EFFECTIVE DATE.

Section 1 is effective January 1, 1992, and is repealed July 1, 1993.

ARTICLE 8

PEATLAND PROTECTION

Section 1. [84.035] PEATLAND PROTECTION.

Subdivision 1. CITATION. Sections 1 and 2 may be cited as the "Minnesota peatland protection act."

Subd. 2. FINDINGS. The legislature finds that certain Minnesota peatlands possess unique scientific, aesthetic, vegetative, hydrologic, geologic, wildlife, wilderness, and educational values and represent the various peatland ecological types in the state. The legislature finds that it is desirable and appropriate to protect and preserve these patterned peatlands as a peatland management system through establishment and designation of certain peatland core areas as scientific and natural areas.

Subd. 3. DEFINITIONS. Unless language or context clearly indicates that a different meaning is intended, the following terms, for the purposes of sections 1 and 2, have the meanings given to them.

(a) "Winter road" means an access route which may be used by vehicles only when the substrate is frozen, except as provided in subdivision 5, paragraph (b), clause (3).

(b) "Corridors of disturbance" means rights of way which are in existence on the effective date of this act, such as ditches, ditch banks, transmission lines, pipelines, permanent roads, winter roads, and recreational trails. The existence, on the effective date of this act, of a corridor of disturbance may be demonstrated by physical evidence, document recorded in the office of county recorder or other public official, aerial survey, or other evidence similar to the above.

(c) "State land" means land owned by the state of Minnesota and administered by the commissioner.

Subd. 4. DESIGNATION OF PEATLAND SCIENTIFIC AND NATURAL AREAS. Within the peatland areas described in section 2, state lands are hereby established and designated as scientific and natural areas to be preserved and managed by the commissioner in accordance with subdivision 5 and section 86A.05, subdivision 5.

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Subd. 5. ACTIVITIES IN PEATLAND SCIENTIFIC AND NATURAL AREAS. Areas designated in subdivision 4 as peatland scientific and natural areas are subject to the following conditions:

(a) Except as provided in paragraph (b), all restrictions otherwise applicable to scientific and natural areas designated under section 86A.05, subdivision 5, apply to the surface use and to any use of the mineral estate which would significantly modify or alter the peatland water levels or flows, peatland water chemistry, plant or animal species or communities, or other natural features of the peatland scientific and natural areas, including, but not limited to, the following prohibitions:

(1) construction of any new public drainage systems after the effective date of this act or improvement or repair to a public drainage system in existence on the effective date of this act, under authority of chapter 103E, or any other alteration of surface water or ground water levels or flows unless specifically permitted under paragraph (b), clause (5) or (6);

(2) removal of peat, sand, gravel, or other industrial minerals;

(3) exploratory boring or other exploration or removal of oil, natural gas, radioactive materials or metallic minerals which would significantly modify or alter the peatland water levels or flows, peatland water chemistry, plant or animal species or communities, or natural features of the peatland scientific and natural areas, except in the event of a national emergency declared by Congress;

(4) commercial timber harvesting;

(5) construction of new corridors of disturbance, of the kind defined in subdivision 3, after the effective date of this article; and

(6) ditching, draining, filling, or any other activities which modify or alter the peatland water levels or flows, peatland water chemistry, plant or animal species or communities, or other natural features of the peatland scientific and natural areas.

(b) The following activities are allowed:

(1) recreational activities, including hunting, fishing, trapping, cross-country skiing, snowshoeing, nature observation, or other recreational activities permitted in the management plan approved by the commissioner;

(2) scientific and educational work and research;

(3) maintenance of corridors of disturbance, including survey lines and preparation of winter roads, consistent with protection of the peatland ecosystem;

(4) use of corridors of disturbance unless limited by a management plan adopted by the commissioner under subdivision 6;

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(5) improvements to a public drainage system in existence on the effective date of this act only when it is for the protection and maintenance of the ecological integrity of the peatland scientific and natural area and when included in a management plan adopted by the commissioner under subdivision 6;

(6) repairs to a public drainage system in existence on the effective date of this act which crosses a peatland scientific and natural area and is used for the purposes of providing a drainage outlet for lands outside of the peatland scientific and natural area, provided that there are no other feasible and prudent alternative means of providing the drainage outlet. The commissioner shall cooperate with the ditch authority in the determination of any feasible and prudent alternatives. No repairs which would significantly modify or alter the peatland water levels or flows, peatland water chemistry, plant or animal species or communities, or other natural features of the peatland scientific and natural areas shall be made unless approved by the commissioner;

(7) motorized uses that are engaged in, on corridors of disturbance, on or before the effective date of this act;

(8) control of forest insects, disease, and wildfires, as described in a management plan adopted by the commissioner under subdivision 6; and

(9) geological and geophysical surveys which would not significantly modify or alter the peatland water levels or flows, peatland water chemistry, plant or animal species or communities, or other natural features of the peatland scientific and natural areas.

