CHAPTER 103G

WATERS OF THE STATE

GENERAL PROVISIONS

103G.001 EFFECT OF CHAPTER 103G ON WATER LAW.

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

History: *1990 c 391 art 7 s 1*

103G.005 DEFINITIONS.

Subdivision 1. **Applicability.** The definitions in this section apply to this chapter.

Subd. 2. **Abandon.** "Abandon" means to give up the use and maintenance of structures or improvements to realty and to surrender them to deterioration. Abandon does not refer to intent to surrender or relinquish title to or a possessory interest in the real property where the structures or improvements are located.

Subd. 2a. **Agricultural land.** "Agricultural land" means: land used for horticultural, row, close grown, pasture, and hayland crops; growing nursery stocks; animal feedlots; farm yards; associated building sites; and public and private drainage systems and field roads located on any of the foregoing.

Subd. 3. **Altered natural watercourse.** "Altered natural watercourse" means a former natural watercourse that has been affected by artificial changes to straighten, deepen, narrow, or widen the original channel.

Subd. 4. **Appropriating.** "Appropriating" means withdrawal, removal, or transfer of water from its source regardless of how the water is used.

Subd. 5. **Artificial watercourse.** "Artificial watercourse" means a watercourse artificially constructed by human beings where a natural watercourse was not previously located.

Subd. 6. **Basin of origin.** "Basin of origin" means the drainage basin of the Great Lakes, the Red River of the North, the Mississippi River, or the Missouri River.

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

Subd. 7. **Commissioner.** "Commissioner" means the commissioner of natural resources.

Subd. 8. **Consumptive use.** "Consumptive use" means water that is withdrawn from its source for immediate further use in the area of the source and is not directly returned to the source.

Subd. 9. **Director.** "Director" means the director of the division of waters of the department of natural resources.

Subd. 10. **Division.** "Division" means the division of waters of the department of natural resources.

Subd. 10a. MS 1994 [Renumbered subd 10e]

Subd. 10a. **50 to 80 percent area.** "50 to 80 percent area" means a county or watershed with at least 50 but less than 80 percent of the presettlement wetland acreage intact.

Subd. 10b. **Greater than 80 percent area.** "Greater than 80 percent area" means a county or watershed where 80 percent or more of the presettlement wetland acreage is intact and:

(1) ten percent or more of the current total land area is wetland; or

(2) 50 percent or more of the current total land area is state or federal land.

Subd. 10c. **Hayland.** "Hayland" means an area that was mechanically harvested or that was planted with annually seeded crops in a crop rotation seeding of grasses or legumes in six of the last ten years prior to January 1, 1991.

Subd. 10d. **Less than 50 percent area.** "Less than 50 percent area" means a county or watershed with less than 50 percent of the presettlement wetland acreage intact or any county or watershed not defined as a "greater than 80 percent area" or "50 to 80 percent area."

Subd. 10e. **Local government unit.** "Local government unit" means:

(1) outside of the seven–county metropolitan area, a city council or county board of commissioners or their delegate;

(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, or their delegate; and

(3) on state land, the agency with administrative responsibility for the land.

Subd. 11. **Meandered lake.** "Meandered lake" means a body of water except streams located within the meander lines shown on plats made by the United States General Land Office.

Subd. 12. **Municipality.** "Municipality" means a home rule charter or statutory city.

Subd. 13. **Natural watercourse.** "Natural watercourse" means a natural channel that has definable beds and banks capable of conducting confined runoff from adjacent land.

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 reusing it for a higher priority purpose.

Subd. 14. **Ordinary high water level.** "Ordinary high water level" means the boundary of waterbasins, watercourses, public waters, and public waters wetlands, and:

(1) the ordinary high water level is an elevation delineating the highest water level that has been maintained for a sufficient period of time to leave evidence upon the landscape, commonly the point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial;

(2) for watercourses, the ordinary high water level is the elevation of the top of the bank of the channel; and

(3) for reservoirs and flowages, the ordinary high water level is the operating elevation of the normal summer pool.

Subd. 14a. MS 1994 [Renumbered subd 14b]

Subd. 14a. **Pasture.** "Pasture" means an area that was grazed by domesticated livestock or that was planted with annually seeded crops in a crop rotation seeding of grasses or legumes of the last years prior to January 1, 1991.

Subd. 14b. **Political subdivision.** "Political subdivision" means a county, city, town, school district, or other local government jurisdiction to which the state provides state aids or on which the state imposes state mandates.

Subd. 14c. **Presettlement wetland.** "Presettlement wetland" means a wetland or public waters wetland that existed in this state at the time of statehood in 1858.

Subd. 14d. **Project.** "Project" means a specific plan, contiguous activity, proposal, or design necessary to accomplish a goal as defined by the local government unit. As used in this chapter, a project may not be split into components or phases for the sole purpose of gaining additional exemptions.

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 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.

Subd. 15a. **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.

Subd. 15b. **Shoreland wetland protection zone.** "Shoreland wetland protection zone" means:

(1) for local government units that have a shoreland management ordinance approved under sections 103F.201 to 103F.221, the shoreland wetland protection zone is:

(i) 1,000 feet from the ordinary high water level of a waterbasin that is a public water identified in the shoreland management ordinance or the shoreland area approved by the commissioner as provided in the shoreland management rules adopted under section 103F.211, whichever is less; or

(ii) 300 feet from the ordinary high water level of a watercourse identified in the shoreland management ordinance or the shoreland area approved by the commissioner as provided in the shoreland management rules adopted under section 103F.211, whichever is less; and

(2) for local government units that do not have a shoreland management ordinance approved under sections 103F.201 to 103F.221, the shoreland wetland protection zone is:

(i) 1,000 feet from the ordinary high water level of a waterbasin that is a public water that is at least ten acres in size within municipalities and at least 25 acres in size in unincorporated areas; or

(ii) 300 feet from the ordinary high water level of a watercourse identified by the public waters inventory under section 103G.201.

Subd. 15c. **Silviculture.** "Silviculture" means the management of forest trees.

Subd. 15d. **Utility.** "Utility" means a sanitary sewer, storm sewer, potable water distribution, and transmission, distribution, or furnishing, at wholesale or retail, of natural or manufactured gas, electricity, telephone, or radio service or communications.

Subd. 16. **Waterbasin.** "Waterbasin" means an enclosed natural depression with definable banks, capable of containing water, that may be partly filled with waters of the state and is discernible on aerial photographs.

Subd. 17. **Waters of the state.** "Waters of the state" means surface or underground waters, except surface waters that are not confined but are spread and diffused over the land. Waters of the state includes boundary and inland waters.

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

Subd. 17b. **Wetland type.** "Wetland type" means a wetland type classified according to Wetlands of the United States, U.S. Fish and Wildlife Service Circular 39 (1971 edition), as summarized in this subdivision.

(1) "Type 1 wetlands" are seasonally flooded basins or flats in which soil is covered with water or is waterlogged during variable seasonal periods but usually is well–drained during much of the growing season. Type 1 wetlands are located in depressions and in overflow bottomlands along watercourses, and in which vegetation varies greatly according to season and duration of flooding and includes bottomland hardwoods as well as herbaceous growths.

(2) "Type 2 wetlands" are inland fresh meadows in which soil is usually without standing water during most of the growing season but is waterlogged within at least a few inches of surface. Vegetation includes grasses, sedges, rushes, and various broad–leafed plants. Mead-

ows may fill shallow basins, sloughs, or farmland sags, or these meadows may border shallow marshes on the landward side.

(3) "Type 3 wetlands" are inland shallow fresh marshes in which soil is usually waterlogged early during a growing season and often covered with as much as six inches or more of water. Vegetation includes grasses, bulrushes, spikerushes, and various other marsh plants such as cattails, arrowheads, pickerelweed, and smartweeds. These marshes may nearly fill shallow lake basins or sloughs, or may border deep marshes on the landward side and are also common as seep areas on irrigated lands.

(4) "Type 4 wetlands" are inland deep fresh marshes in which soil is usually covered with six inches to three feet or more of water during the growing season. Vegetation includes cattails, reeds, bulrushes, spikerushes, and wild rice. In open areas, pondweeds, naiads, coontail, water milfoils, waterweeds, duckweeds, waterlilies, or spatterdocks may occur. These deep marshes may completely fill shallow lake basins, potholes, limestone sinks, and sloughs, or they may border open water in such depressions.

(5) "Type 5 wetlands" are inland open fresh water, shallow ponds, and reservoirs in which water is usually less than ten feet deep and is fringed by a border of emergent vegetation similar to open areas of type 4 wetland.

(6) "Type 6 wetlands" are shrub swamps in which soil is usually waterlogged during growing season and is often covered with as much as six inches of water. Vegetation includes alders, willows, buttonbush, dogwoods, and swamp–privet. This type occurs mostly along sluggish streams and occasionally on floodplains.

(7) "Type 7 wetlands" are wooded swamps in which soil is waterlogged at least to within a few inches of the surface during growing season and is often covered with as much as one foot of water. This type occurs mostly along sluggish streams, on floodplains, on flat uplands, and in shallow basins. Trees include tamarack, arborvitae, black spruce, balsam, red maple, and black ash. Northern evergreen swamps usually have a thick ground cover of mosses. Deciduous swamps frequently support beds of duckweeds and smartweeds.

(8) "Type 8 wetlands" are bogs in which soil is usually waterlogged and supports a spongy covering of mosses. This type occurs mostly in shallow basins, on flat uplands, and along sluggish streams. Vegetation is woody or herbaceous or both. Typical plants are heath shrubs, sphagnum moss, and sedges. In the north, leatherleaf, Labrador–tea, cranberries, carex, and cottongrass are often present. Scattered, often stunted, black spruce and tamarack may occur.

Subd. 18. [Renumbered subd 15a]

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:

(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 15a.

History: *1990 c 391 art 7 s 2; 1990 c 597 s 62; 1991 c 354 art 6 s 1–6; art 10 s 4; 1994 c 643 s 49; 1995 c 218 s 3; 1996 c 462 s 10–22,43*

COMMISSIONER'S AUTHORITY

103G.101 WATER CONSERVATION PROGRAM.

Subdivision 1. **Development.** The commissioner shall develop a water resources conservation program for the state. The program must include conservation, allocation, and development of waters of the state for the best interests of the people.

Subd. 2. **Program to guide permit issuance and dams.** The commissioner must be guided by the program in issuing permits for the use and appropriation of the waters of the

state and the construction, reconstruction, repair, removal, or abandonment of dams, reservoirs, and other control structures.

History: *1990 c 391 art 7 s 3*

103G.105 COOPERATION WITH OTHER AGENCIES.

Subdivision 1. **Commissioner may cooperate with other states and federal government.** The commissioner may cooperate and enter into agreements with the United States government, a state department, or a state or country adjacent to this state to implement this chapter and chapter 103F. The commissioner may cooperate with departments of the government of the United States in the execution of surveys within the state.

Subd. 2. **State and local officials must cooperate in enforcement.** Personnel of the pollution control agency, the health department, and county and municipal governments must cooperate with the commissioner in monitoring and enforcing water permits. County attorneys, sheriffs, and other peace officers and other officers having enforcement authority must take all action to the extent of their authority, respectively, that may be necessary or proper for the enforcement of the provisions, rules, standards, orders, or permits specified in this chapter and chapter 103F.

History: *1990 c 391 art 7 s 4; 1995 c 218 s 4*

103G.111 REPRESENTATION OF STATE IN WATER ISSUES.

Subdivision 1. **Commissioner to appear in federal water issues.** The commissioner may appear, represent, and act for the state in any matter relating to an application to be made to the federal government relating to waters of the state or their use and may act in a manner to protect the interests of the people of the state consistent with this chapter and chapter 103F.

Subd. 2. **Director to appear for state in water proceedings.** The director may appear for the state in any matter or proceeding affecting waters of the state to give hydrologic and hydraulic engineering advice and information in connection with the proceeding.

History: *1990 c 391 art 7 s 5; 1995 c 218 s 5*

103G.115 ENJOINING WATERFLOW INTERFERENCE OUTSIDE OF STATE.

If a person, firm, association, corporation, or a state or political subdivision, agency, or commission of a state disturbs, obstructs, or interferes with the natural flow or condition of public waters beyond the boundaries of this state in a manner that seriously affects the public welfare and interests of this state, the commissioner may institute proceedings in behalf of this state in a court having jurisdiction to abate or enjoin the continuance of the disturbance, obstruction, or interference.

History: *1990 c 391 art 7 s 6*

103G.121 COMMISSIONER'S AUTHORITY TO INVESTIGATE AND CONSTRUCT PROJECTS.

Subdivision 1. **Surveys and investigations.** The commissioner may conduct surveys, investigations, and studies, and prepare maps of the waters of the state and topography of the state to implement this chapter.

Subd. 2. **Acquisition of property including by eminent domain.** The commissioner may acquire title to private property for an authorized purpose by purchase or by eminent domain. The use of property for projects to implement this chapter is a public purpose. On request by the commissioner, the attorney general shall acquire title to private property for projects under this chapter as provided in chapter 117.

Subd. 3. **Contracts.** The commissioner may approve contracts for projects under this chapter and change the plans of the projects when necessary, and supervise, control, and accept the projects when complete. The commissioner may pay for projects and expenses incurred in connection with the projects from funds available to the commissioner.

History: *1990 c 391 art 7 s 7; 1995 c 218 s 6*

103G.125 DIRECTOR'S AUTHORITY.

Subdivision 1. **Cooperation with government agencies.** The director shall cooperate with agencies and departments of the state and federal government relating to projects affect-

ing waters of the state and shall make recommendations to the agencies involved and to the governor about the desirability, feasibility, and practicability of the proposed projects.

Subd. 2. **Cooperative agreements.** The director, with approval of the commissioner, may make cooperative agreements with and cooperate with any person, corporation, or government authority to implement this chapter.

Subd. 3. **Standards for forms and maps.** The director may adopt rules to standardize forms and maps, sizes of maps, plats, drawings, and specifications in proceedings related to waters of the state.

History: *1990 c 391 art 7 s 8; 1993 c 186 s 16*

103G.127 PERMIT PROGRAM UNDER SECTION 404 OF THE FEDERAL CLEAN WATER ACT.

Notwithstanding any other law to the contrary, the commissioner, with the concurrence of the board of water and soil resources and the commissioner of agriculture, 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 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.

History: *1991 c 354 art 9 s 1; 1996 c 462 s 23*

103G.131 VENUE OF CERTAIN ACTIONS.

Subdivision 1. **Water located in one county.** Notwithstanding any other law to the contrary, an action for declaratory judgment that is brought under chapter 555 by or against the commissioner must be venued in the county where the water, watercourse, or waterbasin is located, if the water, watercourse, or waterbasin is located in one county. This section applies to actions to determine the validity of the commissioner's final decision regarding:

(1) the classification of waters of the state as public waters; or

(2) the drainage of waterbasins or watercourses as provided in chapter 103E.

Subd. 2. **Water located in more than one county.** If the water, watercourse, or waterbasin is located in more than one county, then the venue is the judicial district where the majority of the water, watercourse, or waterbasin is located.

History: *1990 c 391 art 7 s 9*

103G.135 ENFORCEMENT OF COMMISSIONER'S ORDERS.

Upon application of the commissioner, the district court of a county where a project is entirely or partially located may by injunction enforce compliance with, or restrain the violation of, an order of the commissioner made under this chapter or chapter 103F, or restrain the violation of this chapter or chapter 103F.

History: *1990 c 391 art 7 s 10; 1995 c 218 s 7*

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 103G.127, 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 103G.127, 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.

History: *1990 c 391 art 7 s 11; 1991 c 354 art 9 s 2*

103G.145 APPLICATION.

Nothing in this chapter supersedes or amends section 92.45.

History: *1990 c 391 art 7 s 12*

PUBLIC WATERS DESIGNATION AND USE

103G.201 PUBLIC WATERS INVENTORY.

The commissioner shall prepare a public waters inventory map of each county that shows the waters of this state that are designated as public waters under the public waters inventory and classification procedures prescribed under Laws 1979, chapter 199. The public waters inventory map for each county must be filed with the auditor of the county.

