

Sec. 14. **REPEALER.** Laws 1951, Chapter 556; Laws 1951, Chapter 598; Laws 1951, Chapter 636, Section 4; Laws 1951, Chapter 702; Laws 1953, Chapter 270; Laws 1953, Chapter 703, Section 1; Laws 1953, Chapter 753; Laws 1955, Chapter 875; Laws 1957, Chapter 671, Section 7; Laws 1957, Chapter 950; Laws 1959, Chapter 200; Laws 1959, Chapter 297; Extra Session Laws 1959, Chapter 17; Extra Session Laws 1961, Chapter 45; Extra Session Laws 1961, Chapter 47; Laws 1963, Chapter 857; Laws 1965, Chapter 294; Laws 1965, Chapter 633; Laws 1965, Chapter 850; Laws 1967, Chapter 441; Laws 1967, Chapter 588; Laws 1967, Chapter 599, Section 4; Laws 1967, Chapter 796; Laws 1969, Chapter 473; Laws 1969, Chapter 692; Laws 1969, Chapter 918; Laws 1969, Chapter 1053; Laws 1971, Chapter 495; Laws 1971, Chapter 744, Section 2; Laws 1973, Chapter 261, are repealed.

Sec. 15. **EFFECTIVE DATE.** This act shall take effect upon its approval by the board of commissioners of Hennepin County and upon compliance with Minnesota Statutes 1971, Section 645.021.

Approved May 25, 1979.

CHAPTER 199—S.F.No.808

An act relating to waters; redefining public waters; defining wetlands; providing new procedures for the determination of public waters and wetlands; reappropriating money; amending Minnesota Statutes 1978, Sections 105.37, by adding subdivisions; 105.38; 105.39, Subdivision 3; 105.391, Subdivisions 1 and 3, and by adding subdivisions; 105.392, Subdivisions 2 and 5; and 105.42, Subdivision 1; repealing Minnesota Statutes 1978, Sections 105.37, Subdivision 6; and 105.391, Subdivisions 2, and 4 to 8.

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

Section 1. Minnesota Statutes 1978, Section 105.37, is amended by adding a subdivision to read:

Subd. 13. "Meandered lakes" means all bodies of water except streams lying within the meander lines shown on plats made by the United States General Land Office.

Sec. 2. Minnesota Statutes 1978, Section 105.37, is amended by adding a subdivision to read:

Subd. 14. "Public waters" includes and shall be limited to the following waters of the state:

(a) All water basins assigned a shoreland management classification by the commissioner pursuant to section 105.485, except wetlands less than 80 acres in size which are classified as natural environment lakes;

(b) All waters of the state which have been finally determined to be public waters

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or navigable waters by a court of competent jurisdiction;

(c) All meandered lakes, except for those which have been legally drained;

(d) All waterbasins previously designated by the commissioner for management for a specific purpose such as trout lakes and game lakes pursuant to applicable laws;

(e) All waterbasins designated as scientific and natural areas pursuant to section 84.033;

(f) All waterbasins located within and totally surrounded by publicly owned lands;

(g) All waterbasins where the state of Minnesota or the federal government holds title to any of the beds or shores, unless the owner declares that the water is not necessary for the purposes of the public ownership;

(h) All waterbasins where there is a publicly owned and controlled access which is intended to provide for public access to the water basin; and

(i) All natural and altered natural watercourses with a total drainage area greater than two square miles, except that trout streams officially designated by the commissioner shall be public waters regardless of the size of their drainage area.

The public character of water shall not be determined exclusively by the proprietorship of the underlying, overlying, or surrounding land or by 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.

For the purposes of statutes other than sections 105.37, 105.38 and 105.391, the term "public waters" shall include "wetlands" unless the statute expressly states otherwise.

Sec. 3. Minnesota Statutes 1978, Section 105.37, is amended by adding a subdivision to read:

Subd. 15. "Wetlands" includes, and shall be limited to all types 3, 4 and 5 wetlands, as defined in U. S. Fish and Wildlife Service Circular No. 39 (1971 edition), not included within the definition of public waters, which are ten or more acres in size in unincorporated areas or 2-1/2 or more acres in incorporated areas.

