

CHAPTER 103F

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GENERAL PROVISIONS

103F 001 EFFECT OF CHAPTER 103F ON WATER LAW

This chapter and chapters 103A, 103B, 103C, 103D, 103E, and 103G constitute the water law of this state and may be cited as the Water Law

History 1990 c 391 art 6 s 1

FLOODPLAIN MANAGEMENT

103F 101 CITATION

Sections 103F 101 to 103F 155 may be cited as the Floodplain Management Law

History 1990 c 391 art 6 s 2

103F 105 FLOODPLAIN MANAGEMENT POLICY

(a) The legislature finds

(1) a large portion of the state's land resources is subject to recurrent flooding by overflow of streams and other watercourses causing loss of life and property, disruption of commerce and governmental services, unsanitary conditions, and interruption of transportation and communications, all of which are detrimental to the health, safety, welfare, and property of the occupants of flooded lands and the people of this state, and

(2) the public interest necessitates sound land use development as land is a limited and irreplaceable resource, and the floodplains of this state are a land resource to be developed in a manner which will result in minimum loss of life and threat to health, and reduction of private and public economic loss caused by flooding

(b) It is the policy of this state to reduce flood damages through floodplain management, stressing nonstructural measures such as floodplain zoning and flood-proofing, flood warning practices, and other indemnification programs that reduce public liability and expense for flood damages

(c) It is the policy of this state

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

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

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

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

(5) to provide incentives for communities to participate in the national flood insurance program and for citizens of Minnesota to take actions such as purchasing and maintaining flood insurance to reduce future flood damage to private property

History 1990 c 391 art 6 s 3, 2Sp1997 c 2 s 17

103F 111 DEFINITIONS

Subdivision 1 **Applicability** The definitions in this section apply to sections 103F 111 to 103F 165

Subd 2 **Commissioner** Commissioner means the commissioner of natural resources

Subd 3 **Flood fringe** "Flood fringe" means the portion of the floodplain outside of the floodway

Subd 4 **Floodplam** "Floodplam" means the areas adjoining a watercourse or water basin that have been or may be covered by a regional flood

Subd 5 **Floodway** "Floodway" means the channel of the watercourse, the bed of water basins, and those portions of the adjoining floodplains that are reasonably required to carry and discharge floodwater and provide water storage during a regional flood

Subd 6 **Local governmental unit** "Local governmental unit" means a county, statutory or home rule charter city, town, watershed district, or lake improvement district

Subd 7 **Mitigation** "Mitigation" means the act of alleviating the effects of floods and flooding by moderating or reducing the severe damages resulting from floods through structural and nonstructural flood management measures

Subd 8 **Mitigation measures** "Mitigation measures" means structural or non-structural flood management measures, or both

Subd 9 **Nonstructural flood management measures** "Nonstructural flood management measures" means actions in floodplains designed to reduce the damaging effects of floods on existing and potential users of floodplains, without physically altering the flood behavior Nonstructural flood management measures include

- (1) public acquisition of floodplain lands,
- (2) relocation of public and private structures and facilities,
- (3) floodproofing of public and private facilities,
- (4) installation and operation of flood warning systems and evacuation procedures,
- (5) adoption and enforcement of land use control ordinances and building codes,
- (6) installation of signs and other notifications in regional flood areas, and
- (7) provision of flood insurance and public education

Subd 10 **Regional flood** "Regional flood" means a flood that is representative of large floods known to have occurred generally in the state and reasonably characteristic of what can be expected to occur on an average frequency in the magnitude of a 100-year recurrence interval

Subd 11 **Structural flood management measures** "Structural flood management measures" means physical actions taken to modify the behavior and extent of floods and flooding including the construction of dams, dikes levees flood bypass channels floodwater storage and retardation structures and water level control structures, excluding deepening or straightening of existing stream channels

Subd 12 **Waterbasin** "Waterbasin" has the meaning given it by section 103G 005, subdivision 16

History 1990 c 391 art 6 s 4

103F 115 PRIORITY FOR REDUCTION OF FLOOD DAMAGE

Floodplain management ordinances are to be given primary consideration in the reduction of flood damage in the state and alternative methods for reducing flood damage may not be carried out before adoption of floodplain management ordinances by local governmental units Structural projects which have the purpose of controlling floods are to be considered only as elements of a floodplain management program

History 1990 c 391 art 6 s 5

103F 121 FLOODPLAIN MANAGEMENT ORDINANCES

Subdivision 1 **Adoption** (a) In accordance with sections 103F 101 to 103F 155, the rules of the commissioner and applicable laws authorizing local governmental units to adopt floodplain management ordinances, local governmental units shall adopt administer, and enforce floodplain management ordinances, which must include

- (1) the delineation of floodplains and floodways,

(2) the preservation of the capacity of the floodplain to carry and discharge regional floods,

(3) the minimization of flood hazards, and

(4) the regulation of the use of land in the floodplain

(b) The ordinances shall be based on adequate technical data and competent engineering advice and shall be consistent with local and regional comprehensive planning

Subd 2 Adoption procedure (a) The commissioner, upon determining that sufficient technical information is available for the delineation of floodplains and floodways on a watercourse, shall notify affected local governmental units that technical information is available. Within six months after receiving this notice, the local governmental units shall prepare or amend their floodplain management ordinances in conformance with the provisions of sections 103F 101 to 103F 155 and shall submit the ordinance to the commissioner for review and approval before adoption

(b) The commissioner shall approve or disapprove the proposed ordinance within 120 days after receiving it

(c) If the proposed ordinance is disapproved, the commissioner shall return it to the local governmental unit with a written statement of reasons for disapproval. Within 90 days after disapproval, the local governmental unit shall resubmit an amended proposed ordinance for further review and approval before adoption. The local governmental unit shall adopt a floodplain management ordinance within 90 days after approval by the commissioner

(d) A floodplain management ordinance adopted by a local governmental unit is invalid unless it is approved by the commissioner

(e) A local governmental unit may adopt a floodplain management ordinance in the absence of notification by the commissioner that the required technical data is available, provided that any such ordinance is submitted to the commissioner prior to its adoption for approval

(f) A local governmental unit may adopt a floodplain management ordinance that is more restrictive than required under sections 103F 101 to 103F 155

(g) Floodplain management ordinances may be amended by a local governmental unit upon the approval of the commissioner

Subd 3 Commissioner's adoption of ordinance (a) If a local governmental unit fails to adopt a floodplain management ordinance, the commissioner shall adopt an ordinance that meets the minimum standards established under section 103F 141 for the local governmental unit

(b) The commissioner shall hold at least one public hearing on the proposed ordinance in the manner provided in section 394 26 or 462 357, as applicable, after giving notice as provided in section 394 26 or 462 357

(c) The ordinance is effective for the local governmental unit on the date and in accordance with rules prescribed by the commissioner

(d) The ordinance shall be enforced as provided in section 394 37 or 462 362, as applicable. The penalties provided in section 394 37 or 462 362 apply to violations of an ordinance adopted by the commissioner

Subd 4 Cost of commissioner's ordinance (a) The cost incurred by the commissioner in adopting a floodplain management ordinance for the local governmental unit shall be paid by the local governmental unit upon submission to the local governmental unit of an itemized statement of these costs by the commissioner

(b) If the local governmental unit fails to pay the costs within 90 days after the commissioner's statement is received, the commissioner shall file a copy of the statement of the costs for collection by special tax levy with the county auditor of the county where the local governmental unit is located. The county auditor, upon receiving a statement from the commissioner, shall include the amount of the state's

claim in the tax levy for general revenue purposes of the local governmental unit. Upon completion of the tax settlement following this levy, the county treasurer shall remit the amount due to the state to the commissioner for deposit in the state treasury.

Subd 5 Major alterations and hazardous uses prohibited (a) If a floodplain has been delineated by a floodplain management ordinance under sections 103F 101 to 103F 155, a major alteration to a structure in existence on the effective date of the ordinance or a new fill, structure, deposit, or other floodplain use that is unreasonably hazardous to the public or that unduly restricts the capacity of the floodplain to carry and discharge a regional flood may not be permitted after the effective date of the ordinance delineating the floodplain.

(b) As used in this subdivision, major alterations of existing structures do not include repair or maintenance and do not include repairs, maintenance, or alterations to structures made under the authority of another authorized agency of the state or federal government.

(c) This subdivision does not apply to alterations, repair, or maintenance reasonably done under emergency circumstances to preserve or protect life or property.

(d) This subdivision applies to alterations to existing structures and to new fill, structures, deposits, or other floodplain uses by the state and state agencies.

History 1990 c 391 art 6 s 6, 1991 c 199 art 2 s 1

103F 125 CONSIDERATION OF INDUSTRIAL USES IN FLOODPLAIN

The commissioner in promulgating guidelines under section 103F 141 and local governmental units in preparing floodplain management ordinances shall give due consideration to the needs of an industry whose business requires that it be located within a floodplain.

History 1990 c 391 art 6 s 7

103F 131 AMUSEMENT PARK EXEMPTION

(a) An amusement park that exists before a floodplain is delineated by a floodplain management ordinance is exempt from the requirements of sections 103F 101 to 103F 155 if the amusement park continues to be used as an amusement park within the amusement park boundaries.

(b) Notwithstanding any other law, the state is not liable for any damage from flooding to an amusement park operating in a floodplain under this subdivision.

History 1990 c 391 art 6 s 8

103F 135 COMMISSIONER'S ASSISTANCE AND INSPECTIONS

Subdivision 1 Commissioner's duties The commissioner shall

(1) collect and distribute information relating to flooding and floodplain management,

(2) coordinate local, state, and federal floodplain management activities to the greatest extent possible, and encourage the United States Army Corps of Engineers and the United States Soil Conservation Service to make their flood control planning data available to local governmental units for planning purposes, to allow adequate local participation in the planning process and in the selection of desirable alternatives,

(3) assist local governmental units in their floodplain management activities, and

(4) do all other things, within lawful authority, that are necessary or desirable to manage the floodplain for beneficial uses compatible with the preservation of the capacity of the floodplain to carry and discharge the regional flood.

Subd 2 Inspections In cooperation with local governmental units, the commissioner shall conduct, whenever possible, periodic inspections to determine the effective-

ness of local floodplain management programs, including an evaluation of the enforcement of and compliance with local floodplain management ordinances

History 1990 c 391 art 6 s 9, 1993 c 163 art 1 s 11

103F 141 RULES

Subdivision 1 **Authority and criteria** The commissioner shall adopt rules to implement sections 103F 101 to 103F 155, including

(1) criteria for determining the floodplain uses that may be permitted without creating an unreasonable public hazard or unduly restricting the capacity of the floodplain to carry and discharge a regional flood,

(2) variance procedures, and

(3) the establishment of criteria for alternative or supplemental floodplain management measures such as floodproofing subdivision rules, building codes, sanitation rules, and flood warning systems

Subd 2 [Repealed, 2Sp1997 c 2 s 32]

History 1990 c 391 art 6 s 10

103F 145 ENFORCEMENT AND PENALTIES

Subdivision 1 **Uses in violation of ordinance are public nuisances** Every structure, fill, deposit, or other floodplain use placed or maintained in the floodplain in violation of a floodplain management ordinance adopted under the provisions of sections 103F 105 to 103F 155 is a public nuisance

Subd 2 **Civil remedies** The creation of a public nuisance under this section may be enjoined and the maintenance of a public nuisance under this section may be abated by an action brought by the commissioner or a local governmental unit

Subd 3 **Criminal penalties** A person who violates a provision of sections 103F 105 to 103F 155 is guilty of a misdemeanor Each day that the violation exists is a separate offense

History 1990 c 391 art 6 s 11

103F 151 FLOOD PRONE AREA INVENTORY AND ASSESSMENT

The commissioner shall conduct a statewide inventory and flood damage assessment of flood prone structures and lands

History 1990 c 391 art 6 s 12

103F 155 FLOOD PROTECTION PLANS

Subdivision 1 **Construction of flood protection measures** If emergency flood protection measures are undertaken, the affected local governmental unit shall submit to the commissioner a plan outlining their use as a part of a future comprehensive flood emergency program The plan shall be submitted within 120 days after construction

Subd 2 **Commissioner's review** (a) The commissioner shall review the plan and consult with the state office of civil defense and other appropriate state and federal agencies Following the review, the commissioner shall accept, require modification, or reject the plan

(b) If required modifications are not made, or if the plan is rejected, the commissioner shall order the removal of the emergency protection measures and shall not provide grant money under section 103F 161 until the plan is approved or the required modifications are made

History 1990 c 391 art 6 s 13, 1998 c 401 s 36

103F 161 FLOOD HAZARD MITIGATION GRANTS

Subdivision 1 **Grants authorized** (a) The commissioner may make grants to local governments to

(1) conduct floodplain damage reduction studies to determine the most feasible, practical, and effective methods and programs for mitigating the damages due to flooding within flood prone rural and urban areas and their watersheds, and

(2) plan and implement flood mitigation measures

(b) The commissioner may cooperate with the North Dakota state water commission, local governmental units, and local water management organizations in this state and in North Dakota, and the United States Army Corps of Engineers to develop hydrologic models and conduct studies to evaluate the practicality and feasibility of flood control measures along the Red river from East Grand Forks to the Canadian border. The commissioner may make grants to local governmental units for these purposes. Flood control measures that may be investigated include agricultural and urban levee systems, wetland restoration, floodwater impoundments, farmstead ring dikes, and stream maintenance activities.

Subd 2 **Action on grant applications** (a) A local government may apply to the commissioner for a grant on forms provided by the commissioner. The commissioner shall confer with the local government requesting the grant and may make a grant up to \$150,000 based on the following considerations:

(1) the extent and effectiveness of mitigation measures already implemented by the local government requesting the grant,

(2) the feasibility, practicality, and effectiveness of the proposed mitigation measures and the associated nonflood related benefits and detriments,

(3) the level of grant assistance that should be provided to the local government, based on available facts regarding the nature, extent, and severity of flood problems,

(4) the frequency of occurrence of severe flooding that has resulted in declaration of the area as a flood disaster area by the President of the United States,

(5) the economic, social, and environmental benefits and detriments of the proposed mitigation measures,

(6) whether the floodplain management ordinance or regulation adopted by the local government meets the minimum standards established by the commissioner, the degree of enforcement of the ordinance or regulation and whether the local government is complying with the ordinance or regulation,

(7) the degree to which the grant request is consistent with local water plans developed under chapters 103B and 103D,

(8) the financial capability of the local government to solve its flood hazard problems without financial assistance, and

(9) the estimated cost and method of financing of the proposed mitigation measures based on local money and federal and state financial assistance.

