

amount of the unencumbered balance of this appropriation.

Approved March 25, 1976.

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**CHAPTER 83—S.F.No.1308**

**[Coded in Part]**

*An act relating to natural resources; clarifying procedures for acquisition of wildlife lands; modifying the definition of beneficial public purpose; requiring a material beneficial public purpose to be served in order to classify waters as public; establishing an accelerated program of inventorying, classifying, and designating state waters; prescribing the powers and duties of the commissioner of natural resources and counties in connection therewith; prescribing interim rules and regulations; specifying certain restrictions on drainage; eliminating the duty of the commissioner of natural resources to promulgate certain criteria relating to drainage systems; clarifying the criteria which county boards or district courts must consider concerning drainage systems; establishing a state water bank program for public waters; appropriating money; amending Minnesota Statutes 1974, Sections 105.37, Subdivision 6, and by adding subdivisions; 105.38; 105.42, Subdivision 1a; 106.021, Subdivisions 2 and 6; 106.031, Subdivision 1; 106.081, Subdivisions 1, 3 and 4; 106.091, Subdivisions 1 and 2; 106.101, Subdivisions 4 and 5; 106.111, Subdivision 1; 106.121, Subdivisions 1 and 4; 106.131; 106.201, Subdivisions 1 and 2; and Chapter 105, by adding sections; and Minnesota Statutes, 1975 Supplement, Section 97.481.*

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

Section 1. Minnesota Statutes, 1975 Supplement, Section 97.481, is amended to read:

**97.481 NATURAL RESOURCES; DEPARTMENTAL FUNCTIONS; ACQUISITION OF WILDLIFE LANDS.** The commissioner of natural resources is hereby authorized and empowered to acquire, in the name of the state, by gift, lease, purchase and transfer of state lands, any such wildlife lands, such as marsh or wetlands, and the margins thereof, including ponds, small lakes and stream bottom lands, which he finds desirable to acquire in the interests of water conservation relating to wildlife development programs, and, he may also acquire for this purpose from any state agency, itself included, lands now in state ownership or tax-forfeited which are suitable for wildlife purposes, and when such lands are so acquired, he is authorized to develop the same in the interest of wildlife, recreational or public hunting areas as he shall deem desirable. In the determination of which lands will be acquired as wildlife lands, the commissioner shall assign highest priority to parcels containing type 3 or 4 wetlands, as defined in U.S. Fish and Wildlife Service Circular No. 39 (1971 edition), which were previously determined to be public waters. No such lands shall be acquired until

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first approved for such purchase, or lease, by a majority of the members of the board of county commissioners in the counties where the land to be purchased, or leased, is located. In the counties in which a soil and water conservation district is organized the supervisors will act as counsellors to the board of county commissioners regarding the best utilization and capability of the land proposed for purchase, including the questions of drainage and flood control. The commissioner in the purchase of such wetlands must recognize that when a majority of land owners, or owners of a majority of the land in the watershed, petition for a drainage outlet, that the state should not interfere, or unnecessarily delay such drainage proceedings when such proceedings are conducted according to the Minnesota Drainage Code. In no case should state lands, so purchased, or leased, be used to produce crops ~~which are in a surplus as defined by the federal government~~ unless such crops are needed to sustain wildlife. No lands described herein shall be acquired unless there is acquired simultaneously therewith a right-of-way or easement from said lands to a public road so as to make entry upon said lands available to the public. The commissioner may designate lands or interests in lands acquired pursuant to this section as wildlife management areas for the purposes of the outdoor recreation system.

Sec. 2. Minnesota Statutes 1974, Section 105.37, Subdivision 6, is amended to read:

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, or 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 spawning, rearing, feeding, and protection-nesting of other wildlife; or~~

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

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Sec. 3. Minnesota Statutes 1974, Section 105.37, is amended by adding a subdivision to read:

Subd. 9. "Waterbasin" means an enclosed natural depression with definable banks capable of containing water which may be partly filled with waters of the state and which is discernible on aerial photographs.