Subd. 6. MANAGEMENT PLANS. The commissioner shall develop a management plan for each peatland scientific and natural area designated under section 2 in a manner prescribed by section 86A.09.

Subd. 7. ESTABLISHING BASELINE ECOLOGICAL DATA. The commissioner shall establish baseline data on the ecology and biological diversity of peatland scientific and natural areas and provide for ongoing, long-term ecological monitoring to determine whether changes are occurring in the peatland scientific and natural areas. This research is intended to identify any changes occurring in peatland scientific and natural areas as a result of any permitted activities outside the peatland scientific and natural areas. This baseline data may include, but is not limited to, the history of the peatlands and their geologic origins, plant and animal communities, hydrology, water chemistry, and contaminants introduced from remote sources of atmospheric deposition.

Subd. 8. DITCH ABANDONMENTS. In order to eliminate repairs or improvements to any public drainage system that crosses a peatland scientific and natural area in those instances where the repair or improvement adversely affects an area, the commissioner may petition for the abandonment of parts of the public drainage system under section 106A.811. If the public drainage sys-

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tem is necessary as a drainage outlet for lands outside of the peatland scientific and natural area, the commissioner will cooperate with the ditch authority in the development of feasible and prudent alternative means of providing a drainage outlet which avoids the crossing of and damage to the peatland scientific and natural area. In so doing, the commissioner shall grant flowage easements to the ditch authority for disposal of the outlet water on other state lands. The ditch authority shall approve the abandonment of parts of any public drainage system crossing a peatland scientific and natural area if the public drainage system crossing of those areas is not necessary as a drainage outlet for lands outside of the areas or if there are feasible and prudent alternative means of providing a drainage outlet without crossing such areas. In any abandonment under this subdivision the commissioner may enter into an agreement with the ditch authority regarding apportionment of costs and, contingent upon appropriations of money for that purpose, may agree to pay a reasonable share of the cost of abandonment.

Subd. 9. COMPENSATION FOR TRUST FUND LANDS. The commissioner shall acquire by exchange or eminent domain the surface interests, including peat, on trust fund lands contained in peatland scientific and natural areas established in subdivision 4.

Subd. 10. ACQUISITION OF PEATLAND SCIENTIFIC AND NATURAL AREAS. The commissioner may acquire by purchase the surface interests, including peat, of lands within the boundaries of the peatland areas described in section 2, that are owned, or that hereafter become owned, by the state and administered by the local county board.

The commissioner shall designate any land acquired under this subdivision as peatland scientific and natural area and preserve and administer any land so acquired and designated in accordance with subdivision 5 and section 86A.05.

Sec. 2. [84.036] PEATLAND SCIENTIFIC AND NATURAL AREAS; DESIGNATION.

The following scientific and natural areas are established and are composed of all of the core peatland areas identified on maps in the 1984 commissioner of natural resources report, "Recommendations for the Protection of Ecologically Significant Peatlands in Minnesota" and maps on file at the department of natural resources:

(1) Red Lake Scientific and Natural Area in Beltrami, Koochiching, and Lake of the Woods counties;

(2) Myrtle Lake Scientific and Natural Area in Koochiching county;

(3) Lost River Scientific and Natural Area in Koochiching county;

(4) North Black River Scientific and Natural Area in Koochiching county;

(5) Sand Lake Scientific and Natural Area in Lake county;

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- (6) Mulligan Lake Scientific and Natural Area in Lake of the Woods county;
- (7) Lost Lake Scientific and Natural Area in St. Louis county;
- (8) Pine Creek Scientific and Natural Area in Roseau county;
- (9) Hole in the Bog Scientific and Natural Area in Cass county;
- (10) Wawina Scientific and Natural Area in St. Louis county;
- (11) Nett Lake Scientific and Natural Area in Koochiching county;
- (12) East Rat Root River Scientific and Natural Area in Koochiching county;
- (13) South Black River Scientific and Natural Area in Koochiching county;
- (14) Winter Road Lake Scientific and Natural Area in Koochiching county;
- (15) Sprague Creek Scientific and Natural Area in Roseau county;
- (16) Luxemberg Scientific and Natural Area in Roseau county;
- (17) West Rat Root River Scientific and Natural Area in Koochiching county; and
- (18) Norris Camp Scientific and Natural Area in Lake of the Woods county.

