A bill for an act

relating to natural resources; providing for disposition of proceeds from sale of administrative sites; providing for administrative penalty orders; providing a rulemaking exemption; appropriating money; amending Minnesota Statutes 2006, sections 84.0857; 94.16, subdivision 3; proposing coding for new law in Minnesota Statutes, chapter 103G.

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

Section 1. Minnesota Statutes 2006, section 84.0857, is amended to read:

84.0857 FACILITIES MANAGEMENT ACCOUNT.

(a) The commissioner of natural resources may bill organizational units within the Department of Natural Resources for the costs of providing them with building and infrastructure facilities. Costs billed may include modifications and adaptations to allow for appropriate building occupancy, building code compliance, insurance, utility services, maintenance, repair, and other direct costs as determined by the commissioner. Receipts shall be credited to a special account in the state treasury and are appropriated to the commissioner to pay the costs for which the billings were made.

(b) Money deposited in the special account from the proceeds of a sale under section 94.16, subdivision 3, paragraph (b), is appropriated to the commissioner to acquire facilities or renovate existing buildings for administrative use or to acquire land for, design, and construct administrative buildings for the Department of Natural Resources.

Sec. 2. Minnesota Statutes 2006, section 94.16, subdivision 3, is amended to read:

Subd. 3. **Proceeds from natural resources land.** (a) Except as provided in paragraph (b), the remainder of the proceeds from the sale of lands that were under the control and supervision of the commissioner of natural resources shall be credited to the land acquisition account in the natural resources fund.

(b) The remainder of the proceeds from the sale of administrative sites under the control and supervision of the commissioner of natural resources shall be credited to the facilities management account established under section 84.0857 and used to acquire facilities or renovate existing buildings for administrative use or to acquire land for, design, and construct administrative buildings for the Department of Natural Resources.

Sec. 3. **[103G.252] ADMINISTRATIVE PENALTY ORDERS.**

The commissioner may issue an order requiring violations to be corrected and administratively assessing monetary penalties for violations of chapters 84, 103F, and 103G, rules, orders, agreements, settlements, licenses, registrations, or permits for activities affecting the course, current, or cross-section of public waters, appropriation or diversion of waters of the state, or harvest, control, or destruction of aquatic plants. The commissioner must follow the procedures in section 103G.253 when issuing an administrative penalty order. The maximum monetary amount of an administrative penalty order is $10,000 for each violator for all violations by that violator identified in an inspection or review of compliance.

Sec. 4. **[103G.253] ADMINISTRATIVE PENALTY ORDER PROCEDURE.**

Subdivision 1. **Contents of order.** An order assessing an administrative penalty under section 103G.252 must include:

(1) a concise statement of the facts alleged to constitute a violation;

(2) a reference to the law, rule, order, agreement, settlement, license, registration, or permit that has been violated;

(3) a statement of the corrective order and the amount of the administrative penalty to be imposed and the factors upon which it is based; and

(4) a statement of the person's right to review the order.

Subd. 2. **Amount of penalty; considerations.** (a) In determining the amount or requirements of a penalty under section 103G.252, the commissioner may consider:

(1) the willfulness of the violation;

(2) the gravity of the violation, including damage to humans, animals, air, water, land, forests, or other natural resources of the state;

(3) the history of past violations;

(4) the number of violations;

(5) the economic benefit gained by the person by allowing or committing the violation; and

(6) other factors as justice may require, if the commissioner specifically identifies the additional factors in the commissioner's order.

(b) For a second or subsequent violation, the commissioner shall, in determining the amount or requirements of a penalty, consider:

(1) the factors in paragraph (a);

(2) the similarity of the most recent previous violation and the violation to be penalized;

(3) the time elapsed since the last violation;

(4) the number of previous violations; and

(5) the response of the person to the most recent previous violation identified.

Subd. 3. **Corrective order.** (a) The commissioner may issue an order requiring the violations cited in the order to be corrected within the time period specified in the order. Corrective orders may require repair, restoration, replacement, and monetary restitution as determined by the commissioner.

(b) The person to whom the order was issued shall provide information to the commissioner before the 31st day after the order was received demonstrating that the violation has been corrected or that the person has developed a corrective plan. The commissioner shall determine whether the violation has been corrected or whether the corrective plan is acceptable and notify the person to whom the order was issued of the commissioner's determination.

Subd. 4. **Penalty.** (a) Except as provided in paragraph (c), if the commissioner determines that the violation has been corrected or the person to whom the order was issued has developed a corrective plan acceptable to the commissioner, the monetary penalty may be forgiven in whole or in part.

(b) Unless the person requests review of the order under subdivision 5 before the monetary penalty is due, the penalty in the order is due and payable on the 31st day after the order was received.