History: *1990 c 391 art 7 s 13*

103G.205 EFFECT OF PUBLIC WATERS DESIGNATION.

The designation of waters of this state as public waters does not:

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

(2) diminish the right of ownership or usage of the beds underlying the designated public waters;

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

(4) require the commissioner to acquire access to the designated public waters under section 97A.141.

History: *1990 c 391 art 7 s 14*

103G.211 DRAINAGE OF PUBLIC WATERS GENERALLY PROHIBITED WITHOUT REPLACEMENT.

Except as provided in sections 103G.221 to 103G.235, public waters may not be drained, and a permit authorizing drainage of public waters may not be issued, unless the public waters to be drained are replaced by public waters that will have equal or greater public value.

History: *1990 c 391 art 7 s 15*

103G.215 AGRICULTURAL USE OF PUBLIC WATERS DURING DROUGHT.

A property owner may use the bed of public waters for pasture or cropland during periods of drought if:

(1) dikes, ditches, tile lines, or buildings are not constructed; and

(2) the agricultural use does not result in the drainage of the public waters.

History: *1990 c 391 art 7 s 16*

WETLANDS

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. [Repealed, 1991 c 354 art 10 s 12]

Subd. 3. [Repealed, 1991 c 354 art 10 s 12]

History: *1990 c 391 art 7 s 17; 1991 c 354 art 6 s 7; 1996 c 305 art 1 s 125*

103G.222 REPLACEMENT OF WETLANDS.

Subdivision 1. **Requirements.** (a) 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 a replacement plan approved as provided in section 103G.2242, a replacement plan under a local governmental unit's comprehensive wetland protection and management plan approved by the board under section 103G.2243, 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 103G.2242. Public value must be determined in accordance with section 103B.3355 or a comprehensive wetland protection and management plan established under section 103G.2243.

(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;

(5) compensating for the impact by restoring a wetland; and

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

For a project involving the draining or filling of wetlands in an amount not exceeding 10,000 square feet more than the applicable amount in section 103G.2241, subdivision 9, paragraph (a), the local government unit may make an on–site sequencing determination without a written alternatives analysis from the applicant.

(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 103G.2242, subdivision 2, except that a greater than 80 percent area may accomplish replacement in less than 50 percent areas. Wetlands impacted by public transportation projects may be replaced statewide, except that wetlands impacted in a less than 50 percent area must be replaced in a less than 50 percent area, and wetlands impacted in the seven–county twin cities metropolitan area by public highways must be replaced:

(1) in the affected county, or, if no restoration opportunities exist in the county;

(2) in another seven–county twin cities metropolitan area county.

The board must maintain a public list of restoration opportunities within the metropolitan area. Disputes about restoration opportunities for wetland replacement in a watershed or county may be appealed to the board's committee for dispute resolution. Replacement of wetlands may be accomplished under the rules for wetland banking as provided for under section 103G.2242.

(f) Except as provided in paragraph (g), 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 or in a greater than 80 percent area, 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.

(i) Except in a greater than 80 percent area, only wetlands that have been restored from previously drained or filled wetlands, wetlands created by excavation in nonwetlands, wetlands created by dikes or dams along public or private drainage ditches, or wetlands created by dikes or dams associated with the restoration of previously drained or filled wetlands may be used in a statewide banking program established in rules adopted under section 103G.2242, subdivision 1. Modification or conversion of nondegraded naturally occurring wetlands from one type to another are not eligible for enrollment in a statewide wetlands bank.

(j) The technical evaluation panel established under section 103G.2242, subdivision 2, shall ensure that sufficient time has occurred for the wetland to develop wetland characteristics of soils, vegetation, and hydrology before recommending that the wetland be deposited in the statewide wetland bank. If the technical evaluation panel has reason to believe that the wetland characteristics may change substantially, the panel shall postpone its recommendation until the wetland has stabilized.

(k) This section and sections 103G.223 to 103G.2242, 103G.2364, and 103G.2365 apply to the state and its departments and agencies.

(l) For projects involving draining or filling of wetlands associated with a new public transportation project in a greater than 80 percent area, public transportation authorities, other than the state department of transportation, may purchase credits from the state wetland bank established with proceeds from Laws 1994, chapter 643, section 26, subdivision 3, paragraph (c). Wetland banking credits may be purchased at the least of the following, but in no case shall the purchase price be less than $400 per acre: (1) the cost to the state to establish the credits; (2) the average estimated market value of agricultural land in the township where the road project is located, as determined by the commissioner of revenue; or (3) the average value of the land in the immediate vicinity of the road project as determined by the county assessor. Public transportation authorities in a less than 80 percent area may purchase credits from the state at the cost to the state to establish credits.

(m) A replacement plan for wetlands is not required for individual projects that result in the filling or draining of wetlands for the repair, rehabilitation, reconstruction, or replacement of a currently serviceable existing state, city, county, or town public road necessary, as determined by the public transportation authority, to meet state or federal design or safety standards or requirements, excluding new roads or roads expanded solely for additional traffic capacity lanes. This paragraph only applies to authorities for public transportation projects that:

(1) minimize the amount of wetland filling or draining associated with the project and consider mitigating important site–specific wetland functions on–site; and

(2) submit annual reports by January 15 to the board and members of the public requesting a copy that indicate the location, amount, and type of wetlands that have been filled or drained during the previous year and a projection of the location, amount, and type of wetlands to be filled or drained during the upcoming year.

The technical evaluation panel shall review minimization and delineation decisions made by the public transportation authority and provide recommendations regarding on–site mitigation if requested to do so by the local government unit, a contiguous landowner, or a member of the technical evaluation panel.

Except for state public transportation projects, for which the state department of transportation is responsible, the board must replace the wetlands drained or filled by public transportation projects on existing roads in critical rural and urban watersheds.

Public transportation authorities at their discretion may deviate from federal and state design standards on existing road projects when practical and reasonable to avoid wetland filling or draining, provided that public safety is not unreasonably compromised. The local road authority and its officers and employees are exempt from liability for any tort claim for injury to persons or property arising from travel on the highway and related to the deviation from the design standards for construction or reconstruction under this paragraph. This paragraph does not preclude an action for damages arising from negligence in construction or maintenance on a highway.

(n) If a landowner seeks approval of a replacement plan after the proposed project has already impacted the wetland, the local government unit may require the landowner to replace the impacted wetland at a ratio not to exceed twice the replacement ratio otherwise required.

(o) A local government unit may request the board to reclassify a county or watershed on the basis of its percentage of presettlement wetlands remaining. After receipt of satisfactory documentation from the local government, the board shall change the classification of a county or watershed. If requested by the local government unit, the board must assist in developing the documentation. Within 30 days of its action to approve a change of wetland classifications, the board shall publish a notice of the change in the Environmental Quality Board Monitor.

(p) One hundred citizens who reside within the jurisdiction of the local government unit may request the local government unit to reclassify a county or watershed on the basis of its percentage of presettlement wetlands remaining. In support of their petition, the citizens shall provide satisfactory documentation to the local government unit. The local government unit shall consider the petition and forward the request to the board under paragraph (o) or provide a reason why the petition is denied.

Subd. 2. **Road credit funding.** At least 50 percent of money appropriated for road repair wetland replacement credit under this section must be used for wetland restoration in the seven–county metropolitan area.

The board shall give priority to restoration projects that will:

(1) intensify land use that leads to more compact development or redevelopment;

(2) encourage public infrastructure investments which connect urban neighborhoods and suburban communities, attract private sector investment in commercial or residential properties adjacent to the public improvement; or

(3) complement projects receiving funding under section 473.253.

History: *1991 c 354 art 6 s 8; 1993 c 175 s 2; 1994 c 627 s 3; 1996 c 462 s 24*

NOTE: The amendment to subdivision 1, paragraph (e), by Laws 1996, chapter 462, section 24, does not apply to replacement completed using wetland banking credits established by a person who submitted a complete wetland banking application to a local government unit by April 1, 1996. Laws 1996, chapter 462, section 45.

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.

History: *1991 c 354 art 6 s 9*

103G.2241 EXEMPTIONS.

Subdivision 1. **Agricultural activities.** (a) 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 grass 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 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;

(4) activities in a type 1 wetland on agricultural land, except for bottomland hardwood type 1 wetlands, and activities in a type 2 or type 6 wetland that is less than two acres in size and located on agricultural land;

(5) aquaculture activities 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;

(6) wild rice production activities, including necessary diking and other activities authorized under 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;

(7) normal agricultural practices to control noxious or secondary weeds as defined by rule of the commissioner of agriculture, in accordance with applicable requirements under state and federal law, including established best management practices; and

(8) agricultural 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.

(b) The exemption under paragraph (a), clause (4), may be expanded to additional acreage, including types 1, 2, and 6 wetlands that are part of a larger wetland system, when the additional acreage is part of a conservation plan approved by the local soil and water conservation district, the additional draining or filling is necessary for efficient operation of the farm, the hydrology of the larger wetland system is not adversely affected, and wetlands other than types 1, 2, and 6 are not drained or filled.

Subd. 2. **Drainage.** (a) For the purposes of this subdivision, "public drainage system" means a drainage system as defined in section 103E.005, subdivision 12, and any ditch or tile lawfully connected to the drainage system.

(b) A replacement plan is not required for draining of type 1 wetlands, or up to five acres of type 2 or 6 wetlands, in an unincorporated area on land that has been assessed drainage benefits for a public drainage system, provided that:

(1) during the 20–year period that ended January 1, 1992:

(i) there was an expenditure made from the drainage system account for the public drainage system;

(ii) the public drainage system was repaired or maintained as approved by the drainage authority; or

(iii) no repair or maintenance of the public drainage system was required under section 103E.705, subdivision 1, as determined by the public drainage authority; and

(2) the wetlands are not drained for conversion to:

(i) platted lots;

(ii) planned unit, commercial, or industrial developments; or

(iii) any development with more than one residential unit per 40 acres.

If wetlands drained under this paragraph are converted to uses prohibited under clause (2) during the ten–year period following drainage, the wetlands must be replaced under section 103G.222.

(c) A replacement plan is not required for draining or filling of wetlands, except for draining types 3, 4, and 5 wetlands that have been in existence for more than 25 years, resulting from maintenance and repair of existing public drainage systems.

(d) A replacement plan is not required for draining or filling of wetlands, except for draining wetlands that have been in existence for more than 25 years, resulting from maintenance and repair of existing drainage systems other than public drainage systems.

(e) A replacement plan is not required for draining or filling of wetlands resulting from activities conducted as part of a public drainage system improvement project that received final approval from the drainage authority before July 1, 1991, and after July 1, 1986, if:

(1) the approval remains valid;

(2) the project remains active; and

(3) no additional drainage will occur beyond that originally approved.

(f) The public drainage authority may, as part of the repair, install control structures, realign the ditch, construct dikes along the ditch, or make other modifications as necessary to prevent drainage of the wetland.

(g) Wetlands of all types that would be drained as a part of a public drainage repair project are eligible for the permanent wetlands preserve under section 103F.516. The board shall give priority to acquisition of easements on types 3, 4, and 5 wetlands that have been in existence for more than 25 years on public drainage systems and other wetlands that have the greatest risk of drainage from a public drainage repair project.

Subd. 3. **Federal approvals.** A replacement plan for wetlands is not required for:

(1) activities exempted from federal regulation under United States Code, title 33, section 1344(f), as in effect on January 1, 1991;

(2) 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), clauses (14), limited to when a new road crosses a wetland, and (26), as in effect on January 1, 1991.

Subd. 4. **Wetland restoration.** A replacement plan for wetlands is not required for activities in a wetland restored for conservation purposes under a contract or easement providing the landowner with the right to drain the restored wetland.

Subd. 5. **Incidental wetlands.** A replacement plan for wetlands is not required for activities in a wetland created solely as a result of:

(1) beaver dam construction;

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

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

(4) any combination of clauses (1) to (3).

Subd. 6. **Utilities; public works.** A replacement plan for wetlands is not required for:

(1) placement, maintenance, repair, enhancement, or replacement of utility or utility–type service 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;

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

(3) alteration of a wetland associated with the operation, maintenance, or repair of an interstate pipeline within all existing or acquired interstate pipeline rights–of–way;

(4) 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 does not result in the draining or filling, wholly or partially, of a wetland;

(5) 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; or

(6) repair and updating of existing individual sewage treatment systems as necessary to comply with local, state, and federal regulations.

Subd. 7. **Forestry.** A replacement plan for wetlands is not required for:

(1) 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; or

(2) 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; filling is avoided wherever possible; and there is no drainage of the wetland or public waters.

Subd. 8. **Approved development.** A replacement plan for wetlands is not required for development projects and ditch improvement projects in the state that have received preliminary or final plat approval or have infrastructure that has been installed or has 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. As used in this subdivision, "infrastructure" means public water facilities, storm water and sanitary sewer piping, outfalls, inlets, culverts, bridges, and any other work defined specifically by a local government unit as constituting a capital improvement to a parcel within the context of an approved development plan.

Subd. 9. **De minimis.** (a) Except as provided in paragraphs (b), (c), and (d), a replacement plan for wetlands is not required for draining or filling the following amounts of wetlands as part of a project, regardless of the total amount of wetlands filled as part of a project:

(1) 10,000 square feet of type 1, 2, 6, or 7 wetland, excluding white cedar and tamarack wetlands, outside of the shoreland wetland protection zone in a greater than 80 percent area;

(2) 5,000 square feet of type 1, 2, 6, or 7 wetland, excluding white cedar and tamarack wetlands, outside of the shoreland wetland protection zone in a 50 to 80 percent area;

(3) 2,000 square feet of type 1, 2, or 6 wetland, outside of the shoreland wetland protection zone in a less than 50 percent area;

(4) 400 square feet of wetland types not listed in clauses (1) to (3) outside of shoreland wetland protection zones in all counties; or

(5) 400 square feet of type 1, 2, 3, 4, 5, 6, 7, or 8 wetland, in the shoreland wetland protection zone, except that in a greater than 80 percent area, the local government unit may increase the de minimis amount up to 1,000 square feet in the shoreland protection zone in

areas beyond the building setback if the wetland is isolated and is determined to have no direct surficial connection to the public water. To the extent that a local shoreland management ordinance is more restrictive than this provision, the local shoreland ordinance applies.

(b) The amounts listed in paragraph (a), clauses (1) to (5), may not be combined on a project.

(c) This exemption no longer applies to a landowner's portion of a wetland when the cumulative area drained or filled of the landowner's portion since January 1, 1992, is the greatest of:

(1) the applicable area listed in paragraph (a), if the landowner owns the entire wetland;

(2) five percent of the landowner's portion of the wetland; or

(3) 400 square feet.

(d) Persons proposing to conduct an activity under this subdivision shall contact the board at a toll–free number to be provided for information on minimizing wetland impacts. Failure to call by the person does not constitute a violation of this subdivision.

(e) This exemption may not be combined with another exemption in this section on a project.

Subd. 10. **Wildlife habitat.** A replacement plan for wetlands is not required for:

(1) deposition of spoil resulting from excavation within a wetland for a wildlife habitat improvement project, if:

(i) the area of deposition does not exceed five percent of the wetland area or one–half acre, whichever is less, and the spoil is stabilized and permanently seeded to prevent erosion;

(ii) the project does not have an adverse impact on any species designated as endangered or threatened under state or federal law; and

(iii) the project will provide wildlife habitat improvement as certified by the soil and water conservation district; or

(2) duck blinds.

Subd. 11. **Exemption conditions.** (a) A person conducting an activity in a wetland under an exemption in subdivisions 1 to 10 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.

(b) An activity is exempt if it qualifies for any one of the exemptions, even though it may be indicated as not exempt under another exemption.

(c) Persons proposing to conduct an exempt activity are encouraged to contact the local government unit or the local government unit's designee for advice on minimizing wetland impacts.

History: *1991 c 354 art 6 s 10; 1993 c 175 s 3; 1993 c 226 s 20; 1994 c 627 s 4; 1996 c 462 s 25*

103G.2242 WETLAND VALUE REPLACEMENT PLANS.