Sec. 3. Minnesota Statutes 1990, section 103G.231, is amended by adding a subdivision to read:

Subd. 3. PEAT MINING. Peat mining, as defined in section 93.461, is permitted subject to the mine permit and reclamation requirements of sections 93.44 to 93.51, and the rules adopted under those restrictions, except as provided for in sections 1 and 2.

Sec. 4. EFFECTIVE DATE.

Sections 1 to 3 are effective the day following final enactment.

ARTICLE 9

SECTION 404 PROGRAM

Section 1. ~~[103G.127]~~ **PERMIT PROGRAM UNDER SECTION 404 OF THE FEDERAL CLEAN WATER ACT.**

Notwithstanding any other law to the contrary, the commissioner may adopt rules establishing a permit program for regulating the discharge of dredged and fill material into the waters of the state as necessary to obtain approval from the United States Environmental Protection Agency to administer the permit

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program under section 404 of the federal Clean Water Act, United States Code, title 33, section 1344. The rules may not be more restrictive than the program under section 404, or state law, if it is more restrictive than the federal program.

Sec. 2. Minnesota Statutes 1990, section 103G.141, is amended to read:

103G.141 PENALTIES.

Subdivision 1. MISDEMEANORS. Except as provided in subdivision 2, 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.

Subd. 2. VIOLATION OF SECTION 404 PERMITS. (a) Whenever the commissioner finds that a person is in violation of a condition or limitation set forth in a permit issued under the rules adopted by the commissioner under section 1, the commissioner shall issue an order requiring the person to comply with the condition or limitation, or the commissioner shall bring a civil action in accordance with paragraph (b).

(b) The commissioner may commence a civil action for appropriate relief in district court, including a permanent or temporary injunction, for a violation for which the commissioner is authorized to issue a compliance order under paragraph (a). The court may restrain the violation and require compliance.

(c) A person who violates a condition or limitation in a permit issued by the commissioner under section 1, and a person who violates an order issued by the commissioner under paragraph (a), is subject to a civil penalty not to exceed \$25,000 per day for each violation. In determining the amount of a civil penalty the court shall consider the seriousness of the violation or violations, the economic benefit, if any, resulting from the violation, any history of violations, any good faith efforts to comply with the applicable requirements, the economic impact of the penalty on the violator, and other matters justice may require.

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Sec. 3. SECTION 404 PROGRAM SUBMISSION.

Subdivision 1. DEFINITION. For purposes of this section, "section 404 program" means the permit program under section 404 of the federal Clean Water Act, United States Code, title 33, section 1344.

Subd. 2. INTENT. The legislature intends that as expeditiously as possible the state obtain approval from the administrator of the United States Environmental Protection Agency to administer the section 404 program in this state.

Subd. 3. REQUIREMENTS. (a) By February 1, 1993, the commissioner of natural resources shall:

(1) adopt rules under section 1 that provide adequate authority for administering the section 404 program; and

(2) after consulting with the attorney general, report to the environment and natural resources committees of the legislature on existing laws that are inconsistent with the authority necessary for administering the section 404 program.

(b) By March 1, 1993, the governor shall make the submission to the administrator of the United States Environmental Protection Agency required in United States Code, title 33, section 1344(g), to obtain authority to administer the section 404 program.

ARTICLE 10**MISCELLANEOUS**

Section 1. Minnesota Statutes 1990, section 84.085, is amended to read:

84.085 ACCEPTANCE OF GIFTS.

Subdivision 1. AUTHORITY. (a) The commissioner of natural resources may accept for and on behalf of the state any gift, bequest, ~~device~~ devise, or grants of lands or interest in lands or personal property of any kind or of money tendered to the state for any purpose pertaining to the activities of the department or any of its divisions. Any money so received is hereby appropriated and dedicated for the purpose for which it is granted. Lands and interests in lands so received may be sold or exchanged as provided in chapter 94.

