

Presented to the governor May 28, 1991

Signed by the governor May 31, 1991, 5:02 p.m.

CHAPTER 259—S.F.No. 919

An act relating to government operations; amending provisions to adopt emergency game and fish rules; providing alternative methods of publishing game and fish rules; deleting obsolete references to publication under the game and fish laws; authorizing the commissioner to protect wild animals by emergency rule; authorizing the commissioner to set seasons and limits for migratory birds and waterfowl; authorizing the commissioner to allow or prohibit hunting and fishing on certain state lands; amending Minnesota Statutes 1990, sections 3.846, subdivisions 1 and 4; 14.03, subdivision 3; 14.29, subdivision 2, and by adding a subdivision; 14.38, subdivision 6; 84.944, subdivision 1; 84A.02; 86A.06; 86B.211; 97A.045, subdivision 2; 97A.051, subdivisions 1, 2, and 4; 97A.081; 97A.141, by adding a subdivision; 97B.731, subdivision 1; and 97C.805, subdivision 1; proposing coding for new law in Minnesota Statutes, chapters 97A and 97B.

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

Section 1. Minnesota Statutes 1990, section 3.846, subdivision 1, is amended to read:

Subdivision 1. **REQUIREMENT.** (a) Except as provided in paragraph (b), No rule, as defined in section 14.02, subdivision 4, that is exempt from the rule-making provisions of chapter 14, has the force and effect of law unless a notice has been published and filed under subdivision 2 before its effective date.

(b) Rules of the division of game and fish may have the force and effect of law up to seven days before publishing and filing under subdivision 2 if the commissioner of natural resources determines that an emergency exists and for a rule that affects more than three counties publishes the rule once in a legal newspaper in Minneapolis, St. Paul, and Duluth, or for a rule that affects three or fewer counties publishes the rule once in a legal newspaper in each of the affected counties. A rule of the division of game and fish that is published under this paragraph is not effective until seven days after the rule is published in the legal newspapers as provided in this paragraph or the rule is published and filed under subdivision 2, whichever is earlier.

Sec. 2. Minnesota Statutes 1990, section 3.846, subdivision 4, is amended to read:

Subd. 4. **NONAPPLICATION.** Except as provided in subdivision 1, paragraph (b), This section does not apply to section ~~14.02~~ 14.03, subdivision 4, clauses (a) to (h) 3.

New language is indicated by underline, deletions by ~~strikeout~~.

Sec. 3. Minnesota Statutes 1990, section 14.03, subdivision 3, is amended to read:

Subd. 3. **RULEMAKING PROCEDURES.** The definition of a rule in section 14.02, subdivision 4, does not include:

(1) rules concerning only the internal management of the agency or other agencies that do not directly affect the rights of or procedures available to the public;

(2) rules of the commissioner of corrections relating to the placement and supervision of inmates serving a supervised release term, the internal management of institutions under the commissioner's control, and rules adopted under section 609.105 governing the inmates of those institutions;

(3) ~~rules of the division of game and fish published in accordance with section 97A.051;~~

(4) rules relating to weight limitations on the use of highways when the substance of the rules is indicated to the public by means of signs;

~~(5)~~ (4) opinions of the attorney general;

~~(6)~~ (5) the systems architecture plan and long-range plan of the state education management information system provided by section 121.931;

~~(7)~~ (6) the data element dictionary and the annual data acquisition calendar of the department of education to the extent provided by section 121.932; or

~~(8)~~ (7) the occupational safety and health standards provided in section 182.655.

Sec. 4. Minnesota Statutes 1990, section 14.29, subdivision 2, is amended to read:

Subd. 2. **180-DAY TIME LIMIT.** Unless an agency is directed by federal law or court order to adopt, amend, suspend, or repeal a rule in a manner that does not allow for compliance with sections 14.14 to 14.28, no agency may adopt an emergency rule later than 180 days after the effective date of the statutory authority, except as provided in ~~subdivision~~ subdivisions 3 and 4. If emergency rules are not adopted within the time allowed, the authority for the rules expires. The time limit of this section does not include any days used for review by the attorney general. If the 180-day period expires while the attorney general is reviewing the rule and the attorney general disapproves the rule, the agency may resubmit the rule to the attorney general after taking corrective action. The resubmission must occur within five working days after the agency receives written notice of disapproval. If the rule is again disapproved by the attorney general, it is withdrawn.

Sec. 5. Minnesota Statutes 1990, section 14.29, is amended by adding a subdivision to read:

New language is indicated by underline, deletions by ~~strikeout~~.

