

CHAPTER 344—S.F.No.1037

[Coded in Part]

An act relating to water resources; revising certain provisions concerning dams, reservoirs, control structures, and waterway obstructions; providing for the orderly maintenance, repair or reconstruction of dams serving the public interest; prescribing powers and duties of the commissioner of natural resources; authorizing the commissioner to make grants to local governmental units; amending Minnesota Statutes 1971, Sections 105.37, by adding a subdivision; 105.38; 105.42; 105.52; and Chapter 105, by adding a section.

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; DAMS, WATERWAYS, RESERVOIRS; REVISION.** "Abandon" means to give up the use and maintenance of the described structures or improvements to realty and to surrender the same to deterioration, without reference to any intent to surrender or relinquish title to or possessory interest in the real property constituting the site of the structures or improvements. "Abandoned" and "abandonment" have meanings consistent with this definition of "abandon".

Sec. 2. 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 the state which are capable of substantial beneficial public use 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 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.

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(3) The state shall control and supervise, so far as practicable, the construction, reconstruction, repair, removal, ~~or abandonment of, the making of any other change, or the transfer of ownership of dams, reservoirs, and all control structures, and waterway obstructions~~ in any of the public waters of the state.

Sec. 3. Minnesota Statutes 1971, Section 105.42, is amended to read:

105.42 PERMITS; WORK IN PUBLIC WATERS.
Subdivision 1. Except in the construction and maintenance of highways when the control of 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, transfer ownership, 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, by any means, including but not limited to, filling, excavating, or placing of any materials in or on the beds of public waters,~~ 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.

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.

Subd. 2. Nothing in this section shall prevent the owner of any dam, reservoir, control structure, or waterway obstruction from instituting repairs which are immediately necessary in case of emergency. However, the owner shall notify the commissioner at once of the emergency and of the emergency repairs being instituted and, as soon as practicable, shall apply for a permit for the emergency repairs and any necessary permanent repairs. Nothing in this section shall apply to routine maintenance, not affecting the safety of the structures.

In case of an emergency where the commissioner declares that repairs or remedial action is immediately necessary to safeguard life and property, the repairs shall be started immediately by the owner.

Subd. 3. The owner of any dam, reservoir, control structure, or waterway obstruction constructed before a permit was required

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by law shall maintain and operate all such dams, reservoirs, control structures, and waterway obstructions in a manner approved by the commissioner and in accordance with any rules and regulations promulgated by the commissioner in the manner prescribed by Minnesota Statutes, Chapter 15.

Sec. 4. Minnesota Statutes 1971, Chapter 105, is amended by adding a section to read:

[105.482] DAMS; REPAIR, RECONSTRUCTION; GRANTS.
Subdivision 1. PURPOSE. The public health, safety, and welfare is promoted by the orderly repair and restoration of dams serving the public interest. In furtherance of this objective, it is the purpose of this section to facilitate the repair and restoration of dams owned by the state and local governmental units.

Subd. 2. DEFINITION. For the purposes of this section, the term "local governmental unit" means a county, city, village, or borough, or two or more of these units acting jointly.

Subd. 3. COMMISSIONER'S DUTIES. From money appropriated for the following purposes from time to time, the commissioner of natural resources may repair or reconstruct state owned dams and may grant aid to local governmental units to repair or reconstruct dams owned by local governmental units. No grant to a local governmental unit shall exceed the amount contributed to the project by the local governmental unit from funds raised locally exclusive of federal grants.

Subd. 4. PROCEDURES. The commissioner shall repair or reconstruct a state owned dam or make a grant to a local governmental unit only after making an investigation of the dam. A local governmental unit desiring a grant for the repair or reconstruction of a dam shall apply for the grant on forms supplied by the commissioner. The commissioner shall consider all relevant factors, including but not limited to the following in determining whether to repair or reconstruct a state owned dam or to make a grant to a local governmental unit: (a) the age and type of construction of the dam; (b) the use of the dam for water supply, flood control, navigation, recreation, wildlife management, scenic, or other purpose related to public health, safety, and welfare; (c) the consequences of abandonment, removal, or alteration of the dam; (d) prospective future uses of the dam; and (e) the relative importance of the dam to the statewide water resource program. Upon his own initiative or at the request of a governmental unit applying for a grant, the commissioner may hold a public hearing on the proposed repair or reconstruction in the manner provided in Minnesota Statutes, Section 105.44, after giving the same notice as required for such a hearing. If the hearing is held at the request of a governmental unit, the costs of publishing notice and of taking

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and preparing the stenographic record shall be paid by the governmental unit. To receive a grant the local governmental unit shall enter into an agreement with the commissioner giving assurance that the governmental unit will operate and maintain the dam in a safe condition for the benefit of the public and shall agree to such other conditions as the commissioner deems reasonable.

