

CHAPTER 478—H.F.No.1327

[Coded]

An act relating to the state college board; authorizing the board to apply and receive federal funds for the planning and construction of an emergency driving and research facility and for the construction and operation of the facility; appropriating money for the operation and maintenance thereof.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. [136.147] **APPROPRIATION; STATE COLLEGE BOARD; HIGHWAY SAFETY CENTER; FEDERAL FUNDING.** The state college board may apply for and receive federal funds for the planning and constructing of an emergency driving and research facility to be known as the Minnesota highway safety center. The board may operate the center for governmental and commercial agencies and the public. The board may negotiate and enter into contracts with prospective users of the center. The board may, in addition to entering into contracts, establish a schedule of fees for the use of the center. For the purpose of building the center, the board may use not more than 45 acres of that land within its control and jurisdiction, the custodial control of which was transferred from the department of corrections to St. Cloud state college. The money received for the use of the center is appropriated annually for the purpose of operating and maintaining the center.

Sec. 2. This act shall be in effect the day after its final enactment.

Approved May 21, 1973.

CHAPTER 479—H.F.No.1381

[Coded in Part]

An act relating to natural resources; imposing certain duties on the commissioner of natural resources and counties; providing standards and enforcement of permits for utility crossings; establishing state policy providing for the establishments of standards and criteria governing drainage systems as they affect lakes, wetlands, wildlife lands, related natural resources, and erosion and flood control; amending Minnesota Statutes 1971, Sections 84.415,

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Subdivisions 1 and 5; 92.46 by adding a subdivision; 106.021, Subdivisions 1, 2, and 4 and by adding a subdivision; 106.081, Subdivisions 1, 3, and 4; 106.091, Subdivision 2; 106.101, Subdivisions 2, 4, and 5; 106.121, Subdivision 4; 106.131; 106.201; 106.221, Subdivision 2; and 106.631, Subdivision 1.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. Minnesota Statutes 1971, Section 84.415, Subdivision 1, is amended to read:

84.415 NATURAL RESOURCES; STANDARDS AND POLICY; LICENSES, PERMITS. Subdivision 1. **UTILITY COMPANIES, PERMIT TO CROSS STATE-OWNED LANDS.** The commissioner of natural resources shall, on or before January 1, 1974, promulgate in the manner provided by Minnesota Statutes, Chapter 15, regulations containing standards and criteria governing the sale of licenses permitting the passage of utilities over public lands and waters. The regulations shall include provisions to insure that all projects for which licenses are sold will have a minimum adverse impact on the environment. The commissioner of natural resources may, at public or private sale and for such price and upon such terms as ~~he may prescribe~~ are specified in the regulations (except where prohibited by law) grant licenses permitting passage over, under, or across any part of any school, university, internal improvement, swamp, tax forfeited or other land or public water under the control of the commissioner of natural resources, of telephone, telegraph, and electric power lines, cables or conduits, underground or otherwise, or mains or pipe lines for gas, liquids, or solids in suspension. Any such license shall be cancelable upon reasonable notice by the commissioner for substantial violation of its terms, or if at any time its continuance will conflict with a public use of the land or water over or upon which it is granted, or for any other cause. All such land or public water shall remain subject to sale or lease or other legal use, but in case of sale, lease or other use there may be excepted from the grant or other disposition of land or public water all rights included in any license over, under, or across it, and the license may contain an agreement that there will be such exception. The commissioner may charge a fee in lieu of but not less than that authorized by subdivision 5 if he issues a license containing an agreement that there will be such an exception. All rights so excepted shall be reserved to the state and be cancelable by the commissioner for the same reasons or cause as they might have been canceled before such sale, lease or other use of the land or water. Upon such cancellation, which shall be only after reasonable notice to the licensee, all rights granted by the license shall be vested in the state and may be granted again by the commissioner on the terms and conditions he may prescribe, but subject to cancellation for the same reasons or causes as they might have been originally canceled unless ownership of the fee

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and of the license are merged. Any license granted before April 13, 1951, may be governed by it if the licensee and commissioner so agree. Reasonable notice as used in this subdivision means a 90 day written notice addressed to the record owner of the license at the last known address, and upon cancellation the commissioner may grant extensions of time to vacate the premises affected.