(b) If the amount of the grant requested is \$150,000 or more, the commissioner shall determine, under the considerations in paragraph (a), whether any part of the grant should be awarded. The commissioner must submit an appropriation request to the governor and the legislature for funding consideration before each odd numbered year, consisting of requests or parts of grant requests of \$150,000 or more. The commissioner must prioritize the grant requests, under the considerations in paragraph (a), beginning with the projects the commissioner determines most deserving of financing.

(c) A grant may not exceed one half the total cost of the proposed mitigation measures.

(d) After July 1, 1991, grants made under this section may be made to local governments whose grant requests are part of, or responsive to, a comprehensive local water plan prepared under chapter 103B or 103D.

Subd 3 **Red river basin flood mitigation projects** Notwithstanding subdivision 2, a grant for implementation of a flood hazard mitigation project in the Red river basin that is consistent with the 1998 mediation agreement and approved by the Red river flood damage reduction work group may be for up to 75 percent of the cost of the proposed mitigation measures for the Agassiz Audubon, North Ottawa, Hay creek, and Thief river subwatershed projects

History 1990 c 391 art 6 s 14, 1994 c 627 s 1, 1998 c 401 s 37, 2000 c 492 art 1 s 41

103F 165 FLOOD INSURANCE

Subdivision 1 **Policy** It is the policy of the state that local governmental units subject to recurrent flooding participate in the national flood insurance program, Public Law Number 90 448, and amendatory and supplementary acts, so that the people of the state may have the opportunity to indemnify themselves from future flood losses through the purchase of the insurance

Subd 2 **List of recurrent flooding areas** The commissioner shall prepare a list of local governmental units having areas subject to recurrent flooding and shall notify each local governmental unit included on the list of the findings. If a local governmental unit objects to the commissioner's findings, it shall submit evidence supporting its objections within 45 days after receiving the commissioner's notification. The commissioner shall accept or reject the findings of each local governmental unit submitting evidence, shall prepare an amended list of local governmental units having areas subject to recurrent flooding, and shall notify each local governmental unit of its inclusion on the amended list

Subd 3 **Application for flood insurance** Within 120 days after receiving notice of inclusion on the amended list, each local governmental unit shall apply for participation in the national flood insurance program in the manner prescribed by federal laws and regulations

History 1990 c 391 art 6 s 15

SOUTHERN MINNESOTA RIVERS BASIN AREA II

103F 171 SOUTHERN MINNESOTA RIVERS BASIN AREA II BOUNDARIES

For the purposes of sections 103F 171 to 103F 187, the term southern Minnesota rivers basin area II means the area within the watersheds of rivers and streams that are tributaries of the Minnesota River from the south between the cities of Ortonville and Mankato. Major rivers included within the watershed are the Yellow Bank, Lac Qui Parle, Yellow Medicine, Redwood, and Cottonwood. All of Lac Qui Parle, Yellow Medicine, and Redwood counties, and parts of Lincoln, Lyon, Pipestone, Murray, Cottonwood, and Brown counties are included within the boundaries of the area

History 1990 c 391 art 6 s 16

103F 173 PROGRAM

There shall be a state grant in aid pilot program of providing financial assistance to units of local government, including counties, soil and water conservation districts, and watershed districts, located in the southern Minnesota river basin area II for project and construction costs for the building of floodwater retarding and retention structures within a general plan for floodplain management

History 1990 c 391 art 6 s 17

103F 175 AID FORMULA

Grants may be made by the board of water and soil resources to a local governmental unit for the purposes of sections 103F 171 to 103F 187 in an amount not to exceed 75 percent of the total cost of each project, including site acquisition, engineering, and construction. If federal funds are being utilized for a portion of the project costs, the state contribution may not exceed 50 percent of the remaining

nonfederal costs If the structure is located in the state of South Dakota, the two states shall share the nonfederal costs equally Money granted by the state may not be used for any project of stream channelization

History 1990 c 391 art 6 s 18

103F 177 OPERATION WITHIN AGENCY

Subdivision 1 **Board of water and soil resources** The board of water and soil resources shall supervise the grant-in-aid pilot program pursuant to sections 103F 171 to 103F 187

Subd 2 **Procedures and forms** The board shall devise procedures and forms for application for grants by the local units of government, and review of and decision on the applications by the state board

Subd 3 **Staff position** A professional engineer shall be employed by the board to work exclusively on the technical implementation and engineering of the pilot project established pursuant to sections 103F 171 to 103F 187 The engineer shall assist the local units of government and the board to achieve the purposes of the project, and shall have duties including

- (1) field review and analysis of projects and project sites,
- (2) preparation of permit applications, including evaluation of environmental effects,
- (3) development of recommended pertinent provisions of permits for specific projects,
- (4) preparation of plans for further consideration of remedial flood control structural measures as part of a general rural floodplain management effort, and
- (5) evaluation of the effectiveness of completed projects constructed under this program

History 1990 c 391 art 6 s 19

103F 179 SELECTION OF PROJECTS

Subdivision 1 **Evaluation of area and sites, federal cooperation** Before a grant is made, a priority system shall be devised for the selection of projects to receive the aid The board of water and soil resources is the granting authority and shall cooperate with the United States Army Corps of Engineers, the department of natural resources, the United States Soil Conservation Service and the area II action committee in analysis of the general floodplain management plan for the area and in hydrological and engineering studies on specific proposed sites From that information, the board of water and soil resources shall determine the relative severity of the flooding problem which would be wholly or partly solved by each project The range of priorities based on these findings shall provide a basis for selection of project sites

Subd 2 **Project requirement for each watershed** Notwithstanding the requirement in subdivision 1 that project selection be based on a priority system, not more than one project may be located within any one of the Cottonwood, Lac Qui Parle, Redwood, Yellow Medicine, and Yellow Bank rivers' watersheds unless agreed upon by the area II action committee composed of representatives of each of those watersheds

History 1990 c 391 art 6 s 20

103F 181 CONDITIONS FOR GRANTS

Subdivision 1 **Local expression of willingness** The local unit of government shall apply for a grant by a resolution requesting state funding assistance for the construction of a floodwater retention or retarding structure within its jurisdiction The resolution shall include provisions concerning local funding, if any The local unit of government shall state its intent to obtain necessary land rights for proposed construction sites and to assume responsibility for maintenance of the structure on its completion

Subd 2 **General plan** The local unit of government shall demonstrate that the construction project that it proposes is consistent with its general plan for floodplain management. The general plan of the local government unit shall be in conformity with the policy and objectives of this chapter and shall, where reasonable and practicable, include nonstructural means of floodplain management.

Subd 3 **Federal aid availability** The board of water and soil resources shall complete a detailed analysis of the availability of federal funds and programs to supplement or complement state and local efforts on each project and include the eligibility requirements and time frame for receiving the federal aid.

Subd 4 **Environmental impact statement** The local unit of government, assisted by the project staff engineer, shall make a comprehensive evaluation of the positive and negative environmental effects which would be reasonably likely to take place if the particular proposed project would be constructed.

History 1990 c 391 art 6 s 21

103F 183 APPROVED PROJECTS

Subdivision 1 **Contracts** When a proposed project is approved to receive a grant, the board of water and soil resources shall negotiate a contract with the local unit of government involved. The contract shall specify the terms of state and local cooperation, including the financing arrangement for the construction and an agreement on maintenance of the structure after completion.

Subd 2 **Permits** Before grant money is spent on construction of the structure, permits required for construction must be obtained from state agencies.

History 1990 c 391 art 6 s 22

103F 185 INTERSTATE COOPERATION

The board of water and soil resources and the staff engineer may enter into a working agreement with the South Dakota Minnesota boundary waters commission, or successor organization, in regard to flood retention and retarding structures constructed pursuant to sections 103F 171 to 103F 187 that involve territory of the state of South Dakota as well as this state.

History 1990 c 391 art 6 s 23

103F 187 REPORT TO LEGISLATURE

When the project has been in operation for a period of two years, the board of water and soil resources and the staff engineer shall prepare and deliver a report to the legislature on the program and its consequences with an evaluation of the feasibility and benefit of continuing the project.

History 1990 c 391 art 6 s 24

SHORELAND DEVELOPMENT

103F 201 REGULATORY PURPOSE OF SHORELAND DEVELOPMENT

To promote the policies in section 103A 201 and chapter 116, it is in the interest of the public health, safety, and welfare to

- (1) provide guidance for the wise development of shorelands of public waters and thus preserve and enhance the quality of surface waters,
- (2) preserve the economic and natural environmental values of shorelands, and
- (3) provide for the wise use of water and related land resources of the state.

History 1990 c 391 art 6 s 25

103F 205 DEFINITIONS

Subdivision 1 **Applicability** The definitions in this section apply to sections 103F 201 to 103F 221.

Subd 2 **Commissioner** ‘Commissioner’ means the commissioner of natural resources

Subd 3 **Municipality** “Municipality” means a statutory or home rule charter city

Subd 4 **Shoreland** “Shoreland” means land located within the following distances from the ordinary high water elevation of public waters

(1) land within 1,000 feet from the normal high watermark of a lake, pond, or flowage, and

(2) land within 300 feet of a river or stream or the landward side of a floodplain delineated by ordinance on the river or stream, whichever is greater

History 1990 c 391 art 6 s 26

103F 211 MODEL STANDARDS AND CRITERIA

Subdivision 1 **Adoption** The commissioner shall adopt model standards and criteria for the subdivision, use, and development of shoreland in municipalities and areas outside of a municipality. The standards and criteria must include

- (1) the area of a lot and length of water frontage suitable for a building site,
- (2) the placement of structures in relation to shorelines and roads,
- (3) the placement and construction of sanitary and waste disposal facilities,
- (4) designation of types of land uses,
- (5) changes in bottom contours of adjacent public waters,
- (6) preservation of natural shorelands through the restriction of land uses,
- (7) variances from the minimum standards and criteria, and
- (8) for areas outside of a municipality only, a model ordinance

Subd 2 **Intergovernmental advice** The state departments of agriculture, health, and trade and economic development, the state planning and pollution control agencies, the board of water and soil resources, and the Minnesota historical society shall provide information and advice necessary to prepare or amend the standards and criteria

Subd 3 **Approval of commissioners of health and pollution control agency** In addition to other requirements of chapter 14, the model standards and ordinance adopted under this section, or amendments to them must not be finally adopted unless approved by the commissioners of health and of the pollution control agency

History 1990 c 391 art 6 s 27

103F 215 MODEL ORDINANCE AS COUNTY ORDINANCE

Subdivision 1 **County ordinance failing to meet standards** The commissioner shall adapt the model ordinance to a county if, after notice and hearing as provided in section 103G 311, the commissioner finds that a county has failed to adopt a shoreland conservation ordinance or that a county has adopted a shoreland conservation ordinance that fails to meet the minimum standards established under section 103F 211

Subd 2 **Hearing** The commissioner shall hold at least one public hearing on the proposed ordinance in the manner provided in section 394 26, after giving notice as provided in section 394 26. The ordinance is effective for the county on the date and in accordance with any rules the commissioner prescribes, by order, relating to compliance

Subd 3 **Enforcement** The ordinance must be enforced as provided in section 394 37. The penalties provided in section 394 37 apply to violations of the commissioner’s model ordinance for the county

Subd 4 **Commissioner’s costs** The cost incurred by the commissioner in adapting the model ordinance to a county under this section must be paid by the county after the commissioner submits an itemized statement of the costs to the county. If the county fails to pay the costs within 90 days after the commissioner’s statement is

received, the commissioner may file a copy of the statement of the costs for collection by special tax levy with the county auditor. The county auditor, upon receiving a statement from the commissioner, shall include the amount of the state's claim in the tax levy for general revenue purposes of the county. On completion of the tax settlement following this levy, the county treasurer must pay the amount due to the state to the commissioner for deposit in the state treasury.

History 1990 c 391 art 6 s 28, 1991 c 199 art 1 s 17, 1995 c 218 s 1

103F 221 MUNICIPAL SHORELAND MANAGEMENT

Subdivision 1 Commissioner's review of ordinances (a) A municipality having shoreland within its corporate boundaries must submit ordinances or rules affecting the use and development of its shorelands to the commissioner for review. The commissioner must review the ordinances or rules and

(1) determine whether the rules and ordinances are in substantial compliance with municipal shoreland management standards and criteria under section 103F 211, and

(2) consider any feature unique to the municipal shoreland in question, including the characteristics of the waters that may be affected by development, storm sewer facilities, and sanitary and waste disposal facilities in existence at the time of the commissioner's review.

(b) If the commissioner determines that the ordinances or rules of a municipality do not substantially comply with the state standards and criteria for municipal shoreland management, the commissioner must notify the municipality. The notice must state the changes that are necessary to bring the ordinances or rules into substantial compliance with the standards and criteria. By one year after receiving the notice from the commissioner, the municipality must make changes necessary to bring the ordinances or rules into substantial compliance with state standards and criteria.

Subd 2 Commissioner's adoption of ordinance for municipality (a) The commissioner may adopt an ordinance or rules for the municipality if

(1) a municipality does not have an ordinance or rule affecting the use and development of shoreland

(2) the corporate boundaries of the municipality are expanded to include shorelands not previously included within the municipal boundaries and the municipality fails to adopt an ordinance within one year after including the shorelands within its municipal boundaries, or

(3) the commissioner determines that a municipal shoreland management ordinance does not substantially comply with the standards and criteria for municipal shoreland management and that the municipality has failed to make the necessary changes within one year after receiving notice of noncompliance.

(b) The ordinance or rules for the municipality must be adopted as provided in this paragraph. The commissioner must hold at least one public hearing on the proposed ordinance or rules in the manner provided in section 462 357, after giving notice under section 462 357. The ordinance or rules are effective for the municipality on the date and in accordance with rules prescribed by the commissioner relating to compliance.

(c) The ordinance must be enforced as provided in section 462 362. The penalties in section 462 362 apply to violations of the ordinances or rules adopted for the municipality by the commissioner.

Subd 3 Commissioner's cost of adopting ordinances The costs incurred by the commissioner in adopting the ordinances or rules for the municipality must be paid by the municipality and collected from the municipality in the same manner as costs are paid by a county and collected from a county under section 103F 215, subdivision 4.

