

Presented to the governor May 12, 1993

Signed by the governor May 14, 1993, 10:09 p.m.

CHAPTER 186—S.F.No. 697

An act relating to water; requiring criteria for water deficiency declarations; prohibiting the use of groundwater for surface water level maintenance; requiring review of water appropriation permits; requiring contingency planning for water shortages; changing water appropriation permit requirements; requiring changes to the metropolitan area water supply plan; requiring reports to the legislature; amending Minnesota Statutes 1992, sections 103G.261; 103G.265, subdivision 3; 103G.271, subdivision 7, and by adding subdivisions; 103G.291, by adding a subdivision; 103G.301, subdivision 1; 115.03, subdivision 1; 473.156, subdivision 1; 473.175, subdivision 1; 473.851; and 473.859, subdivisions 3, 4, and by adding a subdivision.

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

Section 1. Minnesota Statutes 1992, section 103G.261, is amended to read:

103G.261 WATER ALLOCATION PRIORITIES.

(a) The commissioner shall adopt rules for allocation of waters based on the following priorities for the consumptive appropriation and use of water:

(1) first priority, domestic water supply, excluding industrial and commercial uses of municipal water supply, and use for power production that meets the contingency planning provisions of section 103G.285, subdivision 6;

(2) second priority, a use of water that involves consumption of less than 10,000 gallons of water per day;

(3) third priority, agricultural irrigation, and processing of agricultural products involving consumption in excess of 10,000 gallons per day;

(4) fourth priority, power production in excess of the use provided for in the contingency plan developed under section 103G.285, subdivision 6; ~~and~~

(5) fifth priority, ~~uses, other than agricultural irrigation, processing of agricultural products, and power production, involving consumption in excess of 10,000 gallons per day and nonessential uses of public water supplies as defined in section 103G.291; and~~

(6) sixth priority, nonessential uses.

(b) For the purposes of this section, "consumption" means water withdrawn from a supply that is lost for immediate further use in the area.

(c) Appropriation and use of surface water from streams during periods of

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flood flows and high water levels must be encouraged subject to consideration of the purposes for use, quantities to be used, and the number of persons appropriating water.

(d) Appropriation and use of surface water from lakes of less than 500 acres in surface area must be discouraged.

(e) The treatment and reuse of water for nonconsumptive uses shall be ~~discouraged~~ encouraged.

(f) Diversions of water from the state for use in other states or regions of the United States or Canada must be discouraged.

Sec. 2. Minnesota Statutes 1992, section 103G.265, subdivision 3, is amended to read:

Subd. 3. **CONSUMPTIVE USE OF MORE THAN 2,000,000 GALLONS PER DAY.** (a) Except as provided in paragraph (b), a water use permit or a plan that requires a permit or the commissioner's approval, involving a consumptive use of more than 2,000,000 gallons per day average in a 30-day period, may not be granted or approved until:

(1) a determination is made by the commissioner that the water remaining in the basin of origin will be adequate to meet the basin's water resources needs during the specified life of the consumptive use; and

(2) approval of the consumptive use is given by the legislature.

(b) Legislative approval under paragraph (a), clause (2), is not required for a consumptive use in excess of 2,000,000 gallons per day average in a 30-day period for:

(1) a domestic water supply, excluding industrial and commercial uses of a municipal water supply;

(2) agricultural irrigation and processing of agricultural products;

(3) construction and mineland dewatering; ~~and~~

(4) pollution abatement or remediation; and

(5) fish and wildlife enhancement projects using surface water sources.

Sec. 3. Minnesota Statutes 1992, section 103G.271, is amended by adding a subdivision to read:

Subd. 5a. MAINTENANCE OF SURFACE WATER LEVELS. Except as provided in subdivision 5, paragraph (c), the commissioner shall, by January 31, 1994, revoke all existing permits, and may not issue new permits, for the appropriation or use of groundwater in excess of 10,000,000 gallons per year for the primary purpose of maintaining or increasing surface water levels in the seven-county metropolitan area and in other areas of concern as determined by the commissioner. This subdivision does not apply until January 1, 1998, to a

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municipality that, by January 1, 1994, submits a plan acceptable to the commissioner for maintaining or increasing surface water levels using sources other than groundwater.

