

(c) Minnesota Statutes 1992, sections 115B.21 to 115B.24, are repealed effective January 1, 2004.

Sec. 94. EFFECTIVE DATES.

Sections 5, subdivision 10; 44; 47; 85; and 86 are effective the day following final enactment. Sections 43; 45; and 46 are effective August 1, 1993. Sections 64 and 80 are effective January 1, 1994.

Presented to the governor May 10, 1993

Signed by the governor May 13, 1993, 5:25 p.m.

CHAPTER 173—H.F.No. 163

VETOED

CHAPTER 174—H.F.No. 947

VETOED

CHAPTER 175—H.F.No. 1402

An act relating to natural resources; defining as "repair" under the drainage code certain incidental straightening of tiles and use of larger tile sizes under certain circumstances; amending requirements relating to replacement of wetlands; modifying exemptions; requiring the wetland heritage advisory committee to meet at least twice per year; requiring a report; amending Minnesota Statutes 1992, sections 103E.701, subdivision 1; 103G.222; 103G.2241; 103G.2242, subdivisions 2 and 11; and 103G.2369, subdivision 2, and by adding a subdivision; Laws 1991, chapter 354, article 7, section 2.

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

Section 1. Minnesota Statutes 1992, section 103E.701, subdivision 1, is amended to read:

Subdivision 1. **DEFINITION.** The term "repair," as used in this section, means to restore all or a part of a drainage system as nearly as practicable to the same condition as originally constructed and subsequently improved, including resloping of ditches and leveling of waste banks if necessary to prevent further deterioration, realignment to original construction if necessary to restore the

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effectiveness of the drainage system, and routine operations that may be required to remove obstructions and maintain the efficiency of the drainage system. "Repair" also includes:

(1) incidental straightening of a tile system resulting from the tile-laying technology used to replace tiles; and

(2) replacement of tiles with the next larger size that is readily available, if the original size is not readily available.

Sec. 2. Minnesota Statutes 1992, section 103G.222, is amended to read:

103G.222 REPLACEMENT OF WETLANDS.

(a) After the effective date of the rules adopted under section 103B.3355 or 103G.2242, whichever is later, wetlands must not be drained or filled, wholly or partially, unless replaced by restoring or creating wetland areas of at least equal public value under either a replacement plan approved as provided in section 103G.2242 or, if a permit to mine is required under section 93.481, under a mining reclamation plan approved by the commissioner under the permit to mine. Mining reclamation plans shall apply the same principles and standards for replacing wetlands by restoration or creation of wetland areas that are applicable to mitigation plans approved as provided in section 103G.2242.

(b) Replacement must be guided by the following principles in descending order of priority:

(1) avoiding the direct or indirect impact of the activity that may destroy or diminish the wetland;

(2) minimizing the impact by limiting the degree or magnitude of the wetland activity and its implementation;

(3) rectifying the impact by repairing, rehabilitating, or restoring the affected wetland environment;

(4) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the activity; and

(5) compensating for the impact by replacing or providing substitute wetland resources or environments.

(c) If a wetland is located in a cultivated field, then replacement must be accomplished through restoration only without regard to the priority order in paragraph (b), provided that a deed restriction is placed on the altered wetland prohibiting nonagricultural use for at least ten years.

(d) Restoration and replacement of wetlands must be accomplished in accordance with the ecology of the landscape area affected.

(e) Replacement shall be within the same watershed or county as the

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impacted wetlands, as based on the wetland evaluation in section 103G.2242, subdivision 2, except that counties or watersheds in which 80 percent or more of the presettlement wetland acreage is intact may accomplish replacement in counties or watersheds in which 50 percent or more of the presettlement wetland acreage has been filled, drained, or otherwise degraded. Wetlands impacted by public transportation projects may be replaced statewide, provided they are approved by the commissioner under an established wetland banking system, or under the rules for wetland banking as provided for under section 103G.2242.

(f) Except as provided in paragraph (g), for a wetland located on nonagricultural land, replacement must be in the ratio of two acres of replaced wetland for each acre of drained or filled wetland.

(g) For a wetland located on agricultural land or in counties or watersheds in which 80 percent or more of the presettlement wetland acreage exists, replacement must be in the ratio of one acre of replaced wetland for each acre of drained or filled wetland.