Subd 4 Municipal use of land other than shoreland Municipal planning and land use controls for land other than shoreland in the vicinity of shoreland must be, to the

maximum extent practical, compatible with planning and land use controls for shore land adopted under subdivision 1

Subd 5 Municipal ordinance may be more restrictive A municipality may adopt and enforce ordinances or rules affecting the use and development of shoreland that are more restrictive than the standards and criteria adopted by the commissioner

History 1990 c 391 art 6 s 29, 1992 c 511 art 5 s 4, 1995 c 218 s 2

WILD AND SCENIC RIVERS ACT

103F 301 CITATION

Sections 103F 301 to 103F 345 may be cited as the "Minnesota Wild and Scenic Rivers Act"

History 1990 c 391 art 6 s 30

103F 305 SCENIC RIVER PROTECTION POLICY

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

History 1990 c 391 art 6 s 31

103F 311 DEFINITIONS

Subdivision 1 Applicability The definitions in this section apply to sections 103F 311 to 103F 345

Subd 2 Commissioner "Commissioner" means the commissioner of natural resources

Subd 3 Free-flowing "Free flowing" means existing in natural condition without significant artificial modification such as impoundment, diversion, or straightening. The existence, however, of low dams, diversion works or other minor structures at the time any river is proposed for inclusion does not automatically bar its inclusion as a wild, scenic, or recreational river

Subd 4 Recreational rivers "Recreational rivers" are those rivers that may have undergone some impoundment or diversion in the past and may have adjacent lands that are considerably developed, but that are still capable of being managed so as to further the purposes of sections 103F 301 to 103F 345

Subd 5 River "River" means a flowing body of water such as a stream or a segment or tributary of a stream and may include lakes through which the river or stream flows

Subd 6 Scenic easement "Scenic easement" means an interest in land, less than the fee title, that limits the use of the land to protect the scenic, recreational, or natural characteristics of a wild, scenic, or recreational river area. Unless otherwise expressly and specifically provided by the parties, the easement must be

- (1) perpetually held for the benefit of the people of the state,
- (2) specifically enforceable by its holder or any beneficiary,
- (3) binding upon the holder of the servient estate, and the holder's heirs, successors, and assigns, and
- (4) restricted so as not to give the holder or any beneficiary the right to enter on the land except for enforcement of the easement

Subd 7 Scenic rivers "Scenic rivers" are those rivers that exist in a free-flowing state and with adjacent lands that are largely undeveloped

Subd 8 System "System" means the state wild and scenic rivers system

Subd 9 **Wild rivers** "Wild rivers" are those rivers that exist in a free-flowing state, with excellent water quality, and with adjacent lands that are essentially primitive

History 1990 c 391 art 6 s 32

103F 315 WILD AND SCENIC RIVERS SYSTEM

Subdivision 1 **Eligibility** An entire river or a segment of a river and adjacent lands in this state that possess outstanding scenic, recreational, natural, historical, scientific, or similar values are eligible for inclusion within the Minnesota wild and scenic rivers system

Subd 2 **Classification** Rivers or segments of rivers included within the system shall be classified as wild, scenic, or recreational

History 1990 c 391 art 6 s 33

103F 321 ADMINISTRATION AND RULES

Subdivision 1 **Administration** The commissioner shall administer the wild and scenic rivers system. The commissioner shall conduct studies, develop criteria for classification and designation of rivers, designate rivers for inclusion within the system, manage the components of the system, and adopt rules to manage and administer the system

Subd 2 **Shoreland rules** (a) The commissioner shall adopt statewide minimum standards and criteria for the preservation and protection of shorelands within the boundaries of wild, scenic, and recreational rivers

(b) The standards and criteria may include

(1) the matters covered in the commissioner's standards and criteria for shoreland areas, as provided in sections 103F 201 to 103F 221, except that the distance limitations contained in sections 103F 201 to 103F 221 do not apply to standards and criteria for wild, scenic, and recreational rivers,

(2) furtherance of the purposes of sections 103F 301 to 103F 345 and of the classifications of rivers, and

(3) application to the local governments as specified in sections 103F 201 to 103F 221

History 1990 c 391 art 6 s 34

103F 325 DESIGNATION PROCEDURE

Subdivision 1 **Management plan** (a) For each river proposed to be included in the wild and scenic rivers system, the commissioner shall prepare a management plan, without unreasonable restrictions upon compatible, preexisting, economic uses of particular tracts of land, to preserve and enhance the values that cause the river to be proposed for inclusion in the system

(b) The plan shall

(1) give primary emphasis to the area's scenic, recreational, natural, historical, scientific and similar values,

(2) state the proposed classification of the river and segments of the river,

(3) designate the boundaries of the area along the river to be included within the system, which may not include more than 320 acres per mile on both sides of the river, and

(4) include proposed rules governing the use of public lands and waters within the area, which may differ from statewide rules to the extent necessary to take account of the particular attributes of the area

(c) The plan may include proposed standards and criteria adopted under section 103F 321 for local land use controls that differ from statewide standards and criteria to the extent necessary to take account of the particular attributes of the area

Subd 2 Review and hearing (a) The commissioner shall make the proposed management plan available to affected local governmental bodies, shoreland owners, conservation and outdoor recreation groups, the commissioner of trade and economic development, the commissioner of public service, the governor, and the general public. The commissioner of trade and economic development and of public service and the governor shall review the proposed management plan in accordance with the criteria in section 86A 09, subdivision 3, and submit any written comments to the commissioner within 60 days after receipt of the proposed management plan.

(b) By 60 days after making the information available, the commissioner shall conduct a public hearing on the proposed management plan in the county seat of each county that contains a portion of the designated system area, in the manner provided in chapter 14.

Subd 3 Post hearing review Upon receipt of the administrative law judge's report, the commissioner shall immediately forward the proposed management plan and the administrative law judge's report to the commissioner of trade and economic development and of public service for review under section 86A 09, subdivision 3, except that the review by the commissioner must be completed or be deemed completed within 30 days after receiving the administrative law judge's report, and the review by the governor must be completed or be deemed completed within 15 days after receipt.

Subd 4 Designation of river as part of system Within 60 days after receipt of the administrative law judge's report, the commissioner shall decide whether to designate by order the river or a segment of the river as a wild, scenic, or recreational river and, if so designated, shall adopt a management plan to govern the area. The commissioner shall notify and inform public agencies and private landowners of the plan and its purposes to encourage their cooperation in the management and use of their land in a manner consistent with the plan and its purposes.

Subd 5 Reservation of legislative authority The legislature may at any time designate additional rivers to be included within the system, exclude rivers previously included in the system, or change the classification of rivers classified by the commissioner.

History 1987 c 186 s 15, 1990 c 391 art 6 s 35

103F 331 ACQUISITION AND DEVELOPMENT OF SYSTEM

Subdivision 1 Acquisition authority To implement the system, the commissioner may acquire the title, scenic easements, or other interests in land, by purchase, grant, gift, devise, exchange, lease, or other lawful means.

Subd 2 Development of public areas The commissioner may designate and develop appropriate areas of public land along wild, scenic, and recreational rivers as water waysides for facilities compatible with the class of river, including, as appropriate, primitive campsites, picnic sites, portages, water access sites, sanitation facilities, and interpretive display.

Subd 3 Canoe and boating routes (a) The commissioner may mark canoe and boating routes along a wild, scenic, or recreational river, consistent with the classification and characteristics of the river, including points of interest, portages, campsites, dams, rapids, waterfalls, whirlpools, and other hazards to navigation.

(b) Canoe routes, boating routes, campsites, and portages marked under this subdivision are not subject to the provisions of section 160 06.

Subd 4 Additional designation as trout stream The commissioner may designate all or a portion of a state wild, scenic, or recreational river that possesses the necessary qualifications as a state trout stream, and make habitat improvement as may be necessary, desirable, and consistent with the classification of the river.

History 1990 c 391 art 6 s 36

103F 335 LOCAL GOVERNMENT COMPLIANCE

Subdivision 1 Compliance of ordinances with system (a) Within six months after establishment of a wild, scenic, or recreational river system, each local governmental unit with jurisdiction over a portion of the system shall adopt or amend its ordinances and land use district maps to the extent necessary to comply with the standards and criteria of the commissioner and the management plan

(b) If a local government fails to adopt adequate ordinances, maps, or amendments within six months, the commissioner shall adopt the ordinances, maps, or amendments in the manner and with the effect specified in section 103F 215

(c) The commissioner shall assist local governments in the preparation, implementation, and enforcement of the ordinances

Subd 2 Local governmental units must implement system All state, local and special governmental units, councils, commissions, boards, districts, agencies, departments, and other authorities shall exercise their powers to implement the purposes of sections 103F 301 to 103F 345 and management plans adopted by the commissioner

Subd 3 Land transfers consistent with system plan Land owned by the state and political subdivisions shall be administered in accordance with the management plan, and land owned by governmental bodies within the designated boundaries of a wild, scenic, or recreational river area may not be transferred to any other person or entity if the transfer would be inconsistent with the management plan

History 1990 c 391 art 6 s 37

103F 341 FEDERAL STATE RELATIONS

Sections 103F 301 to 103F 345 do not preclude a river in the state system from becoming a part of the federal wild and scenic rivers system as established in the Wild and Scenic Rivers Act, Public Law Number 90 542, United States Code, title 16 section 1271 et seq, as amended The commissioner is authorized to seek, alone or in conjunction with other governmental authorities, financial and technical assistance from the federal government and to enter into written cooperative agreements for the joint administration of a river in the federal wild and scenic rivers system

History 1990 c 391 art 6 s 38

103F 345 CONFLICT WITH OTHER LAWS

A river in the wild and scenic rivers system is subject to the provisions of sections 103F 301 to 103F 345, except that in case of conflict with some other law of this state the more protective provision shall apply

History 1990 c 391 art 6 s 39

LOWER ST CROIX RIVER**103F 351 LOWER ST CROIX WILD AND SCENIC RIVER ACT**

Subdivision 1 Findings The lower St Croix River, between the dam near Taylors Falls and its confluence with the Mississippi River, constitutes a relatively undeveloped scenic and recreational asset lying close to the largest densely populated area of the state The preservation of this unique scenic and recreational asset is in the public interest and will benefit the health and welfare of the citizens of the state The state recognizes and concurs in the inclusion of the lower St Croix River into the federal wild and scenic rivers system by the Lower St Croix River Act of the 92nd Congress, Public Law Number 92 560 The authorizations of the state are necessary to the preservation and administration of the lower St Croix River as a wild and scenic river, particularly in relation to those portions of the river that are to be jointly preserved and administered as a wild and scenic river by this state and Wisconsin

Subd 2 Comprehensive master plan (a) The commissioner of natural resources shall join with the secretary of the United States Department of the Interior and the

appropriate agency of the state of Wisconsin in the preparation of the comprehensive master plan relating to boundaries, classification, and development required by section 3 of the Lower St Croix River Act of 1972, and by section 3(b) of the Wild and Scenic Rivers Act, Public Law Number 90-542

(b) The commissioner shall make the proposed comprehensive master plan available to affected local governmental bodies, shoreland owners, conservation and outdoor recreation groups, and the general public

(c) Not less than 30 days after making the information available, the commissioner shall conduct a public hearing on the proposed comprehensive master plan in the county seat of each county which contains a portion of the area covered by the comprehensive master plan, in the manner provided in chapter 14

Subd 3 Acquisition of land and easements The commissioner of natural resources may acquire land, scenic easements, or other interests in land by gift, purchase, or other lawful means, and may acquire scenic easement interests in land by eminent domain. The acquisitions must be proposed for acquisition by the state by the comprehensive master plan

Subd 4 Rules (a) The commissioner of natural resources shall adopt rules that establish guidelines and specify standards for local zoning ordinances applicable to the area within the boundaries covered by the comprehensive master plan

(b) The guidelines and standards must be consistent with this section, the federal Wild and Scenic Rivers Act, and the federal Lower St Croix River Act of 1972. The standards specified in the guidelines must include

(1) the prohibition of new residential, commercial, or industrial uses other than those that are consistent with the above mentioned acts, and

(2) the protection of riverway lands by means of acreage, frontage, and setback requirements on development

(c) Cities, counties, and towns lying within the areas affected by the guidelines shall adopt zoning ordinances complying with the guidelines and standards within the time schedule prescribed by the commissioner

Subd 5 Administration The commissioner of natural resources in cooperation with appropriate federal authorities and authorities of the state of Wisconsin shall administer state lands and waters in conformance with this section, the federal Wild and Scenic Rivers Act, and the federal Lower St Croix River Act of 1972

History 1990 c 391 art 6 s 40

MISSISSIPPI HEADWATERS PLANNING AND MANAGEMENT

103F 361 FINDINGS AND INTENT

Subdivision 1 Findings The legislature finds that

(1) the Mississippi River from its outlet at Lake Itasca, Clearwater county, to the southerly boundary of Morrison county, Minnesota, possesses outstanding and unique natural, scientific, historical, recreational and cultural values deserving of protection and enhancement,

(2) the counties of Clearwater, Hubbard, Beltrami, Cass, Itasca, Aitkin, Crow Wing, and Morrison have entered into a joint powers agreement pursuant to law to develop a plan for the protection and enhancement of the foregoing values, and

(3) the plan adopted by the counties pursuant to the joint powers agreement establishes guidelines and minimum standards for cooperative local management of this segment of the Mississippi River

Subd 2 Legislative intent It is the intent of sections 103F 361 to 103F 377 to authorize and direct the board and the counties to implement the plan for the Mississippi headwaters area

History 1990 c 391 art 6 s 41, 1992 c 476 s 1

MINNESOTA STATUTES 2000

103F 363 APPLICABILITY

Subdivision 1 **Generally** Sections 103F 361 to 103F 377 apply to the counties of Clearwater, Hubbard, Beltrami, Cass, Itasca, Aitkin, Crow Wing, and Morrison

Subd 2 **Leech Lake Indian Reservation** Sections 103F 361 to 103F 377 do not alter or expand the zoning jurisdiction of the counties within the exterior boundaries of the Leech Lake Indian Reservation The plan and the county ordinances adopted pursuant to section 103F 369, subdivision 4, apply only to areas within the zoning jurisdiction of the counties as provided by law in effect prior to May 20, 1981

History 1990 c 391 art 6 s 42, 1992 c 476 s 2

103F 365 DEFINITIONS

Subdivision 1 **Applicability** The definitions in this section apply to sections 103F 361 to 103F 377

Subd 2 **Board** Board" means the Mississippi headwaters board established under section 103F 367

Subd 3 **Counties** "Counties" means the counties of Clearwater, Hubbard, Beltrami, Cass, Itasca, Aitkin, Crow Wing, and Morrison

Subd 4 **Plan** Plan" means the comprehensive land use plan approved by the board and dated July 1, 1992

History 1990 c 391 art 6 s 43, 1992 c 476 s 3

103F 367 MISSISSIPPI HEADWATERS BOARD

Subdivision 1 **Establishment** The Mississippi headwaters board established by the counties of Clearwater, Hubbard, Beltrami, Cass, Itasca, Aitkin, Crow Wing, and Morrison by agreement entered into on February 22, 1980, pursuant to section 471 59, is established as a permanent board with authority to prepare, adopt, and implement a comprehensive land use plan designed to protect and enhance the Mississippi River and related shoreland areas situated within the counties

Subd 2 **Membership** (a) The board shall consist of eight members The governing body of each county shall appoint one of its members to serve on the board

(b) The terms of board members are two years commencing on the first Monday in January of odd-numbered years

(c) Vacancies on the board shall be filled for the remainder of the term by the governing body that made the original appointment

(d) The governing body of a county may designate another member of the governing body or a county officer to act as an alternate for the member appointed by that county

Subd 3 **Officers** (a) The board shall annually appoint from among its members a chair, vice-chair, and secretary-treasurer who shall serve for concurrent one-year terms

(b) The chair shall preside over all meetings of the board and may call special meetings at reasonable times and upon adequate notice when necessary

(c) The vice chair shall preside over the meetings of the board in the absence of the chair

(d) The secretary-treasurer or the designee of the secretary treasurer shall keep a record of all proceedings of the board The secretary treasurer shall provide for the proper receipt and disbursement of funds

Subd 4 **Meetings** (a) The regular meetings of the board shall be held at times and places prescribed by it

(b) A majority of all members of the board shall constitute a quorum and a majority vote of all members shall be required for actions taken by the board

Subd 5 **Staff and contracts** The board may employ staff and contract for goods and services as necessary to implement sections 103F 361 to 103F 377. Contracts are subject to the statutory procedures and restrictions applicable to county contracts.

