

(3) if necessary to prevent physical harm or the commission of a crime.

Subd. 6. **REMEDIES.** In addition to other remedies provided by law, the recipient of employee assistance services may bring a civil action to compel compliance with this section and to recover actual damages, plus costs and reasonable attorney fees.

Presented to the governor May 17, 2001

Signed by the governor May 21, 2001, 10:56 a.m.

CHAPTER 146—H.F.No. 1828

An act relating to water; modifying provisions relating to wetland classification and replacement; modifying provisions relating to consumptive use of water; amending Minnesota Statutes 2000, sections 103F.516, subdivisions 1, 2, 3; 103F.612, by adding a subdivision; 103G.201; 103G.2242, subdivisions 9, 12; 103G.2372, subdivision 1; 103G.245, subdivision 5.

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

Section 1. Minnesota Statutes 2000, section 103F.516, subdivision 1, is amended to read:

Subdivision 1. **EASEMENTS.** Upon application by a landowner, the board may acquire permanent easements and may pay for the cost of related capital improvement projects to preserve or restore wetlands on land containing type 1, 2, 3, 4, 5, or 6 wetlands, as defined in United States Fish and Wildlife Service Circular No. 39 (1971 edition), public waters wetlands, or public waters.

Sec. 2. Minnesota Statutes 2000, section 103F.516, subdivision 2, is amended to read:

Subd. 2. **NATURE OF PROPERTY RIGHTS ACQUIRED.** (a) The nature of property rights acquired in an easement under this section must be consistent with the provisions of section 103F.515, subdivision 4.

(b) A permanent easement may include four adjacent upland acres of land for each acre of wetland wetlands, public waters wetlands, or public waters included.

(c) The easement must require that the landowner control noxious weeds in accordance with sections 18.77 to 18.88.

(d) The permanent easement must be conveyed to the state in recordable form free of any prior title, lien, or encumbrance and must provide for a right of entry by the state for inspection and correction of violations.

Sec. 3. Minnesota Statutes 2000, section 103F.516, subdivision 3, is amended to read:

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Subd. 3. **PAYMENT.** (a) Payment for the conservation easement may be made in ten equal annual payments or, at the option of the ~~land owner~~ landowner, in a lump sum at:

(1) 50 percent of the township average equalized estimated market value of agricultural property as established by the commissioner of revenue at the time of easement application for wetlands, public waters wetlands, or public waters located outside of the metropolitan counties, as defined in section 473.121, subdivision 4, and wetlands located on agricultural lands within a metropolitan county; ~~or~~

(2) for wetlands, public waters wetlands, or public waters located on nonagricultural land within the metropolitan county, 20 percent of the township average equalized estimated market value of agricultural property as established by the commissioner of revenue at the time of easement application; or

(3) for wetlands, public waters wetlands, or public waters connected to a public or private drainage system, an amount determined by the board based on the fair market value of the land if drainage infrastructure were restored.

(b) Payment for adjacent upland acreage of cropped and noncropped land under subdivision 2, paragraph (b), must be made at 90 percent and 60 percent, respectively, of the township average equalized market value of agricultural land as established by the commissioner of revenue at the time of easement application.

Sec. 4. Minnesota Statutes 2000, section 103F.612, is amended by adding a subdivision to read:

Subd. 8. AUTHORITY OF WATERSHED MANAGEMENT ORGANIZATION. A watershed management organization with an approved watershed management plan under section 103B.231 has the same authority as a county to receive and act on applications under sections 103F.612 to 103F.616.

Sec. 5. Minnesota Statutes 2000, section 103G.201, is amended to read:

103G.201 PUBLIC WATERS INVENTORY.

(a) The commissioner shall prepare a public waters inventory map of each county that shows the waters of this state that are designated as public waters under the public waters inventory and classification procedures prescribed under Laws 1979, chapter 199. The public waters inventory map for each county must be filed with the auditor of the county.

(b) The commissioner is authorized to revise the list of public waters established under Laws 1979, chapter 199, to reclassify those types 3, 4, and 5 wetlands previously identified as public waters wetlands under Laws 1979, chapter 199, as public waters or as wetlands under section 103G.005, subdivision 19. The commissioner may only reclassify public waters wetlands as public waters if:

(1) they are assigned a shoreland management classification by the commissioner under sections 103F.201 to 103F.22; ~~or~~

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(2) they are classified as lacustrine wetlands or deepwater habitats according to Classification of Wetlands and Deepwater Habitats of the United States (Cowardin, et al., 1979 edition); or

(3) the state or federal government has become titleholder to any of the beds or shores of the public waters wetlands, subsequent to the preparation of the public waters inventory map filed with the auditor of the county, pursuant to paragraph (a), and the responsible state or federal agency declares that the water is necessary for the purposes of the public ownership.