Subd. 4. GAME AND FISH RULES. (a) The commissioner of natural resources may adopt rules under sections 14.29 to 14.36 and this subdivision that are authorized under chapters 97A, 97B, and 97C to set open seasons and areas, to close seasons and areas, to select hunters for areas, to provide for tagging and registration of game, to prohibit or allow taking of wild animals to protect a species, and to prohibit or allow importation, transportation, or possession of a wild animal.

(b) If conditions exist that do not allow the commissioner to comply with sections 14.29 to 14.36, the commissioner may adopt a rule under this subdivision by submitting the rule to the attorney general for review under section 14.32, complying with sections 3.846, subdivision 2, and 14.36, and including a statement of the emergency conditions and a copy of the rule in the notice. The notice may be published after it is received from the attorney general or five business days after it is submitted to the attorney general, whichever is earlier.

(c) Rules adopted under paragraph (b) are effective upon publishing in the State Register and may be effective up to seven days before publishing and filing under section 3.846, subdivision 2, if:

(1) the commissioner of natural resources determines that an emergency exists;

(2) the attorney general approves the rule; and

(3) for a rule that affects more than three counties the commissioner publishes the rule once in a legal newspaper published in Minneapolis, St. Paul, and Duluth, or for a rule that affects three or fewer counties the commissioner publishes the rule once in a legal newspaper in each of the affected counties.

(d) Except as provided in paragraph (e), a rule published under paragraph (c), clause (3), may not be effective earlier than seven days after publication.

(e) A rule published under paragraph (c), clause (3), may be effective the day the rule is published if the commissioner gives notice and holds a public hearing on the rule within 15 days before publication.

(f) The commissioner shall attempt to notify persons or groups of persons affected by rules adopted under paragraphs (b) and (c) by public announcements, posting, and other appropriate means as determined by the commissioner.

(g) Notwithstanding section 14.35, a rule adopted under this subdivision is effective for the period stated in the notice but not longer than 18 months after the rule is adopted.

(h) A rule adopted under this subdivision is not subject to the 180-day time limit in subdivision 2.

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Sec. 6. Minnesota Statutes 1990, section 14.38, subdivision 6, is amended to read:

Subd. 6. **EXEMPT RULES.** Rules adopted, amended, suspended, or repealed by any agency but excluded from the definition of "rule" in section ~~14.02~~ 14.03, subdivision 4 ~~3~~, shall have the force and effect of law upon compliance with subdivision 7.

However, subdivisions 5 to 9 do not apply to:

(1) rules concerning only the internal management of the agency or other agencies, and which do not directly affect the rights of or procedure available to the public; or;

(2) opinions of the attorney general; ~~or;~~

~~(3) rules published in accordance with section 97A.051.~~

Sec. 7. Minnesota Statutes 1990, section 84.944, subdivision 1, is amended to read:

Subdivision 1. **ACQUISITION CONSIDERATIONS.** (a) In determining what critical natural habitat shall be acquired or improved, the commissioner shall consider:

(1) the significance of the land or water as existing or potential habitat for fish and wildlife and providing fish and wildlife oriented recreation;

(2) the significance of the land, water, or habitat improvement to maintain or enhance native plant, fish, or wildlife species designated as endangered or threatened under section 84.0895;

(3) the presence of native ecological communities that are now uncommon or diminishing; and

(4) the significance of the land, water or habitat improvement to protect or enhance natural features within or contiguous to natural areas including fish spawning areas, wildlife management areas, scientific and natural areas, riparian habitat and fish and wildlife management projects.

(b) Based on the above clauses, the commissioner by ~~order promulgated under section 97A.051, subdivision 3,~~ rule must establish a process to prioritize what critical habitat shall be acquired or improved.

Sec. 8. Minnesota Statutes 1990, section 84A.02, is amended to read:

84A.02 DEPARTMENT TO MANAGE PRESERVE.

The department of natural resources shall manage and control the Red Lake game preserve. The department may adopt and enforce rules for the care, preservation, protection, breeding, propagation, and disposition of all species of wild-

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life in the preserve. The department may adopt and enforce rules for the regulation, issuance, sale, and revocation of special licenses or special permits for hunting, fishing, camping, and other uses of this area, consistent with sections 84A.01 to 84A.11. The department may by rule, set the terms, conditions, and charges for these licenses and permits.

The rules may specify and control the terms under which wildlife may be taken, captured, or killed in the preserve, and under which fur-bearing animals, or animals and fish otherwise having commercial value, may be taken, captured, trapped, killed, sold, and removed from it. These rules may also provide for (1) the afforestation and reforestation of state lands in the preserve, (2) the sale of merchantable timber from these lands when, in the opinion of the department, it can be sold and removed without damage or injury to the further use and development of the land for wildlife and game in the preserve, and (3) the purposes for which the preserve is established by sections 84A.01 to 84A.11.