Subd 6 **Funding** The board shall annually submit to each county for its approval an estimate of the funds it will need from that county in the next fiscal year to prepare and implement the plan and otherwise carry out the duties imposed upon it by sections 103F 361 to 103F 377. Each county shall, upon approval of the estimate by its governing body, furnish the necessary funds to the board. The board may apply for, receive, and disburse federal, state, and other grants and donations.

Subd 7 **Advisory committees** The board shall appoint advisory committees, representing a broad geographical area and diverse public interests, and conduct public meetings and hearings necessary to afford the public an opportunity to become fully informed of all deliberations in the preparation and implementation of the plan.

Subd 8 **Contact with government agencies** The board shall initiate and maintain contacts with governmental agencies as necessary to properly prepare the plan and shall negotiate cooperative management agreements with the United States Forest Service and Bureau of Land Management and the state department of natural resources. The board, Beltrami, Cass, Hubbard, and Itasca counties shall initiate and maintain contacts with the governing body of the Leech Lake Indian Reservation and shall negotiate a cooperative management and jurisdiction agreement with the reservation governing body.

History 1990 c 391 art 6 s 44, 1992 c 476 s 4

103F 369 PLAN IMPLEMENTATION

Subdivision 1 **Implementation required** The plan shall be implemented by the board as provided in this section and section 103F 373.

Subd 2 **Plan provides minimum standards** The standards set forth in the plan are the minimum standards which may be adopted by the board and by the counties for the protection and enhancement of the natural, scientific, historical, recreational and cultural values of the Mississippi River and related shoreland areas subject to the plan. Except for forest management, fish and wildlife habitat improvement, a veterans cemetery that complies with subdivision 5, and open space recreational uses as defined in the plan, state or county lands within the boundaries established by the plan may not be offered for public sale or lease. The board with the agreement, expressed by resolution adopted after public hearing, of the county boards of Clearwater, Hubbard, Beltrami, Cass, Itasca, Aitkin, Crow Wing, and Morrison counties may amend the plan in any way that does not reduce the minimum standards set forth in the plan.

Subd 3 **Implementation** The board shall develop and establish a schedule for implementation and common administration of the plan by the counties. The schedule shall be binding upon the counties subject to approval by the governing bodies of the respective counties.

Subd 4 **County land use ordinance must be consistent with plan** The counties shall adopt land use ordinances consistent with the plan.

Subd 5 **Veterans cemetery** A veterans cemetery may be located within the boundaries established by the plan if a site plan approved by the county zoning authority addresses each of the following items:

- (1) the name of the cemetery,
- (2) a legal description of the property affected,
- (3) names and addresses of applicant, owner, surveyor, and designer of the plan,
- (4) graphic scale,
- (5) an arrow depicting north on the plan,
- (6) date of preparation of the plan,
- (7) total acreage of property,

- (8) square footage for each proposed site,
- (9) existing soil conditions, depth of water table, and topographic contours,
- (10) roads and proposed roads showing right of way widths,
- (11) proposed location and type of on-site sanitary treatment facilities and domestic water supply,
- (12) accessory facilities, existing or to be constructed, by type and location,
- (13) all streams, creeks, ponds, wetlands, and swamps,
- (14) burial only on site with no embalming or other related activities on site,
- (15) no placement of graves or accessory facilities within the designated flood plain, and
- (16) each burial must be in a vault or an appropriate liner as determined by the board

History 1990 c 391 art 6 s 45, 1991 c 158 s 1,2, 1992 c 476 s 5-7

103F 371 RESPONSIBILITIES OF OTHER GOVERNMENTAL UNITS

All local and special governmental units, councils, commissions, boards and districts and all state agencies and departments must exercise their powers so as to further the purposes of sections 103F 361 to 103F 377 and the plan Land owned by the state, its agencies, and political subdivisions shall be administered in accordance with the plan

Actions that comply with the land use ordinance are consistent with the plan Actions that do not comply with the ordinance may not be started until the board has been notified and given an opportunity to review and comment on the consistency of the action with this section

History 1990 c 391 art 6 s 46, 1992 c 476 s 8

103F 373 REVIEW AND CERTIFICATION OF LAND USE ACTIONS

Subdivision 1 Purpose To assure that the plan is not nullified by unjustified exceptions in particular cases and to promote uniformity in the treatment of applications for exceptions, a review and certification procedure is established for the following categories of land use actions taken by the counties and directly or indirectly affecting land use within the area covered by the plan

- (1) the adoption or amendment of an ordinance regulating the use of land, including rezoning of particular tracts of land,
- (2) the granting of a variance from provisions of the land use ordinance, and
- (3) the approval of a plat which is inconsistent with the land use ordinance

Subd 2 Certification Notwithstanding any provision of chapter 394 to the contrary, an action of a type specified in subdivision 1, clauses (1) to (3), is not effective until the board has reviewed the action and certified that it is consistent with the plan In determining consistency of ordinances and ordinance amendments, the provisions of the plan shall be considered minimum standards An aggrieved person may appeal a decision of the type specified in subdivision 1, clauses (1) to (3), that is reviewed by the board under this section in the same manner as provided for review of a decision of a board of adjustment in section 394 27, subdivision 9, but only after the procedures prescribed under this section have been completed

Subd 3 Procedure for certification A copy of the notices of public hearings or, when a hearing is not required, a copy of the application to consider an action of a type specified in subdivision 1, clauses (1) to (3), must be forwarded to the board by the county at least 15 days before the hearing or meetings to consider the actions The county shall notify the board of its final decision on the proposed action within ten days of the decision By 30 days after the board receives the notice, the board shall notify the county and the applicant of its approval or disapproval of the proposed action

Subd 4 Disapproval of actions (a) If a notice of disapproval is issued by the board, the county or the applicant may, within 30 days of the notice, file with the board a demand for a hearing. If a demand is not filed within the 30 day period, the disapproval becomes final.

(b) If a demand is filed within the 30 day period, a hearing must be held within 60 days of demand. The hearing must be preceded by two weeks' published notice. Within 30 days after the hearing, the board must

- (1) affirm its disapproval of the proposed action, or
- (2) certify approval of the proposed action.

History 1990 c 391 art 6 s 47, 1992 c 476 s 9,10

103F 375 INCORPORATION AND ANNEXATION

Subdivision 1 Moratorium on certain activities If land subject to the plan is annexed, incorporated, or otherwise subjected to the land use planning authority of a home rule charter or statutory city, a moratorium shall exist on

(1) all subdivision platting and building permits on the land until zoning regulations are adopted for the land that comply with the provisions of the plan, and

(2) construction, grading and filling, and vegetative cutting as those activities are defined in the plan.

Subd 2 Exception for work under prior permits This section does not apply to work done pursuant to lawful permits issued before the land became subject to the land use planning authority of the city.

History 1990 c 391 art 6 s 48, 1992 c 476 s 11

103F 377 BIENNIAL REPORT

During the first year of each biennial legislative session, the board shall prepare and present to the appropriate policy committees of the legislature a report concerning the actions of the board in exercising the authority granted by the legislature under sections 103F 361 to 103F 377. The report must include an assessment of the effectiveness of the plan and its implementation in protecting and enhancing the natural, scientific, historical, recreational, and cultural values of the Mississippi River and related shorelands situated within the member counties.

History 1990 c 391 art 6 s 49, 1992 c 476 s 12

MINNESOTA RIVER BASIN JOINT POWERS BOARD

103F 378 MINNESOTA RIVER BASIN JOINT POWERS BOARD

Subdivision 1 Duties The Minnesota river basin joint powers board, established under section 471 59 for the purpose of coordinating efforts to improve water quality in the Minnesota river and achieving the goal of making the Minnesota river suitable for fishing and swimming by the year 2005, has the following duties:

(1) coordination of comprehensive cleanup goals for the Minnesota river by coordinating the work plans of the 12 major watersheds and the member counties of the joint powers board, state agencies, and the University of Minnesota in cleanup efforts and submission of periodic river cleanup plans for submission to the governor and the legislature,

(2) advising on the development and use of monitoring and evaluation systems in the Minnesota river and the incorporation of the data obtained from these systems into the planning process,

(3) conducting public meetings of the board on at least a quarterly basis at locations within the Minnesota river basin,

(4) conducting an ongoing information and education program concerning the status of the Minnesota river, including an annual conference on the state of the Minnesota river,

(5) providing periodic reports and budget requests to the governor's office and the chairs of the agriculture and environment and natural resources committees of the senate and the house of representatives regarding progress on meeting river water quality management goals and future funding required for this effort,

(6) advising on the development of projects within the 12 major watersheds that are scientifically sound, have landowner support, and reduce inputs of pollutants into the Minnesota river basin, and

(7) administering the distribution of project implementation funds for the 12 major watersheds by approving projects, identifying matching components for each project, and tracking the results achieved for each project

Subd 2 Membership Upon acceptance of the joint powers agreement, each member county that agrees to join the board shall have one county commissioner as its delegate to the board and one county commissioner as an alternate. A technical and citizen advisory committee shall be established to advise the board consisting of a technical representative from each of the counties in the basin and citizens who are not county employees but who have an interest in agriculture, conservation, sporting activities, and other relevant areas as determined by the board

History 1996 c 407 s 43, 1997 c 216 s 92

PROJECT RIVERBEND

103F 381 FINDINGS

The legislature finds that the Minnesota River from the city of Franklin in Renville county to Le Sueur in Le Sueur county possesses outstanding scenic, recreational, natural, historical, scientific, and similar values. Because it is in the interest of present and future generations to retain these values, the legislature finds that the adoption and implementation of a comprehensive land use plan is necessary

History 1990 c 391 art 6 s 50

103F 383 DEFINITIONS

Subdivision 1 Applicability The definitions in this section apply to sections 103F 383 to 103F 393

Subd 2 Board "Board" means the project riverbend board

Subd 3 Counties "Counties" means the counties of Renville, Redwood, Brown, Nicollet, Blue Earth, and Le Sueur except as otherwise provided in Laws 1982, chapter 627, section 7

History 1990 c 391 art 6 s 51

103F 385 BOARD

Subdivision 1 Establishment The project riverbend board is established under Laws 1982, chapter 627

Subd 2 Members (a) Except as provided in Laws 1982, chapter 627, section 7, the board shall consist of six members, one each from the counties of Renville, Redwood, Brown, Nicollet, Blue Earth, and Le Sueur

(b) The members shall be appointed by their respective county boards for a term of two years

Subd 3 Chair The board shall select a chair, who shall preside at meetings and hearings and may call special meetings

Subd 4 Procedural rules and records The board shall adopt rules for the transaction of its business and shall keep a public record of its transactions, findings, and determinations

Subd 5 **Quorum** A majority of all members of the board constitutes a quorum and a majority vote of all members is required for the board to take any action pursuant to section 103F 389

Subd 6 **Staff and funds** The counties shall supply staff and funds to the board as may be necessary for its operation

History 1986 c 444, 1990 c 391 art 6 s 52

103F 387 COMPREHENSIVE PLAN

(a) The comprehensive plan known as "Project Riverbend Fifth Draft, June 1981" shall be implemented by the board and the counties as provided in sections 103F 383 to 103F 393. The counties shall adopt land use ordinances consistent with the plan. The standards set forth in the plan are the minimum standards that may be adopted by the board and the counties. The board may amend the comprehensive land use plan in any way that does not reduce the minimum standards set forth in the plan.

(b) The board shall develop and establish a schedule for implementation and administration of the plan by the counties. The schedule shall be binding on the counties subject to approval by the governing bodies of the respective counties.

History 1990 c 391 art 6 s 53

103F 389 REVIEW AND CERTIFICATION OF LAND USE ACTIONS

Subdivision 1 **Land use actions covered** To ensure that the comprehensive land use plan is not nullified by unjustified exceptions in particular cases and to promote uniformity in the treatment of applications for exceptions, a review and certification procedure is established for the following categories of land use actions taken by the counties and directly or indirectly affecting land use within the area covered by the plan:

- (1) the adoption or amendment of an ordinance regulating the use of land, including rezoning of a particular tract of land,
- (2) the granting of a variance from provisions of the land use ordinances, and
- (3) the approval of a plat which is inconsistent with the land use ordinance.

Subd 2 **Land use actions must be consistent with plan** (a) Notwithstanding any contrary provision of chapter 394, an action of a type specified in subdivision 1, clauses (1) to (3), is not effective until the board has reviewed the action and certified that it is consistent with the comprehensive plan of the board.

(b) In determining consistency of ordinances and ordinance amendments, the provisions of the comprehensive land use plan shall be considered minimum standards. An aggrieved person may appeal a decision of the type specified in subdivision 1, clauses (1) to (3), which is reviewed by the board under this section in the manner provided for review of a decision of a board of adjustment under section 394 27, subdivision 9, but only after the procedures prescribed under this section have been completed.

Subd 3 **Procedure for certification** (a) A copy of all notices of public hearings or, when a hearing is not required, a copy of the application to consider any actions of a type specified in subdivision 1, clauses (1) to (3), must be forwarded to the board by the county at least ten days prior to the hearing or meetings to consider the land use actions.