Sec. 4. Minnesota Statutes 1992, section 103G.271, is amended by adding a subdivision to read:

Subd. 6a. PAYMENT OF FEES FOR PAST UNPERMITTED APPROPRIATIONS. An entity that appropriates water without a required permit under subdivision 1 must pay the applicable water use permit processing fee specified in subdivision 6 for the period during which the unpermitted appropriation occurred. This fee is in addition to any other fee or penalty assessed.

Sec. 5. Minnesota Statutes 1992, section 103G.271, subdivision 7, is amended to read:

Subd. 7. TRANSFER OF PERMIT. A water use permit may be transferred to a successive owner of real property if the permittee conveys the real property where the source of water is located. The new owner must notify the commissioner immediately after ~~a water use permit is transferred under this section~~ the conveyance and request transfer of the permit.

Sec. 6. Minnesota Statutes 1992, section 103G.291, is amended by adding a subdivision to read:

Subd. 3. EMERGENCY PLANS; DEMAND REDUCTION. (a) Every public water supplier serving more than 1,000 people must submit an emergency and conservation plan to the commissioner for approval by January 1, 1996. The plan must address supply and demand reduction measures and allocation priorities and must identify alternative sources of water for use in an emergency. Public water suppliers must update the plan and submit it to the commissioner for approval every ten years.

(b) Public water suppliers serving more than 1,000 people must employ water use demand reduction measures before requesting approval from the commissioner of health under section 144.383, paragraph (a), to construct a public water supply well or requesting an increase in the authorized volume of appropriation. Demand reduction measures must include evaluation of conservation rate structures and a public education program that may include a toilet and showerhead retrofit program.

(c) Public water suppliers serving more than 1,000 people must submit records that indicate the number of connections and amount of use by customer category and volume of water unaccounted for with the annual report of water use required under section 103G.281, subdivision 3.

(d) For the purposes of this subdivision, "public water supplier" means an entity that owns, manages, or operates a public water supply, as defined in section 144.382, subdivision 4.

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Sec. 7. Minnesota Statutes 1992, section 103G.301, subdivision 1, is amended to read:

Subdivision 1. **APPLICATION DOCUMENTATION.** (a) An application for a permit must be accompanied by:

- (1) maps, plans, and specifications describing the proposed appropriation and use of waters;
- (2) the changes, additions, repairs, or abandonment proposed to be made;
- (3) the ~~public water~~ waters of the state affected; and
- (4) other data the commissioner may require.

(b) The commissioner may require a statement of the effect the actions proposed in the permit application will have on the environment, including:

- (1) anticipated changes in water and related land resources;
- (2) unavoidable but anticipated detrimental effects; and
- (3) alternatives to the actions proposed in the permit application, including conservation measures to improve water use efficiencies and reduce water demand.

Sec. 8. Minnesota Statutes 1992, section 115.03, subdivision 1, is amended to read:

Subdivision 1. **GENERALLY.** The agency is hereby given and charged with the following powers and duties:

(a) To administer and enforce all laws relating to the pollution of any of the waters of the state;

(b) To investigate the extent, character, and effect of the pollution of the waters of this state and to gather data and information necessary or desirable in the administration or enforcement of pollution laws, and to make such classification of the waters of the state as it may deem advisable;

(c) To establish and alter such reasonable pollution standards for any waters of the state in relation to the public use to which they are or may be put as it shall deem necessary for the purposes of this chapter and, with respect to the pollution of waters of the state, chapter 116;

(d) To encourage waste treatment, including advanced waste treatment, instead of stream low-flow augmentation for dilution purposes to control and prevent pollution;

(e) To adopt, issue, reissue, modify, deny, or revoke, enter into or enforce reasonable orders, permits, variances, standards, ~~rules~~, schedules of compliance,

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and stipulation agreements, under such conditions as it may prescribe, in order to prevent, control or abate water pollution, or for the installation or operation of disposal systems or parts thereof, or for other equipment and facilities;

(1) Requiring the discontinuance of the discharge of sewage, industrial waste or other wastes into any waters of the state resulting in pollution in excess of the applicable pollution standard established under this chapter;