Sec. 4. Minnesota Statutes 1974, Section 105.37, is amended by adding a subdivision to read:

Subd. 10. "Natural watercourse" means any natural channel which has definable beds and banks capable of conducting confined runoff from adjacent lands.

Sec. 5. Minnesota Statutes 1974, Section 105.37, is amended by adding a subdivision to read:

Subd. 11. "Altered natural watercourse" means a former natural watercourse which has been affected by man made changes in straightening, deepening, narrowing, or widening of the original channel.

Sec. 6. Minnesota Statutes 1974, Section 105.37, is amended by adding a subdivision to read:

Subd. 12. "Artificial watercourse" means a watercourse which has been artificially constructed by man where there was no previous natural watercourse.

Sec. 7. Minnesota Statutes 1974, 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 of the state which serve a material beneficial public purpose are public waters subject to the control of the state. In the determination of whether a beneficial public purpose exists, specific evidence of the present or future beneficial public purpose shall be evaluated in accordance with section 105.37, subdivision 6, and with reference to the existing land use of the area, the soil types surrounding and underlying the water, the ownership of the land surrounding the water, the relative agricultural and wildlife productivity of the area, and relevant provisions of a county or municipal shorelands ordinance enacted pursuant to section 105.485. 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

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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.

(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, abandonment, the making of any other change, or the transfer of ownership of dams, reservoirs, control structures, and waterway obstructions in any of the public waters of the state.

Sec. 8. Minnesota Statutes 1974, Chapter 105, is amended by adding a section to read:

**[105.391] PUBLIC WATERS INVENTORY AND CLASSIFICATION.** Subdivision 1. On the basis of all information available to him, the commissioner shall inventory the waterbasins of each county and make a preliminary designation as to which constitute public waters. The commissioner shall send his preliminary designation for each county to the county board of that county for its review and comment.

Subd. 2. Within 90 days after a county board has received the commissioner's preliminary designation, it shall notify the commissioner of any disagreement with his designation. The commissioner may extend the time within which a county may notify him of a disagreement.

Subd. 3. If there is no disagreement between the commissioner and a county concerning the preliminary designation of waterbasins in that county, the commissioner by rule shall designate as public waters those waterbasins listed in the preliminary designation. In the same rule making proceeding the commissioner may also designate as public waters any watercourses which have been determined to be public and classified as to the level of regulation in accordance with the procedures of the commissioner's interim rules. The designation of watercourses as public waters pursuant to this subdivision shall remain in effect until changed by rule of the commissioner following the inventory, designation, and classification of watercourses prescribed by this section. A hearing on proper designation of waterbasins or watercourses shall be held in the county in which the waters to be designated are located. Except as provided below, no waterbasin designated public water may be drained, and no permit authorizing drainage of a waterbasin containing public water may be issued, unless the public water being drained is replaced by a waterbasin which will have equal or greater public value. However, after a state water bank program has

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been established, a waterbasin designated public water which is eligible for inclusion in that program may be drained without a permit and without replacement of a waterbasin of equal or greater public value if the commissioner does not elect, within 60 days of the receipt of an application for a permit to drain the waterbasin, to either (1) place the waterbasin in the state waterbank program, or (2) acquire it pursuant to section 97.481, or (3) indemnify the landowner through any other appropriate means, including but not limited to conservation restrictions, easements, leases, or any applicable federal program. If the applicant is not offered his choice of any one of all of the above alternatives, he is entitled to drain the waters involved.

Subd. 4. If there is a disagreement between the commissioner and a county concerning the preliminary designation of a waterbasin as public waters in that county, the commissioner shall attempt to resolve the disagreement with the county within 60 days after receiving notice of disagreement from the county. During the 60 day period the commissioner may proceed, in the manner provided by subdivision 3, to make a final designation for those waterbasins which are not the subject of disagreement between the commissioner and the county.