Subdivision 1. **Rules.** (a) 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 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 or a comprehensive wetland protection and management plan approved under section 103G.2243.

(c) If the local government unit fails to apply the rules, or fails to implement a local comprehensive wetland protection and management plan established under section 103G.2243, 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 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 a technical professional with expertise in water resources management appointed by the local government unit. The panel shall use the "United States Army Corps of Engineers Wetland Delineation Manual" (January 1987), "Wetlands of the United States" (United States Fish and Wildlife Service Circular 39, 1971 edition), and "Classification of Wetlands and Deepwater Habitats of the United States" (1979 edition). 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 reviewing replacement plan applications, banking plan applications, and exemption or no–loss determination requests must act on all replacement plan applications, banking plan applications, and exemption or no–loss determination requests in compliance with section 15.99.

Subd. 5. **Processing fee.** The local government unit may charge processing fees in amounts not greater than are necessary to cover the reasonable costs of implementing the rules adopted under subdivision 1.

Subd. 6. **Notice of application.** (a) Except as provided in paragraph (b), within ten days of receiving an application for approval of a replacement plan under this section, copies of the complete application must be mailed to the members of the technical evaluation panel, the managers of the watershed district if one exists, and the commissioner of natural resources. Individual members of the public who request a copy shall be provided information to identify the applicant and the location and scope of the project.

(b) Within ten days of receiving an application for approval of a replacement plan under this section for an activity affecting less than 10,000 square feet of wetland, a summary of the application must be mailed to the members of the technical evaluation panel, individual members of the public who request a copy, and the commissioner of natural resources.

(c) For the purpose of this subdivision, "application" includes a revised application for replacement plan approval and an application for a revision to an approved replacement plan if:

(1) the wetland area to be drained or filled under the revised replacement plan is at least ten percent larger than the area to be drained or filled under the original replacement plan; or

(2) the wetland area to be drained or filled under the revised replacement is located more than 500 feet from the area to be drained or filled under the original replacement plan.

Subd. 7. **Notice of decision.** Within ten days of the approval or denial of a replacement plan under this section, a summary of the approval or denial must be mailed to members of the technical evaluation panel, the applicant, individual members of the public who request a copy, the managers of the watershed district, if one exists, and the commissioner of natural resources.

Subd. 8. **Public comment period.** Except for activities impacting less than 10,000 square feet of wetland, 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 a replacement plan, exemption, or no–loss decision may be obtained by mailing a petition and payment of a filing fee of $200, which shall be retained by the board to defray administrative costs, to the board within 15 days after the postmarked date of the mailing specified in subdivision 7. If appeal is not sought within 15 days, the decision becomes final. The local government unit may require the petitioner to post a letter of credit, cashier's check, or cash in an amount not to exceed $500. If the petition for hearing is accepted, the amount posted must be returned to the petitioner. 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 residents of the county in which a majority of the wetland is located. Within 30 days after receiving a petition, the board shall decide whether to grant the petition and hear the appeal. The board shall grant the petition unless the board finds that the appeal is meritless, trivial, or brought solely for the purposes of delay; that the petitioner has not exhausted all local administrative remedies; or that the petitioner has not posted a letter of credit, cashier's check, or cash if required by the local government unit. In determining whether to grant the appeal, the board shall also consider the size of the wetland, other factors in controversy, any patterns of similar acts by the local government unit or petitioner, and the consequences of the delay resulting from the appeal. 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. A decision whether to grant a petition for appeal and a decision on the merits of an appeal 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 at least 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.** (a) 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.

(b) Paragraph (a) does not apply to a wetland whose owner has paid back with interest the individual or organization restoring, enhancing, or constructing the wetland.

(c) Notwithstanding section 103G.222, subdivision 1, paragraph (i), the following actions are eligible for replacement credit as determined by the local government unit, including enrollment in a statewide wetlands bank:

(1) Reestablishment of permanent vegetative cover on 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 supports 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. Replacement credit may not exceed 50 percent of the total wetland area vegetatively restored;

(2) Buffer areas of permanent vegetative cover established on upland adjacent to replacement wetlands, provided that the upland buffer must be established at the time of wet-

land replacement and replacement credit for the buffer may not exceed 75 percent of the replacement wetland area and may only be used for replacement above a 1:1 ratio;

(3) Wetlands restored for conservation purposes under terminated easements or contracts, provided that up to 75 percent of the restored wetland area is eligible for replacement credit and adjacent upland buffer areas reestablished to permanent vegetative cover are eligible for replacement credit above a 1:1 ratio in an amount not to exceed 25 percent of the restored wetland area; and

(4) Water quality treatment ponds constructed to pretreat storm water runoff prior to discharge to wetlands, public waters, or other water bodies, provided that the water quality treatment ponds must be associated with an ongoing or proposed project that will impact a wetland and replacement credit for the treatment ponds may not exceed 75 percent of the treatment pond area and may only be used for replacement above a 1:1 ratio.

Subd. 13. [Repealed, 1996 c 462 s 44]

History: *1991 c 354 art 6 s 11; 1993 c 175 s 4,5; 1994 c 627 s 5–9; 1996 c 462 s 26–32*

103G.2243 LOCAL COMPREHENSIVE WETLAND PROTECTION AND MANAGEMENT PLANS.

Subdivision 1. **General requirements; notice and participation.** (a) As an alternative to the rules adopted under section 103G.2242, subdivision 1, and the public value criteria established or approved under section 103B.3355, a comprehensive wetland protection and management plan may be developed by a local government unit, or one or more local government units operating under a joint powers agreement, provided that:

(1) a notice is made at the beginning of the planning process to the board, the commissioner of natural resources, the pollution control agency, local government units, and local citizens to actively participate in the development of the plan; and

(2) the plan is implemented by ordinance as part of the local government's official controls under chapter 394, for a county; chapter 462, for a city; chapter 366, for a town; and by rules adopted under chapter 103D, for a watershed district; and chapter 103B, for a watershed management organization.

(b) An organization that is invited to participate in the development of the local plan, but declines to do so and fails to participate or to provide written comments during the local review process, waives the right during board review to submit comments, except comments concerning consistency of the plan with laws and rules administered by that agency. In determining the merit of an agency comment, the board shall consider the involvement of the agency in the development of the local plan.

Subd. 2. **Plan contents.** A comprehensive wetland protection and management plan may:

(1) provide for classification of wetlands in the plan area based on:

(i) an inventory of wetlands in the plan area;

(ii) an assessment of the wetland functions listed in section 103B.3355, using a methodology chosen by the technical evaluation panel from one of the methodologies established or approved by the board under that section; and

(iii) the resulting public values;

(2) vary application of the sequencing standards in section 103G.222, subdivision 1, paragraph (b), for projects based on the classification and criteria set forth in the plan;

(3) vary the replacement standards of section 103G.222, subdivision 1, paragraphs (f) and (g), based on the classification and criteria set forth in the plan, for specific wetland impacts provided there is no net loss of public values within the area subject to the plan, and so long as:

(i) in a 50 to 80 percent area, a minimum acreage requirement of one acre of replaced wetland for each acre of drained or filled wetland requiring replacement is met within the area subject to the plan; and

(ii) in a less than 50 percent area, a minimum acreage requirement of two acres of replaced wetland for each acre of drained or filled wetland requiring replacement is met within

the area subject to the plan, except that replacement for the amount above a 1:1 ratio can be accomplished as described in subdivision 12;

(4) in a greater than 80 percent area, allow replacement credit, based on the classification and criteria set forth in the plan, for any project that increases the public value of wetlands, including activities on adjacent upland acres; and

(5) in a greater than 80 percent area, based on the classification and criteria set forth in the plan, expand the application of the exemptions in section 103G.2241, subdivision 1, paragraph (a), clause (4), to also include nonagricultural land, provided there is no net loss of wetland values.

Subd. 3. **Board review and approval; mediation; judicial review.** (a) The plan is deemed approved 60 days after the local government submits the final plan to the board, unless the board disagrees with the plan as provided in paragraph (d).

(b) The board may not disapprove a plan if the board determines the plan meets the requirements of this section.

(c) In its review of a plan, the board shall advise the local government unit of those elements of the plan that are more restrictive than state law and rules for purposes of section 103G.237, subdivision 5.

(d) If the board disagrees with the plan or any elements of the plan, the board shall, in writing, notify the local government of the plan deficiencies and suggested changes. The board shall include in the response to the local government the scientific justification, if applicable, for the board's concerns with the plan. Upon receipt of the board's concerns with the plan, the local government has 60 days to revise the plan and resubmit the plan to the board for reconsideration, or the local government may request a hearing before the board. The board shall hold a hearing within the boundaries of the jurisdiction of the local government within 60 days of the request for hearing. After the hearing, the board shall, within 60 days, prepare a report of its decision and inform the local government.

(e) If, after the hearing, the board and local government disagree on the plan, the board shall, within 60 days, initiate mediation through a neutral party. If the board and local government unit agree in writing not to use mediation or the mediation does not result in a resolution of the differences between the parties, then the board may commence a declaratory judgment action in the district court of the county where the local government unit is located. If the board does not commence a declaratory judgment action within the applicable 60-day period, the plan is deemed approved.

(f) The declaratory judgment action must be commenced within 60 days after the date of the written agreement not to use mediation or 60 days after conclusion of the mediation. If the board commences a declaratory judgment action, the district court shall review the board's record of decision and the record of decision of the local government unit. The district court shall affirm the plan if it meets the requirements of this subdivision.

Subd. 4. **Effective date; replacement decisions.** (a) The plan becomes effective as provided in subdivision 3, paragraphs (d) to (f), and after adoption of the plan into the official controls of the local government.

(b) After the effective date of a plan, a local government unit shall make replacement decisions consistent with the plan.

Subd. 5. **Plan amendments.** Amendments to the plan become effective upon completion of the same process required for the original plan.

Subd. 6. **Water planning processes apply.** Except as otherwise provided for in this section, all other requirements relating to development of the plan must be consistent with the water plan processes under sections 103B.231 and 103B.311.

History: *1996 c 462 s 33*

103G.2244 WETLAND CREATION OR RESTORATION WITHIN PIPELINE EASEMENT.

A person proposing to create or restore a wetland within the easement of a pipeline as defined in section 299J.02, subdivision 11, shall first notify the easement holder and the director of the office of pipeline safety in writing. The person may not create or restore the wet-

land if, within 90 days after receiving the required notice, the easement holder or the director of the office of pipeline safety provides to the person a written notice of objection that includes the reasons for the objection.

History: *1996 c 462 s 34*

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 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.

History: *1990 c 391 art 7 s 18; 1991 c 354 art 6 s 12*

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.

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 84.035 and 84.036.

History: *1990 c 391 art 7 s 19; 1991 c 354 art 6 s 13; art 8 s 3*

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.

History: *1990 c 391 art 7 s 20; 1991 c 354 art 6 s 14*

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.

History: *1991 c 354 art 6 s 15*

103G.2365 CONTROL OF NOXIOUS WEEDS.

Noxious weeds, as defined in section 18.77, subdivision 8, must be controlled on wetlands as required in section 18.78.

History: *1991 c 354 art 6 s 16; 1995 c 186 s 30*

103G.2369 [Repealed, 1991 354 art 7 s 2; 1993 c 175 s 7]

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:

(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 103G.2242;

(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.** (a) The board shall award compensation in an amount equal to the greater of:

(1) 50 percent of the value of the wetland, calculated by multiplying the acreage of the wetland by the greater of:

(i) 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; or

(ii) the assessed value per acre of the parcel containing the wetland, based on the assessed value of the parcel as stated on the most recent tax statement; or

(2) $200 per acre of wetland subject to the replacement plan, increased or decreased by the percentage change of the assessed valuation of land in the township where the wetland is located from the 1995 valuation.

(b) A person who receives compensation under paragraph (a) shall convey to the board a permanent conservation easement as described in section 103F.515, subdivision 4. An easement conveyed under this paragraph is subject to correction and enforcement under section 103F.515, subdivisions 8 and 9.

Subd. 5. **Compensation claims against local government units.** (a) At the request of a local government unit against which a compensation action is brought based at least in part on the local government unit's application of this section or section 103G.222, 103G.2241, 103G.2242, 103G.2243, or 103G.2372, or rules adopted by the board to implement these sections, the state, through the attorney general, shall intervene in the action on behalf of the local government unit and shall thereafter be considered a defendant in the action. A local government unit making a request under this paragraph shall provide the attorney general with a copy of the complaint as soon as possible after being served. If requested by the attorney general, the court shall grant additional time to file an answer equal to the time between service of the complaint on the local government unit and receipt of the complaint by the attorney general.

(b) The state is liable for costs, damages, fees, and compensation awarded in the action based on the local government unit's adoption or implementation of standards that are required by state law, as determined by the court. The local government unit is liable for costs, damages, fees, and compensation awarded in the action based on local standards that are more restrictive than state law and rules.

(c) For the purposes of this subdivision, "compensation action" means an action in which the plaintiff seeks compensation for a taking of private property under the state or federal constitution.

History: *1991 c 354 art 6 s 17; 1994 c 627 s 10; 1996 c 462 s 35,36*

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 subdivision 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.

History: *1991 c 354 art 6 s 18*

103G.2373 ANNUAL WETLANDS REPORT.

By March 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;

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

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

History: *1991 c 354 art 10 s 6; 1996 c 462 s 37*

WORK AFFECTING PUBLIC WATERS

103G.241 CONTRACTOR'S RESPONSIBILITY WHEN WORK AFFECTS PUBLIC WATERS.

Subdivision 1. **Conditions for employees and agents to affect public waters.** An agent or employee of another may not construct, reconstruct, remove, or make a change in a reservoir, dam, or waterway obstruction on a public water or in any manner change or diminish the course, current, or cross section of public waters unless the agent or employee has:

(1) obtained a signed statement from the property owner stating that the permits required for the work have been obtained or a permit is not required; and

(2) mailed a copy of the statement to the regional office of the department of natural resources where the proposed work is located.

Subd. 2. **Violation is separate offense.** Violation of this section is a separate and independent offense from other violations of this chapter.

Subd. 3. **Form for compliance with this section.** The commissioner shall develop a form to be distributed to contractors' associations and county auditors to comply with this section. The form must include:

(1) a listing of the activities for which a permit is required;

(2) a description of the penalties for violating this chapter;

(3) the mailing addresses and telephone numbers of the regional offices of the department of natural resources;

(4) a statement that water inventory maps completed according to section 103G.201 are on file with the auditors of the counties; and

(5) spaces for a description of the work and the names, mailing addresses, and telephone numbers of the person authorizing the work and the agent or employee proposing to undertake it.

History: *1990 c 391 art 7 s 21*

103G.245 WORK IN PUBLIC WATERS.

Subdivision 1. **Permit requirement.** Except as provided in subdivisions 2, 11, and 12, the state, a political subdivision of the state, a public or private corporation, or a person must have a public waters work permit to:

(1) construct, reconstruct, remove, abandon, transfer ownership of, or make any change in a reservoir, dam, or waterway obstruction on public waters; or

(2) change or diminish the course, current, or cross section of public waters, entirely or partially within the state, by any means, including filling, excavating, or placing of materials in or on the beds of public waters.

Subd. 2. **Exceptions.** A public waters work permit is not required for:

(1) work in altered natural watercourses that are part of drainage systems established under chapter 103D or 103E if the work in the waters is undertaken according to chapter 103D or 103E; or

(2) a drainage project for a drainage system established under chapter 103E that does not substantially affect public waters.

Subd. 3. **Permit application.** Application for a public waters work permit must be in writing to the commissioner on forms prescribed by the commissioner. The commissioner may issue a state general permit to a governmental subdivision or to the general public for classes of activities having minimal impact upon public waters under which more than one project may be conducted under a single permit.

Subd. 4. **Structures in or adjacent to public waters outside cities.** The commissioner, subject to the approval of the county board, may grant and prescribe terms and conditions for granting public waters work permits to establish, construct, maintain, and control wharves, docks, piers, levees, breakwaters, basins, canals, and hangars in or adjacent to public waters of the state, except within the corporate limits of a municipality.