(c) For repeated or serious violations, the commissioner may issue an order with a monetary penalty that shall not be forgiven after the corrective action is taken.

(d) Interest at the rate established in section 549.09 begins to accrue on penalties under this subdivision on the 31st day after the order with the penalty was received.

Subd. 5. **Expedited administrative hearing.** (a) Within 30 days after receiving an order, the person to whom the order was issued may request an expedited hearing, using the procedures adopted under section 14.51, to review the commissioner's action. The hearing request must specifically state the reasons for seeking review of the order. The person to whom the order was issued and the commissioner are the parties to the expedited hearing. The commissioner must notify the person to whom the order was issued of the time and place of the hearing at least 15 days before the hearing. The expedited hearing must be held within 30 days after a request for hearing has been filed with the commissioner unless the parties agree to a later date.

(b) All written arguments must be submitted within ten days following the close of the hearing. The hearing shall be conducted according to rules adopted under section 14.51, as modified by this subdivision. The Office of Administrative Hearings may, in consultation with the commissioner of natural resources, adopt rules specifically applicable to cases under this section.

(c) The administrative law judge shall issue a report making recommendations about the commissioner's action to the commissioner within 30 days following the close of the record. The administrative law judge may not recommend a change in the amount of the proposed penalty or corrective order unless the administrative law judge determines that, based on the factors in subdivision 2, the monetary penalty or corrective order is unreasonable.

(d) If the administrative law judge makes a finding that the hearing was requested solely for purposes of delay or that the hearing request was frivolous, the commissioner may add to the amount of the penalty the costs charged to the Department of Natural Resources by the Office of Administrative Hearings for the hearing.

(e) If the administrative law judge issues a report that recommends dismissal of the order assessing the administrative penalty, the commissioner must refund the costs charged to the person receiving the order by the Office of Administrative Hearings for the hearing and reasonable and necessary attorney fees incurred for the hearing. For purposes of this paragraph, the administrative law judge may recommend attorney fees to be refunded, not to exceed the amount of the penalty order.

(f) If a hearing has been held, the commissioner may not issue a final order until at least five days after receipt of the report of the administrative law judge. The person to whom the order was issued may, within those five days, comment to the commissioner on the recommendations and the commissioner must consider the comments. The final order may be appealed according to sections 14.63 to 14.69

(g) If a hearing has been held and a final order issued by the commissioner, the penalty must be paid within 30 days after the date the final order is received and the corrective action must be completed within the time period specified by the final order, unless review of the final order is requested under sections 14.63 to 14.69. If review is not requested or the order is reviewed and upheld, the amount due is the penalty, together with interest accruing from 31 days after the original order was received at the rate established in section 549.09.

Subd. 6. **Alternative dispute resolution.** In addition to review under subdivision 5, the commissioner may enter into mediation or other alternative dispute resolution concerning an order issued under this section if the commissioner and the person to whom the order was issued both agree to mediation or other alternative dispute resolution.

Subd. 7. **Enforcement.** (a) The attorney general may proceed on behalf of the state to enforce penalties that are due and payable under this section in any manner provided by law for the collection of debts.

(b) The attorney general may petition the district court to file the administrative order as an order of the court. At any court hearing, the only issues parties may contest are procedural and notice issues. Once entered, the administrative order may be enforced in the same manner as a final judgment of the district court.

(c) If a person fails to pay the penalty or comply with a corrective order, the attorney general may bring a civil action in district court seeking payment of the penalties, injunctive relief, or other appropriate relief including monetary damages, attorney fees, costs, and interest.

Subd. 8. **Revocation and suspension of permit, license, or registration.** If a person fails to pay a penalty owed under this section, the commissioner may revoke or refuse to reissue or renew the related permit, license, or registration issued by the commissioner.

Subd. 9. **Cumulative remedy.** The authority of the commissioner to issue a corrective order assessing penalties is in addition to other remedies available under statutory or common law, except that the state may not seek civil penalties under any other provision of law for the violations covered by the administrative penalty order. The payment of a penalty does not preclude the use of other enforcement provisions, under which penalties are not assessed, in connection with the violation for which the penalty was assessed.

Sec. 5. **IMPLEMENTATION PLAN; RULEMAKING EXEMPTION.**

The commissioner of natural resources shall prepare a plan to implement the administrative penalty order according to Minnesota Statutes, sections 103G.252 to 103G.254. The commissioner shall provide a 30-day period for public comment on the plan. The plan must be finalized by December 31, 2008. The plan is exempt from the rulemaking procedures under Minnesota Statutes, chapter 14, and Minnesota Statutes, section 14.386, does not apply.