(b) The commissioner may accept for and on behalf of the permanent school fund a donation of lands, interest in lands, or improvements on lands. A donation so received shall become state property, be classified as school trust land as defined in section 92.025, and be managed consistent with section 120.85.

Subd. 2. WETLANDS. The commissioner of natural resources must accept

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a gift, bequest, devise, or grant of wetlands, as defined in article 6, section 6, or public waters wetlands, as defined in section 103G.005, subdivision 18, unless:

(1) the commissioner determines that the value of the wetland for water quality, floodwater retention, public recreation, wildlife habitat, or other public benefits is minimal;

(2) the wetland has been degraded by activities conducted without a required permit by the person offering the wetland and the person has not taken actions determined by the commissioner to be necessary to restore the wetland;

(3) the commissioner determines that the wetland has been contaminated by a hazardous substance as defined in section 115B.02, subdivision 8, a pollutant or contaminant as defined in section 115B.02, subdivision 13, or petroleum as defined in section 115C.02, subdivision 10, and the contamination has not been remedied as required under chapter 115B or 115C;

(4) the wetland is subject to a lien or other encumbrance; or

(5) the commissioner, after reasonable effort, has been unable to obtain an access to the wetland.

Sec. 2. Minnesota Statutes 1990, section 103E.701, is amended by adding a subdivision to read:

Subd. 6. WETLAND RESTORATION AND MITIGATION. Repair of a drainage system may include the restoration or enhancement of wetlands; wetland replacement under section 103G.222; and the realignment of a drainage system to prevent drainage of a wetland.

Sec. 3. Minnesota Statutes 1990, section 103F.515, subdivision 2, is amended to read:

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;

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(7) is cropland or noncropland adjacent to restored wetlands to the extent of up to four acres of cropland or one acre of noncropland 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.

(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 103F.505.

Sec. 4. Minnesota Statutes 1990, section 103G.005, subdivision 13a, is amended to read:

Subd. 13a. **ONCE-THROUGH SYSTEM.** "Once-through system" means a space heating, ventilating, air conditioning (HVAC), or refrigeration system used for any type of temperature or humidity control application, utilizing groundwater, that circulates through the system and is then discharged without ~~recirculating the majority of the water in the system components or reusing it for another a~~ higher priority purpose.

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

Sec. 5. Minnesota Statutes 1990, section 103G.271, subdivision 6, is amended to read:

Subd. 6. **WATER USE PERMIT PROCESSING FEE.** (a) Except as described in paragraphs (b) to ~~(e)~~ (f), a water use permit 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) 0.05 cents per 1,000 gallons for the first 50,000,000 gallons per year;
- (2) 0.10 cents per 1,000 gallons for amounts greater than 50,000,000 gallons but less than 100,000,000 gallons per year;
- (3) 0.15 cents per 1,000 gallons for amounts greater than 100,000,000 gallons but less than 150,000,000 gallons per year; and
- (4) 0.20 cents per 1,000 gallons for amounts greater than 150,000,000 gallons but less than 200,000,000 gallons per year;
- (5) 0.25 cents per 1,000 gallons for amounts greater than 200,000,000 gallons but less than 250,000,000 gallons per year;
- (6) 0.30 cents per 1,000 gallons for amounts greater than 250,000,000 gallons but less than 300,000,000 gallons per year;
- (7) 0.35 cents per 1,000 gallons for amounts greater than 300,000,000 gallons but less than 350,000,000 gallons per year;
- (8) 0.40 cents per 1,000 gallons for amounts greater than 350,000,000 gallons but less than 400,000,000 gallons per year; and
- (9) 0.45 cents per 1,000 gallons for amounts greater than 400,000,000 gallons per year.

(b) For once-through cooling systems, 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) for nonprofit corporations and school districts:
 - (i) 5.0 cents per 1,000 gallons until December 31, 1991;
 - (ii) 10.0 cents per 1,000 gallons from January 1, 1992, until December 31, 1996; and
 - (iii) 15.0 cents per 1,000 gallons after January 1, 1997; and
- (2) for all other users ~~after January 1, 1990~~, 20 cents per 1,000 gallons.