Subd. 5. If after 60 days from the date of receiving notice of disagreement by a county, there remain matters upon which the commissioner and the county disagree, the commissioner shall order a public hearing to be held in the county and conducted pursuant to chapter 15. A hearings unit composed of two persons appointed by the commissioner, one person appointed by the affected county board and one person appointed by the area soil and water conservation district shall select a fifth member within 45 days of the public hearing order. If the fifth member of the hearings unit cannot be agreed upon by the four appointees within the 45 day period, then the state soil and water conservation board shall select such member within 30 days. In the event there is a watershed district whose boundaries include the waters involved, the district shall provide the hearings unit with its recommendations. Upon completion of the hearing and review of the hearing examiner's report, the hearings unit shall issue its findings of fact, conclusions and an order, which shall be considered the decision of an agency in a contested case for purposes of judicial review pursuant to section 15.0425. Upon receipt of the order of the hearings unit and after the appeal period has expired, or upon receipt of the final order of the court in the case of an appeal, the commissioner shall promulgate by rule a list of the waterbasins and watercourses determined to be public waters by the hearings unit, provided that unless any aggrieved party other than the commissioner or the affected county board seeks judicial review of the order of the hearings unit, pursuant to chapter 15, both the commissioner and the affected county board shall be bound by the order of the hearings unit and shall not be entitled to seek judicial review. A person who did not intervene pursuant to section 116B.09 in the initial action for judicial review of the order of the hearings unit shall not be entitled to maintain a subsequent civil action pursuant to section 116B.03. In the event the county appeals an order

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of the hearings unit, the commissioner shall be obligated to pay 50 percent of the appeal costs and disbursements of the county. In the event the commissioner appeals an order of the hearings unit, the commissioner shall be obligated to pay the costs and disbursements incurred by the county in defense of the appeal.

Subd. 6. From money appropriated to him for the following purposes, the commissioner shall grant aid to counties to facilitate an inventory of all watercourses for the purpose of designating which watercourses in the county are public waters and for the purpose of recommending a management classification for each watercourse. The commissioner shall consider the size of a county and the number of watercourses within the county when making a grant. Within a reasonable time following the grant of aid for a watercourse inventory, as specified by the commissioner, the county shall report to the commissioner on its watercourse inventory, its recommendations as to which watercourses in the county should be designated public waters, and its recommended management classifications. Within 90 days after receiving a county's report, the commissioner shall notify the county of any disagreement with the county's report. If there is no disagreement concerning a particular watercourse the commissioner shall by rule designate that watercourse public waters and shall specify its proper management classification. The commissioner shall attempt to resolve any disagreement between the commissioner and a county within 60 days after notifying the county of his disagreement. During the 60 day period the commissioner may proceed, in the manner provided by subdivision 3, to make a final designation for watercourses which are not the subject of disagreement between the commissioner and the county. If, after 60 days from the date the county receives notice of the commissioner's disagreement, there remain matters upon which the commissioner and a county disagree, the commissioner, in accordance with subdivision 5, shall present the disagreement to a hearings unit as stipulated therein who shall conduct a public hearing which upon completion shall further comply with the provisions of subdivision 5 relating to judicial review, final order and appeal costs.

Subd. 7. Waters of this state are public waters for the purposes of this section if they have been determined to be public waters or navigable waters by the district court or, if appealed, by the supreme court of this state or by the United States supreme court.

Subd. 8. Notwithstanding any other law to the contrary the procedures, rules and guidelines set forth in the order of the commissioner of natural resources dated March 4, 1976, and filed with the secretary of state by March 4, 1976, and given a document number by the secretary of state, shall be valid and enforceable emergency rules of the commissioner of natural resources for the purposes of Minnesota Statutes, Sections 15.0411 to 15.0422, with respect to public waters during the period between the effective date of this act and their designation as public waters pursuant to this section, without further act or deed of the commissioner.