(h) Wetlands that are restored or created as a result of an approved replacement plan are subject to the provisions of this section for any subsequent drainage or filling.

(i) Except in counties or watersheds where 80 percent or more of the presettlement wetlands are intact, only wetlands that have been restored from previously drained or filled wetlands, wetlands created by excavation in nonwetlands, wetlands created by dikes or dams along public or private drainage ditches, or wetlands created by dikes or dams associated with the restoration of previously drained or filled wetlands may be used in a statewide banking program established in rules adopted under section 103G.2242, subdivision 1. Modification or conversion of nondegraded naturally occurring wetlands from one type to another are not eligible for enrollment in a statewide wetlands bank.

(j) The technical evaluation panel established under section 103G.2242, subdivision 2, shall ensure that sufficient time has occurred for the wetland to develop wetland characteristics of soils, vegetation, and hydrology before recommending that the wetland be deposited in the statewide wetland bank. If the technical evaluation panel has reason to believe that the wetland characteristics may change substantially, the panel shall postpone its recommendation until the wetland has stabilized.

Sec. 3. Minnesota Statutes 1992, section 103G.2241, is amended to read:

103G.2241 EXEMPTIONS.

~~Subdivision 1. EXEMPTIONS.~~ (a) Subject to the conditions in paragraph (b), a replacement plan for wetlands is not required for:

(1) activities in a wetland that was planted with annually seeded crops, was in a crop rotation seeding of pasture grasses or legumes, or was required to be

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set aside to receive price support or other payments under United States Code, title 7, sections 1421 to 1469, in six of the last ten years prior to January 1, 1991;

(2) activities in a wetland that is or has been enrolled in the federal conservation reserve program under United States Code, title 16, section 3831, that:

(i) was planted with annually seeded crops, was in a crop rotation seeding, or was required to be set aside to receive price support or payment under United States Code, title 7, sections 1421 to 1469, in six of the last ten years prior to being enrolled in the program; and

(ii) has not been restored with assistance from a public or private wetland restoration program;

(3) activities necessary to repair and maintain existing public or private drainage systems as long as wetlands that have been in existence for more than 20 years are not drained;

(4) activities in a wetland that has received a commenced drainage determination provided for by the federal Food Security Act of 1985, that was made to the county agricultural stabilization and conservation service office prior to September 19, 1988, and a ruling and any subsequent appeals or reviews have determined that drainage of the wetland had been commenced prior to December 23, 1985;

(5) activities exempted from federal regulation under United States Code, title 33, section 1344(f);

(6) activities authorized under, and conducted in accordance with, an applicable general permit issued by the United States Army Corps of Engineers under section 404 of the federal Clean Water Act, United States Code, title 33, section 1344, except the nationwide permit in Code of Federal Regulations, title 33, section 330.5, paragraph (a), clause (14), limited to when a new road crosses a wetland, and all of clause (26);

(7) activities in a type 1 wetland on agricultural land, as defined in United States Fish and Wildlife Circular No. 39 (1971 edition) except for bottomland hardwood type 1 wetlands;

(8) activities in a type 2 wetland that is two acres in size or less located on agricultural land;

(9) activities in a wetland restored for conservation purposes under a contract or easement providing the landowner with the right to drain the restored wetland;

(10) activities in a wetland created solely as a result of:

(i) beaver dam construction;

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(ii) blockage of culverts through roadways maintained by a public or private entity;

(iii) actions by public entities that were taken for a purpose other than creating the wetland; or

(iv) any combination of (i) to (iii);

(11) placement, maintenance, repair, enhancement, or replacement of utility or utility-type service, including the transmission, distribution, or furnishing, at wholesale or retail, of natural or manufactured gas, electricity, telephone, or radio service or communications if:

(i) the impacts of the proposed project on the hydrologic and biological characteristics of the wetland have been avoided and minimized to the extent possible; and

(ii) the proposed project significantly modifies or alters less than one-half acre of wetlands;

(12) activities associated with routine maintenance of utility and pipeline rights-of-way, provided the activities do not result in additional intrusion into the wetland;

(13) alteration of a wetland associated with the operation, maintenance, or repair of an interstate pipeline;

(14) temporarily crossing or entering a wetland to perform silvicultural activities, including timber harvest as part of a forest management activity, so long as the activity limits the impact on the hydrologic and biologic characteristics of the wetland; the activities do not result in the construction of dikes, drainage ditches, tile lines, or buildings; and the timber harvesting and other silvicultural practices do not result in the drainage of the wetland or public waters;