The department may provide for the policing of the preserve as necessary for its proper development and use for the purposes specified. Supervisors, guards, custodians, and caretakers assigned to duty in the preserve have the powers of peace officers while in their employment.

The department shall also adopt and enforce rules concerning the burning of grass, timber slashings, and other flammable matter, and the clearing, development, and use of lands in the preserve as necessary to prevent forest fires and grass fires that would injure the use and development of this area for wildlife preservation and propagation and to protect its forest and wooded areas.

Lands within the preserve are subject to the rules, whether owned by the state or privately, consistent with the rights of the private owners and with applicable state law. The rules may establish areas and zones within the preserve where hunting, fishing, trapping, or camping is prohibited or specially regulated, to protect and propagate particular wildlife in the preserve.

Rules adopted under sections 84A.01 to 84A.11 must be ~~published as required by section 97A.051 and~~ posted on the boundaries of the preserve.

Sec. 9. Minnesota Statutes 1990, section 86A.06, is amended to read:

86A.06 RULES.

Each managing agency, in consultation with the commissioner of trade and economic development, shall promulgate rules relating to the units of the outdoor recreation system within its jurisdiction, which shall provide for administration of the units in the manner specified in section 86A.05 and the laws relating to each type of unit. ~~The authority provided by this subdivision does not amend or repeal authority possessed by the commissioner of natural resources pursuant to section 97A.051, subdivision 3, and in no way is intended to modify or diminish authority possessed by the commissioner in relation to section 97A.051, subdivision 3.~~

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Sec. 10. Minnesota Statutes 1990, section 86B.211, is amended to read:

86B.211 WATER SAFETY RULES.

The commissioner shall adopt rules ~~and publish the rules in the manner prescribed in section 97A.051, subdivision 3;~~ that relate to:

- (1) the application for, form, and numbering of watercraft licenses;
- (2) the size, form, reflectorized material, and display of watercraft license numbers, which must comply with the requirements of the federal watercraft numbering system;
- (3) placement and regulation of docks, piers, buoys, mooring or marking devices, and other structures in the waters of this state;
- (4) rules of the road for watercraft navigation;
- (5) standards for equipment used in the towing of persons on water skis, aquaplanes, surfboards, saucers, and other devices;
- (6) standards for lights, signals, fire extinguishers, bilge ventilation, and life-saving equipment;
- (7) standards of safe load and power capacity;
- (8) accounting, procedural, and reporting requirements for county sheriff;
- (9) designation of swimming or bathing areas;
- (10) standards of safety for watercraft offered for rent, lease, or hire;
- (11) the use of surface waters of this state by watercraft as provided and in accordance with section 86B.205, subdivision 9, paragraphs (c) and (d), including:
 - (i) standards and criteria for resolving conflicts in the use of water surfaces by watercraft;
 - (ii) procedures for dealing with problems involving more than one local governmental unit;
 - (iii) procedures for local enforcement; and
 - (iv) procedures for enforcing the restrictions in section 86B.205, subdivision 9, paragraph (c); and
- (12) other rules determined by the commissioner to be necessary to implement the provisions of this chapter.

Sec. 11. Minnesota Statutes 1990, section 97A.045, subdivision 2, is amended to read:

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Subd. 2. **POWER TO PROTECT WILD ANIMALS BY SEASONS AND LIMITS.** (a) The commissioner may protect a species of wild animal in addition to the protection provided by the game and fish laws, by further limiting or closing seasons or areas of the state, or by reducing limits in areas of the state, if the commissioner determines the action is necessary to prevent unnecessary depletion or extinction, or to promote the propagation and reproduction of the animal.

(b) The commissioner may protect a species of wild animal in the state by emergency rule adopted under section 14.29, subdivision 4, by prohibiting or allowing taking of the animal whether or not the animal is protected under the game and fish laws. The commissioner must make findings of the necessity of a rule authorized under this paragraph and may authorize taking by special permit with or without fee under conditions prescribed in the rule by the commissioner.

(c) The commissioner may protect a species of wild animal in the state by emergency rule adopted under section 14.29, subdivision 4, by allowing importation, transportation, or possession of the wild animal or prohibiting these activities except by special permit with or without fee under conditions prescribed in the rule by the commissioner.

Sec. 12. Minnesota Statutes 1990, section 97A.051, subdivision 1, is amended to read:

Subdivision 1. **COMPILATION OF LAWS.** As soon as practicable after each legislative session, the commissioner, ~~under the direction with the cooperation~~ of the attorney general and the revisor of statutes, shall assemble the current laws and permanent rules relating to wild animals and index the laws and rules properly. This compilation shall be printed in pamphlet form of pocket size, and 50 copies distributed to each senator, 25 copies to each representative, and ten copies to each county auditor. Up to 10,000 additional copies may be printed for general distribution.