Sec. 2. Minnesota Statutes 1971, Section 84.415, Subdivision 5, is amended to read:

Subd. 5. ~~FEE. Such licenses or permits shall provide for a fee of not more than \$4 per mile or proportionately for each fraction of a mile, but not less than \$1 annually.~~ In the event the construction of such lines causes damage to timber or other property of the state on or along the same, the license or permit shall also provide for payment to the state treasurer of the amount thereof as may be determined by the commissioner.

All money received under such licenses or permits shall be credited to the fund to which other income or proceeds of sale from such land would be credited, if provision therefor be made by law, otherwise to the general fund.

Sec. 3. Minnesota Statutes 1971, Section 92.46, is amended by adding a subdivision to read:

Subd. 1a. TERMINATION OF LEASING. Effective upon enactment of this subdivision, no new leases shall be made pursuant to subdivision 1. In any case where substantial improvements have been made to land leased pursuant to subdivision 1, the commissioner shall require the lessee to comply with applicable county ordinances for the management of shoreland areas and shall cancel any lease for non-compliance with these standards except those sub-standard uses authorized by the county ordinance.

Sec. 4. Minnesota Statutes 1971, Section 106.021, Subdivision 1, is amended to read:

106.021 POWERS OF COUNTY BOARDS AND OF DISTRICT COURTS. Subdivision 1. **GENERALLY.** The county boards of the several counties, and the district courts are authorized to make all necessary orders for and cause to be constructed and maintained public drainage systems; to deepen, widen, straighten, or change the channel or bed of any waterway following the general direction thereof, and when practical, terminating therein; to extend the same into or through any municipality for the purpose of securing a suitable outlet; and to construct all needed dikes, dams, and control works and power appliances, pumps, and pumping machinery in the manner set forth by law.

Sec. 5. Minnesota Statutes 1971, Section 106.021, Subdivision 2, is amended to read:

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Subd. 2. **DRAINAGE OF LAKES.** ~~The board or court is authorized to drain in whole or in part lakes which have become normally shallow and of a marshy character and are not of sufficient depth or volume to be of any substantial public use; provided No meandered lake shall be so drained nor shall a natural watercourse be channelized~~ except upon the determination of the commissioner of natural resources of the state of Minnesota that such lake or natural watercourse is not public waters of the state as defined by Minnesota Statutes, Section 105.38, or pursuant to the permit of the commissioner as provided in subdivision 3.

Sec. 6. Minnesota Statutes 1971, Section 106.021, Subdivision 4, is amended to read:

Subd. 4. **APPLICATION TO COMMISSIONER.** The petitioners for any public ditch, or the board or court may make application to the commissioner of natural resources for the authority required by subdivision 3 or for the determination of the status of ~~meandered~~ lakes basins or natural watercourses required by subdivision 2.

Sec. 7. Minnesota Statutes 1971, Section 106.021, is amended by adding a subdivision to read:

Subd. 6. **CRITERIA FOR PROPOSED DRAINAGE SYSTEMS.** Before January 1, 1974, the commissioner of natural resources shall promulgate, in the manner provided in chapter 15, a list of criteria that county boards or court must consider when establishing and improving drainage systems. The criteria shall relate to the social, economic, and environmental impact of the proposed drainage system, and shall be limited to the following:

(a) An economic analysis of the private and public benefits and costs derived from the proposed project;

(b) An analysis of present and anticipated agricultural land acreage availability and use within the county;

(c) An analysis of flooding characteristics of project lands involved;

(d) An analysis of alternative measures for the conservation, allocation, and development of the drainage waters;

(e) An analysis of water quality effects as a result of the proposed project;

(f) An analysis of fish and wildlife resources affected by the proposed project;

(g) An analysis of shallow ground water availability, distribution, and use in the project area;

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(h) An analysis of the overall environmental impact of all the criteria in items (a) to (g).

