

year 1997, plus or minus any adjustments due to variance in pupil forecasts, levies or other factors generating entitlements for the general revenue program established in Minnesota Statutes, section 124A.04. These amounts will first be allocated to fully fund the general revenue program. Amounts remaining will be allocated to other programs in proportion to the fiscal year 1995 appropriations or the entitlements generated by existing law for those programs for each year, up to the amount of the entitlement or the fiscal year 1995 appropriations. Any amounts remaining after allocation to these other programs may be maintained in a reserve account pending recommendations of the governor and legislature in the 1995 session.

Sec. 4. **EFFECTIVE DATE.**

Section 1 is effective the day following final enactment.

Presented to the governor May 13, 1993

Signed by the governor May 17, 1993, 10:38 p.m.

CHAPTER 225—S.F.No. 1496

VETOED

CHAPTER 226—S.F.No. 1115

An act relating to natural resources; modifying provisions relating to aquaculture; providing penalties; amending Minnesota Statutes 1992, sections 17.4982, subdivisions 1, 8, and by adding a subdivision; 17.4983, subdivision 2; 17.4984, subdivision 2; 17.4985, subdivisions 2 and 3; 17.4986, subdivision 2, and by adding a subdivision; 17.4991, subdivisions 3, 4, and by adding a subdivision; 17.4992, subdivision 3; 18B.26, subdivision 1; 97C.203; 97C.515, subdivision 4, and by adding a subdivision; 97C.525, subdivision 3; and 103G.2241; proposing coding for new law in Minnesota Statutes, chapter 17.

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

Section 1. Minnesota Statutes 1992, section 17.4982, subdivision 1, is amended to read:

Subdivision 1. **SCOPE.** The definitions in this section apply to sections 17.4981 to ~~17.4997~~ 17.4998.

Sec. 2. Minnesota Statutes 1992, section 17.4982, is amended by adding a subdivision to read:

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

Subd. 2a. AQUACULTURE THERAPEUTICS. "Aquaculture therapeutics" means drugs, medications, and disease control chemicals that are approved for aquaculture use by the United States Food and Drug Administration or the United States Environmental Protection Agency.

Sec. 3. Minnesota Statutes 1992, section 17.4982, subdivision 8, is amended to read:

Subd. 8. **CONTAINMENT FACILITY.** "Containment facility" means a licensed facility for salmonids or catfish that complies with clauses (1), (3), and (4), or clauses (2), (3), and (4):

(1) disinfects its effluent to the standards in section 17.4991 before the effluent is discharged to public waters; ~~if the facility contains catfish and discharges into or upstream of waters containing catfish or if the facility contains salmonids and discharges into or upstream of waters containing salmonids;~~

(2) does not discharge to public waters or to waters of the state directly connected to public waters;

(3) raises aquatic life for food consumption only;

(4) contains aquatic life requiring a fish health inspection prior to transportation.

Sec. 4. Minnesota Statutes 1992, section 17.4983, subdivision 2, is amended to read:

Subd. 2. **ACQUISITION FROM STATE.** (a) The commissioner may sell aquatic life to licensed facilities at fair wholesale market value. Fair wholesale market value must be determined by the average market price charged in this state and contiguous states and provinces for similar quantities.

(b) The commissioner shall establish procedures to make aquatic life available to licensed facilities if state aquatic life would otherwise die or go to waste, such as in cases of winterkill lakes, waters where piscicides will be applied, and waters subject to extreme draw-down. The public must be given angling opportunities if public access is available.

(c) The commissioner shall attempt to provide opportunities to make brood stock available to licensed facilities to reduce reliance on out-of-state sources without causing adverse impacts to game fish populations.

(d) If the commissioner denies approval to obtain aquatic life outside the state, a written notice must be submitted to the applicant stating the reasons for denial, and the commissioner shall:

(1) designate approved sources if available to obtain the desired aquatic life;
or

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(2) sell the aquatic life from state hatcheries at fair wholesale market value if there is a surplus from state operations.

Sec. 5. Minnesota Statutes 1992, section 17.4984, subdivision 2, is amended to read:

Subd. 2. **LISTED WATERS.** (a) An aquatic farm license must list:

(1) the specific waters of the state that may be used in connection with the licensed aquatic farm and the species approved for each licensed water; and

(2) whether aeration requiring a permit is approved; ~~and~~

(3) ~~whether piscicide use is approved.~~

Additional waters may not be used until they are approved by the commissioner.