(b) The county shall notify the board of its final decision on the proposed action within ten days of the decision.

(c) By 30 days from the time it receives the notice, the board shall notify the county and the applicant of its approval or disapproval of the proposed action.

Subd 4 **Disapproval of actions** (a) If the board issues a notice of disapproval, either the county or the applicant may, within 30 days of notice, file a demand for a hearing with the board.

(b) If a demand is not filed during that period, the disapproval becomes final

(c) If a demand is filed within the 30 day period, a hearing shall be held within 60 days of demand and shall be preceded by two weeks' published notice. Within 30 days after the hearing, the board shall either affirm its disapproval of the proposed action or certify its approval

History 1990 c 391 art 6 s 54

103F 391 RESTRICTIONS ON LAND INCORPORATED OR ANNEXED

(a) If land subject to the comprehensive land use plan of the board is annexed, incorporated, or otherwise subjected to the land use planning authority of a home rule charter or statutory city, a moratorium shall exist on all subdivision platting and building permits on that land until zoning regulations are adopted for the land that comply with the provisions of the comprehensive plan of the board

(b) The moratorium shall also apply to construction, grading and filling, and vegetative cutting as those activities are defined in the comprehensive plan

(c) This section does not apply to work done pursuant to lawful permits issued before the land became subject to the land use planning authority of the city

History 1990 c 391 art 6 s 55

103F 393 BIENNIAL REPORT

During the first year of each biennial legislative session, the board shall prepare and present to the appropriate policy committees of the legislature a report concerning the actions of the board in exercising the authority granted by the legislature under sections 103F 383 to 103F 393. The report shall include an assessment of the effectiveness of the board's comprehensive land use plan and its implementation in protecting and enhancing the outstanding scenic, recreational, natural, historical, scientific, and similar values of the Minnesota River and related shorelands situated within the member counties

History 1990 c 391 art 6 s 56

SOIL EROSION

103F 401 DEFINITIONS

Subdivision 1 Applicability The definitions in this section apply to sections 103F 401 to 103F 455

Subd 2 Conservation plan "Conservation plan" means a set of practices that will decrease soil erosion to the soil loss limits on a particular parcel of land

Subd 3 Conservation practices "Conservation practices" means practices and standards containing a definition, purpose, and conditions that the practice applies including design requirements and specifications containing a statement of details required for installing a conservation practice, including kinds, quality, and quantity of work and materials needed to meet the standards. A conservation practice may be a permanent or temporary, vegetative or structural measure that will aid the control of wind and water erosion. Permanent practices are those that have effective life greater than ten years and include grassed waterways, terraces, field windbreaks, water control structures, grade stabilization structures, sediment retention structures, strip cropping, and other permanent practices approved by the board of water and soil resources. Temporary practices include conservation tillage, contour farming, grasses and legumes in rotation, emergency tillage, and any other cultural practices approved by the board of water and soil resources

Subd 4 Development activity "Development activity" means a physical disturbance of the land, that may result in sedimentation of adjacent lands or waters, associated with activities that include clearing, grading, excavating, transporting, and filling lands. Road construction by federal, state, county, and municipal governments

designed according to department of transportation standard specifications for construction are not development activities

Subd 5 **Erosion** "Erosion" means any process that removes soil away from the surface of the land by the action of water, wind, or gravity

Subd 6 **Excessive soil loss** "Excessive soil loss" means soil loss that is greater than the soil loss limits. Excessive soil loss may be evidenced by sedimentation on adjoining land or in a body of water

Subd 7 **Land occupier** "Land occupier" means a person, firm, corporation, municipality, or other legal entity that holds title to or is in possession of lands, as owner, lessee, or otherwise. Land occupier' includes both the owner and the occupier of the land if they are not the same

Subd 8 **Local government** "Local government" means the elected governing body of a county, home rule charter or statutory city, or town, or their designated agents. Agents may include soil and water conservation districts, water management organizations, joint powers boards, watershed districts, and other governmental entities responsible for resource management within the local government's jurisdiction

Subd 9 **Sediment** "Sediment" means solid mineral or organic material that is in suspension, is being transported, or has been moved from its original location by air, water, gravity, or ice, and has been deposited at another location

Subd 10 **Soil** "Soil" means the unconsolidated mineral and organic material on the immediate surface of the earth that serves as natural medium for the growth of land plants

Subd 11 **Soil loss limit** "Soil loss limit" means the maximum amount of soil loss from water or wind erosion, expressed in tons per acre per year, that is allowed by local regulations on a particular soil

Subd 12 **Technical guide** "Technical guide" means the guide developed by the United States Soil Conservation Service and adopted by soil and water conservation districts containing technical information including methods and procedures by which the various types of erosion can be measured, and conservation practice standards and specifications required in the application of soil and water conservation practices

History 1990 c 391 art 6 s 57

103F 405 SOIL LOSS ORDINANCES

Subdivision 1 **Authority** Each statutory or home rule charter city, town, or county that has planning and zoning authority under sections 366 10 to 366 19, 394 21 to 394 37, or 462 351 to 462 365 is encouraged to adopt a soil loss ordinance. The soil loss ordinance must use the soil loss tolerance for each soil series described in the United States Soil Conservation Service Field Office Technical Guide to determine the soil loss limits, but the soil loss limits must be attainable by the best practicable soil conservation practice. Ordinances adopted by local governments within the metropolitan area defined in section 473 121 must be consistent with local water management plans adopted under section 103B 235

Subd 2 **Agents of local governments** A local government that adopts a soil loss ordinance may enter an agreement with its agent allowing the agent to administer the functions and perform the duties of the local government as provided by sections 103F 401 to 103F 455

History 1990 c 391 art 6 s 58, art 10 s 3

103F 411 MODEL ORDINANCE

Subdivision 1 **Authority** The board of water and soil resources, in consultation with counties, soil and water conservation districts, and other appropriate agencies, shall adopt a model ordinance and rules that serve as a guide for local governments to implement sections 103F 401 to 103F 455 and provide administrative procedures for the board for sections 103F 401 to 103F 455

Subd 2 **Model ordinance** The model ordinance must specify the technical and administrative procedures required to control soil loss and erosion. The model ordinance is the minimum regulation to be adopted. The model ordinance must use the soil loss tolerance for each soil series described in the United States Soil Conservation Service Field Office Technical Guide to determine soil loss limits, but the soil loss limits must be attainable by the best practicable soil conservation practice.

Subd 3 **Periodic review** At least once every five years the board shall review the rules and model ordinance in cooperation with counties, soil and water conservation districts, and appropriate agencies to ensure their continued applicability and relevance.

History 1990 c 391 art 6 s 59

103F 415 EXCESSIVE SOIL LOSS PROHIBITED

Subdivision 1 **Prohibited activities** A person may not cause, conduct, contract for, or authorize an activity that causes excessive soil loss.

Subd 2 **Agricultural land** A land occupier of agricultural land is not violating subdivision 1 if the occupier is farming by methods that implement the best practicable conservation practices.

Subd 3 **Woodland** A land occupier who uses wooded land for pasture must ensure that proper management is used to prevent excessive soil loss due to overgrazing or cattle paths.

History 1990 c 391 art 6 s 60

103F 421 ENFORCEMENT

Subdivision 1 **Complaint** (a) An adversely affected landowner, an elected or appointed official of the local government, or a soil and water conservation district board member may submit a written complaint to the local government if conditions exist that indicate there is excessive soil loss from a tract of land that affects another tract of land or body of water. The written complaint must contain

- (1) the name and address of the landowner whose land is causing excessive soil loss,
- (2) the location of the tract of land with the excessive soil loss,
- (3) a description of land or water that is affected by the excessive soil loss, and
- (4) a description of the nature of the excessive soil loss and resulting sedimentation.

(b) The local government shall submit the complaint to the soil and water conservation district for soil loss determination.

Subd 2 **District determination of soil loss** (a) The soil and water conservation district shall determine the average soil loss in tons per acre per year of the tract of land cited in the complaint.

(b) Representatives of the soil and water conservation district may enter public or private land to make an inspection for the determination of soil loss or to complete the report required by paragraph (c). The landowners must be notified of the time of the inspection and be given an opportunity to be present when the inspection is made.

(c) The soil and water conservation district shall submit a report to the local government that states the average soil loss in tons per acre per year for each tract of land and whether the soil loss is excessive under the applicable soil loss limits. If the soil loss is excessive the report must include identification of existing management practices and a conservation plan and time schedule that will prevent excessive soil loss or reduce the soil loss to the most practicable extent.

Subd 3 **Mediation** (a) If the soil and water conservation district report shows that soil loss from the tract of land is excessive and alternative practices are available to reduce the soil loss, the local government shall request the allegedly offending landowner to participate in mediation with the local government.

(b) The local government may appoint the planning and zoning director, a planning commissioner, or other county official to act as a mediator. The local government may also contract with a mediation center to provide mediation services.

(c) The landowner and the local government or its agent must attempt to agree on conservation practices and times to implement the practice that will reduce soil loss to the local soil loss limits.

(d) A mediated settlement must be in writing and filed with the local government.

(e) If the local government and the landowner do not agree to a mediated settlement, or if the landowner refuses to participate in mediation, the local government shall forward the complaint to the county attorney. The county attorney may dismiss the complaint or petition for a hearing under section 103F 425.

Subd 4 Application for cost sharing funds. The landowner has 90 days after a mediated settlement is filed to apply for state cost sharing funds that will provide 75 percent of the cost of the permanent conservation practices. Only 50 percent of the cost share will be provided if the application is not made within 90 days after the settlement is filed. The landowner must apply for 50 percent of the cost share within 270 days after the mediated settlement is filed.

Subd 5 Penalty. A landowner that does not comply with the provisions of the mediated settlement is subject to a civil penalty up to \$500. Soil conservation practices that are made in good faith and substantial compliance are a complete defense.

History 1990 c 391 art 6 s 61

103F 425 DISTRICT COURT HEARING

Subdivision 1 Determination of proper conservation plan. If the landowner and the local government do not agree to a mediated settlement or if the landowner has refused mediation, the county attorney may petition the district court for a hearing. The landowner shall have the opportunity to present the landowner's conservation plan and time schedule as an alternative to the local government conservation plan and time schedule. The court shall order the landowner to implement the conservation plan and time schedule that is the least burdensome to the landowner and will reduce soil loss to at least the soil loss limit. The court may amend the local government's or landowner's conservation plan and time schedule or develop a new conservation plan and time schedule. The court shall set times to implement, make satisfactory progress, and complete the conservation plan.

Subd 2 Cost sharing funds. (a) If the court orders implementation of the landowner's conservation plan and time schedule, or amends the conservation plan and time schedule, or if the court develops a new conservation plan and time schedule, the landowner is eligible to apply for 75 percent cost share funds for permanent conservation practices. The landowner must apply for the cost share within 90 days after the court order. If the landowner does not apply within 90 days for the cost sharing funds the cost share is reduced to 50 percent. The court shall establish a time after which the landowner is no longer eligible for cost sharing funds if an application is not made.

(b) If the court orders a plan and time schedule developed by the district in its report, the landowner is eligible for 50 percent cost share if the landowner applies within 90 days after the court order.

History 1990 c 391 art 6 s 62

103F 431 SOIL AND WATER CONSERVATION ASSISTANCE

A landowner who has filed a mediated settlement under section 103F 421 or who has received a court order under section 103F 425 may request the soil and water conservation district to assist in the planning, design, and application of practices necessary to reduce soil loss to the applicable soil loss limit amounts or to the greatest

practical extent The soil and water conservation district must give the landowner a high priority for technical and cost sharing assistance

History 1990 c 391 art 6 s 63

103F 435 ATTORNEY AND LOCAL GOVERNMENT MAY PERFORM DUTY OF COUNTY

The city attorney or town attorney may perform the duties of a county attorney A city or town may perform the duties of a local government only if the city or town adopts a soil loss ordinance and the land specified in the complaint is located within the city or town

History 1990 c 391 art 6 s 64

103F 441 EROSION CONTROL PLAN FOR DEVELOPMENT ACTIVITIES

Subdivision 1 **Sedimentation control plan** (a) A person engaged in a development activity that will disturb over one acre of land must submit a sedimentation control plan and time schedule that will prevent excessive soil loss to the local government having jurisdiction over the land before the development activity is to begin

(b) A sedimentation control plan and time schedule must specify how the movement of soil and damage to other property during the construction will be minimized, including the use of temporary seeding, fiber mats, plastic, straw, mulch, sediment control basins, and other measures to prevent erosion and sediment damage The time schedule must establish deadlines for the implementation and completion of each phase or element of the sedimentation control plan

Subd 2 **Permit required** The local government may appoint the zoning and planning director, building inspector, county engineer, or the soil and water conservation district to review the plan and time schedule If the sedimentation control plan and time schedule will prevent excessive soil loss to the most practicable extent, the local government must issue a permit that authorizes the development activity contingent upon the implementation and completion of the sedimentation control plan

Subd 3 **Penalty** A person engaged in a development activity who does not obtain a sedimentation control plan permit or does not commence or complete the plan or make satisfactory progress to complete the plan is subject to a civil penalty Soil conservation practices made in good faith and substantial compliance are a defense

Subd 4 **Application** For counties, the provisions of this section apply only to county jurisdiction over unincorporated areas

History 1990 c 391 art 6 s 65

103F 445 COST-SHARING FUNDS

Subdivision 1 **Cost-share required** Except for a development activity, a land occupier may not be required to establish soil conservation practices unless state cost-sharing funds have been specifically approved for that land and have been made available to the land occupier under sections 103F 421 and 103F 425, equal to at least 75 percent of the cost of the permanent conservation practices on a voluntary basis, or a 50 percent cost share if an application for cost share is not made within 90 days after the board approves a mediated written agreement or within 90 days after the court orders implementation of a plan and time schedule prepared by the landowner or the court For mediated settlements, a court order that implements the landowner's alternatives or the court's alternatives must state the time schedule for application for 50 percent cost share If the court orders implementation of the district's plan and time schedule, a landowner is eligible only for 50 percent cost share

Subd 2 **Review of requirements** The board of water and soil resources shall review these requirements at least once each year and may authorize a district to provide a higher percentage of cost sharing than is required by this section To aid in this determination, the board may consider the location of the affected area in relation

to the priority areas as established in the soil and water conservation district annual and long range plans

Subd 3 **Recording** The permanent conservation practices must be recorded with the county recorder on the tracts where they occur if the cost sharing funds are issued to the landowner