Sec. 4. Minnesota Statutes 1978, Section 105.37, is amended by adding a subdivision to read:

Subd. 16. "Ordinary high water level" means the boundary of public waters and wetlands, and shall be an elevation delineating the highest water level which has been maintained for a sufficient period of time to leave evidence upon the landscape, commonly that point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial. For watercourses, the ordinary high water level shall be the elevation of the top of the bank of the channel. For reservoirs and flowages the ordinary

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high water level shall be the operating elevation of the normal summer pool.

Sec. 5. Minnesota Statutes 1978, 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 and wetlands are 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 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 or wetlands, 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 or wetlands of the state.

Sec. 6. Minnesota Statutes 1978, Section 105.39, Subdivision 3, is amended to read:

Subd. 3. The commissioner shall have administration over the use, allocation and control of public waters and wetlands, the establishment, maintenance and control of lake levels and water storage reservoirs, and the determination of the ~~natural~~ ordinary high water level of any public waters and wetlands.

Sec. 7. Minnesota Statutes 1978, Section 105.391, Subdivision 1, is amended to read:

105.391 PUBLIC WATERS INVENTORY AND CLASSIFICATION. Subdivision 1. On the basis of all information available to him and the criteria set forth in section 1, the commissioner shall inventory the ~~waterbasins~~ waters of each county and make a preliminary designation as to which constitute public waters and wetlands. The commissioner shall send his ~~preliminary designation for a list and map of the waters~~

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which he has preliminarily designated as public waters and wetlands in each county to the county board of that county for its review and comment. The designation of waters as "public waters" pursuant to this section shall not grant any additional or greater right of access to the public to those waters; nor is the commissioner required to acquire access to those waters under section 97.48, subdivision 15; nor is any right of ownership or usage of the beds underlying those waters diminished. The county board shall conduct at least one public informational meeting within the county regarding the commissioner's preliminary designation. After conducting the meetings and within 90 days after receipt of the list or maps, the county board shall present its recommendation to the commissioner, listing any waters regarding which the board disagrees with the commissioner's preliminary designation and stating with particularity the waters involved and the reasons for disagreement. The commissioner shall review the county board's response and, if he agrees with any of the board's recommendations, he shall revise the list and map to reflect the recommendations. Within 30 days after receiving the county board's recommendations, he shall also notify the county board as to which recommendations he accepts and rejects and the reasons for his decision. After the revision of the map and list, if any, or if no response is received from the county board within the 90 days review period, the commissioner shall file the revised list and map with the recorder of each county and shall cause the list and map to be published in the official newspaper of the county. The published notice shall also state that any person or any county may challenge the designation of specific waters as public waters or wetlands or may request the designation of additional waters as public waters or wetlands, by filing a petition for a hearing with the commissioner within 90 days following the date of publication. The petition shall state with particularity the waters for which the commissioner's designation is disputed and shall set forth the reasons for disputing the designation. If any designations are disputed by petition, the commissioner shall order a public hearing to be held within the county within 60 days following the 90 day period, notice of which shall be published in the state register and the official newspaper of the county. The hearings shall be conducted by a hearings unit composed of one person appointed by the affected county board, one person appointed by the commissioner and one board member of the local soil and water conservation district or districts within the county who shall be selected by the other two members at least 20 days prior to the hearing date. The expenses of and per diem payments to any member of the hearings unit who is not a state employee shall be paid as provided for in section 15.059, subdivision 3, within the limits of funds available from grants to the county pursuant to section 16. In the event there is a watershed district whose boundaries include the waters involved, the district may provide the hearings unit with its recommendations. Within 60 days following completion of the hearing, 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 sections 15.0424 and 15.0425. The commissioner, the county or any person aggrieved by the decision of the hearings unit may appeal from the hearings unit's order. 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 publish a list of the waters determined to be public waters and wetlands. The commissioner shall complete the public waters and wetlands inventory by December 31, 1982.

