

(2) a separate license be required to operate each off-track betting location;

(3) off-track betting locations be limited to facilities with television displays of live horse racing, adequate seating and dining and beverage service; and

(4) a limited number of off-track betting locations be licensed, with a reasonable geographic distribution of locations around the state.

The director shall submit the report to the legislature by February 1, 1995.

Presented to the governor May 6, 1994

Signed by the governor May 10, 1994, 3:58 p.m.

CHAPTER 627—H.F.No. 3179

An act relating to wetlands; authorizing grants for flood control measures along a portion of the Red river; allowing alternative wetland regulation under county plans; expanding types of wetlands that may be used in the state wetland bank; modifying exemptions; clarifying the applicability of the wetland conservation act to the state; streamlining notice requirements for smaller wetland projects; adding an alternative compensation formula; expanding eligibility for the permanent wetlands preserve; amending Minnesota Statutes 1992, sections 103F.161, subdivision 1; 103F.516, subdivision 1; 103G.2242, subdivisions 1, 5, 6, 7, and 8; and 103G.237, subdivision 4; Minnesota Statutes 1993 Supplement, sections 103G.222; and 103G.2241.

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

Section 1. Minnesota Statutes 1992, section 103F.161, subdivision 1, is amended to read:

Subdivision 1. **GRANTS AUTHORIZED.** (a) The commissioner may make grants to local governments to:

(1) conduct floodplain damage reduction studies to determine the most feasible, practical, and effective methods and programs for mitigating the damages due to flooding within flood prone rural and urban areas and their watersheds; and

(2) plan and implement flood mitigation measures.

(b) The commissioner may cooperate with the North Dakota state water commission, local governmental units, and local water management organizations in this state and in North Dakota, and the United States Army Corps of Engineers to develop hydrologic models and conduct studies to evaluate the practicality and feasibility of flood control measures along the Red river from East Grand Forks to the Canadian border. The commissioner may make grants

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to local governmental units for these purposes. Flood control measures that may be investigated include agricultural and urban levee systems, wetland restoration, floodwater impoundments, farmstead ring-dikes, and stream maintenance activities.

Sec. 2. Minnesota Statutes 1992, section 103F.516, subdivision 1, is amended to read:

Subdivision 1. **EASEMENTS.** Upon application by a landowner, the board may acquire permanent easements on land containing type 1, 2, ~~or 3~~, or 6 wetlands, as defined in United States Fish and Wildlife Service Circular No. 39 (1971 edition).

Sec. 3. Minnesota Statutes 1993 Supplement, 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, a replacement plan under a local governmental unit's comprehensive wetland protection and management plan approved by the board under section 103G.2242, subdivision 1, paragraph (c), 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

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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 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 draining 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.

(k) This section and sections 103G.223 to 103G.2242, 103G.2364, and 103G.2365 apply to the state and its departments and agencies.

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Sec. 4. Minnesota Statutes 1993 Supplement, section 103G.2241, is amended to read:

103G.2241 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 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;

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(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;

(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;

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(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 outside of the existing right-of-way drain- ing or filling up to one-half acre of wetlands for the repair, rehabilitation, or replacement of a previously authorized, currently serviceable existing public road, provided that minor deviations in the public road's configuration or filled area, including those due to changes in materials, construction techniques, or current construction codes or safety standards, that are necessary to make repairs, rehabilitation, or replacement are allowed if the wetland draining or fill- ing resulting from the repair, rehabilitation, or replacement is minimized;

(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;

(18) normal maintenance and minor repair of structures causing no addi- tional 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, including pond excavation and construction and maintenance of associated access roads and dikes authorized under, and con- ducted 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 construction or expansion of 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 require- ments under state and federal law, including established best management prac- tices;

(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 ease- ment participation for those acres not already compensated under a federal pro- gram;

(24) development projects and ditch improvement projects in the state that have received preliminary or final plat approval, or infrastructure that has been

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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) For the purpose of paragraph (a), clause (16), "currently serviceable" means useable as is or with some maintenance, but not so degraded as to essentially require reconstruction. Paragraph (a), clause (16), authorizes the repair, rehabilitation, or replacement of public roads destroyed by storms, floods, fire, or other discrete events, provided the repair, rehabilitation, or replacement is commenced or under contract to commence within two years of the occurrence of the destruction or damage.