History 1990 c 391 art 6 s 66

103F 451 APPLICABILITY

The provisions of sections 103F 415 to 103F 455 are not applicable without the adoption of an ordinance by the county or local government unit

History 1990 c 391 art 6 s 67

103F 455 PENALTY

A person who violates section 103F 415, subdivision 1, is subject to a civil penalty up to \$500

History 1990 c 391 art 6 s 68

103F 460 [Repealed, 1994 c 557 s 27]

103F 461 GROUNDWATER EDUCATION

(a) In each even-numbered year, the board of water and soil resources must review groundwater education activities with local units of government and develop recommendations for improvement in a report to the environmental quality board for review and then to the house of representatives and senate committees with jurisdiction over the environment, natural resources, and agriculture as part of the groundwater policy report in section 103A 204. The board must work with agencies and interested groups with responsibility for groundwater education in preparing the report

(b) The board must ensure that the biennial review of groundwater education with local units of government is coordinated with the Minnesota environmental education advisory board and the nonpoint source education and information strategy of the pollution control agency

(c) Grants for innovative groundwater education strategies to local units of government identified in this section may be awarded by the board of water and soil resources

History 1994 c 557 s 14, 1999 c 86 art 3 s 10

REINVEST IN MINNESOTA RESOURCES LAW

103F 501 SHORT TITLE

Sections 103F 505 to 103F 531 may be cited as the 'Reinvest in Minnesota Resources Law'

History 1990 c 391 art 6 s 70

103F 505 PURPOSE AND POLICY

It is the purpose of sections 103F 505 to 103F 531 to keep certain marginal agricultural land out of crop production to protect soil and water quality and support fish and wildlife habitat. It is state policy to encourage the retirement of marginal, highly erodible land, particularly land adjacent to public waters, drainage systems, wetlands, and locally designated priority waters, from crop production and to reestablish a cover of perennial vegetation

History 1990 c 391 art 6 s 71, 1992 c 415 s 1

103F 511 DEFINITIONS

Subdivision 1 **Applicability** The definitions in this section apply to sections 103F 505 to 103F 535

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

Subd 3 **Conservation easement** "Conservation easement" means a conservation easement as defined in section 84C 01

Subd 4 **Conservation reserve program** "Conservation reserve program" means the program established under section 103F 515

Subd 5 **Drained wetland** "Drained wetland" means a former natural wetland that has been altered by draining, dredging, filling, leveling, or other manipulation sufficient to render the land suitable for agricultural crop production. The alteration must have occurred before December 23, 1985, and must be a legal alteration as determined by the commissioner of natural resources

Subd 6 **Landowner** "Landowner" means individuals, family farms, family farm partnerships, authorized farm partnerships, family farm corporations and authorized farm corporations as defined under section 500 24, subdivision 2, and estates and testamentary trusts, which either own eligible land or are purchasing eligible land under a contract for deed

Subd 7 **Marginal agricultural land** "Marginal agricultural land" means land that is

- (1) composed of class IIIe, IVe, V, VI, VII, or VIII land as identified in the land capability classification system of the United States Department of Agriculture, or
- (2) similar to land described under clause (1) and identified under a land classification system selected by the board

Subd 8 **Public waters** "Public waters" means waters and wetlands as defined in section 103G 005, and inventoried under section 103G 201

Subd 8a **Riparian land** "Riparian land" means lands adjacent to public waters, drainage systems, wetlands, or locally designated priority waters identified in a comprehensive local water plan, as defined in section 103B 3363, subdivision 3

Subd 9 **Sensitive groundwater area** "Sensitive groundwater area" means a geographic area defined by natural features where there is a significant risk of groundwater degradation from activities conducted at or near the land surface. These areas may be identified by mapping or other appropriate methods determined by the commissioner of natural resources and the board of water and soil resources. Wellhead protection areas may be designated as a sensitive groundwater area

Subd 10 **Wetland** "Wetland" means land that has a predominance of hydric soils and that is inundated or saturated by surface or ground water at a frequency and duration sufficient to support, or that periodically does support, a predominance of hydrophytic vegetation typically adapted for life in saturated soil conditions

Subd 11 **Windbreak** "Windbreak" means a strip or belt of trees, shrubs, or grass barriers at least six rows deep and within 300 feet of the right of way of a highway

History 1990 c 391 art 6 s 72, 1992 c 415 s 2

103F 515 CONSERVATION RESERVE PROGRAM

Subdivision 1 **Establishment of program** The board, in consultation with the commissioner of agriculture and the commissioner of natural resources, shall establish and administer a conservation reserve program. The board shall implement sections 103F 505 to 103F 531. Selection of land for the conservation reserve program must be based on its potential for fish and wildlife production, reducing erosion, and protecting water quality

Subd 2 **Eligible land** (a) Land may be placed in the conservation reserve program if the land meets the requirements of paragraphs (b) and (c)

(b) Land is eligible if the land

- (1) is marginal agricultural land,
- (2) is adjacent to marginal agricultural land and is either beneficial to resource protection or necessary for efficient recording of the land description,

- (3) consists of a drained wetland,
- (4) is land that with a windbreak would be beneficial to resource protection,
- (5) is land in a sensitive groundwater area,
- (6) is riparian land,
- (7) is cropland or noncropland adjacent to restored wetlands to the extent of up to four acres of cropland or one acre of noncropland for each acre of wetland restored,
- (8) is a woodlot on agricultural land,
- (9) is abandoned building site on agricultural land, provided that funds are not used for compensation of the value of the buildings, or
- (10) is land on a hillside used for pasture
- (c) Eligible land under paragraph (a) must
 - (1) be owned by the landowner, or a parent or other blood relative of the landowner, for at least one year before the date of application,
 - (2) be at least five acres in size, except for a drained wetland area, riparian area, windbreak, woodlot, or abandoned building site, or be a whole field as defined by the United States Agricultural Stabilization and Conservation Services,
 - (3) not be set aside, enrolled or diverted under another federal or state government program unless enrollment in the conservation reserve program would provide additional conservation benefits or a longer term of enrollment than under the current federal or state program, and
 - (4) have been in agricultural crop production for at least two of the last five years before the date of application except drained wetlands, riparian lands, woodlots, abandoned building sites, or land on a hillside used for pasture
- (d) In selecting drained wetlands for enrollment in the program, the highest priority must be given to wetlands with a cropping history during the period 1976 to 1985
- (e) In selecting land for enrollment in the program, highest priority must be given to permanent easements that are consistent with the purposes stated in section 103F 505

Subd 3 Conservation easements (a) The board may acquire, or accept by gift or donation, conservation easements on eligible land. An easement may be permanent or of limited duration. An easement acquired on land for windbreak purposes, under subdivision 2, may be only of permanent duration. An easement of limited duration may not be acquired if it is for a period less than 20 years. The negotiation and acquisition of easements authorized by this section are exempt from the contractual provisions of chapters 16B and 16C.

(b) The board may acquire, or accept by gift or donation, flowage easements when necessary for completion of wetland restoration projects.

Subd 4 Nature of property rights acquired (a) A conservation easement must prohibit

- (1) alteration of wildlife habitat and other natural features, unless specifically approved by the board,
- (2) agricultural crop production, unless specifically approved by the board for wildlife management purposes,
- (3) grazing of livestock except, for agreements entered before the effective date of Laws 1990, chapter 391, grazing of livestock may be allowed only if approved by the board after consultation with the commissioner of natural resources, in the case of severe drought, or a local emergency declared under section 12 29, and
- (4) spraying with chemicals or mowing, except as necessary to comply with noxious weed control laws or emergency control of pests necessary to protect public health

(b) A conservation easement is subject to the terms of the agreement provided in subdivision 5

(c) A conservation easement must allow repairs, improvements, and inspections necessary to maintain public drainage systems provided the easement area is restored to the condition required by the terms of the conservation easement

Subd 5 Agreements by landowner The board may enroll eligible land in the conservation reserve program by signing an agreement in recordable form with a landowner in which the landowner agrees

(1) to convey to the state a conservation easement that is not subject to any prior title, lien, or encumbrance,

(2) to seed the land subject to the conservation easement, as specified in the agreement, to establish and maintain perennial cover of either a grass-legume mixture or native grasses for the term of the easement, at seeding rates determined by the board, or to plant trees or carry out other long-term capital improvements approved by the board for soil and water conservation or wildlife management,

(3) to convey to the state a permanent easement for the wetland restoration,

(4) that other land supporting natural vegetation owned or leased as part of the same farm operation at the time of application, if it supports natural vegetation or has not been used in agricultural crop production, will not be converted to agricultural crop production or pasture, and

(5) that the easement duration may be lengthened through mutual agreement with the board in consultation with the commissioners of agriculture and natural resources if they determine that the changes effectuate the purpose of the program or facilitate its administration

Subd 6 Payments for conservation easements and establishment of cover (a) The board must make the following payments to the landowner for the conservation easement and agreement

(1) to establish the perennial cover or other improvements required by the agreement

(i) except as provided in items (ii) and (iii), up to 75 percent of the total eligible cost not to exceed \$75 per acre for limited duration easements and 100 percent of the total eligible cost not to exceed \$100 per acre for perpetual easements,

(ii) for native species restoration, 75 percent of the total eligible cost not to exceed \$150 per acre for limited duration easements and 100 percent of the total eligible cost not to exceed \$200 per acre for perpetual easements, and

(iii) 100 percent of the total eligible cost of wetland restoration not to exceed \$300 per acre,

(2) for the cost of planting trees required by the agreement, up to 75 percent of the total eligible cost not to exceed \$200 per acre for limited duration easements, and 100 percent of the total eligible cost not to exceed \$300 per acre for perpetual easements,

(3) for a permanent easement, 70 percent of the township average equalized estimated market value of agricultural property as established by the commissioner of revenue at the time of easement application,

(4) for an easement of limited duration, 90 percent of the present value of the average of the accepted bids for the federal conservation reserve program, as contained in Public Law Number 99-198, in the relevant geographic area and on bids accepted at the time of easement application, or

(5) an alternative payment system for easements based on cash rent or a similar system as may be determined by the board

(b) For hillside pasture conservation easements, the payments to the landowner in paragraph (a) for the conservation easement and agreement must be reduced to reflect the value of similar property

(c) The board may establish a payment system for flowage easements acquired under this section

(d) For wetland restoration projects involving more than one conservation easement, state payments for restoration costs may exceed the limits set forth in this section for an individual easement provided the total payment for the restoration project does not exceed the amount payable for the total number of acres involved

(e) The board may use available nonstate funds to exceed the payment limits in this section

Subd 7 Easement renewal When a conservation easement of limited duration expires, a new conservation easement and agreement for an additional period of not less than 20 years may be acquired by agreement of the board and the landowner, under the terms of this section. The board may adjust payment rates as a result of renewing an agreement and conservation easement only after examining the condition of the established cover, conservation practices, and land values

Subd 8 Correction of conservation easement boundary lines To correct errors in legal descriptions for easements that affect the ownership interests in the state and adjacent landowners, the board may, in the name of the state, with the approval of the attorney general, convey, without consideration, interests of the state necessary to correct legal descriptions of boundaries. The conveyance must be by quitclaim deed or release in a form approved by the attorney general

Subd 9 Enforcement and damages (a) A landowner who violates the term of a conservation easement or agreement under this section, or induces, assists, or allows another to do so, is liable to the state for treble damages if the trespass is willful, but liable for double damages only if the trespass is not willful. The amount of damages is the amount needed to make the state whole or the amount the landowner has gained due to the violation, whichever is greater

(b) Upon the request of the board, the attorney general may commence an action for specific performances, injunctive relief, damages, including attorney's fees, and any other appropriate relief to enforce sections 103F 505 to 103F 531 in district court in the county where all or part of the violation is alleged to have been committed, or where the landowner resides or has a principal place of business

History 1990 c 391 art 6 s 73, 1991 c 354 art 10 s 3, 1992 c 415 s 3, 1996 c 449 s 1 3, 1998 c 386 art 2 s 31, 1999 c 231 s 127

103F 516 PERMANENT WETLANDS PRESERVE

Subdivision 1 Easements Upon application by a landowner, the board may acquire permanent easements on land containing type 1, 2, 3, or 6 wetlands, as defined in United States Fish and Wildlife Service Circular No. 39 (1971 edition)

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

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

(c) The easement must require that the landowner control noxious weeds in accordance with sections 18 77 to 18 88

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

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

(1) 50 percent of the township average equalized estimated market value of agricultural property as established by the commissioner of revenue at the time of easement application for wetlands located outside of the metropolitan counties, as

defined in section 473 121, subdivision 4, and wetlands located on agricultural lands within a metropolitan county, or

(2) for wetlands located on nonagricultural land within the metropolitan county, 20 percent of the township average equalized estimated market value of agricultural property as established by the commissioner of revenue at the time of easement application

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

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

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

History 1991 c 354 art 3 s 1, 1994 c 627 s 2, 1995 c 186 s 29

103F 521 COOPERATION AND TECHNICAL ASSISTANCE

Subdivision 1 Cooperation In implementing sections 103F 505 to 103F 531, the board must share information and cooperate with the department of agriculture, the department of natural resources, the pollution control agency, the United States Fish and Wildlife Service, the Agricultural Stabilization and Conservation Service and Soil Conservation Service of the United States Department of Agriculture, the Minnesota extension service, the University of Minnesota, county boards, and interested private organizations and individuals

Subd 2 Technical assistance (a) The board and the commissioners of agriculture and natural resources must provide necessary technical assistance to landowners enrolled in the conservation reserve program. The commissioner of natural resources must provide technical advice and assistance to the board on

(1) the form and content of the conservation easement and agreement,

(2) forestry and agronomic practices, and

(3) hydrologic and hydraulic design relating to the establishment and maintenance of permanent cover, or other conservation improvements

(b) The commissioner of transportation must provide technical advice and assistance to the board and the commissioner of natural resources on the planting of windbreaks adjacent to highways

(c) The board and the commissioners of agriculture and natural resources shall jointly prepare an informational booklet on the conservation reserve program and other state and federal programs for land acquisition, conservation, and retirement to be made available to eligible landowners and the general public

History 1990 c 391 art 6 s 74

103F 525 SUPPLEMENTAL PAYMENTS ON FEDERAL AND STATE CONSERVATION PROGRAMS

The board may supplement payments made under federal land retirement programs to the extent of available appropriations other than bond proceeds. The supplemental payments must be used to establish perennial cover on land enrolled or increase payments for land enrollment in programs approved by the board, including the federal conservation reserve program and federal and state water bank program

History 1990 c 391 art 6 s 75

103F 526 FOOD PLOTS IN WINDBREAKS

The board, in cooperation with the commissioner of natural resources, may authorize wildlife food plots on land with windbreaks