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Sec. 9. Minnesota Statutes 1974, Chapter 105, is amended by adding a section to read:

**[105.392] WATER BANK PROGRAM.** Subdivision 1. The legislature finds that it is in the public interest to preserve the wetlands of the state and thereby to conserve surface waters, to preserve wildlife habitat, to reduce runoff, to provide for floodwater retention, to reduce stream sedimentation, to contribute to improved subsurface moisture, to enhance the natural beauty of the landscape, and to promote comprehensive and total water management planning. Therefore, the commissioner of natural resources is authorized to promulgate rules, which shall include the procedures and payment rates designed to effectuate the terms of this section. This program is intended to supplement and complement the federal water bank program and the payment rates established shall be at least equal to the federal rates existing at the time any agreements are entered into.

Subd. 2. The commissioner shall have authority to enter into agreements with landowners for the conservation of wetlands. These agreements shall be entered into for a period of ten years, with provision for renewal for additional ten year periods. The commissioner may re-examine the payment rates at the beginning of any ten year renewal period in the light of the then current land and crop values and make needed adjustments in rates for any renewal period.

Wetlands eligible for inclusion in the waterbank program shall have all the following characteristics as determined by the commissioner: (a) types 3 or 4, as defined in U. S. Fish and Wildlife Service Circular No. 39 (1971 edition); (b) less than 50 acres in area; (c) declared public waters because of its beneficial public value as wildlife habitat; (d) its drainage is lawful, feasible, and practical; and (e) its drainage would provide high quality cropland and that is the projected land use.

Subd. 3. In the agreement between the commissioner and an owner, the owner shall agree:

(1) to place in the program for the period of the agreement eligible wetland areas he designates, which areas may include wetlands covered by a federal or state government easement which permits agricultural use, together with such adjacent areas as determined desirable by the commissioner;

(2) not to drain, burn, fill, or otherwise destroy the wetland character of such areas, nor to use such areas for agricultural purposes, as determined by the commissioner;

(3) to effectuate the wetland conservation and development plan for his land in accordance with the terms of the agreement, unless any requirement thereof is waived or modified by the commissioner;

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(4) to forfeit all rights to further payments or grants under the agreement and to refund to the state all payments or grants received thereunder upon his violation of the agreement at any stage during the time he has control of the land subject to the agreement if the commissioner determines that such violation is of such a nature as to warrant termination of the agreement, or to make refunds or accept such payment adjustments as the commissioner may deem appropriate if he determines that the violation by the owner does not warrant termination of the agreement;

(5) upon transfer of his right and interest in the lands subject to the agreement during the agreement period, to forfeit all rights to further payments or grants under the agreement and refund to the state all payments or grants received thereunder during the year of the transfer unless the transferee of any such land agrees with the commissioner to assume all obligations of the agreement;

(6) not to adopt any practice specified by the commissioner in the agreement as a practice which would tend to defeat the purposes of the agreement; and

(7) to additional provisions which the commissioner determines are desirable and includes in the agreement to effectuate the purposes of the program or to facilitate its administration.

Subd. 4. In return for the agreement of the owner, the commissioner shall (1) make an annual payment to the owner for the period of the agreement at the rate as the commissioner determines to be fair and reasonable in consideration of the obligations undertaken by the owner; and (2) provide advice on conservation and development practices on the wetlands and adjacent areas for the purposes of this section as the commissioner determines to be appropriate. In making his determination, the commissioner shall consider, among other things, the rate of compensation necessary to encourage owners of wetlands to participate in the water bank program.

Subd. 5. Any agreement may be renewed or extended at the end of the agreement period for an additional period of ten years by mutual agreement of the commissioner and the owner, subject to any rate re-determination by the commissioner. If during the agreement period the owner sells or otherwise divests himself of the ownership or right of occupancy of the land, the new owner may continue such agreement under the same terms or conditions, or enter into a new agreement in accordance with the provisions of this section, including the provisions for renewal and adjustment of payment rates, or he may choose not to participate in the program, except any water declared public waters shall not be drained.

