

(14) The terms and conditions upon which the holder or holders of the bonds, or the holders of any proportion or percentage of them, may enforce any covenants made under sections 474.01 to 474.13 or any duties imposed thereby;

(15) A procedure by which the terms of any ordinance or resolution authorizing bonds or of any other contract with bondholders, including, but not limited to, an indenture of trust or similar instrument, may be amended or abrogated, and the amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given; and

(16) The subordination of the security of any bonds issued hereunder and the payment of principal and interest thereof, to the extent deemed feasible and desirable by the governing body, to other bonds or obligations of the municipality or redevelopment agency issued to finance the project or that may be outstanding when the bonds thus subordinated are issued and delivered.

Approved May 18, 1973.

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## CHAPTER 315—H.F.No.1465

[Coded in Part]

*An act relating to water resources; modifying and strengthening certain powers of the commissioner of natural resources in connection therewith; providing penalties; amending Minnesota Statutes 1971, Sections 105.37, by adding subdivisions; 105.38; 105.39, by adding a subdivision; 105.41; 105.42; 105.43; 105.44, Subdivisions 1, 3, 5, 6; 105.45; 105.47; 105.51, Subdivision 1; and Chapter 105, by adding sections; repealing Minnesota Statutes 1971, Section 105.54.*

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

Section 1. Minnesota Statutes 1971, Section 105.37, is amended by adding a subdivision to read:

Subd. 5. WATER RESOURCES; POWERS OF COMMISSIONER OF NATURAL RESOURCES. "Appropriating" includes but is not limited to "taking", regardless of the use to which the water is put.

Sec. 2. Minnesota Statutes 1971, Section 105.37, is amended by adding a subdivision to read:

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Subd. 6. "Beneficial public purpose", in relation to waters of the state, includes but is not limited to any or all of the following purposes:

(a) Water supply for municipal, industrial, agricultural, or other purposes;

(b) Recharge of underground water strata;

(c) Retention of water to prevent or reduce downstream flooding, thereby minimizing erosion and resultant property damage;

(d) Entrapment and retention of nutrients and other materials which impair the quality of natural resources;

(e) Recreational activities such as swimming, boating, fishing, and hunting;

(f) Public navigation other than for recreational purposes;

(g) Wildlife habitat such as fish spawning and rearing areas, waterfowl nesting and feeding areas, and areas for the rearing, feeding, and protection of other wildlife;

(h) Areas designated as scientific and natural areas pursuant to section 84.033.

Sec. 3. Minnesota Statutes 1971, Section 105.37, is amended by adding a subdivision to read:

Subd. 7. "Waters of the state" means any waters, surface or underground, except those surface waters which are not confined but are spread and diffused over the land. "Waters of the state" includes all boundary and inland waters.

Sec. 4. Minnesota Statutes 1971, Section 105.38, is amended to read:

**105.38 DECLARATION OF POLICY.** In order to conserve and utilize the water resources of the state in the best interests of the people of the state, and for the purpose of promoting the public health, safety and welfare, it is hereby declared to be the policy of the state:

(1) ~~Subject to existing rights all waters in streams and lakes within of the state which are capable of substantial serve a beneficial public use purpose are public waters subject to the control of the state. The public character of water shall not be determined exclusively by the proprietorship of the underlying, overlying, or surrounding land or on whether it is a body or stream of water which was navigable in fact or susceptible of being used~~

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as a highway for commerce at the time this state was admitted to the union. This section is not intended to affect determination of the ownership of the beds of lakes or streams.

(2) The state, to the extent provided by law from time to time, shall control the appropriation and use of surface and underground waters of the state.

(3) The state shall control and supervise, so far as practicable, any activity which changes or which will change the course, current, or cross-section of public waters, including but not limited to the construction, reconstruction, repair, removal, or abandonment of dams, reservoirs, and all control structures in any of the public waters of the state.