History 1990 c 391 art 6 s 76

103F 531 RULEMAKING

The board may adopt rules to implement sections 103F 505 to 103F 531. The rules must include standards for tree planting so that planting does not conflict with existing electrical lines, telephone lines, rights of way, or drainage ditches

History 1990 c 391 art 6 s 77

103F 535 RESERVATION OF MARGINAL LAND AND WETLANDS

Subdivision 1 **Reservation of marginal land and wetlands** (a) Marginal land and wetlands are withdrawn from sale or exchange unless

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

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

(b) This section does not apply to transfers of land by the board of water and soil resources to correct errors in legal descriptions under section 103F 515, subdivision 8, or to transfers by the commissioner of natural resources for

(1) land that is currently in nonagricultural commercial use if a restrictive covenant would interfere with the commercial use,

(2) land in platted subdivisions,

(3) conveyances of land to correct errors in legal descriptions under section 84 0273,

(4) exchanges of nonagricultural land with the federal government, or exchanges of Class A, Class B, and Class C nonagricultural land with local units of government under sections 94 342, 94 343, 94 344, and 94 349,

(5) land transferred to political subdivisions for public purposes under sections 84 027, subdivision 10, and 94 10, and

(6) land not needed for trail purposes that is sold to adjacent property owners and lease holders under section 85 015, subdivision 1, paragraph (b)

(c) This section does not apply to transfers of land by the commissioner of administration or transportation or by the Minnesota housing finance agency, or to transfers of tax forfeited land under chapter 282 if

(1) the land is in platted subdivisions, or

(2) the conveyance is a transfer to correct errors in legal descriptions

(d) This section does not apply to transfers of land by the commissioner of administration or by the Minnesota housing finance agency for

(1) land that is currently in nonagricultural commercial use if a restrictive covenant would interfere with the commercial use, or

(2) land transferred to political subdivisions for public purposes under sections 84 027, subdivision 10, and 94 10

Subd 2 [Repealed, 1992 c 502 s 7, 1992 c 561 s 10]

Subd 3 [Repealed, 1992 c 502 s 7, 1992 c 561 s 10]

Subd 4 [Repealed, 1992 c 561 s 10]

Subd 5 **Release and alteration of conservation easements** Conservation easements existing under this section, as of April 30, 1992, may be altered, released, or

terminated by the board of water and soil resources after consultation with the commissioners of agriculture and natural resources. The board may alter, release, or terminate a conservation easement only if the board determines that the public interest and general welfare are better served by the alteration, release, or termination.

History 1990 c 391 art 6 s 78, 1990 c 473 s 1,2, 1990 c 572 s 13, 1991 c 214 s 5, 1992 c 502 s 1, 1992 c 561 s 1,9

WATER BANK PROGRAM

103F 601 WATER BANK PROGRAM

Subdivision 1 Establishment (a) The commissioner of natural resources shall establish a water bank program of acquiring interests in land to preserve wetlands, whether or not the wetlands are included in the definition contained in section 103G 005, subdivision 15a

(b) The commissioner may

(1) acquire title to wetlands under section 97A 145, or

(2) enter into easement agreements with property owners to preserve wetlands and other waters

Subd 2 Easement agreements (a) The easement agreements must be conservation easements, as defined in section 84C 01, paragraph (1). The conservation easements may be possessory or nonpossessory if agreed upon by the property owner and the commissioner

(b) The conservation easements must be

(1) for a period of at least 20 years, with provision for renewal for at least 20-year periods, or

(2) permanent in duration

(c) Highest priority must be given to property owners desiring to enter agreements for permanent easements

(d) The commissioner may reexamine the payment rates at the beginning of a 20 year renewal period and adjust them after giving consideration to current land and crop values

Subd 3 Easement agreement In the easement agreement between the commissioner and a property owner, the property owner must agree

(1) to designate eligible wetland areas for placement into the water bank program, which may include wetlands covered by a federal or state government easement that allows agricultural use, together with adjacent areas as determined desirable by the commissioner,

(2) to place designated eligible wetland areas in the program for the period of the agreement,

(3) not to drain, burn, fill, or otherwise destroy the wetland character of the areas, or to use them for agricultural purposes, as determined by the commissioner,

(4) to implement the wetland conservation and development plan for the property in accordance with the agreement, unless a requirement of the agreement or plan is waived or changed by the commissioner,

(5) that upon violating the agreement during the time the property owner has control of the property covered by the agreement

(i) to forfeit rights to further payments or grants under the agreement and to refund to the state payments or grants received under the agreement if the commissioner determines that the violation warrants termination of the agreement, or

(ii) to make refunds or accept payment adjustments the commissioner finds appropriate if the commissioner determines that the violation by the owner does not warrant termination of the agreement,

(6) not to adopt a practice specified by the commissioner in an easement as a practice that would tend to defeat the purposes of the easement, and

(7) to additional provisions that the commissioner determines are desirable and includes in the easement to implement the purposes of the program or to facilitate its administration

Subd 4 Conservation and development advice The commissioner must provide advice about conservation and development practices on the wetlands and adjacent areas to implement this section

Subd 5 Easement payments The commissioner must make payments under this subdivision to the property owner for the water bank easement

(1) for a permanent easement, 50 percent of the average equalized estimated market value of cropland in the township as established by the commissioner of revenue for the time period when the application is made,

(2) for an easement of limited duration, a lump sum payment equal to 65 percent of the value of the permanent easement value for the time period when the application is made, or

(3) an alternative payment system for easements based on cash rent or a similar system as may be determined by the commissioner

Subd 6 Conversion to permanent easement A limited term easement may be converted to a permanent easement or renewed at the end of the easement period for an additional 20 years by mutual agreement of the commissioner and the property owner, subject to a rate redetermination by the commissioner

Subd 7 Change of ownership If the property owner sells or otherwise disposes of the ownership or right of occupancy of the property during the easement period, the new property owner must continue the easement under the same terms or conditions

Subd 8 Termination or changing agreement The commissioner may terminate an easement by mutual agreement with the property owner if the commissioner determines that the termination would be in the public interest, and may agree to a modification of terms of the agreement that the commissioner determines desirable to implement the water bank program or facilitate its administration

Subd 9 Rules The commissioner may adopt rules that include the procedures and payment rates to implement this section

History 1990 c 391 art 6 s 79 1996 c 462 s 43

WETLAND PRESERVATION AREAS

103F 612 WETLAND PRESERVATION AREAS

Subdivision 1 Definition For purposes of sections 103F 612 to 103F 616, wet land" has the meaning given in section 103G 005, subdivision 19

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

(b) The application shall be executed and acknowledged in the manner required by law to execute and acknowledge a deed and must contain at least the following information and other information the board of water and soil resources requires

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

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

(3) name and address of the owner,

(4) a statement by the owner covenanting that the land will be preserved as a wetland and will only be used in accordance with conditions prescribed by the board of water and soil resources and providing that the restrictive covenant will be binding on the owner and the owner's successors or assigns, and will run with the land

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

Subd 3 Review and notice Upon receipt of an application, the county shall determine if all material required by subdivision 2 has been submitted and, if so, shall determine that the application is complete. The term "date of application" means the date the application is determined to be complete by the county. The county shall send a copy of the application to the county assessor, the board of water and soil resources, and the soil and water conservation district where the land is located. The soil and water conservation district shall prepare an advisory statement of existing and potential preservation problems or conflicts and send the statement to the owner of record and to the county. The county shall notify the landowner of the acceptance or denial of the application within 60 days from the date of the application.

Subd 4 Recording Within five days of the date of application, the county shall forward the application to the county recorder for recording or to the registrar of titles for filing if the land is registered. The county recorder shall record the application containing the restrictive covenant and return it to the applicant. If the land is registered, the registrar of titles shall memorialize the application containing the restrictive covenant upon the certificate of title. The recorder or registrar of titles shall notify the county that the application has been recorded or memorialized.

Subd 5 Commencement of wetland preservation area The wetland is a wetland preservation area commencing 30 days from the date the county notifies the landowner of acceptance of the application under subdivision 3.

Subd 6 Fee The county may require an application fee to defray administrative costs of the program.

Subd 7 Maps The county shall maintain wetland preservation area maps illustrating land covenanted as wetland preservation areas.

History 1991 c 354 art 4 s 1, 1996 c 462 s 5 9, 1999 c 11 art 1 s 4,5

103F 613 DURATION OF WETLAND PRESERVATION AREA

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

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

Subd 3 Notice and recording, termination When the county receives notice under subdivision 2, the county shall forward the original notice to the county recorder for recording or to the registrar of titles for filing if the land is registered and shall notify the regional development commission, where applicable, the board of water and soil resources, and the county soil and water conservation district of the date of expiration. The benefits and limitations of the wetland preservation area and the restrictive covenant filed with the application cease on the date of expiration. If the land is registered, the registrar of titles shall cancel the memorial of the application containing the restrictive covenant upon the certificate of title on the effective date of the expiration.

Subd 4 **Early expiration** A wetland preservation area may be terminated earlier than as provided in this section only in the event of a public emergency upon petition from the owner or county to the governor. The determination of a public emergency must be made by the governor through executive order under section 4 035 and chapter 12. The executive order must identify the wetland preservation area, the reasons requiring the action, and the date of expiration.

History 1991 c 354 art 4 s 2, 1999 c 11 art 1 s 6

103F 614 EMINENT DOMAIN ACTIONS

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

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

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

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

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

Subd 4 **Public hearing** During the additional 60 days, the environmental quality board shall hold a public hearing concerning the proposed action at a place within the affected wetland preservation area or easily accessible to the wetland preservation area. Notice of the hearing must be published in a newspaper having a general circulation within the area. Individual written notice must be given to the local governments with jurisdiction over the wetland preservation area, the agency, corporation or government proposing to take the action, the owner of land in the wetland preservation area, and any public agency having the power of review or approval of the action.

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

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

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

Subd 8 **Action by attorney general** The environmental quality board may request the attorney general to bring an action to enjoin an agency, corporation, or government from violating this section

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

History 1991 c 354 art 4 s 3

103F 615 LIMITATION ON CERTAIN PUBLIC PROJECTS

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

Subd 2 **Exception, owner option** Subdivision 1 does not apply to public projects if the owner of the wetland preservation area elects to use and benefit from a public project.

History 1991 c 354 art 4 s 4

103F 616 SOIL CONSERVATION PRACTICES

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

History 1991 c 354 art 4 s 5

CLEAN WATER PARTNERSHIP

103F 701 CITATION

Sections 103F 701 to 103F 761 may be cited as the 'Clean Water Partnership Law'

History 1990 c 391 art 6 s 80

103F 705 PURPOSE

(a) It is the purpose of the legislature in enacting sections 103F 701 to 103F 761 to protect and improve surface and ground water in the state, through financial and technical assistance to local units of government to control water pollution associated with land use and land management activities.

(b) It is also the purpose of the legislature to

- (1) identify water quality problems and their causes,
- (2) direct technical and financial resources to resolve water quality problems and to abate their causes,
- (3) provide technical and financial resources to local units of government for implementation of water quality protection and improvement projects,
- (4) coordinate a nonpoint source pollution control program with elements of the existing state water quality program and other existing resource management programs, and

(5) provide a legal basis for state implementation of federal laws controlling nonpoint source water pollution.

History 1990 c 391 art 6 s 81

103F 711 DEFINITIONS

Subdivision 1 **Applicability** The definitions in this section apply to sections 103F 701 to 103F 761

Subd 2 **Agency** Agency means the pollution control agency

Subd 3 **Best management practices** "Best management practices" means practices, techniques, and measures, that prevent or reduce water pollution from nonpoint sources by using the most effective and practicable means of achieving water quality goals Best management practices include, but are not limited to, official controls, structural and nonstructural controls, and operation and maintenance procedures

Subd 4 **Commissioner** "Commissioner" means the commissioner of the pollution control agency

Subd 5 **Local unit of government** "Local unit of government" means a statutory or home rule charter city, town, county, soil and water conservation district, watershed district, an organization formed for the joint exercise of powers under section 471 59, and any other special purpose district or authority exercising authority in water and related land resources management at the local level

Subd 6 **Nonpoint source** "Nonpoint source" is a land management activity or land use activity that contributes or may contribute to ground and surface water pollution as a result of runoff, seepage, or percolation and that is not defined as a point source in section 115 01, subdivision 11 Nonpoint sources include rural and urban land management activities and land use activities and specialty land use activities such as transportation

Subd 7 **Official controls** "Official controls" means ordinances and regulations that control the physical development of the whole or part of a local government unit or that implement the general objectives of the local government unit

Subd 8 **Project** "Project" means the diagnostic study of water pollution caused by nonpoint sources of water pollution, a plan to implement best management practices, and the physical features constructed or actions taken by a local unit of government to implement best management practices

Subd 9 **Water pollution** "Water pollution" means water pollution as defined in section 115 01, subdivision 13

Subd 10 **Waters of the state** "Waters of the state" means waters as defined in section 115 01 subdivision 22

History 1990 c 391 art 6 s 82

103F 715 CLEAN WATER PARTNERSHIP PROGRAM ESTABLISHED

A clean water partnership program is established as provided in sections 103F 701 to 103F 761 The agency shall administer the program in accordance with these sections As a basis for the program, the agency and the metropolitan council shall conduct an assessment of waters in accordance with section 103F 721 The agency shall then provide financial and technical assistance in accordance with section 103F 725 to local units of government for projects in geographical areas that contribute to surface or ground water flows The projects shall provide for protection and improvement of surface and ground water from nonpoint sources of water pollution

History 1990 c 391 art 6 s 83

103F 721 STATEWIDE RESOURCE ASSESSMENT

The agency shall conduct an assessment of waters of the state that have been polluted by nonpoint sources and of geographical areas with waters of the state that have a high potential for water pollution caused by nonpoint sources The metropolitan council shall conduct the assessment in the metropolitan area, as defined in section 473 121, subdivision 2, in cooperation with the agency

History 1990 c 391 art 6 s 84

103F 725 FINANCIAL AND TECHNICAL ASSISTANCE

Subdivision 1 **Financial assistance** (a) The agency may award grants for up to 50 percent of the eligible cost for

- (1) the development of a diagnostic study and implementation plan, and
- (2) the implementation of that plan

(b) The agency shall determine which costs are eligible costs and grants shall be made and used only for eligible costs

Subd 1a **Financial assistance, loans** (a) Up to \$36,000,000 of the balance in the water pollution control revolving fund in section 446A 07, as determined by the public facilities authority, may be provided to the commissioner for the establishment of a clean water partnership loan program