Subd. 6. The commissioner may terminate any agreement by mutual agreement with the owner if the commissioner determines that the termination would be in the public interest, and may agree to any mod-

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ification of agreements he may determine to be desirable to carry out the purposes of the program or facilitate its administration.

Sec. 10. Minnesota Statutes 1974, Section 105.42, Subdivision 1a, is amended to read:

Subd. 1a. The commissioner shall recommend by January 15, 1975, to the legislature a comprehensive law containing standards and criteria governing the issuance and denial of permits under this section. These standards and criteria shall relate to the diversion of water from other uses and changes in the level of public waters to insure that projects will be completed and maintained in a satisfactory manner. The commissioner may by rule identify classes of activities in waterbasins and classes of watercourses on which the commissioner may delegate permit authority to the appropriate county or city under such guidelines as the commissioner may provide based on agreement with the involved county or city and in compliance with the requirements of section 105.45. After November 15, 1975, a permit shall be granted under this section only when the project conforms to state, regional, and local water and related land resources management plans, and only when it will involve a minimum of encroachment, change, or damage to the environment, particularly the ecology of the waterway. In those instances where a major change in the resource is justified, permits shall include provisions to compensate for the detrimental aspects of the change.

In unincorporated areas and, after January 1, 1976, in incorporated areas, permits that will involve excavation in the beds of public waters shall be granted only where the area in which the excavation will take place is covered by a shoreland conservation ordinance approved by the commissioner and only where the work to be authorized is consistent with the shoreland conservation ordinance. Each permit that will involve excavation in the public waters shall include provisions governing the deposition of spoil materials.

No permit affecting flood waters shall be granted except where the area covered by the permit is governed by a flood plain management ordinance approved by the commissioner and the conduct authorized by the permit is consistent with the flood plain management ordinance, provided that the commissioner has determined that sufficient information is available for the adoption of a flood plain ordinance. No permit involving the control of flood waters by structural means, such as dams, dikes, levees, and channel improvements, shall be granted until after the commissioner has given due consideration to all other flood damage reduction alternatives. In developing his policy with regard to placing emergency levees along the banks of public waters under flood emergency conditions, the commissioner shall consult and cooperate with the office of emergency services.

No permit that will involve a change in the level of public waters shall be granted unless the shoreland adjacent to the waters to be

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changed is governed by a shoreland conservation ordinance approved by the commissioner and the change in water level is consistent with that shoreland conservation ordinance. Standards and procedures for use in deciding the level of a particular lake must insure that the rights of all persons are protected when lake levels are changed and shall include provisions for providing technical advice to all persons involved, for establishing alternatives to assist local agencies in resolving water level conflicts, and mechanics necessary to provide for local resolution of water problems within the state guidelines.

Sec. 11. Minnesota Statutes 1974, Section 106.021, Subdivision 2, is amended to read:

Subd. 2. **DRAINAGE OF WATERBASINS AND WATERCOURSES.** ~~No lake-waterbasin shall be completely drained nor shall any activity regulated by section 105.42 be initiated in a natural watercourse be channelized except upon-until~~ the determination of the commissioner of natural resources of the state of Minnesota that such lake waterbasin or natural watercourse is not public waters of the state as defined by section 105.38 ; ~~or pursuant to the permit of the commissioner as provided in subdivision 3 . If a waterbasin or watercourse is determined to be public waters, the permissible drainage activities shall be governed by section 8, subdivisions 3 and 6, of this act.~~

Sec. 12. Minnesota Statutes 1974, Section 106.021, Subdivision 6, is amended to read:

Subd. 6. **CRITERIA FOR PROPOSED DRAINAGE SYSTEMS.** ~~Before January 1, 1976, the commissioner of natural resources shall promulgate, in the manner provided in chapter 15, a list of criteria that County boards or court courts must consider the following criteria when establishing and improving drainage systems : No criteria relating to drainage systems, whether promulgated pursuant to this subdivision or pursuant to Laws 1973, Chapter 216, shall be effective prior to July 1, 1976. The criteria shall relate to the social, economic, and environmental impact of the proposed drainage system, and shall be limited to the following-for which a preliminary order pursuant to section 106.101, has not been issued prior to the effective date of this act :~~

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

(b) ~~An analysis of-The~~ present and anticipated agricultural land acreage availability and use within the county-project area ;

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

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

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

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

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

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

(i) The present and anticipated land use within the project area .

Sec. 13. Minnesota Statutes 1974, Section 106.031, Subdivision 1, is amended to read:

106.031 **PETITION.** Subdivision 1. **FORM.** Before any public drainage system or other improvement authorized by sections 106.011 to 106.661 is established, a petition therefor shall be filed with the county auditor, if for a drainage system entirely within one county, or ~~with the clerk of the district court pursuant to section 106.015, subdivision 1~~ , if for a drainage system within two or more counties. Such petition shall be signed by not less than a majority of the resident owners of the land described in the petition or by the owners of at least 60 percent of the area of such land, exclusive of the holder of easements for electric or telephone transmission and distribution lines. The lands described in the petition shall be those over which the proposed ditch passes or upon which the improvement is located, and the petition shall set forth the description of such lands and shall set forth the necessity for the ditch or improvement, and that the same will be of public benefit and utility and will promote the public health, with the description of the starting point, the general course, and terminus or location of the same. The petition shall state that the petitioners will pay all costs and expenses which may be incurred in case the proceedings are dismissed or for any reason no contract for the construction thereof is let. Such petition may be signed by the authorized representative of any municipal corporation or by the commissioner of highways, or the authorized agent of any public institution or any corporation which may be affected by or assessed for the proposed construction; but in such case, the signature of such representatives, commissioner, agent, or corporation shall each count only as one signature on the petition. Each ditch proceeding shall be designated by number assigned by the auditor or clerk.

Sec. 14. Minnesota Statutes 1974, 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

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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 ~~in compliance with reference to the requirements of section 106.021, subdivision 6.~~ The engineer shall also examine and gather information concerning the factors stated in sections 105.37, subdivision 6, and 105.38, clause (1) for consideration in the determination of whether the proposed drainage system substantially affects any public water. 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. 15. Minnesota Statutes 1974, 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, subdivision 6, 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-consideration~~ of the project as required by section 106.021, subdivision 6, and such other information as the board or court may order.

Sec. 16. Minnesota Statutes 1974, 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 con-

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fined to running the necessary levels to ascertain the distance necessary to secure the proper fall. The preliminary survey shall include ~~an analysis~~ consideration of the impact of the project as required by section 106.021 , subdivision 6 .

Sec. 17. Minnesota Statutes 1974, Section 106.091, Subdivision 1, is amended to read:

**106.091 FILING ENGINEER'S REPORT; COMMISSIONER'S REPORT.** Subdivision 1. **FILING.** Upon completion of his survey and report, the engineer shall file his report in duplicate with the auditor or clerk. The auditor or clerk shall transmit one copy thereof to the director of the division of waters, soils and minerals. If the ~~report be filed with the clerk~~ proposed drainage system involves more than one county , a duplicate thereof shall also be filed with the auditor of each county affected.

Sec. 18. Minnesota Statutes 1974, Section 106.091, Subdivision 2, is amended to read:

**Subd. 2. COMMISSIONER'S REPORT.** 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~~ sections 105.37, subdivision 6; 105.38, clause (1), and 106.021 , subdivision 6 . If the commissioner determines that the report is not adequate and sufficient, he shall so report the specific inadequacies or insufficiencies . 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. 19. Minnesota Statutes 1974, 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, subdivision 6, 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.