(15) permanent access for forest roads across wetlands so long as the activity limits the impact on the hydrologic and biologic characteristics of the wetland; the construction activities do not result in the access becoming a dike, drainage ditch or tile line; with filling avoided wherever possible; and there is no drainage of the wetland or public waters;

(16) activities associated with routine maintenance or repair of existing public highways, roads, streets, and bridges, provided the activities do not result in additional intrusion into the wetland ~~and do not result in the draining or filling, wholly or partially, of a wetland~~ outside of the existing right-of-way;

(17) emergency repair and normal maintenance and repair of existing public works, provided the activity does not result in additional intrusion of the public works into the wetland and do not result in the draining or filling, wholly or partially, of a wetland;

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(18) normal maintenance and minor repair of structures causing no additional intrusion of an existing structure into the wetland, and maintenance and repair of private crossings that do not result in the draining or filling, wholly or partially, of a wetland;

(19) duck blinds;

(20) aquaculture activities; ~~except building or altering of docks and activities involving the draining or filling, wholly or partially, of a wetland~~ including pond excavation and associated access roads and dikes authorized under, and conducted in accordance with, a permit issued by the United States Army Corps of Engineers under section 404 of the federal Clean Water Act, United States Code, title 33, section 1344, but not including buildings;

(21) wild rice production activities, including necessary diking and other activities authorized under a permit issued by the United State Army Corps of Engineers under section 404 of the federal Clean Water Act, United States Code, title 33, section 1344;

(22) normal agricultural practices to control pests or weeds, defined by rule as either noxious or secondary weeds, in accordance with applicable requirements under state and federal law, including established best management practices;

(23) activities in a wetland that is on agricultural land annually enrolled in the federal Food, Agricultural, Conservation, and Trade Act of 1990, United States Code, title 16, section 3821, subsection (a), clauses (1) to (3), as amended, and is subject to sections 1421 to 1424 of the federal act in effect on January 1, 1991, except that land enrolled in a federal farm program is eligible for easement participation for those acres not already compensated under a federal program;

(24) development projects and ditch improvement projects in the state that have received preliminary or final plat approval, or infrastructure that has been installed, or having local site plan approval, conditional use permits, or similar official approval by a governing body or government agency, within five years before July 1, 1991. In the seven-county metropolitan area and in cities of the first and second class, plat approval must be preliminary as approved by the appropriate governing body; and

(25) activities that result in the draining or filling of less than 400 square feet of wetlands.

(b) A person conducting an activity in a wetland under an exemption in paragraph (a) shall ensure that:

(1) appropriate erosion control measures are taken to prevent sedimentation of the water;

(2) the activity does not block fish passage in a watercourse; and

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(3) the activity is conducted in compliance with all other applicable federal, state, and local requirements, including best management practices and water resource protection requirements established under chapter 103H.

Sec. 4. Minnesota Statutes 1992, section 103G.2242, subdivision 2, is amended to read:

Subd. 2. **EVALUATION.** Questions concerning the public value, location, size, or type of a wetland shall be submitted to and determined by a technical evaluation panel after an on-site inspection. The technical evaluation panel shall be composed of a technical professional employee of the board, a technical professional employee of the local soil and water conservation district or districts, and ~~an engineer for a technical~~ professional with expertise in water resources management appointed by the local government unit. The panel shall use the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands" (January 1989). The panel shall provide the wetland determination to the local government unit that must approve a replacement plan under this section, and may recommend approval or denial of the plan. The authority must consider and include the decision of the technical evaluation panel in their approval or denial of a plan.

Sec. 5. Minnesota Statutes 1992, section 103G.2242, subdivision 11, is amended to read:

Subd. 11. **WETLAND HERITAGE ADVISORY COMMITTEE.** The governor shall establish a wetland heritage advisory committee consisting of a balanced diversity of interests including agriculture, environmental, and sporting organizations, land development organizations, local government organizations, and other agencies. The committee must consist of nine members including the commissioner of agriculture, or a designee of the commissioner, the commissioner of natural resources, and seven members appointed by the governor. The governor's appointees must include one county commissioner, one representative each from a statewide sporting organization, a statewide conservation organization, an agricultural commodity group, one faculty member of an institution of higher education with expertise in the natural sciences, and one member each from two statewide farm organizations. The committee shall advise the board on the development of rules under this section and, after rule adoption, shall meet at least twice a year to review implementation of the program, to identify strengths and weaknesses, and to recommend changes to the rules and the law to improve the program.