Subd. 5. **Delegation of permit authority to local units of government.** The commissioner may delegate public waters work permit authority to the appropriate county or municipality or to watershed districts or watershed management organizations that have elected to assert local authority over protected waters. The public waters work permit authority must be delegated under guidelines of the commissioner and the delegation must be done by agreement with the involved county, municipality, watershed district, or water management organization and in compliance with section 103G.315.

Subd. 6. **Conformance with water and related land resource management plans.** A public waters work permit may not be issued under this section if the project does not conform to state, regional, and local water and related land resources management plans.

Subd. 7. **Effect on environment and mitigation.** (a) A public waters work permit may be issued only if the project will involve a minimum encroachment, change, or damage to the environment, particularly the ecology of the waterway.

(b) If a major change in the resource is justified, public waters work permits must include provisions to compensate for the detrimental aspects of the change.

Subd. 8. **Excavation in public waters.** Public waters work permits for projects that involve excavation in the beds of public waters may be granted only if:

(1) the area where the excavation will take place is covered by a shoreland zoning ordinance approved by the commissioner;

(2) the work under the permit is consistent with the shoreland zoning ordinance; and

(3) the permit includes provisions for the deposition of excavated materials.

Subd. 9. **Project affecting floodwaters.** (a) A public waters work permit for a project affecting floodwaters may be granted only if:

(1) the area covered by the public waters work permit is governed by a floodplain management ordinance approved by the commissioner; and

(2) the conduct authorized by the public waters work permit is consistent with the floodplain management ordinance, if the commissioner has determined that enough information is available for the adoption of a floodplain ordinance.

(b) A public waters work permit involving the control of floodwaters by structural means, such as dams, dikes, levees, and channel improvements, may be granted only after the

commissioner has considered all other flood damage reduction alternatives. In developing a policy on placing emergency levees along the banks of public waters under emergency flood conditions, the commissioner shall consult and cooperate with the office of emergency services.

Subd. 10. **Change of level of public waters.** (a) A public waters work permit that will change the level of public waters may not be issued unless:

(1) the shoreland adjacent to the waters to be changed is governed by a shoreland zoning ordinance approved by the commissioner; and

(2) the change in water level is consistent with the shoreland zoning ordinance.

(b) Standards and procedures for use in deciding the level of public waters must ensure that the rights of all persons are protected when public water levels are changed and must provide for:

(1) technical advice to persons involved;

(2) establishing alternatives to help local agencies resolve water level conflicts; and

(3) mechanics necessary for local resolution of water problems within the state guidelines.

Subd. 11. **Emergency repairs.** (a) The owner of a dam, reservoir, control structure, or waterway obstruction may make repairs that are immediately necessary in case of emergency without a public waters work permit under subdivision 1. The owner must immediately notify the commissioner of the emergency and of the emergency repairs being made. The owner must apply for a public waters work permit for the emergency repairs and necessary permanent repairs as soon as practicable.

(b) This subdivision does not apply to routine maintenance not affecting the safety of the structures.

(c) If the commissioner declares there is an emergency and repairs or remedial action are immediately necessary to safeguard life and property, the repairs, remedial action, or both, must be started immediately by the owner.

Subd. 12. **Operation of structure prior to permit requirement.** The owner of a dam, reservoir, control structure, or waterway obstruction constructed before a public waters work permit was required by law must maintain and operate the dam, reservoir, control structure, or waterway obstruction in a manner approved and prescribed by rule by the commissioner.

History: *1990 c 391 art 7 s 22; 1995 c 218 s 8,9; 1996 c 443 s 1,2*

103G.251 INVESTIGATION OF ACTIVITIES WITHOUT PERMIT.

Subdivision 1. **Investigations.** If the commissioner determines that an investigation is in the public interest, the commissioner may investigate activities being conducted without a permit that may affect waters of the state.

Subd. 2. **Findings and order.** (a) With or without a public hearing, the commissioner may make findings and issue orders related to activities being conducted without a permit that affect waters of the state as otherwise authorized under this chapter.

(b) A copy of the findings and order must be served on the person to whom the order is issued.

(c) If the commissioner issues the findings and order without a hearing, the person to whom the order is issued may file a demand for a hearing with the commissioner. The demand for a hearing must be accompanied by the bond as provided in section 103G.311, subdivision 6, and the hearing must be held in the same manner and with the same requirements as a hearing held under section 103G.311, subdivision 5. The demand for a hearing and bond must be filed by 30 days after the person is served with a copy of the commissioner's order.

(d) The hearing must be conducted as a contested case hearing under chapter 14.

(e) If the person to whom the order is addressed does not demand a hearing or demands a hearing but fails to file the required bond:

(1) the commissioner's order becomes final at the end of 30 days after the person is served with the order; and

(2) the person may not appeal the order.

History: *1990 c 391 art 7 s 23; 1993 c 186 s 16*

WATER DIVERSION AND APPROPRIATION

103G.255 ALLOCATION AND CONTROL OF WATERS OF THE STATE.

The commissioner shall administer:

(1) the use, allocation, and control of waters of the state;

(2) the establishment, maintenance, and control of lake levels and water storage reservoirs; and

(3) the determination of the ordinary high water level of waters of the state.

History: *1990 c 391 art 7 s 24; 1993 c 186 s 16*

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;

(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

(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 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 encouraged.

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

History: *1989 c 326 art 4 s 1; 1990 c 391 art 7 s 25; 1990 c 426 art 1 s 13; 1993 c 186 s 1*

103G.265 WATER SUPPLY MANAGEMENT.

Subdivision 1. **Assurance of supply.** The commissioner shall develop and manage water resources to assure an adequate supply to meet long–range seasonal requirements for domestic, municipal, industrial, agricultural, fish and wildlife, recreational, power, navigation, and quality control purposes from waters of the state.

Subd. 2. **Diversion greater than 2,000,000 gallons per day.** A water use permit or a plan that requires a permit or the commissioner's approval, involving a diversion of waters of the state of more than 2,000,000 gallons per day average in a 30–day period, to a place outside of this state or from the basin of origin within this state may not be granted or approved until:

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

(2) approval of the diversion is given by the legislature.

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;

(4) pollution abatement or remediation; and

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

Subd. 4. **Diversion or consumptive use from Great Lakes greater than 5,000,000 gallons per day.** (a) A water use permit or a plan that requires a permit or the commissioner's approval, involving a diversion or consumptive use of waters of the state from the Great Lakes water basin within this state where the diversion or consumptive use of waters would be more than 5,000,000 gallons per day average in a 30–day period, may not be granted or approved until:

(1) the commissioner has notified and solicited comments on the proposed diversion or consumptive use from the offices of the governors of the Great Lakes states and premiers of the Great Lakes provinces, the appropriate water management agencies of the Great Lakes states and provinces, and the international joint commission;

(2) the commissioner has considered the comments and concerns of the offices, agencies, and commission to which notice was given under clause (1); and

(3) the diversion or consumptive use has been approved by the legislature.

(b) If an objection is made to the proposed diversion or consumptive use by an office, agency, or commission to which notice was given under paragraph (a), clause (1), the commissioner must convene a meeting with the affected office, agency, or commission to investigate and consider the issues involved, and to seek a mutually agreeable solution to be recommended to the commissioner. In making a final decision on the approval of a permit or plan subject to review under this subdivision, the commissioner shall consider the record of the meeting and the recommendation. The commissioner must send notification of the final decision to each office, agency, or commission to which notice was given under paragraph (a), clause (1).

History: *1990 c 391 art 7 s 26; 1990 c 406 s 1; 1993 c 186 s 2*

103G.271 APPROPRIATION AND USE OF WATERS.

Subdivision 1. **Permit required.** (a) Except as provided in paragraph (b), the state, a person, partnership, or association, private or public corporation, county, municipality, or other political subdivision of the state may not appropriate or use waters of the state without a water use permit from the commissioner.

(b) This section does not apply to use for a water supply by less than 25 persons for domestic purposes.

Subd. 2. **Permits must be consistent with state and local plans.** A water use permit may not be issued under this section unless it is consistent with state, regional, and local water and related land resources management plans if the regional and local plans are consistent with statewide plans.

Subd. 3. **Permit restriction during summer months.** The commissioner must not modify or restrict the amount of appropriation from a groundwater source authorized in a water use permit issued to irrigate agricultural land under section 103G.295, subdivision 2,

between May 1 and October 1, unless the commissioner determines the authorized amount of appropriation endangers a domestic water supply.

Subd. 4. **Minimum use exemption and local approval of low use permits.** (a) Except for local permits under section 103B.211, subdivision 4, a water use permit is not required for the appropriation and use of less than a minimum amount prescribed by the commissioner by rule.

(b) Water use permits for more than the minimum amount but less than an intermediate amount prescribed by rule must be processed and approved at the municipal, county, or regional level based on rules adopted by the commissioner.

(c) The rules must include provisions for reporting to the commissioner the amounts of water appropriated under local permits.

Subd. 4a. **Mt. Simon–Hinckley aquifer.** (a) The commissioner may not issue new water use permits that will appropriate water from the Mt. Simon–Hinckley aquifer in a metropolitan county, as defined in section 473.121, subdivision 4, unless the appropriation is for potable water use, there are no feasible or practical alternatives to this source, and a water conservation plan is incorporated with the permit.

(b) The commissioner shall terminate all permits authorizing appropriation and use of water from the Mt. Simon–Hinckley aquifer for once–through systems in a metropolitan county, as defined in section 473.121, subdivision 4, by December 31, 1992.

Subd. 5. **Prohibition on once–through water use permits.** (a) The commissioner may not, after December 31, 1990, issue a water use permit to increase the volume of appropriation from a groundwater source for a once–through cooling system using in excess of 5,000,000 gallons annually.

(b) Except as provided in paragraph (c), once–through system water use permits using in excess of 5,000,000 gallons annually, must be terminated by the commissioner by the end of their design life but not later than December 31, 2010. Existing once–through systems are required to convert to water efficient alternatives within the design life of existing equipment.

(c) Paragraph (b) does not apply where groundwater appropriated for use in a once–through system is subsequently discharged into a wetland or public waters wetland owned or leased by a nonprofit corporation if:

(1) the membership of the corporation includes a local government unit;

(2) the deed or lease requires that the area containing the wetland or public waters wetland be maintained as a nature preserve;

(3) public access is allowed consistent with the area's status as a nature preserve; and

(4) by January 1, 2003, the permittee incurs costs of developing the nature preserve and associated facilities that, when discounted to 1992 dollars, exceed twice the projected cost, as determined by the commissioner, of the conversion required in paragraph (b), discounted to 1992 dollars.

The costs incurred under clause (4) may include preparation of plans and designs; site preparation; construction of wildlife habitat structures; planting of trees and other vegetation; installation of signs and markers; design and construction of trails, docks, and access structures; and design and construction of interpretative facilities. The permittee shall submit an estimate of the cost of the conversion required in paragraph (b) to the commissioner by January 1, 1993, and shall annually report to the commissioner on the progress of the project and the level of expenditures.

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 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.

Subd. 6. **Water use permit processing fee.** (a) Except as described in paragraphs (b) to (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, 20 cents per 1,000 gallons.

(c) The fee is payable based on the amount of water appropriated during the year and, except as provided in paragraph (f), the minimum fee is $50.

(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; and

(4) the fee for a municipality that furnishes electric service and cogenerates steam for home heating may not exceed $10,000 for its permit for water use related to the cogeneration of electricity and steam.

(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, 75 percent of the fees must be credited to a special account and are appropriated to the Minnesota public facilities authority for loans under section 446A.21.

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.

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 the conveyance and request transfer of the permit.

History: *1990 c 391 art 7 s 27; 1990 c 594 art 1 s 49; 1990 c 597 s 63–65; 1991 c 214 s 6; 1991 c 234 s 1; 1991 c 354 art 10 s 5; 1992 c 366 s 1; 1992 c 601 s 1; 1993 c 186 s 3–5; 1994 c 557 s 15; 1995 c 218 s 10*

103G.275 INSTALLATION FOR WATER USE.

Subdivision 1. **Permit required.** The owner of an installation for appropriating or using waters of the state may not increase the pumping capacity or make any major change in the installation without first applying in writing for, and obtaining, the written permit of the commissioner.

Subd. 2. **Water use data statement.** The owner or person in charge of an installation for appropriating or using waters of the state, whether or not under use permit, must file a water use data statement with the commissioner. The statement must be filed at the time the commissioner determines necessary for the statewide water information system. The water use data statement must be on forms provided by the commissioner and identify the installation's location, its capacity, the purposes for which it is used, and additional information required by the commissioner.

Subd. 3. **Commissioner's examinations.** The commissioner may examine an installation that appropriates or uses surface water or ground water. The owner of the installation must provide information required by the commissioner.

History: *1990 c 391 art 7 s 28; 1995 c 218 s 11*

103G.281 WATER USE PROHIBITED WITHOUT MEASURING QUANTITIES.

Subdivision 1. **Measuring and records required.** The state, a political subdivision of the state, a person, partnership, public or private corporation, or association may not appropriate or use waters of the state without measuring and keeping a record of the quantity of water used or appropriated as provided in section 103G.271 or 103G.275.

Subd. 2. **Measuring equipment required.** An installation for appropriating or using water must be equipped with a flow meter to measure the quantity of water appropriated within the degree of accuracy required by rule. The commissioner can determine other methods to be used for measuring water quantity based on the quantity of water appropriated or used, the source of water, the method of appropriating or using water, and any other facts supplied to the commissioner.

Subd. 3. **Report.** (a) Records of the amount of water appropriated or used must be kept for each installation. The readings and the total amount of water appropriated must be reported annually to the commissioner on or before February 15 of the following year on forms provided by the commissioner.

(b) The records must be submitted with the annual water use permit processing fee in section 103G.271.

History: *1990 c 391 art 7 s 29; 1990 c 597 s 66*

103G.285 SURFACE WATER APPROPRIATIONS.

Subdivision 1. **Waiver.** The commissioner may waive a limitation or requirement in subdivisions 2 to 6 for just cause.

Subd. 2. **Natural and altered natural watercourses.** If data are available, permits to appropriate water from natural and altered natural watercourses must be limited so that consumptive appropriations are not made from the watercourses during periods of specified low flows. The purpose of the limit is to safeguard water availability for instream uses and for downstream higher priority users located reasonably near the site of appropriation.

Subd. 3. **Waterbasins.** (a) Permits to appropriate water from waterbasins must be limited so that the collective annual withdrawals do not exceed a total volume of water amounting

to one–half acre–foot per acre of waterbasin based on Minnesota department of conservation bulletin No. 25, "An Inventory of Minnesota Lakes," published in 1968.

(b) As a condition to a surface water appropriation permit, the commissioner shall set a protective elevation for the waterbasin, below which an appropriation is not allowed. During the determination of the protective elevation, the commissioner shall consider:

(1) the elevation of important aquatic vegetation characteristics related to fish and wildlife habitat;

(2) existing uses of the waterbasin by the public and riparian landowners; and

(3) the total volume within the waterbasin and the slope of the littoral zone.

Subd. 4. **Waterbasins less than 500 acres.** As part of an application for appropriation of water from a waterbasin less than 500 acres in surface area, the applicant shall obtain a statement of support with as many signatures as the applicant can obtain from property owners with property riparian to the waterbasin. The statement of support must:

(1) state support for the proposed appropriation; and

(2) show the number of property owners whose signatures the applicant could not obtain.

Subd. 5. **Trout streams.** Permits issued after June 3, 1977, to appropriate water from streams designated trout streams by the commissioner's orders under section 97C.021 must be limited to temporary appropriations.

Subd. 6. **Contingency planning.** An application for use of surface waters of the state is not complete until the applicant submits, as part of the application, a contingency plan that describes the alternatives the applicant will use if further appropriation is restricted due to the flow of the stream or the level of a waterbasin. A surface water appropriation may not be allowed unless the contingency plan is feasible or the permittee agrees to withstand the results of not being able to appropriate water.

History: *1990 c 391 art 7 s 30*

103G.291 PUBLIC WATER SUPPLY APPROPRIATION DURING DEFICIENCY.