Sec. 5. Minnesota Statutes 1971, Section 105.39, is amended by adding a subdivision to read:

**Subd. 6. STATEWIDE WATER INFORMATION SYSTEM.**  
The commissioner in cooperation with other state agencies, including the Minnesota geologic survey, shall establish and maintain a statewide system to gather, process, and disseminate information on the availability, distribution, quality, and use of waters of the state. Each local, regional, and state governmental unit, its officers and employees shall cooperate with the commissioner in accomplishing the purpose of this subdivision.

Sec. 6. Minnesota Statutes 1971, Section 105.41, is amended to read:

**105.41 APPROPRIATION AND USE OF WATERS.** Subdivision 1. It shall be unlawful for the state, any person, partnership, or association, private or public corporation, county, municipality, or other political subdivision of the state to appropriate or use any waters of the state, surface or underground, without the written permit of the commissioner, previously obtained upon written application therefor to the commissioner. The commissioner may give such permit subject to such conditions as he may find advisable or necessary in the public interest. Nothing in this section shall be construed to apply to the use of water for domestic purposes serving at any time less than 25 persons, and nothing in this subdivision shall apply to any beneficial uses and rights, outside the geographical limits of any municipality, in existence on July 1, 1937, or to any beneficial uses and rights, within the geographical limits of any municipality, in existence on July 1, 1959.

Subd. 2. It shall be unlawful for the owner of any installation for appropriating or using surface or underground water to increase the pumping capacity or make any major modification in

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such installation without the written permit of the commissioner previously obtained upon written application therefor to the commissioner.

The owner or person in charge of every installation for appropriating or using surface or underground water, ~~whether or not under permit~~, shall file with the commissioner, ~~not later than January 1, 1966~~, at such time as the commissioner determines necessary to the statewide water information system, a statement of the location thereof, its capacity, the purpose or purposes for which it is used, and such additional information that the commissioner may require, on forms provided by the commissioner.

Subd. 3. The commissioner may examine any ~~air conditioning or industrial cooling~~ installation which ~~utilizes~~ appropriates or uses surface or underground water, and the owner of such installation shall supply such information concerning such installation as the commissioner may require.

Subd. 4. It shall be unlawful for the state, any person, partnership, or association, private or public corporation, county, municipality, or other political subdivision of the state to appropriate or use any waters of the state, surface or underground, without measuring and keeping a record of the quantity of water used or appropriated as herein provided. Each installation for appropriating or using water shall be equipped with a ~~flow meter that will devise or employ a method to~~ measure the quantity of water appropriated with reasonable accuracy ~~if said installation is requested by the commissioner of natural resources to be equipped with a flow meter as aforesaid~~. ~~The commissioner may permit an approved timing device that will record the time intervals when water is being appropriated to be substituted for a flow meter. The commissioner's determination of the method to be used for measuring water quantity shall be based upon the quantity of water appropriated or used, the source of water, the method of appropriating or using water, and any other facts supplied to the commissioner.~~

Subd. 5. ~~Monthly meter readings and timing device~~ Records of the amount of water appropriated or used shall be recorded for each such installation and such readings and the total amount of water appropriated shall be reported annually to the commissioner of natural resources on or before ~~January~~ February 15 of the following year upon forms to be supplied by the commissioner.

Sec. 7. Minnesota Statutes 1971, Section 105.42, is amended to read:

**105.42 PERMITS; WORK IN PUBLIC WATERS.** ~~Except in the construction and maintenance of highways when the control of~~

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~~public waters is not affected.~~ It shall be unlawful for the state, any person, partnership, association, private or public corporation, county, municipality or other political subdivision of the state, to construct, reconstruct, remove, or abandon or make any change in any reservoir, dam, or waterway obstruction on any public water; or in any manner, other than in the usual operation of dams beneficially using water prior to July 1, 1937, to change or diminish the course, current or cross-section of any public waters, wholly or partly within the state, without a written permit from the commissioner previously obtained. Application for such permit shall be in writing to the commissioner on forms prescribed by him.