(b) The right to use waters licensed for private fish hatchery or aquatic farm purposes may be transferred between licensees with prior approval by the commissioner if requirements for species to be raised are met. Waters that are continually connected by a permanent watercourse to other waters must not be approved for aquatic farm use, except that connected waters that are isolated from other waters may be licensed as a single water body. Waters that are intermittently connected or may become connected with other waters may be denied, or screening or other measures may be required to prevent passage of aquatic life. Listed waters may be changed on approval by the area fisheries supervisor or the commissioner.

(c) The commissioner shall conduct an inspection of waters to be licensed prior to approving or denying initial licensing of the waters.

(d) Waters containing game fish of significant public value may be denied licensing unless the applicant can demonstrate exclusive riparian control.

(e) Waters containing game fish of significant public value may be denied licensing unless the game fish of significant public value are sold to the licensee, removed for other state use by the department of natural resources, or disposed of as provided in writing by the commissioner.

(f) Waters licensed under an aquatic farm license may be aerated during open water periods without a separate aeration permit.

Sec. 6. Minnesota Statutes 1992, section 17.4985, subdivision 2, is amended to read:

Subd. 2. **BILL OF LADING.** (a) A person may transport aquatic life except salmonids or catfish with a completed bill of lading for:

(1) intrastate transportation of aquatic life between licensed private fish hatcheries, aquatic farms, or aquarium facilities licensed for the same species and of the proper classification for the aquatic life if the aquatic life is being transported into a watershed where it is not currently present or if the original source of the aquatic life is outside Minnesota and contiguous states; and

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

(2) stocking of waters other than public waters.

(b) When aquatic life is transported ~~between licensed private fish hatcheries, aquatic farms, or aquarium facilities~~ under paragraph (a), a copy of the bill of lading must be submitted to the regional fisheries manager:

(1) at least 72 hours before the transportation if ~~species transported into a watershed are not found in it, or have their original source outside Minnesota and contiguous states; or~~

(2) ~~within 30 days in cases not covered by clause (1).~~

(c) ~~A bill of lading is also required at least 72 hours before any transportation between licensed waters of the same licensee if species transported into a watershed are not found in it, or have their original source outside Minnesota and contiguous states.~~

(d) For transportation and stocking of waters that are not public waters:

(1) a bill of lading must be submitted to the regional fisheries manager 72 hours before transporting fish for stocking;

(2) a bill of lading must be submitted to the regional fisheries manager within five days after stocking if the waters to be stocked are confirmed by telecopy or telephone prior to stocking by the regional fisheries office not to be public waters; or

(3) a completed bill of lading may be submitted to the regional fisheries office by telecopy prior to transporting fish for stocking. Confirmation that the waters to be stocked are not public waters may be made by returning the bill of lading by telecopy or in writing, in which cases additional copies need not be submitted to the department of natural resources.

(e) (d) Bill of lading forms may only be issued by the department of natural resources in St. Paul, and new bill of lading forms may not be issued until all previously issued forms have been returned.

Sec. 7. Minnesota Statutes 1992, section 17.4985, subdivision 3, is amended to read:

Subd. 3. **EXEMPTIONS FOR TRANSPORTATION PERMITS AND BILLS OF LADING.** (a) A bill of lading or transportation permit is not required by an aquatic farm licensee for importation, transportation, or export for the following:

(1) minnows taken under an aquatic farm license in this state and transported intrastate;

(2) aquarium or ornamental fish including goldfish and tropical, subtropical, and saltwater species that cannot survive in the waters of the state, which may be imported or transported if accompanied by shipping documents;

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(3) fish or fish eggs that have been processed for use as food, bait, or other purposes unrelated to fish propagation;

(4) live fish; ~~except salmonids and catfish~~, from a licensed aquatic farm, which may be transported directly to an outlet for processing or for other food purposes if accompanied by shipping documents;

(5) fish being exported if accompanied by shipping documents;

(6) sucker eggs, sucker fry, or fathead minnows transported intrastate for bait propagation or feeding of cultural aquatic life;

(7) species of fish that are found within the state used in connection with public shows, exhibits, demonstrations, or fishing pools for periods not exceeding 14 days; or

(8) transfer of aquatic life between licensed waters of the same licensee intrastate transportation of aquatic life between licensed private fish hatcheries, aquatic farms, or aquarium facilities licensed for the same species and of the proper facility classification for the aquatic life, except where required in subdivision 2 and except that salmonids and catfish may only be transferred or transported intrastate without a transportation permit if they had no record of bacterial kidney disease at the time they were imported into the state and if the most recent fish health inspection since importation has shown no certifiable diseases to be present.

Aquatic life being transferred between licensed private fish hatcheries, aquatic farms, or aquarium facilities must be accompanied by shipping documents and salmonids and catfish being transferred or transported intrastate without a transportation permit must be accompanied by a copy of their most recent fish health inspection.