Subdivision 1. **Declaration and conservation.** (a) If the governor determines and declares by executive order that there is a critical water deficiency, public water supply authorities appropriating water must adopt and enforce water conservation restrictions within their jurisdiction that are consistent with rules adopted by the commissioner.

(b) The restrictions must limit lawn sprinkling, vehicle washing, golf course and park irrigation, and other nonessential uses, and have appropriate penalties for failure to comply with the restrictions.

Subd. 2. **Modification of appropriation for noncompliance.** Disregard of critical water deficiency orders, even though total appropriation remains less than that permitted, is adequate grounds for immediate modification of a public water supply authority's water use permit.

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.

History: *1990 c 391 art 7 s 31; 1993 c 186 s 6*

103G.293 STATEWIDE DROUGHT PLAN.

The commissioner shall establish a plan to respond to drought–related emergencies and to prepare a statewide framework for drought response. The plan must consider metropolitan water supply plans of the metropolitan council prepared under section 473.156. The plan must provide a framework for implementing drought response actions in a staged approach related to decreasing levels of flows. Permits issued under section 103G.271 must provide conditions on water appropriation consistent with the drought response plan established by this section.

History: *1990 c 391 art 10 s 3; 1990 c 434 s 1; 1993 c 13 art 1 s 23*

103G.295 IRRIGATION OF AGRICULTURAL LAND.

Subdivision 1. **Recommendation and information for waters of the state appropriation.** (a) If an application is made for a permit to irrigate agricultural land from waters of the state, the soil and water conservation district may make recommendations to the commissioner regarding the disposition of the application and its compatibility to a comprehensive soil and water conservation plan approved under section 103C.331, subdivision 11. The recommendations must be made within 30 days of the receipt of the application.

(b) Within 30 days of receipt of the application, the commissioner may require additional specific information from the applicant.

Subd. 2. **Issuance or denial of permit for appropriation from waters of the state.** After receiving all requested information, the commissioner must review the application and information, consider the soil and water conservation district's recommendations, and issue or deny the permit within 60 days. If the commissioner orders a hearing, the permit must be issued or denied within ten days after receiving the report of the hearing officer. For an application for a permit to irrigate agricultural land, failure of the commissioner to issue or deny a permit within the time specified under this subdivision is considered an order issuing the permit as applied for. The order is effective ten days after the applicant has given written notice to the commissioner stating an intention to proceed with the appropriation of water to irrigate agricultural land.

Subd. 3. **Groundwater appropriation permit classification areas.** (a) Water use permit applications required for appropriation of groundwater for agricultural irrigation must be processed in the order received and designated as either class A or class B applications. Class A applications are for wells located in areas for which the commissioner has adequate groundwater availability data. Class B applications are for wells located in other areas.

(b) The commissioner must evaluate available groundwater data, determine its adequacy, and designate class A and B application areas for the entire state. The commissioner shall request, obtain, and evaluate groundwater data from soil and water conservation districts, and where appropriate revise the class A and B application area designations.

(c) The commissioner shall file a commissioner's order with the secretary of state defining class A and B application areas by county and township. Additional areas may be added by a later order of the commissioner.

Subd. 4. **Class B permit requirements.** (a) Class B groundwater use permit applications are not complete until the applicant has supplied:

(1) a summary of the anticipated well depth and subsurface geologic formation expected to be penetrated by the well, including for glacial drift aquifers, the logs of test holes drilled to locate the site of the proposed production well;

(2) the formation and aquifer expected to serve as the groundwater source;

(3) the maximum daily, seasonal, and annual pumpage expected;

(4) the anticipated groundwater quality in terms of the measures of quality commonly specified for the proposed water use;

(5) the results of a pumping test supervised by the commissioner or a designee of the commissioner, conducted at a rate not to exceed the proposed pumping rate for not more than 72 continuous hours for wells under water table conditions and not more than 24 continuous hours for wells under artesian conditions; and

(6) when the area of influence of the proposed well is determined, the location of existing wells within the area of influence that were reported according to section 103I.205, subdivision 9, together with readily available facts on depths, geologic formations, pumping and nonpumping water levels, and details of well construction as related to the water well construction code.

(b) The commissioner may in any specific application waive any requirements of paragraph (a), clauses (4) to (6), or (c) if the necessary data are already available.

(c) Before, during, and after the pumping test required in paragraph (a), clause (5), the commissioner shall require monitoring of water levels in one observation well located at a distance from the pumping well that the commissioner has reason to believe may be affected by the new appropriation. The permit applicant is responsible for costs of the pumping tests and monitoring in the observation well. The applicant is responsible for the construction of one observation well if suitable existing wells cannot be located for this purpose. If the commissioner determines that more than one observation well is needed, the commissioner shall instruct the applicant to install and monitor more observation wells. The commissioner shall reimburse the applicant for these added costs.

Subd. 5. **Issuance of permits for groundwater appropriation.** The commissioner may issue water use permits for irrigation appropriation from groundwater only if the commissioner determines that:

(1) proposed soil and water conservation measures are adequate based on recommendations of the soil and water conservation districts; and

(2) water supply is available for the proposed use without reducing water levels beyond the reach of vicinity wells constructed in accordance with the water well construction code in Minnesota Rules, parts 4725.1900 to 4725.6500.

History: *1990 c 391 art 7 s 32; 1993 c 186 s 16; 1995 c 218 s 12*

103G.297 DIVERSION OR DRAINAGE OF WATER FOR MINING.

Subdivision 1. **Authority to issue permits.** The commissioner may issue water use permits for the diversion, drainage, control, or use of waters of the state for mining iron ore, taconite, copper, copper–nickel, or nickel as provided in this section.

Subd. 2. **Application.** (a) An owner of the iron ore, taconite, copper, copper–nickel, or nickel deposits or the owner of the right to mine the deposits must apply to the commissioner for a permit in the form prescribed by the commissioner.

(b) Except as otherwise provided in this section, the application and the proceedings related to the application and to a permit issued are governed by the applicable provisions of this chapter.

Subd. 3. **Grant.** The permit may be granted only if the commissioner determines that:

(1) the proposed drainage, diversion, control, or use of waters will be necessary for the mining of substantial deposits of iron ore, taconite, copper, copper–nickel, or nickel, and that another feasible and economical method of mining is not reasonably available;

(2) the proposed drainage, diversion, control, or use of waters will not substantially impair the interests of the public in lands or waters or the substantial beneficial public use of lands or waters except as expressly authorized in the permit and will not endanger public health or safety; and

(3) the proposed mining operations will be in the public interest and the resulting public benefits warrant the proposed drainage, diversion, or control of waters.

Subd. 4. **Operation.** If the operations authorized by a permit may affect public or private property not owned by the permittee, before proceeding with the operations the permittee must:

(1) acquire all rights or easements necessary for the operation;

(2) pay or give security for the payment of damages to the property that may result from the operations; and

(3) give evidence of compliance with this subdivision as the commissioner may require.

Subd. 5. **Liability of state and its officials.** The state and its officers, agents, or employees do not incur liability on account of the issuance of a permit or on account of any act or omission of the permittee, or the permittee's agents or employees, under or in connection with the permit.

Subd. 6. **Permit period.** (a) Notwithstanding other limitations prescribed by law, a permit must be granted for a term the commissioner finds reasonable and necessary for the completion of the proposed mining operations, and the commissioner may prescribe a time in the permit for the commencement or completion of operations or construction under the permit or the exercise of the rights granted by the permit.

(b) The commissioner may extend the original term of the permit or the time allowed for the performance of its conditions for good cause shown upon application of the permittee.

Subd. 7. **Permit conditions.** In a permit, the commissioner may prescribe conditions the commissioner finds necessary and practicable for restoring the waters to their former condition after completion of the mining operations or after expiration or cancellation of the permit. The commissioner may also prescribe other conditions necessary to protect the public health, safety, and welfare, and may require the permittee to furnish a bond to the state in an appropriate form and amount as security for compliance with the conditions of the permit and applicable law.

Subd. 8. **Modification and cancellation of permit.** (a) A permit issued under this section is irrevocable for the term of the permit and for any extension of the term except:

(1) the permit may be modified or canceled by the commissioner at the request or with the consent of the permittee upon conditions the commissioner finds necessary to protect the public interest;

(2) subject to appeal as provided for water use permits, the commissioner may modify or cancel a permit as provided in paragraph (b) if:

(i) the permittee or its employees or agents breach the permit's terms or conditions or violate pertinent law; or

(ii) the commissioner finds the modification or cancellation necessary to protect the public health or safety, or to protect the public interests in lands or waters against substantial injury resulting in any manner or to any extent not expressly authorized by the permit, or to prevent substantial injury to persons or property resulting in any manner or to any extent not so authorized; or

(3) the commissioner immediately suspends operations under a permit by written order to the permittee if necessary in an emergency, to protect the public health or safety or to protect public interests in lands or waters against imminent danger of substantial injury in any manner or to any extent not expressly authorized by the permit, or to protect persons or property against the danger, and may require the permittee to take any measures necessary to prevent or remedy the injury.

(b) The commissioner may modify or cancel the permit upon at least 30 days' written notice to the permittee, stating the grounds of the proposed modification or cancellation and giving the permittee an opportunity to be heard.

(c) An order under paragraph (a), clause (3), may not remain in effect for more than 30 days from the date of the order without giving the permittee at least ten days' written notice of the order and an opportunity to be heard relating to the order.

Subd. 9. **Effect on other law.** This section does not amend, supersede, or repeal any existing law, but is supplementary to it.

History: *1990 c 391 art 7 s 33*

GENERAL PERMIT PROCEDURE

103G.301 GENERAL PERMIT APPLICATION PROCEDURES.

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

(1) maps, plans, and specifications describing the proposed appropriation and use of waters;

(2) the changes, additions, repairs, or abandonment proposed to be made;

(3) the 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.

Subd. 2. **Permit application fees.** (a) An application for a permit authorized under this chapter, and each request to amend or transfer an existing permit, must be accompanied by a permit application fee to defray the costs of receiving, recording, and processing the application or request to amend or transfer.

(b) The application fee for a permit to appropriate water, a permit to construct or repair a dam that is subject to dam safety inspection, a state general permit, or to apply for the state water bank program is $75. The application fee for a permit to work in public waters or to divert waters for mining must be at least $75, but not more than $500, in accordance with a schedule of fees adopted under section 16A.1285.

Subd. 3. **Field inspection fees.** (a) In addition to the application fee, the commissioner may charge a field inspection fee for:

(1) projects requiring a mandatory environmental assessment under chapter 116D;

(2) projects undertaken without a required permit or application; and

(3) projects undertaken in excess of limitations established in an issued permit.

(b) The fee must be at least $100 but not more than actual inspection costs.

(c) The fee is to cover actual costs related to a permit applied for under this chapter or for a project undertaken without proper authorization.

(d) The commissioner shall establish a schedule of field inspection fees under section 16A.1285. The schedule must include actual costs related to field inspection, including investigations of the area affected by the proposed activity, analysis of the proposed activity, consultant services, and subsequent monitoring, if any, of the activity authorized by the permit.

Subd. 4. **Refund of fees prohibited.** A permit application or field inspection fee may not be refunded for any reason, even if the application is denied or withdrawn.

Subd. 5. **State and federal agencies exempt from fee.** A permit application or field inspection fee may not be imposed on any state agency, as defined in section 16B.01, or federal governmental agency applying for a permit.

Subd. 5a. **Town fees limited.** Notwithstanding this section or any other law, no permit application or field inspection fee charged to a town in connection with the construction or alteration of a town road, bridge, or culvert shall exceed $100.

Subd. 6. **Filing application.** (a) An application for a permit must be filed with the commissioner and if the proposed activity for which the permit is requested is within a municipality, or is within or affects a watershed district or a soil and water conservation district, a copy of the application with maps, plans, and specifications must be served on the mayor of the municipality, the secretary of the board of managers of the watershed district, and the secretary of the board of supervisors of the soil and water conservation district.

(b) If the application is required to be served on a local governmental unit under this subdivision, proof of service must be included with the application and filed with the commissioner.

Subd. 7. **Recommendation of local units of government.** (a) If the proposed activity for which the permit is requested is within a municipality, or is within or affects a watershed district or a soil and water conservation district, the commissioner may obtain a written recommendation of the managers of the district and the board of supervisors of the soil and wa-

ter conservation district or the mayor of the municipality before issuing or denying the permit.

(b) The managers, supervisors, or mayor must file a recommendation within 30 days after receiving of a copy of the application for permit.

History: *1990 c 391 art 7 s 34; 1991 c 298 art 4 s 1; 1993 c 186 s 7; 1995 c 218 s 13; 1996 c 305 art 3 s 10,11*

103G.305 TIME LIMIT TO ACT ON WATER USE PERMIT APPLICATION.

Subdivision 1. **General 30-day limit.** (a) Except as provided in subdivision 2, the commissioner must act on a water use permit within 30 days after the application for the permit and the required data are filed in the commissioner's office.

(b) The commissioner must direct a hearing to be held on a water use permit application or make an order issuing a permit or denying a permit.

Subd. 2. **Exception.** The requirements of subdivision 1 do not apply to applications for a water use permit for:

(1) appropriations from waters of the state for irrigation, under section 103G.295;

(2) appropriations for diversion from the basin of origin of more than 2,000,000 gallons per day average in a 30-day period; or

(3) appropriations with a consumptive use of more than 2,000,000 gallons per day average for a 30-day period.

History: *1990 c 391 art 7 s 35; 1993 c 186 s 16*

103G.311 PERMIT HEARING.

Subdivision 1. **Hearing requirement.** A hearing must be conducted as a contested case hearing under chapter 14.

Subd. 2. **Hearing notice.** (a) The hearing notice on an application must state:

(1) the date, place, and time fixed by the commissioner for the hearing; and

(2) the waters affected, the water levels sought to be established, or control structures proposed.

(b) The hearing notice must be published by the commissioner at the expense of the applicant or, if the proceeding is initiated by the commissioner in the absence of an applicant, at the expense of the commissioner.

(c) The hearing notice must be:

(1) published once a week for two successive weeks before the day of hearing in a legal newspaper published in the county where any part of the affected waters is located;

(2) mailed by the commissioner to the county auditor, the mayor of a municipality, the watershed district, and the soil and water conservation district affected by the application; and

(3) made under requirements prescribed by sections 14.57 to 14.59 and rules of the chief administrative law judge.

Subd. 3. **Subpoena of witnesses and evidence.** (a) The commissioner may subpoena and compel the attendance of witnesses and the production of books and documents that are material to the purposes of the hearing.

(b) Disobedience of a subpoena is punishable in the same manner as a contempt of the district court. The commissioner must file a complaint of the disobedience of a subpoena with the district court of the county where the subpoena was disobeyed.

Subd. 4. **Waiver of hearing.** The commissioner may waive a hearing on an application and order the permit to be issued or deny the permit.

Subd. 5. **Demand for hearing.** (a) If a hearing is waived and an order is made issuing or denying the permit, the applicant, the managers of the watershed district, the board of supervisors of the soil and water conservation district, or the mayor of the municipality may file a demand for hearing on the application. The demand for a hearing must be filed within 30 days after mailed notice of the order with the bond required by subdivision 6.

(b) The commissioner must give notice as provided in subdivision 2, hold a hearing on the application, and make a determination on issuing or denying the permit as though the previous order had not been made.

(c) The order issuing or denying the permit becomes final at the end of 30 days after mailed notice of the order to the applicant, the managers of the watershed district, the board of supervisors of the soil and water conservation district, or the mayor of the municipality, and an appeal of the order may not be taken if:

(1) the commissioner waives a hearing and a demand for a hearing is not made; or

(2) a hearing is demanded but a bond is not filed as required by subdivision 6.

Subd. 6. **Bond for demanding public hearing.** (a) An applicant filing a demand for a public hearing must execute and file a corporate surety bond or equivalent security to the state of Minnesota, to be approved by the commissioner and in an amount and form determined by the commissioner. The bond or security must be conditioned to pay the costs of the hearing if the commissioner's order issuing or denying a permit is affirmed without material modification.

(b) A bond or security is not required of a public authority that demands a public hearing.