Subd. 5. LIMITATIONS. If the cost of repair or reconstruction of a state owned dam or a grant to a local governmental unit is less than \$25,000, the commissioner may direct that the state owned dam be repaired or reconstructed or that a grant be made to repair or reconstruct a dam owned by a local governmental unit without the approval of the state executive council. If the cost of repair or reconstruction of a state owned dam, or a grant to a local governmental unit is \$25,000 or more but less than \$50,000, the expenditure shall be made only with the approval of the state executive council. If the cost of repair or reconstruction of a state owned dam or a grant to a local governmental unit is \$50,000 or more, the commissioner may recommend the project to the legislature for its consideration and action, except in the following emergency situations. With the approval of the executive council, the commissioner may direct that a state owned dam be repaired or reconstructed or a grant be made to a local governmental unit where he determines that an emergency condition exists and that there is danger that life will be lost or that substantial property losses will be suffered if such action is not promptly taken.

Subd. 6. COMMISSIONER'S ORDER TO REPAIR OR RE-CONSTRUCT A DAM. If for any reason a local governmental unit fails to repair or remove a dam when ordered to do so by the commissioner pursuant to Minnesota Statutes, Section 105.52, the commissioner may repair or remove the dam. In so doing the commissioner shall proceed as follows. After a hearing as provided in Minnesota Statutes, Section 105.44, on the failure of the local governmental unit to repair or remove the dam, the commissioner shall make findings relating to the matter, specifying the failure of the local governmental unit to act, and shall by order assume and possess the powers of the legislative authority of the local governmental unit in regard to the repair or removal of dams. Thereafter the commissioner has the same powers, insofar as applicable to the repair or removal of dams, as the commissioner of administration and pollution control agency have in the construction, installation, maintenance, or operation of a municipal disposal system, or part thereof, or issuing bonds and levying taxes therefor, pursuant to Minnesota Statutes, Section 115.48.

Sec. 5. Minnesota Statutes 1971, Section 105.52, is amended to read:

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105.52 EXAMINATION AND REPAIR OF DAMS AND RESERVOIRS. Upon complaint or upon his own initiative, the commissioner is authorized to examine any reservoir, dam, control structure, or waterway obstruction. If the commissioner determines that additional engineering investigations are necessary in order to determine the safety of the dam, reservoir, control structure, or waterway obstruction and the nature and extent of the necessary repairs or alterations, he shall notify the owner thereof to cause such investigations to be made at the owner's expense and filed with the commissioner for his use in determining the condition of the structures and the need for the repair, alteration or removal thereof. If the commissioner determines that such reservoir, dam, control structure, or waterway obstruction is unsafe or needs repair or alteration, he shall notify the owner thereof to repair, alter, or remove the same as the exigencies of the case may require, and shall issue an order to that effect in the same manner and subject to the same conditions as if the owner had made application for permit for the said repairs, alterations, or removal. The engineering investigations or the work of repair, alteration, or removal shall be commenced and completed within such reasonable time as may be prescribed by the commissioner.

Sec. 6. **EFFECTIVE DATE.** This act is effective July 1, 1973.

Approved May 19, 1973.

CHAPTER 345—S.F.No.1109

An act relating to villages, boroughs, and cities of the fourth class; permitting a tax levy for certain purposes without requesting a referendum of the electorate; amending Minnesota Statutes 1971, Section 465.56.

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

Section 1. Minnesota Statutes 1971, Section 465.56, is amended to read:

465.56 CITIES, VILLAGES, AND BOROUGHES; TAX LEVIES FOR ADVERTISING PURPOSES. The governing body of any village, borough, or city of the fourth class may, ~~when authorized by the electors thereof,~~ as hereinafter provided, annually levy a tax of not to exceed one mill on all the taxable property within such village, borough, or city, but in no event shall more than \$2,000 be

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