(c) The fee is payable based on the amount of water appropriated during the year and ~~in no case may~~, except as provided in paragraph (f), the minimum fee be less than is \$50. ~~The commissioner shall notify all permittees of the fee~~

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~~changes authorized by this law by July 1, 1990. The commissioner is authorized to refund 1989 water use report processing fees under this subdivision:~~

(d) For water use processing fees other than once-through cooling systems:

(1) the fee for a city of the first class may not exceed \$175,000 per year;

(2) the fee for other entities for any permitted use may not exceed:

(i) \$35,000 per year for an entity holding three or fewer permits;

(ii) \$50,000 per year for an entity holding four or five permits;

(iii) \$175,000 per year for an entity holding more than five permits;

(3) the fee for agricultural irrigation may not exceed \$750 per year.

(e) Failure to pay the fee is sufficient cause for revoking a permit. A penalty of two percent per month calculated from the original due date must be imposed on the unpaid balance of fees remaining 30 days after the sending of a second notice of fees due. A fee may not be imposed on an agency, as defined in section 16B.01, subdivision 2, or federal governmental agency holding a water appropriation permit.

(f) The minimum water use processing fee for a permit issued for irrigation of agricultural land is \$10 for years in which:

(1) there is no appropriation of water under the permit; or

(2) the permit is suspended for more than seven consecutive days between May 1 and October 1.

(g) For once-through systems fees payable after July 1, 1993, at least 50 percent of the fee deposited in the general fund shall be used for grants, loans, or other financial assistance as appropriated by the legislature to assist in financing retrofitting of permitted once-through systems until December 31, 1999. The commissioner shall adopt rules for determining eligibility and criteria for the issuance of grants, loans, or other financial assistance for retrofitting according to chapter 14, by July 1, 1993.

~~(g) This subdivision applies to permits issued or effective on or after January 1, 1990.~~

Sec. 6. [103G.2373] ANNUAL WETLANDS REPORT.

By January 1 of each year, the commissioner of natural resources and the board of water and soil resources shall jointly report to the committees of the legislature with jurisdiction over matters relating to agriculture, the environment, and natural resources on:

(1) the status of implementation of state laws and programs relating to wetlands;

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(2) the quantity, quality, acreage, types, and public value of wetlands in the state; and

(3) changes in the items in clause (2).

Sec. 7. Minnesota Statutes 1990, section 273.11, subdivision 1, is amended to read:

Subdivision 1. **GENERALLY.** Except as provided in subdivisions 6, 8, ~~and 9,~~ and 11 or section 273.17, subdivision 1, all property shall be valued at its market value. The market value as determined pursuant to this section shall be stated such that any amount under \$100 is rounded up to \$100 and any amount exceeding \$100 shall be rounded to the nearest \$100. In estimating and determining such value, the assessor shall not adopt a lower or different standard of value because the same is to serve as a basis of taxation, nor shall the assessor adopt as a criterion of value the price for which such property would sell at a forced sale, or in the aggregate with all the property in the town or district; but the assessor shall value each article or description of property by itself, and at such sum or price as the assessor believes the same to be fairly worth in money. The assessor shall take into account the effect on the market value of property of environmental factors in the vicinity of the property. In assessing any tract or lot of real property, the value of the land, exclusive of structures and improvements, shall be determined, and also the value of all structures and improvements thereon, and the aggregate value of the property, including all structures and improvements, excluding the value of crops growing upon cultivated land. In valuing real property upon which there is a mine or quarry, it shall be valued at such price as such property, including the mine or quarry, would sell for a fair, voluntary sale, for cash. In valuing real property which is vacant, the fact that such property is platted shall not be taken into account. An individual lot of such platted property shall not be assessed in excess of the valuation of the land as if it were unplatted until the lot is improved with a permanent improvement all or a portion of which is located upon the lot, or for a period of three years after final approval of said plat whichever is shorter. When a lot is sold or construction begun, that lot or any single contiguous lot fronting on the same street shall be eligible for revaluation. All property, or the use thereof, which is taxable under section 272.01, subdivision 2, or 273.19, shall be valued at the market value of such property and not at the value of a leasehold estate in such property, or at some lesser value than its market value.