Sec. 13. Minnesota Statutes 1990, section 97A.051, subdivision 2, is amended to read:

Subd. 2. **SUMMARY OF FISH AND GAME LAWS.** The commissioner shall prepare a summary of the hunting and fishing laws and rules and deliver a sufficient supply to county auditors to furnish one copy to each person obtaining a hunting, fishing, or trapping license. At the beginning of the summary, under the heading "Trespass," the commissioner shall summarize the trespass provisions under sections 97B.001 to 97B.945, state that conservation officers and peace officers must enforce the trespass laws, and state the penalties for trespassing.

Sec. 14. Minnesota Statutes 1990, section 97A.051, subdivision 4, is amended to read:

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Subd. 4. ~~ORDERS AND RULES HAVE FORCE AND EFFECT OF LAW.~~ When an order or a rule is effective, it has the force and effect of law. Violation of an order or a rule has the same penalty as a violation of the law under which the rule was adopted.

Sec. 15. Minnesota Statutes 1990, section 97A.081, is amended to read:

97A.081 **POSTING LAND.**

The commissioner may post land acquired for public hunting grounds, food and cover planting areas, game refuges, wildlife lands, and conservation area lands so as to identify and indicate the management purpose and whether hunting and trapping are allowed.

Sec. 16. [97A.083] **HUNTING AND FISHING ON STATE LAND.**

The commissioner shall allow or prohibit hunting and fishing on state land as provided under the game and fish laws. The commissioner shall publish information on hunting and fishing on state land, including areas where taking wild animals is allowed or prohibited.

Sec. 17. [97A.093] **HUNTING AND FISHING IN SCIENTIFIC AND NATURAL AREAS.**

Except as otherwise provided by law, scientific and natural areas are closed to hunting, trapping, and fishing unless opened by rule of the commissioner.

Sec. 18. [97A.137] **HUNTING AND FISHING IN WILDLIFE MANAGEMENT AREAS.**

Wildlife management areas are open to hunting and trapping unless closed by rule of the commissioner.

Sec. 19. Minnesota Statutes 1990, section 97A.141, is amended by adding a subdivision to read:

Subd. 5. HUNTING GENERALLY PROHIBITED. A person may not hunt on water access sites unless allowed by rule of the commissioner.

Sec. 20. Minnesota Statutes 1990, section 97B.731, subdivision 1, is amended to read:

Subdivision 1. **MIGRATORY GAME BIRDS.** (a) Migratory game birds may be taken and possessed. A person may not take migratory game birds in violation of federal law.

(b) The commissioner shall prescribe seasons and limits for migratory birds in accordance with federal law.

Sec. 21. [97B.803] **MIGRATORY WATERFOWL SEASONS AND LIMITS.**

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The commissioner shall prescribe seasons, limits, and areas for taking migratory waterfowl in accordance with federal law.

Sec. 22. Minnesota Statutes 1990, section 97C.805, subdivision 1, is amended to read:

Subdivision 1. **OPEN SEASON.** The commissioner shall, by ~~order~~ rule, prescribe the open season and open state waters for netting lake whitefish and ciscoes. The commissioner may ~~prescribe that the date for the open season to begin is prior to the effective date of the order under section 97A.051; open specific lakes and waters that are otherwise closed~~ if the commissioner posts notice of the date and time in appropriate public places at least 48 hours before the open season begins.

Sec. 23. **INSTRUCTION TO REVISOR.**

The revisor of statutes shall delete the references to commissioner's orders or similar terms in Minnesota Statutes, chapters 97A, 97B, and 97C, and insert a reference to the commissioner's rule or similar terms.

Sec. 24. **EXPIRATION OF EXISTING COMMISSIONER'S ORDERS.**

Commissioner's orders that would be rules within the definition of Minnesota Statutes, section 14.02, subdivision 4, but for the exception in Minnesota Statutes 1990, section 14.03, subdivision 3, and have not been adopted under the rulemaking provisions of Minnesota Statutes, chapter 14, expire and are terminated July 1, 1993. This section is intended to allow sufficient time for the commissioner to make recommendations to the legislature regarding orders existing as of the effective date of this act that should be exempted from the rulemaking requirements in section 5, and for the legislature to act on the recommendations.

Sec. 25. **EFFECTIVE DATE.**

This act is effective July 1, 1992.

Presented to the governor May 28, 1991

Signed by the governor May 31, 1991, 5:06 p.m.

CHAPTER 260—S.F.No. 432

An act relating to employment; regulating certain construction bids; providing penalties; proposing coding for new law in Minnesota Statutes, chapter 181.

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