(c) The commissioner may waive the requirement for a bond or other security.

Subd. 7. **Hearing costs.** (a) Except as provided in paragraphs (b) and (c), the costs of a hearing must be paid as prescribed by chapter 14 and the chief administrative law judge.

(b) If a hearing is waived by the commissioner, but the applicant other than a public authority demands a hearing on the application and the commissioner's order is affirmed without material modification, the applicant must pay the following costs up to $750:

(1) costs of the stenographic record and transcript;

(2) rental costs, if any, of the place where the hearing is held; and

(3) costs of publication of orders made by the commissioner.

(c) If a hearing is waived by the commissioner, but a hearing is demanded by a public authority other than the applicant and the commissioner's order is affirmed without material modification, the public authority making the demand must pay:

(1) costs of the stenographic record and transcript;

(2) rental costs, if any, of the place where the hearing is held; and

(3) costs of publication of orders made by the commissioner.

History: *1990 c 391 art 7 s 36*

103G.315 DENIAL AND ISSUANCE OF PERMITS.

Subdivision 1. **Commissioner's general authority.** The commissioner may deny issuing permits and issue permits with or without conditions.

Subd. 2. **Findings of fact.** The commissioner shall make findings of fact on issues necessary for determination of the applications considered. Orders made by the commissioner must be based upon findings of fact made on substantial evidence. The commissioner may have investigations made. The facts disclosed by investigation must be put in evidence at the hearing.

Subd. 3. **Issuance of permit.** If the commissioner concludes that the plans of the applicant are reasonable, practical, and will adequately protect public safety and promote the public welfare, the commissioner shall grant the permit.

Subd. 4. **Control levels.** If they are in issue, the commissioner shall also fix the control levels of public waters accordingly.

Subd. 5. **Denial; modifications.** Otherwise the commissioner shall reject the application or may require modification of the plan as the commissioner finds proper to protect the public interest.

Subd. 6. **Burden of proof; conditions.** (a) In permit applications, the applicant has the burden of proving that the proposed project is reasonable, practical, and will adequately protect public safety and promote the public welfare.

(b) In granting a permit, the commissioner may include in it terms and reservations about the amount and manner of the use or appropriation or method of construction or operation of controls as appear reasonably necessary for the safety and welfare of the people of the state.

Subd. 7. **Restoring effects of unlawful activities.** (a) The commissioner may include in an order issuing or denying a permit a requirement for the applicant to take an action necessary to restore the public waters or their beds to the condition existing before unlawful activities, if any, were undertaken by the applicant. The restoration may include filling beds unlawfully dredged, removing fill unlawfully placed, or restoring water unlawfully appropriated.

(b) If a hearing on the application was not held, the applicant may contest the order within 30 days of receiving it and must be given a contested case hearing as prescribed by chapter 14.

Subd. 8. **Notice of permit order.** Notice of orders made after hearing must be given by publication of the order once a week for two successive weeks in a legal newspaper in the county where the hearing was held and by mailing copies of the order to parties who entered an appearance at the hearing.

Subd. 9. **Time for issuance of order.** The commissioner shall make an order within 60 days after the completion of the hearing.

Subd. 10. **Charges for excavation of minerals.** The commissioner must impose charges for the excavation of minerals from the beds of public waters, as provided in chapter 93.

Subd. 11. **Limitations on permits.** (a) Except as otherwise expressly provided by law, a permit issued by the commissioner under this chapter is subject to:

(1) cancellation by the commissioner at any time if necessary to protect the public interests;

(2) further conditions on the term of the permit or its cancellation as the commissioner may prescribe and amend and reissue the permit; and

(3) applicable law existing before or after the issuance of the permit.

(b) Permits issued to irrigate agricultural land under section 103G.295, or considered issued, are subject to this subdivision and are subject to cancellation by the commissioner upon the recommendation of the supervisors of the soil and water conservation district where the land to be irrigated is located.

Subd. 12. **Permit not issued until fees are paid.** Except for field inspection fees related to monitoring, the commissioner may not issue a permit until all fees required by section 103G.301 relating to the issuance of a permit have been paid. The time limits prescribed by section 103G.305, subdivision 1, do not apply to an application for which the appropriate fee has not been paid. Field inspection fees relating to monitoring of an activity authorized by a permit may be charged and collected as necessary at any time after the issuance of the permit.

Subd. 13. **Period for activities under permit.** (a) The commissioner shall set the time period within which:

(1) construction authorized in the permit must be completed; or

(2) an appropriation or use of water must be made.

(b) The time must not exceed five years from the date of the permit.

(c) The time period may be extended by the commissioner after application and for good cause demonstrated by the permittee.

Subd. 14. **Irrevocability of certain permits related to mining.** (a) Permits granted in connection with the mining, transporting, concentration, or shipment of taconite as defined in section 93.20, subdivision 18, and permits granted in connection with the mining, production, or beneficiation of copper, copper–nickel, or nickel, are irrevocable for the term of the permits without the consent of the permittee, except for breach or nonperformance of any condition of the permit by the permittee.

(b) The commissioner may allow and prescribe in the permit any time the commissioner considers reasonable, notwithstanding the limitations under subdivision 13, limitations of time contained in this section for beginning or completing construction or operations under the permit, or exercising the rights granted under the permit.

(c) The commissioner may extend the time, for cause shown, upon the application of the permittee.

Subd. 15. **Rules for issuance and denial of permits.** The commissioner shall adopt rules prescribing standards and criteria for issuing and denying water use permits and public waters work permits.

History: *1990 c 391 art 7 s 37; 1995 c 218 s 14,15*

WATER LEVEL ESTABLISHMENT AND CONTROL

103G.401 APPLICATION FOR ESTABLISHMENT OF LAKE LEVELS.

(a) Applications for authority to establish and maintain levels of public waters and applications to establish the natural ordinary high water level of public waters may be made to the commissioner by a public body or authority or by a majority of the riparian owners on the public waters.

(b) To conserve or utilize the water resources of the state, the commissioner may initiate proceedings to establish and maintain the level of public waters.

History: *1990 c 391 art 7 s 38*

103G.405 WATER LEVEL CONTROL FOR LANDLOCKED LAKES.

(a) Except as provided in paragraph (c), the commissioner must issue a water level control permit to establish a control elevation for a landlocked lake below the ordinary high water level for the lake if:

(1) the commissioner finds that:

(i) the control is necessary to prevent adverse impacts to the lake or adjoining property;

(ii) other reasonable or cost–effective alternatives are not available; and

(iii) natural resource or hydrologic conditions exist in the watershed that would limit the potential for continuous discharge of excess waters from the lake; and

(2) the outlet and discharge of excess waters is addressed in an approved water management plan under chapter 103B or 103D.

(b) In addition to the requirements in section 103G.301, subdivision 6, if the proposed control elevation is more than 1–1/2 feet below the ordinary high water level, the permit applicant shall serve a copy of the application on each county and municipality within which any portion of the lake is located and the lake improvement district, if one exists.

(c) The commissioner may not issue a permit to establish a control elevation more than 1–1/2 feet below the ordinary high water level of a lake if a county, municipality, watershed district, or lake improvement district required to be served under paragraph (b) or section 103G.301, subdivision 6, files a written objection to the issuance of the permit with the commissioner within 30 days after receiving a copy of the application.

History: *1990 c 391 art 7 s 39; 1996 c 407 s 45*

103G.411 STIPULATION OF LOW–WATER MARK.

If the state is a party in a civil action relating to the navigability or ownership of the bed of a body of water, river, or stream, the commissioner, in behalf of the state, with the approval of the attorney general, may agree by written stipulation with a riparian owner who is a party to the action on the location of the ordinary low–water mark on the riparian land of the party. After the stipulation is executed by all parties, it must be presented to the judge of the district court where the action is pending for approval. If the stipulation is approved, the judge shall make and enter an order providing that the final judgment when entered shall conform to the location of the ordinary, low–water mark as provided for in the stipulation as it relates to the parties to the stipulation.

History: *1990 c 391 art 7 s 40*

BIG STONE LAKE

103G.415 BIG STONE LAKE, SEASONAL WATER LEVEL.

Subdivision 1. **Desirable water level elevation determined.** The most desirable and beneficial level for the waters of Big Stone Lake from May 1 to October 1 is elevation 967, project datum, and the director of game and fish of South Dakota and the commissioner of natural resources of Minnesota shall maintain and operate the Big Stone control dam in conformance with this elevation.

Subd. 2. **Regulation at levels less than desirable elevation.** When the water elevation of Big Stone Lake is 967 or less, project datum:

(1) stop logs must be kept in place and maintained in the outlet dam of Big Stone Lake; and

(2) the outflow from the outlet dam must be regulated not to exceed 100 cubic feet per second.

History: *1990 c 391 art 7 s 41*

MISSISSIPPI HEADWATER LAKES

103G.421 CONTROL OF MISSISSIPPI HEADWATER LAKES.

Subdivision 1. **Reason for control.** The legislature finds that the regulation, control, and utilization of waters in the headwater lakes in the Mississippi River, including Leech Lake, Winnibigoshish Lake, Pokegama Lake, Pine River, the Whitefish chain, Sandy Lake, and Gull Lake are of tremendous economic importance and value to the state and the utility of these lakes in aid of navigation has been very greatly diminished since the time of the establishment of the reservoirs, and that the economic values in utilization of these waters for state purposes has increased tremendously. These factors require the assertion on the part of the state of Minnesota of its rights to utilization and control of these water areas.

Subd. 2. **Joint federal–state control.** The commissioner shall enter into cooperative agreements with the United States of America acting through the Department of the Army for the joint control and regulation of the Mississippi headwater reservoirs to control the water elevations and the water discharges from the Mississippi headwaters lakes in the interests of the state, subject only to:

(1) a paramount need of waters from these sources in aid of substantial navigation requirements; and

(2) a substantial requirement of providing necessary flood control storage capacity as determined by the United States Department of the Army Corps of Engineers.

Subd. 3. **Plan for dam operation.** (a) The commissioner must develop a plan for the operation of the dams controlling each of the Mississippi headwater reservoirs that:

(1) establishes the water elevation on each of the Mississippi headwater lakes at the most desirable height and stabilizes the stages at that point, as practicable, during the recreational use season;

(2) considers reasonable fluctuations when desirable for the production of wild rice in the wild rice producing areas of Mississippi headwater lakes;

(3) considers the elevations most desirable for the production and maintenance of wildlife resources;

(4) considers the needs of water for recreation, agriculture, forestry, game and fish, industry, municipal water supply and sewage disposal, power generation, and other purposes in the Mississippi River headwaters and downstream;

(5) establishes stages at which the water will be maintained, as practicable, but recognizing the following minimum stages in reference to present zeros on the respective government gauges:

(i) Leech Lake 0.0;

(ii) Winnibigoshish Lake 6.0;

(iii) Pokegama Lake 6.0;

(iv) Sandy Lake 7.0;

(v) Pine River 9.0;

(vi) Gull Lake 5.0;

(6) prescribes maximum discharges when the elevations fall below the stages; and

(7) prescribes maximum elevations and amounts of discharge from each lake to stabilize and effectuate the desired stages and, as practicable, does not allow the elevation to exceed the following maximum lake stages:

(i) Leech Lake 3.5;

(ii) Winnibigoshish Lake ... 12.0;

(iii) Pokegama Lake 12.0;

(iv) Sandy Lake 11.0;

(v) Pine River 14.0;

(vi) Gull Lake ..... 7.0.

(b) The plan developed by the commissioner must consider the following conditions:

(1) the necessity for changing discharges to meet emergencies resulting from unexpected or abnormal inflows;

(2) the possibility of overriding requirements of the federal government for substantial discharges to meet reasonable and substantial navigation requirements; and

(3) the overriding authority and needs as prescribed by the United States Department of the Army Corps of Engineers in discharging their functions of requiring additional storage capacity for flood control purposes.

Subd. 4. **Notice of plan.** Before the plan of operation for a headwater lake is effective, the commissioner must publish a notice of hearing on the plan of operation for two weeks in a newspaper in each county where the affected waters are located.

Subd. 5. **Hearing on plan.** (a) The hearing must be conducted by the commissioner or an appointed referee. The hearing will not be governed by legal rules of evidence, but the findings of fact and orders, to be made and formulated by the commissioner, must be predicated only on relevant, material, and competent evidence.

(b) Interested parties must have an opportunity to be heard, under oath, and are subject to cross–examination by adverse parties and by the attorney general or the attorney general's representative who shall represent the commissioner at the hearing.

(c) The findings of fact and orders incorporating the plan determined by the commissioner must be published for two weeks in the same manner as the notice of hearing.

Subd. 6. **Appeal.** A riparian owner or water user aggrieved by the commissioner's findings has the right to appeal by 30 days after completion of publication of the findings and order to the district court of a county where the regulated water is located. The appeal shall be determined by the court on the record made before the commissioner. Issues on the appeal are limited to the legal rights of the parties and whether the findings of the commissioner are reasonably supported by the evidence at the hearing.

Subd. 7. **Modifications.** (a) After a plan has been put into effect, the commissioner is authorized to modify the stages sought to be maintained by modifying the plan with respect to any of the lakes involved to the extent of one foot in elevation according to the zeros of the present government gauges without holding additional hearings, except a departure from the elevation target may not be made to reduce proposed stages below the minimums prescribed by subdivision 3, paragraph (a), clause (5), during the recreational season.

(b) A modification of the established plan that departs by more than one foot in elevation may be placed into effect only after a hearing is held in the same manner as the hearing establishing the plan as provided under subdivisions 4 and 5.

History: *1990 c 391 art 7 s 42*

DAM CONSTRUCTION AND MAINTENANCE

103G.501 CONSTRUCTION OF PRIVATE DAMS ON NONNAVIGABLE WATERS.

Subdivision 1. **Procedure to acquire flowage rights.** If a person desires to raise and extend or erect and maintain a dam on the person's property across a stream or other watercourse that is not navigable to create or improve a waterpower for milling or manufacturing purposes and property owned by other persons will be overflowed or otherwise damaged, the person desiring to erect or extend or raise the dam may acquire the right to do so by petitioning the court and having damages ascertained and paid as prescribed in chapter 117.

Subd. 2. **Dam may not damage previous waterpower.** A dam may not be erected, raised, or maintained under this section that damages a waterpower previously developed.

Subd. 3. **Project and repair completion times.** If the right to erect, raise, or extend a dam is acquired under subdivision 1, the project must be started within one year, completed, and the waterpower applied to the purpose stated in the petition within three years after the right to erect, raise, or extend the dam is acquired. If a dam or the machinery connected with the dam is destroyed, the rebuilding of the dam or machinery must be started and completed within the same periods after the destruction.

Subd. 4. **Forfeiture.** Failure to comply with subdivision 3 or failure to operate a mill or machinery for one consecutive year after it is erected forfeits the rights acquired under subdivision 1 unless the owner is an infant, or is otherwise legally disabled, in which case the periods under this section begin after the disability is removed.

History: *1990 c 391 art 7 s 43*

103G.505 DAM CONSTRUCTION AND MAINTENANCE BY STATE.

Subdivision 1. **Authorization.** The commissioner may construct, maintain, and operate dikes, dams, and other structures necessary to maintain uniform water levels established under this chapter to improve navigation, protect and improve domestic water supply, protect and preserve fish and other wildlife, protect the public interest in the shore and shorelines of public waters, and promote public health.

Subd. 2. **Authority to acquire land.** The commissioner may acquire lands or any necessary interest in lands by purchase, gift, or condemnation.

Subd. 3. **Operation of dams on state property.** Dams owned by the state or built on property owned or controlled by the state must be maintained under the direction of the commissioner and operated under the commissioner's direction and control.

Subd. 4. **Acceptance of local funding.** The commissioner may accept funds from local governmental and civic agencies or persons to acquire property for or to construct, maintain, or operate dams and control structures.

History: *1990 c 391 art 7 s 44*

103G.511 PUBLICLY OWNED DAM REPAIR.