(2) Prohibiting or directing the abatement of any discharge of sewage, industrial waste, or other wastes, into any waters of the state or the deposit thereof or the discharge into any municipal disposal system where the same is likely to get into any waters of the state in violation of this chapter and, with respect to the pollution of waters of the state, chapter 116, or standards or rules promulgated or permits issued pursuant thereto, and specifying the schedule of compliance within which such prohibition or abatement must be accomplished;

(3) Prohibiting the storage of any liquid or solid substance or other pollutant in a manner which does not reasonably assure proper retention against entry into any waters of the state that would be likely to pollute any waters of the state;

(4) Requiring the construction, installation, maintenance, and operation by any person of any disposal system or any part thereof, or other equipment and facilities, or the reconstruction, alteration, or enlargement of its existing disposal system or any part thereof, or the adoption of other remedial measures to prevent, control or abate any discharge or deposit of sewage, industrial waste or other wastes by any person;

(5) Establishing, and from time to time revising, standards of performance for new sources taking into consideration, among other things, classes, types, sizes, and categories of sources, processes, pollution control technology, cost of achieving such effluent reduction, and any nonwater quality environmental impact and energy requirements. Said standards of performance for new sources shall encompass those standards for the control of the discharge of pollutants which reflect the greatest degree of effluent reduction which the agency determines to be achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants. New sources shall encompass buildings, structures, facilities, or installations from which there is or may be the discharge of pollutants, the construction of which is commenced after the publication by the agency of proposed rules prescribing a standard of performance which will be applicable to such source. Notwithstanding any other provision of the law of this state, any point source the construction of which is commenced after May 20, 1973, and which is so constructed as to meet all applicable standards of performance for new sources shall, consistent with and subject to the provisions of section 306(d) of the Amendments of 1972 to the Federal Water Pollution Control Act, not be subject to any more stringent standard of performance for new sources during a ten-year

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period beginning on the date of completion of such construction or during the period of depreciation or amortization of such facility for the purposes of section 167 or 169, or both, of the Federal Internal Revenue Code of 1954, whichever period ends first. Construction shall encompass any placement, assembly, or installation of facilities or equipment, including contractual obligations to purchase such facilities or equipment, at the premises where such equipment will be used, including preparation work at such premises;

(6) Establishing and revising pretreatment standards to prevent or abate the discharge of any pollutant into any publicly owned disposal system, which pollutant interferes with, passes through, or otherwise is incompatible with such disposal system;

(7) Requiring the owner or operator of any disposal system or any point source to establish and maintain such records, make such reports, install, use, and maintain such monitoring equipment or methods, including where appropriate biological monitoring methods, sample such effluents in accordance with such methods, at such locations, at such intervals, and in such a manner as the agency shall prescribe, and providing such other information as the agency may reasonably require;

(8) Notwithstanding any other provision of this chapter, and with respect to the pollution of waters of the state, chapter 116, requiring the achievement of more stringent limitations than otherwise imposed by effluent limitations in order to meet any applicable water quality standard by establishing new effluent limitations, based upon section 115.01, subdivision 13, clause (b), including alternative effluent control strategies for any point source or group of point sources to insure the integrity of water quality classifications, whenever the agency determines that discharges of pollutants from such point source or sources, with the application of effluent limitations required to comply with any standard of best available technology, would interfere with the attainment or maintenance of the water quality classification in a specific portion of the waters of the state. Prior to establishment of any such effluent limitation, the agency shall hold a public hearing to determine the relationship of the economic and social costs of achieving such limitation or limitations, including any economic or social dislocation in the affected community or communities, to the social and economic benefits to be obtained and to determine whether or not such effluent limitation can be implemented with available technology or other alternative control strategies. If a person affected by such limitation demonstrates at such hearing that, whether or not such technology or other alternative control strategies are available, there is no reasonable relationship between the economic and social costs and the benefits to be obtained, such limitation shall not become effective and shall be adjusted as it applies to such person;

(9) Modifying, in its discretion, any requirement or limitation based upon best available technology with respect to any point source for which a permit application is filed after July 1, 1977, upon a showing by the owner or operator of such point source satisfactory to the agency that such modified requirements

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will represent the maximum use of technology within the economic capability of the owner or operator and will result in reasonable further progress toward the elimination of the discharge of pollutants; and