Sec. 6. Minnesota Statutes 1992, section 103G.2369, subdivision 2, is amended to read:

Subd. 2. **PROHIBITED ACTIVITIES.** (a) Except as provided in subdivision 3, until July 1, 1993, a person may not drain, ~~burn,~~ or fill a wetland.

(b) Except as provided in subdivision 3, until July 1, 1993, a state agency or local unit of government may not issue a permit for an activity prohibited in

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paragraph (a) or for an activity that would include an activity prohibited in paragraph (a).

Sec. 7. Minnesota Statutes 1992, section 103G.2369, is amended by adding a subdivision to read:

Subd. 4a. ELECTION BY LOCAL GOVERNMENT UNIT. Notwithstanding subdivision 2 and sections 103G.222 and 103G.2242, a local government unit may elect to operate under this section after July 1, 1993, but not beyond December 31, 1993.

Sec. 8. Laws 1991, chapter 354, article 7, section 2, is amended to read:

Sec. 2. **EFFECTIVE DATE.**

Section 1 is effective January 1, 1992, and is repealed ~~July~~ January 1, 1993 1994.

Sec. 9. **STUDY AND REPORT ON WETLAND ISSUES.**

The wetland heritage advisory committee shall study the following issues and submit a report by January 15, 1994, to the legislative committees having jurisdiction over environmental and natural resource issues:

(1) the appropriateness of requirements under existing state laws relating to replacement of drained or filled wetlands;

(2) the advisability of establishing a minimum size of wetland that would not be subject to regulation under these laws;

(3) the appropriate level of regulation of activities in wetlands located in counties in which a high percentage of presettlement wetland acreage is intact;

(4) the appropriate level of regulation for activities in type I wetlands, as defined in United States Fish and Wildlife Circular No. 39 (1971 edition);

(5) the feasibility and advisability of allowing local units of government to establish alternative regulatory programs for wetlands that would operate in lieu of state law; and

(6) other issues identified by the committee as deserving of attention.

The report must include the committee's recommendations, if any, for changes to existing state laws and rules regulating draining and filling activities in wetlands.

Sec. 10. **EFFECTIVE DATE.**

This act is effective the day following final enactment.

Presented to the governor May 12, 1993

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

Signed by the governor May 14, 1993, 10:04 p.m.

CHAPTER 176—H.F.No. 964

An act relating to public safety; authorizing commissioner of public safety to apply for federal natural disaster assistance funds; amending Minnesota Statutes 1992, section 12.221.

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

Section 1. Minnesota Statutes 1992, section 12.221, is amended to read:

12.221 MINNESOTA NATURAL DISASTER ASSISTANCE.

Subdivision 1. **DISASTER ASSISTANCE AGREEMENT.** The division of emergency management is authorized to enter into an agreement with the federal disaster assistance administration for the maintenance of the Minnesota natural disaster assistance ~~plan~~ program and for administration of federal disaster assistance programs as provided for under provisions of federal law and regulation. The commissioner may apply for and accept federal money for natural disaster assistance. Federal money received is appropriated to the commissioner, who shall report its expenditure to the chairs of the house of representatives ways and means committee and the senate finance committee.

Subd. 2. **FEDERAL ASSISTANCE FOR PROGRAM.** Under the agreement the federal disaster assistance administration will provide ~~\$25,000~~ \$50,000 in federal funds annually toward the cost incurred by implementation of the natural disaster assistance program. The division of emergency management shall provide two planners and the necessary equipment and facilities for project operations.

Sec. 2. **EFFECTIVE DATE.**

Section 1 is effective the day following final enactment.

Presented to the governor May 12, 1993

Signed by the governor May 14, 1993, 3:50 p.m.

CHAPTER 177—S.F.No. 338

An act relating to economic development; creating Minnesota Business Finance, Inc. to provide capital for commercial borrowers through the Small Business Administration; providing for powers and duties of a board of directors and employees; transferring funds from the certified development company established under the department of trade and economic

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