(b) Shipping documents required under paragraph (a) must show the place of origin, owner or consignee, destination, number, and species.

Sec. 8. Minnesota Statutes 1992, section 17.4986, subdivision 2, is amended to read:

Subd. 2. **LICENSED FACILITIES.** (a) The commissioner shall issue transportation permits to import:

(1) indigenous and naturalized species except trout, salmon, and catfish from any source to a standard facility;

(2) trout, salmon, and catfish from a nonemergency disease area to a containment facility if the fish are certified within the previous year to be free of certifiable diseases, except that eggs with enteric redmouth, whirling disease, or furunculosis may be imported following treatment approved by the commissioner, and fish with bacterial kidney disease may be imported into areas where the disease has been previously introduced; and

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(3) trout, salmon, and catfish from a facility in a nonemergency disease area with a disease-free history of three years or more to a standard facility, except that eggs with enteric redmouth, whirling disease, or furunculosis may be imported following treatment approved by the commissioner, and fish with bacterial kidney disease may be imported into areas where the disease has been previously introduced.

(b) If a source facility in ~~an emergency~~ a nonemergency disease area cannot demonstrate a history free from disease, aquatic life may only be imported into a quarantine facility.

Sec. 9. Minnesota Statutes 1992, section 17.4986, is amended by adding a subdivision to read:

Subd. 4. DISEASE-FREE HISTORY. When disease-free histories of more than one year are required for importing salmonids or catfish, the disease history must be of consecutive years that include the year previous to, or the year of, the transportation request.

Sec. 10. Minnesota Statutes 1992, section 17.4991, subdivision 3, is amended to read:

Subd. 3. **FISH HEALTH INSPECTION.** (a) An aquatic farm propagating trout, salmon, or catfish and having an effluent discharge from the aquatic farm into public waters must have an annual fish health inspection conducted by a certified fish health inspector. Testing must be conducted according to approved laboratory methods.

(b) A health inspection fee must be charged based on each lot of fish sampled. The fee by check or money order payable to the department of natural resources must be prepaid or paid at the time a bill or notice is received from the commissioner that the inspection and processing of samples is completed.

(c) Upon receipt of payment and completion of inspection, the commissioner shall notify the operator and issue a fish health certificate. The certification must be made according to the Fish Health Blue Book by a person certified as a fish health inspector.

(d) All aquatic life in transit or held at transfer stations within the state may be inspected by the commissioner. This inspection may include the collection of stock for purposes of pathological analysis. Sample size necessary for analysis will follow guidelines listed in the Fish Health Blue Book.

(e) Salmonids and catfish must have a fish health inspection before being transported from a containment facility, unless the fish are being transported directly to an outlet for processing or other food purposes or unless the commissioner determines that an inspection is not needed. A fish health inspection conducted for this purpose need only be done on the lot or lots of fish that will be transported. The commissioner must conduct a fish health inspection requested

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for this purpose within five working days of receiving written notice. Salmonids and catfish may be immediately transported from a containment facility to another containment facility once a sample has been obtained for a health inspection or once the five-day notice period has expired.

Sec. 11. Minnesota Statutes 1992, section 17.4991, subdivision 4, is amended to read:

Subd. 4. **EMERGENCY DISEASE DETERMINATION.** If emergency diseases exist, the commissioner may order the fish aquatic life in the facility to be impounded, confiscated, sold, or destroyed and the facility disinfected. The commissioner shall make every effort to allow disposed fish aquatic life to be sold for market if there is no imminent danger of a significant adverse impact on natural fish populations ~~or human health~~ or of escape of the pathogen to public waters.

Sec. 12. Minnesota Statutes 1992, section 17.4991, is amended by adding a subdivision to read:

Subd. 5. **AQUACULTURE THERAPEUTICS REGISTRATION.** (a) Aquaculture therapeutics must be registered and labeled in accordance with rules adopted by the commissioner of agriculture relating to drugs and feed additives.

(b) The department of agriculture may not require registration of those aquaculture therapeutics designated as low regulatory priority by the United States Food and Drug Administration.

Sec. 13. Minnesota Statutes 1992, section 17.4992, subdivision 3, is amended to read:

Subd. 3. **ACQUISITION OF FISH FOR BROOD STOCK.** Game fish brood stock may be sold to private fish hatcheries or aquatic farms by the state at fair wholesale market value. As a one-time purchase for brood stock development, up to 20 pair of adults may be provided, if available, by the state through normal operations.