This section does not apply to any public drainage system lawfully established under the provisions of chapter 106 which does not substantially affect any natural watercourse or any lake basin which serves a beneficial public purpose.

The commissioner, subject to the approval of the county board, shall have power to grant permits under such terms and conditions as he shall prescribe, to establish, construct, maintain and control wharfs, docks, piers, levees, breakwaters, basins, canals and hangars in or adjacent to public waters of the state except within the corporate limits of cities or villages.

Sec. 8. Minnesota Statutes 1971, Section 105.43, is amended to read:

**105.43 APPLICATION FOR ESTABLISHMENT OF LAKE LEVELS.** Application for authority to establish and maintain levels on any public water and applications to establish the natural ordinary high water level of any body of public water may be made to the commissioner by any public body or authority or by ~~two or more~~ a majority of the riparian owners thereon; or, for the purpose of conserving or utilizing the water resources of the state, the commissioner may initiate proceedings therefor.

Sec. 9. Minnesota Statutes 1971, Section 105.44, Subdivision 1, is amended to read:

**105.44 PROCEDURE UPON APPLICATION.** Subdivision 1. **PERMIT.** Each application for a permit required by sections 105.37 to 105.55 shall be accompanied by maps, plans, and specifications describing the proposed appropriation and use of waters, or the changes, additions, repairs or abandonment proposed to be made, or the public water affected, and such other data as the commissioner may require. This data may include but not be limited to a statement of the effect the actions proposed in the permit application will have on the environment, such as: (a) changes in water and related land resources which are anticipated; (b) unavoidable but anticipated detrimental effects; (c) alternatives to the actions

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proposed in the permit. If the proposed activity, for which the permit is requested, is within a city, village, town, or borough, or is within or affects a watershed district, a copy of the application together with maps, plans and specifications shall be served on the secretary of the board of managers of the district and on the chief executive officer of the city, village, town, or borough. Proof of such service shall be included with the application and filed with the commissioner.

Sec. 10. Minnesota Statutes 1971, Section 105.44, Subdivision 3, is amended to read:

Subd. 3. **WAIVER OF HEARING.** The commissioner in his discretion may waive hearing on any application and make his order granting or refusing such application. In such case, if any application be granted, with or without conditions, or be refused, the applicant, the managers of the watershed district, or the chief executive officer of the city, village, town, or borough may within ~~ten~~ 30 days after mailed notice thereof file with the commissioner a demand for hearing on the application. The application shall thereupon be fully heard on notice as hereinafter provided, and determined the same as though no previous order had been made. If no demand for hearing be made, the order shall become final at the expiration of ~~ten~~ 30 days after mailed notice thereof to the applicant, managers of the watershed district, or the chief executive officer of the city, village, town, or borough and no appeal of the order may be taken to the district court.

Sec. 11. Minnesota Statutes 1971, Section 105.44, Subdivision 5, is amended to read:

Subd. 5. **NOTICE.** The notice of hearing on any application shall recite the date, place and time fixed by the commissioner for the public hearing thereon and shall show the waters affected, the levels sought to be established or any control structures proposed. The notice shall be published by the commissioner at the expense of the applicant, or by the commissioner, if the proceeding is initiated by him, the commissioner in the absence of an applicant, at the expense of the commissioner, once each week for two successive weeks prior to the day of hearing in a legal newspaper published in the county in which a part or all of the affected waters are located. Notice shall also be mailed by the commissioner to the county auditor and the chief executive official of any municipality or watershed district affected.