Sec. 8. Minnesota Statutes 1971, Section 106.081, Subdivision 1, is amended to read:

106.081 PRELIMINARY SURVEY AND REPORT. Subdivision 1. **SURVEY AND REPORT.** The engineer shall promptly proceed and examine all matters set forth in the petition and order, and make such preliminary survey of the territory likely to be affected by the proposed improvement as will enable him to determine whether the same is necessary and feasible, and report accordingly in compliance with the requirements of Minnesota Statutes, Section 106.021. If some other plan than that described in the petition is found practical, the engineer shall so report, giving such detail and information as is necessary to inform the court or board on all matters pertaining to the feasibility of the proposed plan, either as outlined in the petition or according to a different plan recommended by the engineer. He shall show all changes, whether by extension, adding laterals, or otherwise, that may be necessary to make the plan of the proposed improvement practicable and feasible. If the construction of a ditch or drain is involved in the proposed improvement, the engineer shall examine and report the nature and capacity of the outlet and any necessary extension thereof.

Sec. 9. Minnesota Statutes 1971, Section 106.081, Subdivision 3, is amended to read:

Subd. 3. INCLUSION IN PRELIMINARY REPORT. If he finds the improvement petitioned for is feasible, and complies with the requirements of section 106.021, he shall include in his report a preliminary plan of the proposed system showing thereon the proposed drain and laterals or other improvements, and the outlet thereof, together with the watershed of such drainage system and the lands and properties likely to be affected, including so far as known the names of the owners thereof. He shall show upon such plan the elevation of the outlet and the controlling elevations of the lands likely to be affected and also the probable size and character of the ditches and laterals necessary to make the plan practicable and feasible. All elevations so far as practical shall be referred to standard sea level datum. He shall show in his report the character of the outlet and the sufficiency thereof and also the probable cost of the drains and improvements shown on his plan, and all other information and data necessary to disclose the practicability, necessity and feasibility of the proposed improvement, including an analysis of the project as required by section 106.021 and such other information as the board or court may order.

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Sec. 10. Minnesota Statutes 1971, Section 106.081, Subdivision 4, is amended to read:

Subd. 4. **LIMITATION OF SURVEY.** The engineer shall confine his preliminary survey to the drainage area described in the petition, except to secure outlet, unless authorized by order of the board or court, with the consent of the bondsmen, at a hearing after ten days notice by mail to the petitioners and bondsmen; and any investigation made by the engineer as to outlet, without such order, shall be confined to running the necessary levels to ascertain the distance necessary to secure the proper fall. The preliminary survey shall include an analysis of the impact of the project as required by section 106.021.

Sec. 11. Minnesota Statutes 1971, Section 106.091, Subdivision 2, is amended to read:

Subd. 2. **COMMISSIONER'S REPORT.** ~~Upon request by the board or court the director shall report to the board or court giving his opinion as to the sufficiency of the engineer's report and as to the practicability and feasibility of the drainage system or improvements shown therein, together with his comments or recommendations thereon. Such report shall be filed with the auditor or clerk on or before the date fixed for the preliminary hearing or at any continuance thereof. If such report is not requested, the director may, in his discretion, report to the board or court. The commissioner of natural resources shall make an advisory report to the board or court giving his opinion as to the sufficiency and adequacy of the engineer's report. The commissioner shall set forth in his report any matters pertaining to the project which should be further investigated and evaluated in accordance with section 106.021. If the commissioner determines that the report is not adequate and sufficient, he shall so report. The commissioner's initial report shall be filed with the auditor or clerk on or before the date fixed for the preliminary hearing or at any continuance thereof. The commissioner may request additional time for review and evaluation of the engineer's report in cases where such additional time can be shown to be necessary for proper evaluation. However, no request for additional time for filing the commissioner's report may be made after five days from the date of notice by the auditor or clerk that a date is to be fixed for the preliminary hearing. No extension of time shall exceed two weeks from the date of the request.~~

Sec. 12. Minnesota Statutes 1971, Section 106.101, Subdivision 2, is amended to read:

Subd. 2. **HEARING.** The engineer shall attend the hearing and supply such information as may be necessary. The petitioners and all other parties interested may appear and be heard. The

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~~director's report, if any, shall be publicly read. Such report shall be deemed advisory only. The commissioner's report on the preliminary plan shall be publicly read and included in the record of proceedings.~~

Sec. 13. Minnesota Statutes 1971, Section 106.101, Subdivision 4, is amended to read:

Subd. 4. **DISMISSAL.** At said hearing or any adjournment thereof, if it shall appear that the proposed improvement is not feasible, or that the adverse environmental impact is greater than the public benefit or utility based upon the requirements and criteria required to be considered by section 106.021, and no plan is reported by the engineer whereby it can be made feasible, and acceptable, or that it is not of public benefit or utility, or that the outlet is not adequate, the petition shall be dismissed.

Sec. 14. Minnesota Statutes 1971, Section 106.101, Subdivision 5, is amended to read:

Subd. 5. **FINDINGS AND ORDER.** If the board or court shall be satisfied that the proposed improvement as outlined in the petition or as modified and recommended by the engineer is feasible, that there is necessity therefor, that it will be of public benefit and promote the public health, based upon the requirements and criteria required to be considered by section 106.021, and that the outlet is adequate, the board or court shall so find and by such order shall designate the changes that shall be made in the proposed improvement from that outlined in the petition including such changes as are necessary to minimize or compensate for adverse impact on the environment. These changes may be described in general terms and shall be sufficiently described by filing with the order a map outlining the proposed improvement thereon. Thereafter the petition shall be treated as modified accordingly. When the ditch shall outlet into an existing county or judicial ditch, the board or court may find that the outlet is adequate subject to confirmation and permission being obtained in accordance with section 106.531. In such case the board or court shall assign a number to the ditch and the board or court shall proceed to act in behalf of the ditch to obtain outlet rights in accordance with section 106.531.

Sec. 15. Minnesota Statutes 1971, Section 106.121, Subdivision 4, is amended to read:

Subd. 4. **DATA AND REPORT.** The engineer shall prepare and submit the following data and report:

(a) A complete map of the drainage system or improvement drawn to scale, showing thereon (1) the termini and course of each

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drain and whether open or tile, and the location of all other proposed improvements; (2) the location and situation of the outlet; (3) the watershed of the drainage system and the sub-watershed of main branches, if any, together with the location of existing highway bridges and culverts; (4) all lands and properties affected, together with the names of the owners thereof so far as known; (5) public streets, highways and railways affected; (6) the outlines of any meandered lake basin, wetland and public body of water affected; (7) such other physical characteristics of the watershed as may appear necessary for the understanding thereof.

(b) A profile of all lines of ditch proposed showing graphically, the elevation of the ground and gradient at each 100-foot station, the station number at each section line and at each property line, whether open or tiled, the size of tile and the bottom width and side slope of open ditch sections, and such other information as may appear necessary for the understanding thereof.

(c) Plans for all private bridges and culverts proposed to be constructed by and as a part of the ditch system, together with plans for all other works and items of construction necessary for the completion of the drainage system or improvement. A list showing the required minimum hydraulic capacity of all bridges and culverts at all railway and highway open ditch crossings and at other prospective open ditch crossings where bridges and culverts are not specified to be constructed as a part of the ditch, together with plans and estimates of the cost of highway bridges and culverts required for the information of the viewers in determining benefits and damages.

(d) A tabular statement showing the number of cubic yards of tile on each tile line with the average depth thereof, and all bridges, culverts, works and other construction items required by the plans for the completion of the system, together with the estimated unit cost of each of said items and a summary of the total cost thereof. Such summary shall include an estimate of the cost of fully completing the system, including supervision and other costs thereof.

(e) The acreage which will be required and taken as right of way upon each government lot and 40-acre tract or fraction thereof under separate ownership required for right of way for any open ditch.

(f) Specifications for drain tile shall require that all drain tile used shall comply with the requirements of the American Society for Testing Materials standard specifications for drain tile, except where the depths to which the drains are to be laid or the conditions of the soil, in the opinion of the engineer, require tile of a special and higher quality.