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Sec. 20. Minnesota Statutes 1974, 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, subdivision 6, 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~~ mitigate 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. 21. Minnesota Statutes 1974, Section 106.111, Subdivision 1, is amended to read:

106.111 **ORDER FOR DETAILED SURVEY.** Subdivision 1. Upon the filing of the preliminary hearing order as specified in section 106.101, subdivision 5, the board or court shall order the engineer or any other engineer, if a change of engineers be determined, to proceed to make a detailed survey and furnish all necessary plans and specifications for the proposed improvement and report the same to the board or court with all reasonable dispatch. All of the provisions of section 106.071 shall be applicable to the employment of the engineer.

Sec. 22. Minnesota Statutes 1974, Section 106.121, Subdivision 1, is amended to read:

106.121 **ENGINEER'S SURVEY.** Subdivision 1. **SURVEY AND EXAMINATION.** Upon the filing of the order for detailed survey named in section 106.111, the engineer shall proceed to survey the lines of the drainage improvement petitioned for and approved by order made upon preliminary hearing, and to survey and examine all lands and properties affected thereby.

Sec. 23. Minnesota Statutes 1974, 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:

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(a) A complete map of the drainage system or improvement drawn to scale, showing thereon (1) the termini and course of each 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 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 excavation and linear feet 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—the criteria~~ of section 106.021, subdivision 6, together with his recommendations thereon.

Sec. 24. Minnesota Statutes 1974, Section 106.131, is amended to read:

**106.131 COMMISSIONER'S FINAL ADVISORY REPORT.** Upon the filing of the engineer's report, a complete copy thereof shall be transmitted to the commissioner by the auditor or clerk.

The commissioner shall examine the same and within 30 days make his advisory 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 specifying the incomplete or nonconforming provisions of the engineer's report. If he approves the same as being 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 of public benefit or utility based upon the ~~requirements or~~ criteria required to be considered by section 106.021, subdivision 6, he shall ~~so~~ report specifically what facts or evidence support his advisory opinion. 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 commissioner's report shall be directed to the board or court and shall be filed with the auditor or clerk.

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

Sec. 25. Minnesota Statutes 1974, Section 106.201, Subdivision 1, 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 based upon the criteria~~ of section 106.021, subdivision 6, the board or court shall so find and the petition shall be dismissed.

Sec. 26. Minnesota Statutes 1974, Section 106.201, Subdivision 2,

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is amended to read:

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. 27. **APPROPRIATION.** The sum of \$1,040,000 is appropriated from the general fund to the commissioner of natural resources for the purposes of this act. This appropriation shall be available immediately upon the effective date of this act and shall not cancel but shall be available until expended. Of this amount, \$240,000 is appropriated to carry out the purposes of section 8, \$200,000 is appropriated for the purposes of grants to counties pursuant to section 8, subdivision 6, and \$600,000 is appropriated for the water bank program pursuant to section 9. The unobligated balance of the \$750,000 appropriated by Laws 1975, Chapter 415, Section 1, Subdivision 7, is cancelled and reappropriated for the purposes of the waterbank program pursuant to section 9 of this act and for fee acquisition pursuant to section 97.481 of wetlands eligible for inclusion in the waterbank program as specified in section 9 of this act.

Sec. 28. **EFFECTIVE DATE.** This act is effective the day following its final enactment.

Approved March 25, 1976.

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#### CHAPTER 84—S.F.No.1456

*An act relating to soil and water conservation; providing for the operation of the soil and water conservation commission; amending Minnesota Statutes, 1975 Supplement, Section 40.03, Subdivision 1; Minnesota Statutes 1974, Sections 40.03, Subdivisions 2 and 4; and 40.06, Subdivision 2.*

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

Section 1. Minnesota Statutes, 1975 Supplement, Section 40.03, Subdivision 1, is amended to read:

#### 40.03 SOIL AND WATER CONSERVATION COMMISSION; OP-

Changes or additions indicated by underline deletions by ~~strikeout~~