Sec. 12. Minnesota Statutes 1971, Section 105.44, Subdivision 6, is amended to read:

Subd. 6. **HEARING.** The hearings shall be public and shall be conducted by the commissioner or a referee appointed by him. All

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affected persons shall have an opportunity to be heard. All testimony shall be taken under oath and the right of cross-examination shall be accorded. The commissioner shall provide a stenographer to take testimony and a record of the testimony and all proceedings at the hearing shall be taken and preserved. The commissioner shall not be bound by judicial rules of evidence or of pleading and procedure. Except where a public hearing is demanded by a public authority which is not the applicant, the applicant shall pay the following: (1) Costs of the stenographic record and transcript, (2) Rental expenses, if any, of the place of hearing, (3) Costs of publication of orders made by the commissioner.

Where the public hearing is demanded by a public authority which is not the applicant, the public authority making the demand shall pay the costs and expenses listed above. An applicant filing a demand for a public hearing shall execute and file a corporate surety bond or equivalent security to the state of Minnesota, to be approved by the commissioner, and in an amount and form fixed by the commissioner. The bond or security shall be conditioned for the payment of all costs and expenses of the public hearing if the commissioner's action taken pursuant to subdivision 2 is affirmed without modification. No bond or security is required of a public authority which demands a public hearing. The commissioner, in his discretion, may waive the requirement for a bond or other security.

Sec. 13. Minnesota Statutes 1971, Section 105.45, is amended to read:

**105.45 PERMITS AND ORDERS OF COMMISSIONER; NOTICE.** The commissioner shall make findings of fact upon all issues necessary for determination of the applications heard by him. All orders made by the commissioner shall be based upon findings of fact made on substantial evidence. He may cause investigations to be made, and in such event the facts disclosed thereby shall be put in evidence at the hearing or any adjournment thereof.

If the commissioner concludes that the plans of the applicant provide for the most are reasonable, practical, use of the waters of the state and will adequately protect public safety and promote the public welfare, he shall grant the permit, and, if that be in issue, fix the control levels of public waters accordingly. If the commissioner concludes that the proposed appropriation or use of state waters or the proposed construction is inadequate, wasteful, dangerous, or impractical, or detrimental to the public interest, he In all other cases the commissioner shall reject the application or he may require such modification of the plan as he deems proper to protect the public interest. In all permit applications the applicant has the burden of proving that the proposed project is reasonable, practical, and will adequately protect public safety and promote the public welfare.

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In granting a permit the commissioner may include therein such terms and reservations with respect to the amount and manner of such use or appropriation or method of construction or operation of controls as appears reasonably necessary for the safety and welfare of the people of the state.

Notice of all orders made after hearing shall be given by publication of the order once each week for two successive weeks in a legal newspaper in the county where the hearing was held, and by mailing copies of the order to all parties who entered an appearance at such hearing.

The commissioner shall make his order pursuant to hearing within 60 days after the completion of the hearing.

Sec. 14. Minnesota Statutes 1971, Chapter 105, is amended by adding a section to read:

**[105.461] ORDERS TO RESTORE.** As a part of any order granting or denying a permit, whether or not a hearing has been held, the commissioner may order the applicant to take any action necessary to restore the public waters or beds thereof to the condition existing before unlawful activities, if any, were undertaken by the applicant. This restoration may include, but not be limited to, filling beds unlawfully dredged, removing fill unlawfully placed, or restoring water unlawfully appropriated.

Sec. 15. Minnesota Statutes 1971, Chapter 105, is amended by adding a section to read:

**[105.462] INVESTIGATIONS; ORDERS WITHOUT A PERMIT APPLICATION.** When the commissioner determines that the public interest so requires, he may investigate on his own motion any activities being conducted in relation to public waters without a permit as required by sections 105.37 to 105.55. With or without a public hearing the commissioner may make findings and issue orders as otherwise may be issued pursuant to sections 105.37 to 105.55. A copy of his findings and order shall be served upon the person to whom the order is issued.