Subdivision 1. **Authorization.** The commissioner may:

(1) repair or reconstruct state–owned dams;

(2) make engineering evaluations related to the repair or reconstruction of dams owned by political subdivisions; and

(3) grant aid to political subdivisions to repair or reconstruct dams owned by political subdivisions.

Subd. 2. **Engineering evaluations.** The engineering evaluations may include studies of the feasibility, practicality, and environmental effects of using dams for hydroelectric power generation.

Subd. 3. **Funding.** (a) Except as provided in this section, a grant to a political subdivision may not exceed the amount contributed to the project by the political subdivision from local funds.

(b) Federal general revenue sharing money may be counted as local funds, but other federal grants or loans must be used to reduce equally the state share and the local share of project costs.

(c) A grant to study the feasibility, practicality, and environmental effects of using a dam for hydroelectric power generation may be for an amount up to 90 percent of the costs of the study.

Subd. 4. **Investigation.** The commissioner may repair or reconstruct a state–owned dam or make a grant to a political subdivision only after making an investigation of the dam.

Subd. 5. **Application.** A political subdivision desiring a grant for the repair or reconstruction of a dam may apply for the grant on forms supplied by the commissioner.

Subd. 6. **Determination of grant.** The commissioner shall consider all relevant factors in determining whether to repair or reconstruct a state–owned dam or to make a grant to a political subdivision including:

(1) the age and type of construction of the dam;

(2) the use of the dam for water supply, flood control, navigation, hydroelectric power generation, recreation, wildlife management, scenic value, or other purposes related to public health, safety, and welfare;

(3) the consequences of abandonment, removal, or alteration of the dam;

(4) prospective future uses of the dam; and

(5) the relative importance of the dam to the statewide water resource program.

Subd. 7. **Hearing.** The commissioner may hold a public hearing under section 103G.311 on the proposed repair or reconstruction after giving notice. If the hearing is held at the request of a political subdivision, the costs of publishing notice and of taking and preparing the stenographic record must be paid by the political subdivision.

Subd. 8. **Operation agreement.** To receive a grant, the political subdivision must enter into an agreement with the commissioner giving assurance that the government unit will operate and maintain the dam in a safe condition for the benefit of the public and must agree to other conditions the commissioner considers reasonable.

Subd. 9. **Limitations.** (a) If the cost of repair or reconstruction of a state–owned dam or a grant to a political subdivision is less than $250,000, the commissioner may direct that the state–owned dam be repaired or reconstructed or that a grant be made to repair or reconstruct a dam owned by a political subdivision.

(b) If the cost of repair or reconstruction of a state–owned claim or grant to a political subdivision is $250,000 or more, the commissioner may recommend the project to the legislature for its consideration and action, except in an emergency under paragraph (c).

(c) The commissioner, with the approval of the commissioner of finance after consulting with the legislative advisory commission, may direct that a state–owned dam be repaired or reconstructed or a grant be made to a political subdivision if the commissioner determines that an emergency exists and:

(1) there is danger that life will be lost; or

(2) that substantial property losses will be suffered if action is not promptly taken.

Subd. 10. **Loans for local share of project costs.** (a) If the commissioner decides to recommend a dam repair or reconstruction grant for a political subdivision to the legislature, the commissioner must notify the political subdivision and the commissioner of finance of the decision. After being notified by the commissioner of natural resources, the political subdivision may apply to the commissioner of finance on forms supplied by the commissioner of finance for a loan up to 90 percent of the local share of the project costs.

(b) The loan is repayable over a period not longer than 20 years, with interest at a rate sufficient to cover the cost to the state of borrowing the money.

(c) A political subdivision receiving a dam safety loan must levy for the loan payment in the year the loan proceeds were received and each later year, until the loan is paid. The levy must be for:

(1) the amount of the annual loan payment; or

(2) the amount of the loan payment less the amount the political subdivision certifies is available from other sources for the loan payment.

(d) Upon approval of the project grant by the legislature, the commissioner of finance shall make the loan in an amount and on terms that are appropriate. Loans made under this

subdivision do not require approval by the electors of the political subdivision as provided in section 475.58.

(e) Principal and interest payments received by the commissioner of finance in repayment of these loans are appropriated to the state bond fund.

Subd. 11. **Commissioner's order to repair or reconstruct a dam.** (a) If a political subdivision fails to comply with a commissioner's order to repair or remove a dam under section 103G.515, the commissioner may repair or remove the dam as provided in this subdivision.

(b) The commissioner must hold a hearing under section 103G.311 on the failure of the political subdivision to repair or remove the dam. After the hearing, the commissioner must make findings specifying the failure of the political subdivision to act and shall, by order, assume the powers of the legislative authority of the political subdivision in regard to the repair or removal of dams.

(c) After issuing the order, the commissioner has the same powers, insofar as applicable to the repair or removal of dams, as the commissioners of administration and the pollution control agency have in the construction, installation, maintenance, or operation of a municipal disposal system, or part of a system, or issuing bonds and levying taxes under section 115.48.

Subd. 12. **Priority list of dams needing repair.** After reviewing examinations of dams owned by the state and political subdivisions, the commissioner shall prioritize the state and political subdivision dams in need of repair, reconstruction, or removal and report by June 1 of each odd-numbered year to the legislature. The commissioner must prioritize projects considering danger to life, damage to property, and the factors listed in subdivision 6.

History: *1990 c 391 art 7 s 45; 1994 c 643 s 50; 1995 c 218 s 16*

103G.515 EXAMINATION AND REPAIR OF DAMS AND RESERVOIRS.

Subdivision 1. **Examination of structure.** The commissioner may examine a reservoir, dam, control structure, or waterway obstruction after receiving a complaint or determining an examination is needed. The commissioner, or an authorized agent, must be granted access at any reasonable time to examine the reservoir, dam, control structure, or waterway obstruction.

Subd. 2. **Additional engineering investigations.** (a) After making an examination, if the commissioner determines that additional engineering investigations are necessary to determine the safety of a dam, reservoir, control structure, or waterway obstruction and the nature and extent of the necessary repairs or alterations, the commissioner must notify the owner to have investigations made at the owner's expense.

(b) The result of the investigation must be filed with the commissioner for use in determining the condition of the structures and the need for their repair, alteration, or removal.

Subd. 3. **Repair, alteration, or removal required.** (a) If the commissioner determines that the reservoir, dam, control structure, or waterway obstruction is unsafe or needs repair or alteration, the commissioner shall notify the owner of the structure with an order to repair, alter, or remove the structure. The order must be issued in the same manner as if the owner had applied for a permit for the repairs, alterations, or removal.

(b) The engineering investigations or the work of repair, alteration, or removal must begin and be completed within a reasonable time prescribed by the commissioner.

Subd. 4. **Dam inspection fee.** (a) The commissioner shall adopt rules which must include a fee schedule to cover the cost of dam inspection and must classify structures to adequately define risks and hazards involved in relation to public health, safety, and welfare.

(b) The rules may not impose a field inspection fee on any state agency, political subdivision of the state, or federal governmental agency.

Subd. 5. **Removal of hazardous dams.** Notwithstanding any provision of this section or of section 103G.511 relating to cost sharing or apportionment, the commissioner, within the limits of legislative appropriation, may assume or pay the entire cost of removal of a privately or publicly owned dam upon determining that continued existence of the structure presents a significant public safety hazard, or prevents restoration of an important fisheries resource, or that public or private property is being damaged due to partial failure of the

structure, and that an attempt to assess costs of removal against the private or public owner would be of no avail.

History: *1990 c 391 art 7 s 46; 1995 c 218 s 17*

103G.521 TRANSFER OF AUTHORITY OVER STATE DAMS.

Subdivision 1. **Application for transfer.** (a) Upon application by resolution of the governing body of a political subdivision authorized to maintain and operate dams or other control structures affecting public waters, the commissioner, with the approval of the executive council, may transfer to the political subdivision the custody of a dam or other control structures owned by the state and under the supervision or control of the commissioner if the commissioner determines that the transfer will promote the best interests of the public. The transfer must be made by order of the commissioner on the terms and conditions the commissioner sets for maintenance and operation of the project.

(b) In connection with the transfer, the commissioner may convey land, easements, or other state property pertaining to the project to the transferee by deed or another appropriate instrument in the name of the state, subject to conditions and reservations prescribed by the commissioner. A duplicate of each order, conveyance, or other instrument executed by the commissioner in connection with a transfer must be filed with the commissioner of finance.

Subd. 2. **Payment for transfer.** A transfer may be made with or without payment of money to the state, as agreed upon between the commissioner and the transferee. If a payment is received as part of the transfer, the amount must be deposited into the state treasury and credited to the general fund.

History: *1990 c 391 art 7 s 47; 1994 c 643 s 51*

103G.525 LIMITATIONS ON TRANSFERS OF OWNERSHIP OF DAMS.

The state, a state department or agency, a county, municipality, town, or other governmental entity may not purchase or accept as a gift a privately owned dam subject to permit requirements until:

(1) the commissioner has examined the dam;

(2) the commissioner has prepared a report of the examination;

(3) the report has been filed with the legislature; and

(4) the legislature has had an opportunity to consider the report and has not prohibited the purchase or gift during the legislative session in which the report is filed or, if the report is filed when the legislature is not in session, the legislature has not prohibited the gift or purchase at the next session.

History: *1990 c 391 art 7 s 48*

103G.531 DAM PERMIT EXCEPTIONS.

Subdivision 1. **Permit not required for original construction of structures before July 1, 1937.** This chapter does not authorize the commissioner to require a permit for the original construction of dams, reservoirs, or control works in existence on and before July 1, 1937.

Subd. 2. **Minor dam exclusion.** The commissioner shall adopt rules that exclude minor dams such as those less than six feet in height or that impound less than 50 acre–feet of water storage at maximum storage elevations from permit requirements. The rules do not apply to a barrier six feet or less in height, regardless of storage capacity, or to a barrier creating a storage capacity at maximum water storage elevation of 15 acre–feet or less, regardless of height.

History: *1990 c 391 art 7 s 49*

103G.535 HYDROPOWER GENERATION.

Subdivision 1. **Public purpose.** The legislature finds that:

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

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

Subd. 2. **Authority for lease of sites.** A political subdivision, or the commissioner with the approval of the state executive council for state–owned dams, may provide by a lease or development agreement for the development and operation of dams, dam sites, and hydroelectric or hydromechanical power generation plants by an individual, a corporation, an organization, or other legal entity on terms and conditions in subdivision 5.

Subd. 3. **Installations less than 15,000 kilowatts unused on January 1, 1984.** If an installation of 15,000 kilowatts or less at a dam site and reservoir was unused on January 1, 1984, in connection with the production of hydroelectric or hydromechanical power, the lease or development agreement negotiated by the political subdivision and the developer constitutes full payment by the lessee and may be in lieu of all real or personal property taxes that might otherwise be due to a political subdivision.

Subd. 4. **Municipality or town approval.** If the dam, dam site, or power generation plant is located in or contiguous to a municipality or town, other than the lessor political subdivision, the lease or agreement is not effective unless it is approved by the governing body of the municipality or town.

Subd. 5. **Contents of development agreement.** (a) An agreement for the development or redevelopment of a hydropower site must contain provisions to assure the maximum financial return to the political subdivision or the commissioner.

(b) An agreement may contain:

(1) the period of the development agreement up to 99 years, subject to negotiations between the parties, and conditions for extension, modification, or termination;

(2) provisions for a performance bond on the developer or certification that the equipment and its installation have a design life at least as long as the lease; and

(3) provisions to assure adequate maintenance and safety in impoundment structures and access to recreational sites.

History: *1990 c 391 art 7 s 50; 1994 c 643 s 52*

103G.541 MUNICIPAL DAMS ON RED RIVER OF THE NORTH.

Subdivision 1. **Authority to construct dam.** A municipality owning or permanently controlling property where a proposed dam is to be constructed may:

(1) construct a dam on the property and across that portion of the Red River of the North that forms a part of the boundary common to this state and the state of North Dakota to conserve water for municipal, commercial, and domestic use; and

(2) construct, in connection with the dam structures, fishways, raceways, sluiceways, and wasteways necessary or convenient for the proper construction and utility of the dam and as may be required by law.

Subd. 2. **Consent of the United States and North Dakota.** If required by law or treaty, the municipality must first obtain the consent of the United States and of the state of North Dakota for the construction.

History: *1990 c 391 art 7 s 51*

103G.545 DAMS AND WATER LEVEL CONTROL IN COOK, LAKE, AND ST. LOUIS COUNTIES.

Subdivision 1. **Purpose.** The purpose of this section is to preserve shorelines, rapids, waterfalls, beaches, and other natural features in an unmodified state of nature.

Subd. 2. **Legislative approval required for control structures and water levels.** Except as provided in this section, specific authority must be given by law after consideration by the legislature with regard to control structures or water levels within or bordering on the area of Cook, Lake, and St. Louis counties designated in the Act of Congress of July 10, 1930, United States Code, title 16, section 577, before:

(1) dams or additions to existing dams may be constructed in or across public waters;

(2) alteration of the natural water level or volume of flowage of public waters may be made; or

(3) an easement for flooding or overflowing or otherwise affecting state property adjacent to public waters may be granted.

Subd. 3. **Recreational and logging dams.** With the written approval of the commissioner and the signed authority of the executive council, dams for public recreational uses or dams essential for logging or for logging reservoirs that do not exceed 100 acres in size may be constructed to temporarily maintain water levels up to but not higher than the normal high–water marks. The approval is subject to fees recommended by the commissioner, time limitation, and other conditions designed fully to protect the public interest and purpose of this section.

Subd. 4. **Exception and requirement for certain waterpower sites.** (a) This section does not apply to the portion of a proposed development for waterpower purposes that was actually occupied and maintained by an applicant for a license to make the development under the terms of the federal waterpower act if the application for the license was pending on or before January 1, 1928.

(b) The occupant may occupy and use the state lands and waters occupied on January 1, 1928, and used up to an elevation not exceeding two feet above the lowest crest of the spillway or overflow dam of the occupant as constructed on January 1, 1928, for as long as the land and water is needed for waterpower purposes. Water control structures may not be used higher than the structures used before January 1, 1928.

(c) The occupant shall pay to the state annual compensation determined by the commissioner after investigation for the use of the state lands affected. The occupant must promptly pay the state reasonable compensation for any further damage to state lands or timber caused by waterpower development, other than is covered by the compensation paid for the use of the lands.

Subd. 5. **Penalty.** Any person who willfully or knowingly violates a provision of this section or of an order made by the commissioner under this section is guilty of a gross misdemeanor.

History: *1990 c 391 art 7 s 52; 1991 c 199 art 1 s 18*

103G.551 DAMS USED ONLY FOR WATER LEVEL REGULATION.

Subdivision 1. **Applicability.** This section and section 103G.555 apply to public waters if:

(1) a dam constructed or maintained in any manner has existed in the outlet of the lake affecting the water level of the lake for a continuous period of at least 15 years;

(2) the lake has been used by the public for navigation, fishing, hunting, or other beneficial public purposes continuously throughout the 15–year period when allowed by natural conditions;

(3) the use of the dam for a purpose other than regulating, controlling, or maintaining the water level of the lake in aid of navigation, propagation of fish or waterfowl, or other beneficial public purposes has been discontinued;

(4) continued regulation, control, or maintenance of the water levels of the lake by the dam in the same manner as during the 15–year period would be desirable and in the public interests in navigation, propagation of fish or waterfowl, or other beneficial public uses of the lake; and

(5) discontinuance of regulation of water levels through deterioration or removal of the dam would be detrimental to public interests in navigation, propagation of fish and waterfowl, or other beneficial public uses.

Subd. 2. **Dedication of perpetual flowage easement.** (a) Owners of property and interests in property bordering on a lake or connecting waters affected by a dam are considered to have dedicated to the state for the use and benefit of the public a perpetual flowage easement on the property for all overflow and other effects of water on their property resulting from the existence, maintenance, or operation of the dam during the 15–year period.

(b) The perpetual flowage easement has the extent and effect as if the state had:

(1) owned and controlled the dam;

(2) regulated, controlled, and maintained the water levels of the lake and connecting waters affected by the dam for public use and benefit under the conditions existing during the 15–year period; and

(3) acquired the flowage easement by prescription.