(10) Requiring that applicants for wastewater discharge permits evaluate in their applications the potential reuses of the discharged wastewater;

(f) To require to be submitted and to approve plans and specifications for disposal systems or point sources, or any part thereof and to inspect the construction thereof for compliance with the approved plans and specifications thereof;

(g) To prescribe and alter rules, not inconsistent with law, for the conduct of the agency and other matters within the scope of the powers granted to and imposed upon it by this chapter and, with respect to pollution of waters of the state, in chapter 116, provided that every rule affecting any other department or agency of the state or any person other than a member or employee of the agency shall be filed with the secretary of state;

(h) To conduct such investigations, issue such notices, public and otherwise, and hold such hearings as are necessary or which it may deem advisable for the discharge of its duties under this chapter and, with respect to the pollution of waters of the state, under chapter 116, including, but not limited to, the issuance of permits, and to authorize any member, employee, or agent appointed by it to conduct such investigations or, issue such notices and hold such hearings;

(i) For the purpose of water pollution control planning by the state and pursuant to the Federal Water Pollution Control Act, as amended, to establish and revise planning areas, adopt plans and programs and continuing planning processes, including, but not limited to, basin plans and areawide waste treatment management plans, and to provide for the implementation of any such plans by means of, including, but not limited to, standards, plan elements, procedures for revision, intergovernmental cooperation, residual treatment process waste controls, and needs inventory and ranking for construction of disposal systems;

(j) To train water pollution control personnel, and charge such fees therefor as are necessary to cover the agency's costs. All such fees received shall be paid into the state treasury and credited to the pollution control agency training account;

(k) To impose as additional conditions in permits to publicly owned disposal systems appropriate measures to insure compliance by industrial and other users with any pretreatment standard, including, but not limited to, those related to toxic pollutants, and any system of user charges ratably as is hereby required under state law or said Federal Water Pollution Control Act, as amended, or any regulations or guidelines promulgated thereunder;

(l) To set a period not to exceed five years for the duration of any National Pollutant Discharge Elimination System permit;

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(m) To require each governmental subdivision identified as a permittee for a wastewater treatment works to annually evaluate the condition of its existing system and identify future capital improvements that will be needed to attain or maintain compliance with a national pollutant discharge elimination system or state disposal system permit; and

(n) To train individual sewage treatment system personnel, including persons who design, construct, install, inspect, service, and operate individual sewage treatment systems, and charge fees as necessary to pay the agency's costs. All fees received must be paid into the state treasury and credited to the agency's training account. Money in the account is appropriated to the agency to pay expenses related to training.

The information required in clause (m) must be submitted annually to the commissioner on a form provided by the commissioner. The commissioner shall provide technical assistance if requested by the governmental subdivision.

Sec. 9. Minnesota Statutes 1992, section 473.156, subdivision 1, is amended to read:

Subdivision 1. **PLAN COMPONENTS.** The metropolitan council shall develop a short-term and long-term plan for existing and expected water use and supply in the metropolitan area. The plan shall be submitted to and reviewed by the commissioner of natural resources for consistency with the statewide drought plan under section 103G.293. At a minimum, the plans must:

(1) update the data and information on water supply and use within the metropolitan area and develop a water use and availability data base;

(2) identify and evaluate alternative courses of action, including water conservation initiatives and economic alternatives, in case of drought or contamination conditions;

(3) develop regional surface water and use projection models for resource evaluation;

(4) recommend long-term approaches to resolving problems that may develop because of water use and supply with consideration given to problems that occur outside of the metropolitan area, but which have an effect within the area; and

~~(4)~~ (5) be consistent with the statewide drought plan under section 103G.293.

Sec. 10. Minnesota Statutes 1992, section 473.175, subdivision 1, is amended to read:

Subdivision 1. The council shall review the comprehensive plans of local governmental units and the capital improvement programs of school districts, prepared and submitted pursuant to Laws 1976, chapter 127, sections 1 to 23, to

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determine their compatibility with each other and conformity with metropolitan system plans. The council shall review and comment on the apparent consistency of the comprehensive plans and capital improvement programs with ~~other adopted chapters~~ plans of the ~~metropolitan development guide~~ council. The council may require a local governmental unit to modify any comprehensive plan or part thereof which may have a substantial impact on or contain a substantial departure from metropolitan system plans.