Sec. 14. **[17.4998] VIOLATIONS; PENALTY.**

Unless a different penalty is prescribed, a violation of a provision of sections 17.4981 to 17.4997 or a rule of the commissioner governing the operation of an aquatic farm, private fish hatchery, or quarantine facility is a misdemeanor.

Sec. 15. Minnesota Statutes 1992, section 18B.26, subdivision 1, is amended to read:

Subdivision 1. **REQUIREMENT.** (a) A person may not use or distribute a pesticide in this state unless it is registered with the commissioner. ~~Aquaculture therapeutics shall be registered and labeled in the same manner as pesticides.~~

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Pesticide registrations expire on December 31 of each year and may be renewed on or before that date for the following calendar year.

(b) Registration is not required if a pesticide is shipped from one plant or warehouse to another plant or warehouse operated by the same person and used solely at the plant or warehouse as an ingredient in the formulation of a pesticide that is registered under this chapter.

(c) An unregistered pesticide that was previously registered with the commissioner may be used only with the written permission of the commissioner.

(d) Each pesticide with a unique United States Environmental Protection Agency pesticide registration number or a unique brand name must be registered with the commissioner.

Sec. 16. Minnesota Statutes 1992, section 97C.203, is amended to read:

97C.203 DISPOSAL OF STATE HATCHERY EGGS OR FRY.

The commissioner shall dispose of game fish eggs and fry according to the following order of priorities:

(1) distribution of fish eggs and fry to state hatcheries to hatch fry or raise fingerlings for stocking waters of the state for recreational fishing; and

(2) sale of fish eggs and fry to private fish hatcheries or licensed aquatic farms ~~to hatch fry or raise fingerlings to stock waters of this state with fingerlings for recreational fishing~~ at a price not less than the wholesale fair market value, established as the average price charged at the state's private hatcheries and contiguous states per volume rates; ~~and~~

~~(3) sale at fair market value, established as the average price charged at the state's private sources and contiguous states per volume rates of fish eggs and fry to private fish hatcheries and aquatic farms to hatch fry or raise fingerlings for sale.~~

Sec. 17. Minnesota Statutes 1992, section 97C.515, subdivision 4, is amended to read:

Subd. 4. **PRIVATE FISH HATCHERY OR AQUATIC FARM.** A person with a private fish hatchery or aquatic farm license may transport minnows from contiguous states to the private fish hatchery or aquatic farm, provided the minnows are used for processing or feeding hatchery fish. The commissioner may require inspection of minnows transported from outside the state.

Sec. 18. Minnesota Statutes 1992, section 97C.515, is amended by adding a subdivision to read:

Subd. 5. SPECIAL PERMITS. (a) The commissioner may issue a special permit, without a fee, to allow a person with a private fish hatchery license to

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import minnows from other states for export. A permit under this subdivision is not required for importation authorized under subdivision 4.

(b) An applicant for a permit under this subdivision shall submit to the commissioner sufficient information to identify potential threats to native plant and animal species and an evaluation of the feasibility of the proposal. The permit may include reasonable restrictions on importation, transportation, possession, containment, and disposal of minnows to ensure that native species are protected. The permit may have a term of up to two years and may be modified, suspended, or revoked by the commissioner for cause, including violation of a condition of the permit.

Sec. 19. Minnesota Statutes 1992, section 97C.525, subdivision 3, is amended to read:

Subd. 3. **MINNOW DEALERS AND HAULERS.** A resident minnow dealer or a nonresident exporting minnow hauler may transport ~~leeches, suckers, and fathead~~ minnows out of the state. A nonresident exporting minnow hauler must possess a bill of lading issued by a minnow dealer with an exporting minnow dealer's license. The bill of lading must be on a form furnished by the commissioner and must state the exporting minnow hauler's name and address, the route through the state, number and species of minnows, and the time it was issued.

Sec. 20. Minnesota Statutes 1992, section 103G.2241, is amended to read:

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;

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(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 September 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;

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(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;

(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 or repair 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~~ outside of the existing right-of-way;

(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~~ including pond excavation and construction and maintenance of associated access roads and dikes authorized under, and conducted in accordance with, a 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, but not including construction or expansion of buildings;

(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;

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(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, 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 July 1, 1991. 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.

Presented to the governor May 14, 1993

Signed by the governor May 17, 1993, 10:55 a.m.

CHAPTER 227—H.F.No. 1450

An act relating to game and fish; authorizing expenditure of RIM funds for restoration of fish and wildlife habitat; amending Minnesota Statutes 1992, section 84.95, subdivision 2.

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

Section 1. Minnesota Statutes 1992, section 84.95, subdivision 2, is amended to read:

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