(b) The agency may award loans for up to 100 percent of the costs associated with activities identified by the agency as best management practices pursuant to section 319 and section 320 of the federal Water Quality Act of 1987, as amended, including associated administrative costs

(c) Loans may be used to finance clean water partnership grant project eligible costs not funded by grant assistance

(d) The interest rate, at or below market rate, and the term, not to exceed 20 years, shall be determined by the agency in consultation with the public facilities authority

(e) The repayment must be deposited in the water pollution control revolving fund under section 446A 07

(f) The local unit of government receiving the loan is responsible for repayment of the loan

(g) For the purpose of obtaining a loan from the agency, a local government unit may provide to the agency its general obligation note. All obligations incurred by a local government unit in obtaining a loan from the agency must be in accordance with chapter 475, except that so long as the obligations are issued to evidence a loan from the agency to the local government unit an election is not required to authorize the obligations issued, and the amount of the obligations shall not be included in determining the net indebtedness of the local government unit under the provisions of any law or chapter limiting the indebtedness

Subd 2 **Technical assistance** The agency may provide technical assistance to local units of government to ensure efficient and effective development and implementation of projects and coordination of projects with other water management activities

History 1990 c 391 art 6 s 85, 1994 c 632 art 2 s 27, 1995 c 220 s 93, 1996 c 407 s 44, 1998 c 404 s 36

103F 731 ELIGIBILITY FOR ASSISTANCE

Subdivision 1 **Generally** To be eligible for the financial or technical assistance or both as provided in section 103F 725, a local unit of government applying for assistance must

(1) have authority to coordinate and enter into contracts with local, state, and federal agencies and private organizations, raise funds, and adopt and enforce official controls, and

(2) provide the agency with those documents required in subdivision 2

Subd 2 **Documents required** (a) An applicant for assistance shall submit the following to the agency

(1) an application form as prescribed by the agency,

(2) evidence that the applicant has consulted with the local soil and water conservation districts and watershed districts, where they exist, in preparing the application, and

(3) one of the following documents

(i) the comprehensive water plan authorized under sections 103B 301 to 103B 355,

(ii) a surface water management plan required under section 103B 231,

(iii) an overall plan required under chapter 103D, or

(iv) any other local plan that provides an inventory of existing physical and hydrologic information on the area, a general identification of water quality problems and goals, and that demonstrates a local commitment to water quality protection or improvement

(b) After July 1, 1991, only projects that are a part of, or are responsive to, a local water plan under the Comprehensive Local Water Management Act, chapter 103D, or sections 103B 211 to 103B 255, will be eligible under paragraph (a), clause (3)

(c) The document submitted in compliance with paragraph (a), clause (2), must identify existing and potential nonpoint source water pollution problems and must recognize the need and demonstrate the applicant's commitment to abate or prevent water pollution from nonpoint sources in the geographic areas for which the application is submitted

History 1990 c 391 art 6 s 86

103F 735 AGENCY REVIEW OF APPLICATIONS

Subdivision 1 Ranking of applications The agency shall rank applications for technical and financial assistance in order of priority and shall, within the limits of available appropriations, grant those applications having the highest priority. The agency shall by rule adopt appropriate criteria to determine the priority of projects.

Subd 2 Criteria (a) The criteria shall give the highest priority to projects that best demonstrate compliance with the objectives in paragraphs (b) to (e)

(b) The project demonstrates participation, coordination, and cooperation between local units of government and other public agencies, including soil and water conservation districts or watershed districts, or both those districts

(c) The degree of water quality improvement or protection is maximized relative to the cost of implementing the best management practices

(d) Best management practices provide a feasible means to abate or prevent nonpoint source water pollution

(e) The project goals and objectives are consistent with the state water quality management plans, the statewide resource assessment conducted under section 103F 721, and other applicable state and local resource management programs

History 1990 c 391 art 6 s 87

103F 741 PLAN IMPLEMENTATION

Subdivision 1 Implementation according to law and contract A local unit of government receiving technical or financial assistance or both from the agency shall carry out the implementation plan approved by the agency according to the terms of the plan, the provisions of a contract or grant agreement made with the agency and according to sections 103F 701 to 103F 761, the rules of the agency, and applicable federal requirements

Subd 2 Review by agency The commissioner or the commissioner's designee may, at any reasonable time, inspect any project and review the expenditure of financial assistance funds granted by the agency to determine whether the local unit of government has complied with subdivision 1

Subd 3 Enforcement of agreements The agency may bring a civil action in district court to recover from a local governmental unit any financial assistance funds used in violation of subdivision 1

History 1990 c 391 art 6 s 88

103F 745 RULES

(a) The agency shall adopt rules necessary to implement sections 103F 701 to 103F 761. The rules shall contain at a *minimum*

- (1) procedures to be followed by local units of government in applying for technical or financial assistance or both,
- (2) conditions for the administration of assistance,
- (3) procedures for the development, evaluation, and implementation of best management practices,
- (4) requirements for a diagnostic study and implementation plan,
- (5) criteria for the evaluation and approval of a diagnostic study and implementation plan,
- (6) criteria for the evaluation of best management practices,
- (7) criteria for the ranking of projects in order of priority for assistance,
- (8) criteria for defining and evaluating eligible costs and cost sharing by local units of government applying for assistance, and
- (9) other matters as the agency and the commissioner find necessary for the proper administration of sections 103F 701 to 103F 761, including any rules determined by the commissioner to be necessary for the implementation of federal programs to control nonpoint source water pollution.

(b) For financial assistance by loan under section 103F 725, subdivision 1a, criteria established by rule for the clean water partnership grants program shall guide requirements and administrative procedures for the loan program until January 1, 1996, or the effective date of the administrative rules for the clean water partnership loan program, whichever occurs first.

History 1990 c 391 art 6 s 89, 1994 c 632 art 2 s 28

103F 751 NONPOINT SOURCE POLLUTION CONTROL PLAN AND PROGRAM EVALUATION

To coordinate the programs and activities used to control nonpoint sources of pollution to achieve the state's water quality goals, the agency shall

- (1) develop a state plan for the control of nonpoint source water pollution to meet the requirements of the federal Clean Water Act,
- (2) work through the environmental quality board to coordinate the activities and programs of federal, state, and local agencies involved in nonpoint source pollution control and, as appropriate, develop agreements with federal and state agencies to accomplish the purposes and objectives of the state nonpoint source pollution control plan, and

(3) evaluate the effectiveness of programs in achieving water quality goals and recommend to the legislature, under section 3 195, subdivision 1, any necessary amendments to sections 103F 701 to 103F 761.

History 1990 c 391 art 6 s 90

103F 755 INTEGRATION OF DATA

The data collected for the activities of the clean water partnership program that have common value for natural resource planning must be provided and integrated into the Minnesota land management information system's geographic and summary databases according to published data compatibility guidelines. Costs associated with this data delivery must be borne by this activity.

History 1990 c 391 art 6 s 91

103F 761 PUBLIC AGENCY COORDINATION

Subdivision 1 Project coordination team, membership The commissioner shall establish and chair a project coordination team made up of representatives of the pollution control agency, department of natural resources, board of water and soil resources, department of agriculture, department of health, Minnesota extension service, University of Minnesota agricultural experiment stations, United States Army Corps of Engineers, United States Environmental Protection Agency, United States Department of Agriculture Agricultural Stabilization and Conservation Service, United States Department of Agriculture Soil Conservation Service, metropolitan council, Association of Minnesota Counties, League of Minnesota Cities, Minnesota Association of Townships, and other agencies as the commissioner may determine

Subd 2 Duties (a) The project coordination team shall advise the agency in preparation of rules, evaluate projects, and recommend to the commissioner those projects that the team believes should receive financial or technical assistance or both from the agency After approval of assistance for a project by the agency, the team shall review project activities and assist in the coordination of the state program with other state and federal resource management programs

(b) For state agencies or departments receiving funding under section 446A 07, subdivision 6, the project coordination team shall provide guidance for the allocation of water pollution control fund nonpoint source pollution funding with consideration to statewide environmental priorities including priorities for types of projects and geographic or watershed priorities A subcommittee of the project coordination team will be formed for each of the separate funding areas under section 446A 07, subdivision 6, and shall be chaired by the appropriate lead state agency or department Each subcommittee shall evaluate and rank projects within its area with consideration given to the guidance provided by the project coordination team

History 1990 c 391 art 6 s 92, 1991 c 345 art 2 s 15, 1994 c 632 art 2 s 29

LAKE PRESERVATION AND PROTECTION**103F 801 COUNTY LAKE IMPROVEMENT PROGRAM**

Subdivision 1 Lake improvement program established To preserve and protect lakes and to increase and enhance the use and enjoyment of lakes, a statewide lake improvement program is established to

- (1) preserve the natural character of lakes and their shoreland environment as feasible and practical,
- (2) improve the quality of water in lakes,
- (3) provide for reasonable assurance of water quantity in lakes, where feasible and practicable, and
- (4) assure protection of the lakes from the detrimental effects of human activities and certain natural processes

Subd 2 Authority (a) A county board of a county has the authority given in this section with respect to bodies of water located entirely or partially within the boundaries of the county and not situated entirely within the boundaries of a single city or lake conservation district established by law

(b) After approval by an affected city or lake conservation district, a county board may assume and exercise the authority given in this section with respect to bodies of water located entirely or partially within the city or lake conservation district

(c) Programs undertaken pursuant to the authority given in this section must be consistent with the statewide water and related land resources plan prepared under the direction of the commissioner of natural resources and with regional water and related resources plans

(d) A body of water may not be improved under this section unless the public has access to some portion of the shoreline of the body of water

Subd 3 **Powers** The county boards shall have power to

(1) acquire, in the name of the county, by gift or purchase or by condemnation under chapter 117, an existing dam or control works that may affect the level of waters,

(2) construct and operate water control structures if approved by the commissioner of natural resources under sections 103G 245 and 103G 405,

(3) undertake projects to change the course current or cross section of public waters if approved by the commissioner of natural resources under sections 103G 245 and 103G 405,

(4) improve navigation and to acquire by gift or purchase land, equipment, or other facilities to improve navigation,

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

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

(7) conduct a program of water improvement and conservation,

(8) develop and implement the comprehensive plan to eliminate water pollution, provided that construction of any water, sewer, or water and sewer system shall be undertaken in the manner provided by section 444 075 or other applicable laws and not under this section,

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

(10) maintain public beaches, public docks, and other public facilities for access to a body of water,

(11) make cooperative agreements with the United States or state government or another county or city to implement the provisions of this section, and

(12) require projects to change the course current or cross section of public waters within unincorporated areas to be approved by the county board before submitting an application for a permit to the commissioner as required by sections 103G 245 and 103G 405

Subd 4 **Funding** (a) The county board may appropriate money from the general revenue fund of the county to implement this section and sections 103B 505 to 103B 581

(b) The county board may apply for, receive, and disburse federal funds made available to the county by federal law or rules for any purpose related to the powers and duties of the county board. The county board shall comply with requirements of federal law to apply for, receive, and disburse the funds

(c) The county board may accept any donations or grants from any public or private concern. The funds received by the county board must be deposited in the county treasury and appropriated for the purpose for which it was received

Subd 5 **Tax levies** The county board may levy taxes to implement authority for water surface use regulation, lake improvement programs, and lake improvement districts on all taxable property within the county, which may be in addition to any amounts levied within a lake improvement district

History 1990 c 391 art 6 s 93

103F 805 STATE AID FOR LAKE IMPROVEMENTS

(a) The commissioner of natural resources, with the help of the pollution control agency and the commissioner of trade and economic development, must

(1) assess the need for particular kinds of lake improvements, including improvements related to high or low water levels and any other resource management considerations, except pollution problems, and

(2) develop criteria for allocating state aid funds among proposed projects

(b) The assessment must include provisions to ensure that any federal program of aid to local lake improvement projects reduces the local share of project costs and not only the state's share

History 1990 c 391 art 6 s 94

103F 806 [No local approval filed]

103F 807 [No local approval filed]

103F 808 [No local approval filed]

103F 809 [No local approval filed]

103F 810 [No local approval filed]

103F 811 [No local approval filed]

WETLAND ESTABLISHMENT AND RESTORATION PROGRAM

103F 901 DEFINITIONS

Subdivision 1 **Applicability** The definitions in this section apply to sections 103F 901 to 103F 905

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

Subd 3 **Commissioner** "Commissioner" means the commissioner of natural resources

Subd 4 **Comprehensive local water plan** "Comprehensive local water plan" has the meaning given in section 103B 3363, subdivision 3

Subd 5 **Local unit of government** "Local unit of government" means a county board, joint county board, watershed management organization, or watershed district

Subd 6 **Watershed district** "Watershed district" means a district established under chapter 103D

Subd 7 **Watershed management organization** "Watershed management organization" has the meaning given in section 103B 205, subdivision 13

Subd 8 **Wetland** "Wetland" has the meaning given in section 103G 005, subdivision 19

History 1991 c 354 art 5 s 1

103F 902 LOCAL PLANNING AND APPROVAL

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

(1) designated by the board as a high priority wetland region, and

(2) identified as a high priority wetland area in the local unit of government's comprehensive local water plan

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

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

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

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

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

Subd 5 Notice and final hearing Within 30 days of receiving the completed survey, the local unit of government shall hold a public hearing on the proposed project. At least ten days before the hearing, the local unit of government shall notify the landowner and the commissioner and provide public notice of the hearing and the availability of the survey report in an official newspaper of general circulation in the county. The commissioner may provide comment on the proposed wetland.

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

History 1991 c 354 art 5 s 2

103F 903 WETLAND ESTABLISHMENT AND RESTORATION COST SHARE PROGRAM

Subdivision 1 Application A local unit of government shall apply to the board to receive cost-share funding for a proposed wetland restoration project that receives final local approval under section 103F 902. The application must include a copy of the survey report and any comments received on the proposed wetland. Within 30 days of receiving an application, the board shall notify the local unit of government on whether the application and survey report are complete.

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

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

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

- (1) water quality,
- (2) flood protection,
- (3) recreation including fish and wildlife habitat,
- (4) groundwater recharge, and

(5) other public uses

History 1991 c 354 art 5 s 3

103F 904 WETLAND ESTABLISHMENT

Subdivision 1 **Establishment order** After receiving approval of cost-share funding from the board, the local unit of government shall order the establishment or restoration of the wetland. The local unit of government shall pay all costs of establishing or restoring the wetland including the compensation required under subdivision 2.

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

History 1991 c 354 art 5 s 4

103F 905 RULES

The board may adopt rules to implement sections 103F 901 to 103F 904.

History 1991 c 354 art 5 s 5