Sec. 16. Minnesota Statutes 1971, Chapter 105, is amended by adding a section to read:

**[105.463] CONTRACTOR'S RESPONSIBILITY.** It is unlawful for any agent, servant, or employee of another to undertake work for which a permit is required pursuant to Minnesota Statutes, Section 98.48, Subdivision 9, Chapter 105, or Section 106.021, unless a copy of the permit authorizing such work is posted on or near the premises upon which such work is conducted. The violation of this section constitutes a separate and independent offense from any other provided by sections 105.37 to 105.55.

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Sec. 17. Minnesota Statutes 1971, Section 105.47, is amended to read:

105.47 **APPEALS.** Except where otherwise prohibited, any party in interest may appeal from any determination of the commissioner to the district court of the county in which the project is wholly or partly located, at any time within 30 days after notice of the commissioner's order. Notice by publication shall be sufficient.

The appellant shall serve the notice of appeal on the commissioner and on the attorney for any adverse party who appears of record in the proceeding. The notice of appeal with proof of service thereof shall be filed with the clerk of the court to which such appeal is taken within five days after the service thereof; thereupon the district court shall have jurisdiction over the appeal. The notice of appeal shall set forth the order appealed from and the grounds upon which the appeal is taken.

When an appeal is taken from any order of the commissioner under the provisions of sections 105.37 to 105.55, the commissioner shall forthwith cause to be made a certified transcript of all proceedings had and of all pleadings, exhibits and files and all testimony taken or offered before him upon which said order is based, and shall file the same with the clerk of the district court where the appeal is pending.

Upon such appeal being perfected, it may be brought on for trial ~~at any time by either party upon ten days notice to the other~~ as other civil actions, and shall then be tried by the court without a jury, and determined upon the record. At such trial the findings of fact made by the commissioner shall be prima facie evidence of the matters therein stated, and his orders shall be deemed prima facie reasonable. If the court shall determine that the order appealed from is lawful and reasonable, it shall be affirmed. If the court finds that the order appealed from is unjust, unreasonable, or not supported by the evidence, it shall make such order to take the place of the order appealed from as is justified by the record before it.

Any person aggrieved may appeal to the supreme court from the judgment of the district court made therein as in a civil action, except that the appeal must be taken within 30 days from date of the entry of such judgment.

The pendency of any such appeal shall not stay the operation of the order of the commissioner, but the district court or the supreme court in their discretion may suspend the operation of the commissioner's order pending a determination of the appeal; provided the appellant shall file an appropriate bond approved by the

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court conditioned that he shall answer for all damages caused by the delay in the enforcement of the commissioner's order.

Sec. 18. Minnesota Statutes 1971, Section 105.51, Subdivision 1, is amended to read:

**105.51 WELLS; CONTROL, REPORTS BY DRILLERS.** Subdivision 1. For the conservation of the underground water supplies of the state, the commissioner is authorized to require the owners ~~to control of wells, especially flowing~~ artesian wells, to prevent waste.

Sec. 19. Minnesota Statutes 1971, Chapter 105, is amended by adding a section to read:

**[105.541] PENALTIES.** Whoever does any of the following is guilty of a misdemeanor:

(1) Undertakes or procures another to undertake an alteration in the course, current, or cross-section of public waters or appropriates waters of the state without a permit from the commissioner previously obtained regardless of whether the commissioner would have granted a permit had an application been filed;

(2) Undertakes or procures another to undertake an alteration in the course, current, or cross-section of public waters or appropriates waters of the state in violation or in excess of authority granted pursuant to a permit duly issued by the commissioner, regardless of whether an application had been filed for permission to perform the act involved, or whether the act involved would have been permitted had a proper application been filed;

(3) Undertakes or procures another to undertake an alteration in the course, current, or cross-section of public waters or appropriates waters of the state after a permit to undertake such project has been denied by the commissioner;

(4) Violates any other provision of chapter 105.

Sec. 20. **REPEALER.** Minnesota Statutes 1971, Section 105.54, is repealed.

Sec. 21. **EFFECTIVE DATE.** This act is effective the day following its final enactment.

Approved May 18, 1973.

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