Sec. 11. Minnesota Statutes 1992, section 473.851, is amended to read:

473.851 LEGISLATIVE FINDINGS AND PURPOSE.

The legislature finds and declares that the local governmental units within the metropolitan area are interdependent, that the growth and patterns of urbanization within the area create the need for additional state, metropolitan and local public services and facilities and increase the danger of air and water pollution and water shortages, and that developments in one local governmental unit may affect the provision of regional capital improvements for sewers, transportation, airports, water supply, and regional recreation open space. Since problems of urbanization and development transcend local governmental boundaries, there is a need for the adoption of coordinated plans, programs and controls by all local governmental units and school districts in order to protect the health, safety and welfare of the residents of the metropolitan area and to ensure coordinated, orderly and economic development. Therefore, it is the purpose of sections 462.355, subdivision 4, 473.175, and 473.851 to 473.871 to (1) establish requirements and procedures to accomplish comprehensive local planning with land use controls consistent with planned, orderly and staged development and the metropolitan system plans, and (2) to provide assistance to local governmental units and school districts within the metropolitan area for the preparation of plans and official controls appropriate for their areas and consistent with metropolitan system plans.

Sec. 12. Minnesota Statutes 1992, section 473.859, subdivision 3, is amended to read:

Subd. 3. **PUBLIC FACILITIES PLAN.** A public facilities plan shall describe the character, location, timing, sequence, function, use and capacity of existing and future public facilities of the local governmental unit. A public facilities plan must be in at least such detail as may be necessary to establish existing or potential effects on or departures from metropolitan system plans and to protect metropolitan system plans. A public facilities plan shall contain at least the following parts:

(a) (1) a transportation plan describing, designating and scheduling the location, extent, function and capacity of existing and proposed local public and private transportation services and facilities;

(b) (2) a sewer policy plan describing, designating and scheduling the areas to be sewered by the public system, the existing and planned capacities of the

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public system, the standards and conditions under which the installation of private sewer systems will be permitted, and to the extent practicable, the areas not suitable for public or private systems because of public health, safety and welfare considerations;

(e) (3) a parks and open space plan describing, designating and scheduling the existing and proposed parks and recreation open spaces within the jurisdiction; and

(4) a water supply plan including:

(i) a description of the existing water supply system, including the source of water, well and treatment plant locations, and major supply lines; an inventory of commercial and industrial users; an indication of the community's intent to make future changes or additions to the system, including projections for population and industrial and commercial use and the methods by which this growth will be served;

(ii) a statement of the community's objectives, policies, and standards for operating the water supply system;

(iii) a conservation program that contains the goals of the program, demand and supply conservation techniques to be used, an evaluation of pricing methods that could be used to reduce demand, the conditions under which conservation actions would occur, a process for reducing nonessential uses according to the priority system under section 103G.261, and the education program that will be used to inform the public of the need to conserve and the methods available to achieve conservation;

(iv) an emergency preparedness or contingency plan, as described in section 103G.291, subdivision 3;

(v) an indication of the possibility for joint efforts with neighboring communities or other public entities for sharing water sources and treatment, interconnection for routine or emergency supply, pursuit of alternative supplies, and water source protection;

(vi) a statement of the water supply problems that the community experiences or expects to experience and any proposed solutions, especially those that would impact other communities or the region; and

(vii) a wellhead protection plan prepared in accordance with rules adopted by the commissioner of health under section 103I.101, subdivision 5, clause (9).

Sec. 13. Minnesota Statutes 1992, section 473.859, subdivision 4, is amended to read:

Subd. 4. **IMPLEMENTATION PROGRAM.** An implementation program shall describe public programs, fiscal devices and other specific actions to be undertaken in stated sequence to implement the comprehensive plan and ensure

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conformity with metropolitan system plans. An implementation program must be in at least such detail as may be necessary to establish existing or potential effects on or departures from metropolitan system plans and to protect metropolitan system plans. An implementation program shall contain at least the following parts:

(a) (1) A description of official controls, addressing at least the matters of zoning, subdivision, water supply, and private sewer systems, and a schedule for the preparation, adoption, and administration of such controls;

(b) (2) A capital improvement program for transportation, sewers, parks, water supply, and open space facilities; and

(c) (3) A housing implementation program, including official controls to implement the housing element of the land use plan, which will provide sufficient existing and new housing to meet the local unit's share of the metropolitan area need for low and moderate income housing.