Sec. 8. Minnesota Statutes 1978, Section 105.391, Subdivision 3, is amended to

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read:

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 waters or wetlands shall be drained, and no permit authorizing drainage of a waterbasin containing public water may waters or wetlands shall be issued, unless the public water waters or wetlands being drained is are replaced by a waterbasin public waters or wetlands which will have equal or greater public value. However, after a state waterbank program has been established, a waterbasin designated public water wetlands which is are eligible for inclusion in that program may be drained without a permit and without replacement of a waterbasin wetlands 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 wetlands, to either (1) place the waterbasin wetlands 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 wetlands involved.

In addition, the owner or owners of lands underlying wetlands situated on privately owned lands may apply to the commissioner for a permit to drain the wetlands at any time after the expiration of ten years following the original designation thereof. Upon receipt of an application, the commissioner shall review the current status and conditions of the wetlands. If he finds that the current status or conditions are such that it appears likely that the economic or other benefits to the owner or owners which would result from drainage would exceed the public benefits of maintaining the wetlands, he shall grant the application and issue a drainage permit. If the application is denied, no additional application shall be made until the expiration of an additional ten years.

Sec. 9. Minnesota Statutes 1978, Section 105.391, is amended by adding a subdivision to read:

Subd. 9. In order to protect the public health or safety, local units of government may establish by ordinance restrictions upon public access to any wetlands from city, county or township roads which abut wetlands.

Sec. 10. Minnesota Statutes 1978, Section 105.391, is amended by adding a subdivision to read:

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Subd. 10. Nothing in this chapter shall prevent a landowner from utilizing the bed of wetlands or public waters for pasture or cropland during periods of drought, provided there is no construction of dikes, ditches, tile lines or buildings, and the agricultural use does not result in the drainage of the wetlands or public waters. This chapter shall not prevent a landowner from filling any wetland to accommodate wheeled booms on irrigation devices so long as the fill does not impede normal drainage.

Sec. 11. Minnesota Statutes 1978, Section 105.391, is amended by adding a subdivision to read:

Subd. 11. When the state owns wetlands on or adjacent to existing public drainage systems, the state shall give consideration to the utilization of the wetlands as part of the drainage system. If the wetlands interfere with or prevent the authorized functioning of the public drainage system, the state shall provide for any necessary work to allow the proper use and maintenance of the drainage system while still preserving the wetlands.

Sec. 12. Minnesota Statutes 1978, Section 105.391, is amended by adding a subdivision to read:

Subd. 12. The designation of waters as "public waters" or "wetlands" pursuant to this section shall not grant any additional or greater right of access to the public to those waters, nor is the commissioner required to acquire access to those waters under section 97.48, subdivision 15, nor is any right of ownership or usage of the beds underlying those waters diminished. Notwithstanding the designation of waters or lands as public waters or wetlands, all provisions of Minnesota law forbidding trespass upon private lands shall remain in full force and effect.

Sec. 13. Minnesota Statutes 1978, Section 105.392, Subdivision 2, is amended to read:

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, or 5 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) ~~(c)~~ its drainage would provide high quality cropland and that is the projected land use. Waters which have the foregoing characteristics but are less than ten acres in size in unincorporated areas or less than 2-1/2 acres in size in incorporated areas shall also be eligible for inclusion in the waterbank program, at the discretion of the commissioner.

Sec. 14. Minnesota Statutes 1978, Section 105.392, Subdivision 5, is amended to

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read:

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 redetermination 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~~ designated as wetlands shall not be drained.

Sec. 15. Minnesota Statutes 1978, Section 105.42, Subdivision 1, is amended to read:

105.42 PERMITS; WORK IN PUBLIC WATERS. Subdivision 1. 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, abandon, transfer ownership, or make any change in any reservoir, dam or waterway obstruction on any public water; or in any manner, 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. No permit shall be required for work in altered natural watercourses which are part of drainage systems established pursuant to chapters 106 and 112 when the work in the waters is undertaken pursuant to those chapters.

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 waters~~.

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.

Sec. 16. Money appropriated by Laws 1976, Chapter 83, Section 27 to the commissioner of natural resources for grants to counties may be used for expenses incurred pursuant to section 7. The appropriation shall cancel December 31, 1982.

Sec. 17. Minnesota Statutes 1978, Sections 105.37, Subdivision 6; and 105.391, Subdivisions 2, 4, 5, 6, 7 and 8 are repealed.

Approved May 25, 1979.

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