Subd. 3. **Conveyance of flowage easement to commissioner authorized.** The commissioner may accept a conveyance or release of a property or an interest in property that grants the state a flowage easement on the property for overflow or other effects of water resulting from the existence, maintenance, or operation of a dam, or reconstruction or improvement of a dam, or construction of a dam in the outlet of a lake to regulate, control, or maintain the water level of the lake in aid of navigation, propagation of fish or waterfowl, or other beneficial public purposes.

Subd. 4. **Determination of easement rights.** (a) An action may be brought in the name of the state in the district court of the county where affected property is located to determine:

(1) the extent and effect of a flowage easement obtained by the state;

(2) the title and rights of the state under the flowage easement;

(3) adverse claims to the flowage easement; and

(4) the rights of all parties interested in or affected by the flowage easement.

(b) The action may be brought by the attorney general upon the attorney general's own initiative or on request of the commissioner. On request of the attorney general, the county attorney of the county where the property affected by the flowage easement is located shall assist in bringing the action.

(c) Part or all of the property affected by the flowage easement that is bordering on one lake and the connecting waters of the lake and located in one county may be included in one action. The parties interested in the affected property may be joined as defendants in the action.

(d) Except as otherwise provided in this section and section 103G.555, the law relating to actions for the determination of title to real estate in the district court governs the action.

(e) The cost of the action may be paid from money appropriated for the maintenance, operation, and control of the dam involved, or may be paid by the county where the lake and connecting waters are located.

Subd. 5. **Higher ordinary high water levels.** (a) If the water levels maintained by a dam that has existed as provided in subdivision 1 have established an ordinary high water level above the natural ordinary high water level, the ordinary high water level reestablishes the natural ordinary high water level of the waters. Property owners and the owners of an interest in property affected by the reestablished natural ordinary high water level are presumed to have consented to the reestablished natural ordinary high water level and to have dedicated their property to the state for the use and benefit of the public.

(b) The commissioner may determine the reestablished natural ordinary high water level in the same manner as provided by law for the determination of natural ordinary high water levels. The determination is prima facie evidence of the level and has the same effect as a determination of natural ordinary high water level by the commissioner.

Subd. 6. **Easements, appurtenant to dam.** A flowage easement obtained by the state under this section attaches and is appurtenant to a dam that is acquired or taken over and maintained or controlled in aid of public navigation, propagation of fish or waterfowl, or other beneficial public purposes by the commissioner or another agency of the state, a county, a political subdivision, or a combination authorized by law. The flowage easement attaches and is appurtenant to the reconstruction or improvement of the dam and to a new dam constructed in the outlet of the lake that is taken over and maintained or controlled by the commissioner, a state agency, a county, a political subdivision, or a combination authorized by law.

Subd. 7. **State control of abandoned dams.** (a) If a dam not owned or controlled by the state or a public agency is not used or maintained by or under the authority of the owner of the dam for a lawful purpose for a continuous period of at least 15 years, the dam and the dam site are presumed to be abandoned by the owner and dedicated to the state with flowage easements appurtenant for the use and benefit of the public. The commissioner:

(1) shall take possession of the dam and the dam site and the flowage easements on behalf of the state and use, maintain, operate, and control the dam, dam site, and flowage easements for public purposes; or

(2) may dispose of the dam, dam site, or flowage easements for public purposes as provided in paragraph (b) or as otherwise authorized by law.

(b) The commissioner may dispose of a dam, dam site, or flowage easement after:

(1) publishing notice of a hearing on disposing of the dam, dam site, or flowage easement in a legal newspaper in the county where the dam is situated;

(2) holding a hearing; and

(3) determining that it is not in the public interest for the state to use, maintain, operate, and control the dam.

(c) The commissioner may construct other or additional control works to supplement or supplant the dam under other provisions of law.

(d) The title of the state to a dam, dam site, or flowage easement acquired under this subdivision may be established and determined by action in the district court as provided by law for actions for the determination of title to real estate.

(e) Before taking possession of an abandoned dam, dam site, or flowage easement, the commissioner must file a written certificate executed by the commissioner stating the dam is abandoned and is acquired by the state, in the office of the county recorder of the county where the dam is situated. The responsibility for a dam, dam site, or flowage easement is not on the state until the certificate is recorded or a judgment entered in an appropriate action establishing the state's title to the dam, dam site, and flowage easement. If a county or other political subdivision of the state or combination desires to take over an abandoned dam, dam site, and flowage easement and maintain, operate, control, or dispose of the dam, dam site, and flowage easement for public purposes, the commissioner may convey the dam, dam site, and flowage easement from the state to the county or other political subdivision or combination.

History: *1990 c 391 art 7 s 53*

103G.555 STATUTE OF LIMITATIONS FOR ACTIONS AGAINST PUBLIC OFFICIALS.

An action or proceeding against the state, the commissioner, a county, or political subdivision or their officers or agents, relating to the taking over, construction, reconstruction, repair, improvement, maintenance, operation, or control of a dam subject to section 103G.551 and this section or the effects of water levels regulated, controlled, or maintained by a dam is barred unless the action is started within one year after the taking over or after the completion of the construction, reconstruction, repair, or improvement.

History: *1990 c 391 art 7 s 54*

103G.561 STATUTE OF LIMITATIONS FOR ACTIONS ON FLOWAGE EASEMENTS AND ORDINARY HIGH WATER LEVELS.

An action or proceeding that affects or seeks to adversely affect a perpetual flowage easement dedicated to the state for the use and benefit of the public as provided in section 103G.551, subdivision 2, or the maintaining or the right to maintain a reestablished natural ordinary high water level above the natural ordinary high water level of waters for which the state holds a perpetual flowage easement is barred unless the action or proceeding is commenced within one year from the date of the order of the commissioner determining the ordinary high water level of the waters under section 103G.551, subdivision 5.

History: *1990 c 391 art 7 s 55*

FLOWAGE EASEMENTS

103G.565 RIGHT TO OVERFLOW, OBSTRUCT, OR IMPAIR HIGHWAYS GRANTED BY GOVERNING BODY.

Subdivision 1. **Authority.** The governing body of a town or municipality may allow the overflow, obstruction, or impairment of a public street or other highway, or the digging of a

raceway in a public street or highway if it is necessary for creating, improving, or operating a waterpower.

Subd. 2. **Procedure.** (a) The waterpower must petition the governing body of the town or municipality where the street or highway is located for approval.

(b) The governing body of the town or municipality must post notice of the time, location, and purpose of the meeting on the petition for ten days. At the meeting, testimony may be taken. The governing body must make an order specifying the terms and conditions of the approval.

(c) The expenses of the meeting must be paid by the petitioner, whether the petition is granted or refused.

History: *1990 c 391 art 7 s 56*

103G.571 BANK REPAIR ON PROPERTY WHERE OVERFLOW RIGHTS ARE ACQUIRED.

Subdivision 1. **Right to repair.** If the right to overflow the property of another by means of a dam is acquired by condemnation or contract and afterwards the waters of the stream are diverted because the banks of the property overflowed break away, the owner of the dam may enter the property of the person where the right to overflow is acquired and repair the banks to restore the previous flow of the stream.

Subd. 2. **Damages of entry and repair.** The damages caused by entry and repair under subdivision 1 must be paid by the owner of the dam.

History: *1990 c 391 art 7 s 57*

103G.575 GRANT OF FLOWAGE EASEMENTS IN UPPER RED LAKE REGION.

The commissioner, on behalf of the state and with the approval of the governor, may grant flowage easements on state–owned land or tax–forfeited land in the region of Upper Red Lake upon the terms and conditions prescribed by the commissioner.

History: *1990 c 391 art 7 s 58*

WATER AERATION AND DEICING

103G.601 ICE–CUTTING FENCES AND GUARDS.

Subdivision 1. **Fence and guard requirement.** A person cutting ice in or on waters entirely or partly in the state to remove ice must surround the cuttings and openings with fences or guards sufficient to warn persons of the cutting before the cutting is started. The fence or guard must be maintained until the ice has formed in the openings to the thickness of at least six inches.

Subd. 2. **Penalty.** A person who fails to comply with this section is guilty of a misdemeanor.

History: *1990 c 391 art 7 s 59*

103G.605 DEICING WATER BODIES.

A county board, lake improvement district, or governing body of a municipality under section 459.20 may regulate the construction and use of mechanical and chemical means of deicing the body of water in a manner consistent with rules of the commissioner.

History: *1990 c 391 art 7 s 60*

103G.611 WATER AERATION SAFETY.

Subdivision 1. **Requirement.** A person operating an aeration system on public waters under a water aeration permit must comply with the sign posting requirements of this section and applicable rules of the commissioner.

Subd. 2. **Posting.** (a) If an aeration system is used on the ice of public waters, signs must be posted by the water aeration permittee at a height of from four to six feet in a rectangular

pattern at each corner of the open water, and additional signs between the corner signs so that a sign is posted at least every 100 feet.

(b) Additional signs must be posted by the permittee on the shoreline of the public waters at each public access point and other areas commonly used by the public for access to the lake.

(c) The signs must comply with the applicable rules of the commissioner.

Subd. 3. **Publication of notice.** Advance public notice of the commencement of any aeration system, authorized by a water aeration permit from the commissioner during periods of ice cover on public waters, must be given by the permittee. Minimum notice consists of publication of the location and date of commencement of the aeration system in a newspaper of general circulation in the area where the system is proposed to be operated at least two times between five and 60 days before aeration is started.

Subd. 4. **Evidence.** In an action for negligence arising out of the conduct of aeration operations authorized by a water aeration permit from the commissioner during periods of ice cover on public waters, evidence of compliance with the posting and publication requirements of this section and applicable rules and permit provisions of the commissioner are prima facie evidence of the exercise of due care by the permittee.

Subd. 5. **Water aeration rules.** The commissioner shall adopt rules relating to the issuance of permits for aeration, bubbler, water circulation, and similar systems used to increase dissolved oxygen or to maintain open water on the surface of public waters.

Subd. 6. **Public waters without access.** (a) A riparian landowner may aerate public waters with a permit under this subdivision if the public waters do not have a public access and the person aerating the public waters owns all of the riparian land or all of the possessory rights to the riparian lands.

(b) The provisions of this section do not apply to the aeration under this subdivision except the public waters must be posted as provided under subdivision 2, paragraphs (a) and (c).

History: *1990 c 391 art 7 s 61; 1995 c 218 s 18*

HARVEST AND CONTROL OF AQUATIC PLANTS

103G.615 PERMITS TO HARVEST OR DESTROY AQUATIC PLANTS.

Subdivision 1. **Authorization.** (a) The commissioner may issue permits, with or without a fee, to:

(1) gather or harvest aquatic plants, or plant parts, other than wild rice from public waters;

(2) transplant aquatic plants into public waters;

(3) destroy harmful or undesirable aquatic vegetation or organisms in public waters under prescribed conditions to protect the waters, desirable species of fish, vegetation, other forms of aquatic life, and the public.

(b) Application for a permit must be accompanied by a permit fee, if required.

Subd. 2. **Fees.** (a) The commissioner shall establish a fee schedule for permits to harvest aquatic plants other than wild rice, by order, after holding a public hearing. The fees may not exceed $200 per permit based upon the cost of receiving, processing, analyzing, and issuing the permit, and additional costs incurred after the application to inspect and monitor the activities authorized by the permit.

(b) The fee for a permit for chemical treatment of rooted aquatic vegetation may not exceed $20 for each contiguous parcel of shoreline owned by an owner. This fee may not be charged for permits issued in connection with lakewide Eurasian water milfoil control programs.

(c) A fee may not be charged to the state or a federal governmental agency applying for a permit.

(d) The money received for the permits under this subdivision shall be deposited in the treasury and credited to the game and fish fund.

Subd. 3. **Permit standards.** The commissioner shall, by rule, prescribe standards to issue and deny permits under this section. The standards must ensure that aquatic plant control is consistent with shoreland conservation ordinances, lake management plans and programs, and wild and scenic river plans.

History: *1990 c 391 art 7 s 62; 1992 c 462 s 18; 1993 c 235 s 4*

103G.617 [Repealed, 1996 c 385 art 2 s 8]

103G.621 COUNTY WEED AND ALGAE DESTRUCTION AND REMOVAL.

A county board, lake improvement district, or governing body of a municipality under section 459.20 may regulate the mechanical and chemical means of removal of weeds and algae from the body of water in a manner consistent with the rules of the commissioner.

History: *1990 c 391 art 7 s 64*

103G.625 MUNICIPAL CONTROL OF AQUATIC VEGETATION AND ORGANISMS.

Subdivision 1. **Authority.** The governing body of a municipality or town may expend funds for the control or destruction of harmful or undesirable aquatic vegetation or organisms in public waters and may cooperate with other governing bodies and landowners in the control or destruction.

Subd. 2. **Permit required.** The control or destruction of the aquatic vegetation or organisms may not be started unless a permit has been obtained from the commissioner under section 103G.615 and the work is done in accordance with the terms and conditions of the permit.

Subd. 3. **Funding.** (a) The governing body of a municipality or town may use any available funds and may levy a tax on all taxable property in the municipality or town to implement this section.

(b) To provide funds in advance of collection of the tax levies, the governing body may, at any time after the tax has been levied and certified to the county auditor for collection, issue certificates of indebtedness in anticipation of the collection and payment of the tax. The total amount of the certificates, including principal and interest, may not exceed 90 percent of the amount of the levy and must become payable from the proceeds of the levy not later than two years from the date of issuance. The certificates shall be issued on terms and conditions as the governing body may determine and sold as provided in section 475.60.

(c) If the governing body determines that an emergency exists, it may make appropriations from the proceeds of the certificates for authorized purposes without complying with statutory or charter provisions requiring that expenditures be based on a prior budget authorization or other budgeting requirement.

(d) The proceeds of a tax levied or an issue of certificates of indebtedness must be deposited in a separate fund and expended only for purposes authorized by this section. If a disbursement is not made from the fund for a period of five years, money remaining in the fund may be transferred to the general fund.

History: *1990 c 391 art 7 s 65; 1994 c 505 art 3 s 3*

STREAMS

103G.701 STREAM MAINTENANCE PROGRAM.

Subdivision 1. **Establishment.** The commissioner shall establish a stream maintenance program. The program must include grants–in–aid to participating counties.

Subd. 2. **Application.** A county desiring to participate in the stream maintenance program must submit an application for the proposed work to the commissioner on forms provided by the commissioner. Unless waived by the commissioner, the county must submit the following information with its application:

(1) a map of the county showing the stream and the specific reaches of the stream to be maintained;

(2) photographs showing the nature and extent of the maintenance problem; and

(3) a resolution by the county board of commissioners asking to participate in the program and agreeing to provide at least 25 percent of the cost of the maintenance project.

Subd. 3. **Contract.** After approving a stream maintenance project, the commissioner shall contract with the county for performance of work necessary to do the project. The contract may provide that the county share of the cost of the project is paid in the form of services provided by the county.

Subd. 4. **Eligible projects.** The commissioner may grant money for:

(1) cutting and removal of brush and dead or downed trees; and

(2) removal of large rocks and other debris such as concrete, asphalt, or scrap material.

Subd. 5. **Grants.** (a) The commissioner must apportion grant money according to the relative severity of the maintenance problem, the date of application for the grant, and the availability of funds.

(b) A grant may not exceed 75 percent of the total cost of a stream maintenance project.

(c) Money may not be disbursed for excavation, filling, or for work performed until an application for the project is filed with the commissioner.

(d) The stream maintenance work must be performed by the county or under county supervision.

Subd. 6. **County matching funds.** A county may appropriate from its general revenue fund sufficient funds to match the grants–in–aid authorized in this section.

History: *1990 c 391 art 7 s 66*

103G.711 STATE'S OWNERSHIP OF BED OF NAVIGABLE RIVER.

The ownership of the bed and the land under the waters of all rivers in the state that are navigable for commercial purposes are in the state in fee simple, subject only to the regulations made by the United States with regard to the public navigation and commerce and the lawful use by the public while on the waters.

History: *1990 c 391 art 7 s 67*