Sec. 14. Minnesota Statutes 1992, section 473.859, is amended by adding a subdivision to read:

Subd. 6. PLAN REVIEW. The council shall, by January 1, 1994, prepare guidelines for the preparation of the water supply plans required in subdivision 3, clause (4). The plans must be submitted to the council by January 1, 1996. The council shall review the plans under section 473.175, subdivision 1, after submitting them to affected counties that have adopted groundwater plans under section 103B.255 for their review and comment.

Sec. 15. REPORTS TO LEGISLATURE.

(a) The metropolitan council, the commissioner of natural resources, and the commissioner of agriculture shall jointly prepare an emergency response program for the Mississippi river and shall report to the appropriate committees and commissions of the legislature by January 1, 1996. The program must address accidental spills, installation of a contaminant detection system, implementation of emergency response and cleanup measures, and cooperation of jurisdictions affecting and affected by the river.

(b) The metropolitan council and appropriate state agencies shall report to the appropriate committees and commissions of the legislature by March 1, 1996, on the status of implementation of sections 8 to 14 and may propose methods of further financing and implementation.

Sec. 16. INSTRUCTIONS TO REVISOR.

In the next publication of Minnesota Statutes, the revisor of statutes shall change "public waters" to "waters of the state" in sections 103G.125, subdivision 3; 103G.251, subdivisions 1 and 2; 103G.255; 103G.295, subdivisions 1 and 2; and 103G.305, subdivision 2, clause (1).

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Presented to the governor May 12, 1993

Signed by the governor May 14, 1993, 10:01 p.m.

CHAPTER 187—H.F.No. 735

An act relating to highway traffic regulations; implements of husbandry; defining implements of husbandry; exempting trailers that carry dry fertilizer from vehicle registration tax; reducing the maximum speed limit for implements of husbandry to 25 miles per hour; clarifying the use of slow-moving vehicle emblem for implements of husbandry; requiring hazard warning lights on implements of husbandry; regulating brakes on implements of husbandry; imposing certain size and weight restrictions; requiring slow-moving vehicle safety to be included in driver examinations and driver education courses; amending Minnesota Statutes 1992, sections 168.012, subdivision 2b; 169.01, subdivision 55; 169.145; 169.18, subdivision 5; 169.47; 169.522, subdivision 1; 169.55, subdivision 2, and by adding a subdivision; 169.64, subdivision 6; 169.67, subdivisions 3, 4, and by adding a subdivision; 169.72, subdivision 1; 169.781, subdivision 3; 169.80, subdivisions 1 and 2; 169.82; 169.86, subdivision 5; and 171.13, subdivision 1, and by adding a subdivision; proposing coding for new law in Minnesota Statutes, chapter 169.

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

Section 1. Minnesota Statutes 1992, section 168.012, subdivision 2b, is amended to read:

Subd. 2b. A trailer used exclusively to carry liquid or dry fertilizer for use on a farm shall not be taxed as a motor vehicle using the public streets and highways and shall be exempt from the provisions of this chapter.

Sec. 2. Minnesota Statutes 1992, section 169.01, subdivision 55, is amended to read:

Subd. 55. **IMPLEMENT OF HUSBANDRY.** (a) "Implement of husbandry" means every vehicle, including a farm tractor and farm wagon, designed and or adapted exclusively for agricultural, horticultural, or livestock-raising operations or for lifting or carrying an implement of husbandry and in either case not subject to registration if used upon the highways.

(b) A towed vehicle meeting the description in paragraph (a) ~~that is not required to be registered~~ is an implement of husbandry without regard to whether the vehicle is towed by an implement of husbandry or by a registered motor vehicle.

Sec. 3. Minnesota Statutes 1992, section 169.145, is amended to read:

169.145 IMPLEMENTS OF HUSBANDRY; SPEED; PENALTY.

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