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(g) When more economical construction will result, the engineer may recommend that the work be divided into sections and let separately, and that open and tile work or tile and labor thereon be let separately, and the time and manner so far as practicable in which the whole work or any section thereof shall be done.

(h) Such other detail and information as shall appear requisite to fully inform the board or court of the practicability and necessity of the proposed improvements shall be made available including a comprehensive examination of all requirements of section 106.021, together with his recommendations thereon.

Sec. 16. Minnesota Statutes 1971, Section 106.131, is amended to read:

106.131 AUTHORITY OF COMMISSIONER; COMMISSIONER'S REPORT. Upon the filing of the engineer's report, a complete copy thereof shall be transmitted to the ~~director~~ commissioner by the auditor or clerk.

The ~~director~~ commissioner shall examine the same and within ~~15~~ 30 days make his report thereon to the board or court. If he finds the report incomplete and not in accordance with the provisions of this chapter, he shall so report. If he approves the same as being ~~a practical~~ an acceptable plan for the drainage of the lands affected, he shall so state. If he does not approve the plan, he shall file his recommendations for changes deemed advisable, or, if in his opinion, the proposed system or improvement is not ~~practical~~ of public benefit or utility based upon the requirements or criteria required to be considered by section 106.021, he shall so report. If a soil survey appears advisable, he shall so advise, and in such event the engineer shall make the soil survey and report thereon before the final hearing. The ~~director's~~ commissioner's report shall be directed to the board or court and shall be filed with the auditor or clerk. ~~Such report shall be deemed advisory only.~~

No notice shall issue for the final hearing until the ~~director's~~ commissioner's report shall be filed.

Sec. 17. Minnesota Statutes 1971, Section 106.201, is amended to read:

106.201 ORDER ESTABLISHING. Subdivision 1. DISMISSAL. If it shall appear that the benefits are not more than the total cost, including damages awarded, or that the proposed system will not be of public benefit and utility, or that the same is not practicable, or that the system does not comply with requirements of section 106.021, the board or court shall so find and the petition shall be dismissed.

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Subd. 2. **ESTABLISHMENT.** If the board or court shall find that the engineer's and viewers' reports have been made and all other proceedings in the matter had in accordance with law, that the estimated benefits are greater than the total estimated cost, including damages, that the damages and benefits have been duly determined, that the proposed drainage system will be of public utility and benefit, and will promote the public health, that the proposed system is practicable, and that such reports as made or amended are complete, just and correct, and comply with requirements of section 106.021, then the board or court shall by order containing such findings, establish the drainage improvement as reported or amended, and adopt and confirm the viewers' report as made or amended.

Sec. 18. Minnesota Statutes 1971, Section 106.221, Subdivision 2, is amended to read:

Subd. 2. **CHANGES DURING CONSTRUCTION.** The contract shall give the engineer the right, with the consent of the board or court, to modify his reports, plans and specifications as the work proceeds and as circumstances may require. It shall provide that the increased cost resulting from such changes will be paid by the county to the contractor at not to exceed the price for like work in the contract. No change shall be made that will substantially impair the usefulness of any part of the drainage system or substantially alter its original character or increase its total cost by more than ten percent of the total original contract price. In no event shall any change be made that will cause the cost to exceed the total estimated benefits found by the board or court, or will cause any detrimental effects to the public interest as set forth in section 106.021.

Sec. 19. Minnesota Statutes 1971, Section 106.631, Subdivision 1, is amended to read:

106.631 **APPEALS.** Subdivision 1. **GROUND FOR APPEAL.** Any party aggrieved thereby, may appeal to the district court from an order of the board or court made in any proceeding and entered upon its record determining any of the following matters:

- (1) The amount of benefits determined;
- (2) The amount of damages allowed;
- (3) Relative to the allowance of fees or expenses in any proceeding;
- (4) The sufficiency of the order in meeting the requirements of section 106.021, and any criteria promulgated pursuant thereto.

Approved May 21, 1973.

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