Sec. 8. Minnesota Statutes 1990, section 273.11, is amended by adding a subdivision to read:

Subd. 11. VALUATION OF RESTORED OR PRESERVED WETLAND. Wetlands restored by the federal, state, or local government, or by a nonprofit organization, or preserved under the terms of a temporary or perpetual easement by the federal or state government, must be valued by assessors at their wetland value. "Wetland value" in this subdivision means the market value of wetlands in any potential use in which the wetland character is not permanently

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altered. Wetland value shall not reflect potential uses of the wetland that would violate the terms of any existing conservation easement, or any one-time payment received by the wetland owner under the terms of a state or federal conservation easement. Wetland value shall reflect any potential income consistent with a property's wetland character, including but not limited to lease payments for hunting or other recreational uses. The commissioner of revenue shall issue a bulletin advising assessors of the provisions of this section by October 1, 1991.

For purposes of this subdivision, "wetlands" means lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. For purposes of this definition, wetlands must have the following three attributes:

(1) have a predominance of hydric soils;

(2) are inundated or saturated by surface or ground water at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and

(3) under normal circumstances support a prevalence of such vegetation.

Sec. 9. Minnesota Statutes 1990, section 282.018, subdivision 2, is amended to read:

Subd. 2. **MARGINAL LAND AND WETLANDS.** Nonforested marginal land and wetlands on land that is property of the state as a result of forfeiture to the state for nonpayment of taxes is withdrawn from sale as provided in section 103F.535 ~~unless restricted by a conservation easement as provided in section 103F.535;~~

(1) notice of the existence of the nonforested marginal land or wetlands, in a form prescribed by the board of water and soil resources, is provided to prospective purchasers; and

(2) the deed contains a restrictive covenant, in a form prescribed by the board of water and soil resources, that precludes enrollment of the land in a state-funded program providing compensation for conservation of marginal land or wetlands.

Sec. 10. Minnesota Statutes 1990, section 446A.12, subdivision 1, is amended to read:

Subdivision 1. **BONDING AUTHORITY.** The authority may issue negotiable bonds in a principal amount that the authority determines necessary to provide sufficient funds for achieving its purposes, including the making of loans and purchase of securities, the payment of interest on bonds of the authority, the establishment of reserves to secure its bonds, the payment of fees to a third party providing credit enhancement, and the payment of all other expenditures of the authority incident to and necessary or convenient to carry out its corporate purposes and powers, but not including the making of grants. Bonds of the

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authority may be issued as bonds or notes or in any other form authorized by law. The principal amount of bonds issued and outstanding under this section at any time may not exceed ~~\$150,000,000~~ \$250,000,000.

Sec. 11. STUDY OF FARMLAND VALUATION.

(a) The commissioner of revenue shall appoint a five-member farmland assessment technical advisory board, consisting of technical experts from the schools of agriculture of the University of Minnesota and the state university system and from state and federal agricultural agencies, to advise in and provide technical information regarding the method of valuing farmland according to productivity factors as described in this section. The department of revenue shall determine the following data on a per acre basis by soil productivity index, based on moving averages for the most recent five-year period for which statistics are available:

(1) gross income, estimated by using yields per acre as assigned to soil productivity indices, the crop mix for each soil productivity index as determined by the Minnesota extension service, and average prices received by farmers for principal crops as published by the Minnesota crop reporting service;

(2) production costs, other than land costs, provided by the Minnesota extension service; and

(3) net return to land, which is the difference between clauses (1) and (2).

(b) The department of revenue shall certify a proposed agricultural economic value per acre for each soil productivity index, determined by dividing the net return to land as calculated in paragraph (a), clause (3), by the moving average of the federal land bank farmland mortgage interest rate for the same five-year period used in calculating the net return to land.

(c) If the crop equivalency rating is not available in a county, the department of revenue shall use rentals or yield records of the United States Department of Agriculture Agricultural Stabilization and Conservation Service in determining the net income. The rentals or yield records must be capitalized in the same manner to determine the valuation of the tillable agricultural land. The commissioner shall provide a report to the legislature on the results of the study by December 1, 1991, that includes a plan for implementation of this method of valuing farmland and an analysis of the impacts on assessments of implementing it.

Sec. 12. REPEALER.

Minnesota Statutes 1990, section 103G.221, subdivisions 2 and 3, are repealed.

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ARTICLE 11
APPROPRIATIONS

Section 1. APPROPRIATIONS; INCREASED COMPLEMENT.

Subdivision 1. \$12,000,000 is appropriated from the bond proceeds fund to be divided as follows:

(a) \$5,000,000 is appropriated to the board of water and soil resources for wetland restoration under Minnesota Statutes, section 103F.515; and

(b) \$7,000,000 is appropriated to the board of water and soil resources for acquisition of conservation easements on wetlands.