(c) 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

(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. 5. Minnesota Statutes 1992, section 103G.2242, subdivision 1, is amended to read:

Subdivision 1. **RULES.** (a) By July 1, 1993, the board, in consultation with the commissioner, shall adopt rules governing the approval of wetland value replacement plans under this section. These rules must address the criteria, procedure, timing, and location of acceptable replacement of wetland values; may address the state establishment and administration of a wetland banking program for public and private projects, which may include provisions allowing monetary payment to the wetland banking program for alteration of wetlands on agricultural land; the methodology to be used in identifying and evaluating wetland functions; the administrative, monitoring, and enforcement procedures to be used; and a procedure for the review and appeal of decisions under this section. In the case of peatlands, the replacement plan rules must consider the impact on carbon balance described in the report required by Laws 1990, chapter 587, and include the planting of trees or shrubs.

(b) After the adoption of the rules, a replacement plan must be approved by a resolution of the governing body of the local government unit, consistent with the provisions of the rules.

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(c) The board may approve as an alternative to the rules adopted under this subdivision a comprehensive wetland protection and management plan developed by a local government unit, provided that the plan:

(1) incorporates sections 103A.201, subdivision 2, and 103G.222;

(2) is adopted as part of an approved local water plan under sections 103B.231 and 103B.311; and

(3) is adopted as part of the local government's official controls.

(d) If the local government unit fails to apply the rules, or fails to implement a local program under paragraph (c), the government unit is subject to penalty as determined by the board.

Sec. 6. Minnesota Statutes 1992, section 103G.2242, subdivision 5, is amended to read:

Subd. 5. **PROCESSING FEE.** The local government unit may charge a ~~processing fee of up to \$75~~ fees in amounts not greater than are necessary to cover the reasonable costs of implementing the rules adopted under subdivision 1.

Sec. 7. Minnesota Statutes 1992, section 103G.2242, subdivision 6, is amended to read:

Subd. 6. **NOTICE OF APPLICATION.** (a) Except as provided in paragraph (b), within ten days of receiving an application for approval of a replacement plan under this section, a copy of the application must be submitted to the board for publication in the Environmental Quality Board Monitor and separate copies mailed to individual members of the public who request a copy, the board of supervisors of the soil and water conservation district, the managers of the watershed district, the board of county commissioners, the commissioner of agriculture, and the mayors of the cities within the area watershed. At the same time, the local government unit must give general notice to the public in a general circulation newspaper within the area affected.

(b) Within ten days of receiving an application for approval of a replacement plan under this section for an activity affecting less than 10,000 square feet of wetland, a summary of the application must be submitted for publication in the Environmental Quality Board Monitor and separate copies mailed to the members of the technical evaluation panel, individual members of the public who request a copy, and the managers of the watershed district, if applicable. At the same time, the local government unit must give general notice to the public in a general circulation newspaper within the area affected.

Sec. 8. Minnesota Statutes 1992, section 103G.2242, subdivision 7, is amended to read:

Subd. 7. **NOTICE OF DECISION.** (a) Except as provided in paragraph

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(b), at least 30 days prior to the effective date of the approval or denial of a replacement plan under this section, a copy of the approval or denial must be submitted for publication in the Environmental Quality Board Monitor and separate copies mailed to the applicant, the board, individual members of the public who request a copy, the board of supervisors of the soil and water conservation district, the managers of the watershed district, the board of county commissioners, the commissioner of agriculture, and the mayors of the cities within the area watershed.

(b) Within ten days of the decision approving or denying a replacement plan under this section for an activity affecting less than 10,000 square feet of wetland, a summary of the approval or denial must be submitted for publication in the Environmental Quality Board Monitor and separate copies mailed to the applicant, individual members of the public who request a copy, the members of the technical evaluation panel, and the managers of the watershed district, if applicable. At the same time, the local government unit must give general notice to the public in a general circulation newspaper within the area affected.

Sec. 9. Minnesota Statutes 1992, section 103G.2242, subdivision 8, is amended to read:

Subd. 8. **PUBLIC COMMENT PERIOD.** Except for activities impacting less than 10,000 square feet of wetland, before approval or denial of a replacement plan under this section, comments may be made by the public to the local government unit for a period of 30 days.

Sec. 10. Minnesota Statutes 1992, section 103G.237, subdivision 4, is amended to read:

Subd. 4. **COMPENSATION.** (a) The board shall award compensation in an amount equal to 50 percent of the value of the wetland, calculated by multiplying the acreage of the wetland by the greater of:

(1) the average equalized estimated market value of agricultural property in the township as established by the commissioner of revenue at the time application for compensation is made; or

(2) the assessed value per acre of the parcel containing the wetland, based on the assessed value of the parcel as stated on the most recent tax statement.