Subd. 2. \$1,900,000 in fiscal year 1992 and \$1,100,000 in fiscal year 1993 is appropriated from the general fund to be divided as follows:

(a) Board of water and soil resources for the following purposes:

(1) \$297,500 in fiscal year 1992 and \$425,000 in fiscal year 1993 for implementation of this act. The complement of the board is increased by 12 positions.

(2) \$100,000 in fiscal year 1992 and \$100,000 in fiscal year 1993 for grants to the Minnesota association of soil and water conservation districts for education and training of local government officials relating to the implementation of this act. Not more than five percent of a grant made under this section may be used for administrative expenses.

(3) \$1,100,000 for fiscal year 1992 for wetland restoration under Minnesota Statutes, section 103F.515.

(b) \$402,500 in fiscal year 1992 and \$575,000 in fiscal year 1993 to the commissioner of natural resources for implementation of this act. The complement of the department of natural resources is increased by nine in fiscal year 1992 and by an additional five in fiscal year 1993.

(c) \$77,000 in fiscal year 1992 and \$77,000 in fiscal year 1993 to the attorney general for costs incurred under this act.

(d) The appropriations under this subdivision are available in either year of the biennium.

Sec. 2. SALE OF BONDS.

Subdivision 1. (a) To provide the money appropriated from the bond proceeds fund in 1991 S.F. No. 1533, the commissioner of finance on request of the governor shall sell and issue bonds of the state in an amount up to \$16,000,000 in the manner, upon the terms, and with the effect prescribed by Minnesota Statutes, sections 16A.631 to 16A.675, and by the Minnesota Constitution, article XI.

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(b) To provide the money appropriated from the bond proceeds fund in this act, the commissioner of finance on request of the governor shall sell and issue bonds of the state in an amount up to \$12,000,000 in the manner, upon the terms, and with the effect prescribed by Minnesota Statutes, sections 16A.631 to 16A.675, and by the Minnesota Constitution, article XI.

Subd. 2. EXISTING BONDING AUTHORITY. Existing funds previously appropriated from the bond proceeds fund for the waterbank program under Minnesota Statutes, section 105.392 are transferred and appropriated to the board of water and soil resources for easements under article 3, section 1.

Sec. 3. EFFECTIVE DATE.

This article is effective July 1, 1991.

Presented to the governor May 31, 1991

Signed by the governor June 4, 1991, 8:31 p.m.

CHAPTER 355—H.F.No. 783

An act relating to health; lowering the fee for licensed lawn service applicators; authorizing a surcharge on sanitizers and disinfectants; abolishing surcharges on pesticides that are less than \$10; changing certain reimbursement figures and deadlines of the agricultural chemical response compensation board; continuing integrated pest management and ground-water research; appropriating money; amending Minnesota Statutes 1990, sections 18E.03, subdivisions 4 and 5; 18E.04, subdivisions 4 and 5; 18E.05, subdivision 3; 103I.005, subdivisions 2, 22, and by adding a subdivision; 103I.101, subdivisions 2, 4, 5, and 6; 103I.105; 103I.111, subdivisions 2a, 2b, 3, and by adding a subdivision; 103I.205, subdivisions 1, 3, 4, 7, 8, and 9; 103I.208, subdivision 2; 103I.231; 103I.235; 103I.301, subdivision 1, and by adding a subdivision; 103I.311, subdivision 3; 103I.331, subdivision 2; 103I.525, subdivisions 1, 4, 8, and 9; 103I.531, subdivisions 5, 8, and 9; 103I.535, subdivisions 8 and 9; 103I.541, subdivisions 4 and 5; 103I.545, subdivision 2; 103I.621, subdivision 3; 103I.701, subdivisions 1 and 4; 103I.705, subdivisions 2, 3, 4, and 5; and 103I.711, subdivision 1; repealing Minnesota Statutes 1990, section 103I.005, subdivision 18.

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

Section 1. Minnesota Statutes 1990, section 18E.03, subdivision 4, is amended to read:

Subd. 4. **FEE THROUGH 1990.** (a) The response and reimbursement fee consists of the surcharge fees in this subdivision and shall be collected until March 1, 1991.

(b) The commissioner shall impose a surcharge on pesticides registered under chapter 18B to be collected as a surcharge on the registration application

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