(b) A person who receives compensation under paragraph (a) shall convey to the board a permanent conservation easement as described in section 103F.515, subdivision 4. An easement conveyed under this paragraph is subject to correction and enforcement under section 103F.515, subdivisions 8 and 9.

Sec. 11. INTERGOVERNMENTAL AGREEMENTS.

The legislature encourages the use of intergovernmental agreements between federal, state, and local governmental entities for the purpose of further coordinating and simplifying implementation of regulatory programs relating to activities in wetlands.

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Sec. 12. PERMANENT WETLANDS PRESERVE; ELIGIBILITY OF WATER BANK PARTICIPANTS.

Notwithstanding Minnesota Statutes, section 103F.516, subdivision 1, an owner of property that, as of July 1, 1991, was subject to an easement agreement under Minnesota Statutes, section 103F.601, is eligible for participation in the permanent wetlands preserve program under Minnesota Statutes, section 103F.516.

Sec. 13. EFFECTIVE DATE.

Section 10 is effective July 1, 1994, and applies to applications for compensation received by the board of water and soil resources on or after that date. Section 9 is effective the day following final enactment.

Presented to the governor May 6, 1994

Signed by the governor May 10, 1994, 3:54 p.m.

CHAPTER 628—S.F.No. 2015

An act relating to metropolitan government; abolishing certain agencies; providing for a regional administrator and a management team; imposing organizational requirements; imposing duties; clarifying existing provisions and making conforming changes; amending Minnesota Statutes 1992, sections 6.76; 15.0597, subdivision 1; 15A.081, subdivision 7; 15A.082, subdivision 3; 16B.58, subdivision 7; 116.16, subdivision 2; 116.182, subdivision 1; 161.173; 161.174; 169.781, subdivision 1; 169.791, subdivision 5; 169.792, subdivision 11; 221.022; 221.041, subdivision 4; 221.071, subdivision 1; 221.295; 297B.09, subdivision 1; 352.03, subdivision 1; 352.75; 422A.01, subdivision 9; 422A.101, subdivision 2a; 471A.02, subdivision 8; 473.121, subdivisions 5a and 24; 473.123, subdivisions 1, 2a, 4, and by adding subdivisions; 473.129; 473.13, subdivision 4; 473.146, subdivisions 1 and 4; 473.149, subdivision 3; 473.1623, subdivision 2; 473.164; 473.168, subdivision 2; 473.173, subdivisions 3 and 4; 473.223; 473.303, subdivisions 2, 3a, 4, 4a, 5, and 6; 473.371, subdivision 1; 473.373, subdivision 1a; 473.375, subdivisions 4, 11, 12, 13, 14, 15, and 18; 473.382; 473.384, subdivisions 1, 3, 4, 5, 6, 7, and 8; 473.385; 473.386, subdivisions 1, 2, 3, 4, 5, and 6; 473.387, subdivisions 2, 3, and 4; 473.388, subdivisions 2, 3, 4, and 5; 473.39, subdivisions 1, 1a, 1b, and by adding a subdivision; 473.391; 473.392; 473.394; 473.399, as amended; 473.405, subdivisions 1, 3, 4, 5, 9, 10, 12, and 15; 473.408, subdivisions 1, 2, 2a, 4, 6, and 7; 473.409; 473.411, subdivisions 3 and 4; 473.415, subdivisions 1, 2, and 3; 473.416; 473.418; 473.42; 473.436, subdivisions 2, 3, and 6; 473.446, subdivisions 1, 1a, 2, 3, and 7; 473.448; 473.449; 473.504, subdivisions 4, 5, 6, 9, 10, 11, and 12; 473.511, subdivisions 1, 2, 3, and 4; 473.512, subdivision 1; 473.513; 473.515, subdivisions 1, 2, and 3; 473.5155, subdivisions 1 and 3; 473.516, subdivisions 2, 3, 4, and 5; 473.517, subdivisions 1, 2, 3, 6, and 9; 473.519; 473.521, subdivisions 1, 2, 3, and 4; 473.523, subdivisions 1 and 2; 473.535; 473.541, subdivision 2; 473.542; 473.543, subdivisions 1, 2, 3, and 4; 473.545; 473.547; 473.549; 473.553, subdivisions 1, 2, 4, 5, and by adding subdivisions; 473.561; 473.595, subdivision 3; 473.605, subdivi-

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