(c) The commissioner must provide notice of the reclassification to the local government unit, the county board, the watershed district, if one exists for the area, and the soil and water conservation district. Within 60 days of receiving notice from the commissioner, a party required to receive the notice may provide a resolution stating objections to the reclassification. If the commissioner receives an objection from a party required to receive the notice, the reclassification is not effective. If the commissioner does not receive an objection from a party required to receive the notice, the reclassification of a wetland under paragraph (b) is effective 60 days after the notice is received by all of the parties.

(d) The commissioner shall give priority to the reclassification of public waters wetlands that are or have the potential to be affected by public works projects.

Sec. 6. Minnesota Statutes 2000, section 103G.2242, subdivision 9, is amended to read:

Subd. 9. **APPEAL.** (a) Appeal of a replacement plan, exemption, wetland banking, wetland boundary or type determination, or no-loss decision may be obtained by mailing a petition and payment of a filing fee of \$200, which shall be retained by the board to defray administrative costs, to the board within ~~15~~ 30 days after the postmarked date of the mailing specified in subdivision 7. If appeal is not sought within ~~15~~ 30 days, the decision becomes final. The local government unit may require the petitioner to post a letter of credit, cashier's check, or cash in an amount not to exceed \$500. If the petition for hearing is accepted, the amount posted must be returned to the petitioner. Appeal may be made by:

- (1) the wetland owner;
- (2) any of those to whom notice is required to be mailed under subdivision 7; or
- (3) 100 residents of the county in which a majority of the wetland is located.

(b) Within 30 days after receiving a petition, the board shall decide whether to grant the petition and hear the appeal. The board shall grant the petition unless the board finds that:

- (1) the appeal is meritless, trivial, or brought solely for the purposes of delay;
- (2) the petitioner has not exhausted all local administrative remedies;
- (3) expanded technical review is needed;

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(4) the local government unit's record is not adequate; or

(5) the petitioner has not posted a letter of credit, cashier's check, or cash if required by the local government unit.

(c) In determining whether to grant the appeal, the board shall also consider the size of the wetland, other factors in controversy, any patterns of similar acts by the local government unit or petitioner, and the consequences of the delay resulting from the appeal.

(d) All appeals must be heard by the committee for dispute resolution of the board, and a decision made within 60 days of the filing the local government unit's record and the written briefs submitted for the appeal. The decision must be served by mail on the parties to the appeal, and is not subject to the provisions of chapter 14. A decision whether to grant a petition for appeal and a decision on the merits of an appeal must be considered the decision of an agency in a contested case for purposes of judicial review under sections 14.63 to 14.69.

Sec. 7. Minnesota Statutes 2000, section 103G.2242, subdivision 12, is amended to read:

Subd. 12. **REPLACEMENT CREDITS.** (a) No public or private wetland restoration, enhancement, or construction may be allowed for replacement unless specifically designated for replacement and paid for by the individual or organization performing the wetland restoration, enhancement, or construction, and is completed prior to any draining or filling of the wetland.

(b) Paragraph (a) does not apply to a wetland whose owner has paid back with interest the individual or organization restoring, enhancing, or constructing the wetland.

(c) Notwithstanding section 103G.222, subdivision 1, paragraph (i), the following actions, and others established in rule, that are consistent with criteria in rules adopted by the board in conjunction with the commissioners of natural resources and agriculture, are eligible for replacement credit as determined by the local government unit, including enrollment in a statewide wetlands bank:

(1) reestablishment of permanent native, noninvasive vegetative cover on a wetland on agricultural land 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 supports 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. Replacement credit may not exceed 50 percent of the total wetland area vegetatively restored in a land retirement program during the past ten years;

(2) buffer areas of permanent native, noninvasive vegetative cover established or preserved on upland adjacent to replacement wetlands, provided that the upland buffer must be established at the time of wetland replacement and replacement credit for the buffer may not exceed 75 percent of the replacement wetland area and may only be used for replacement above a 1:1 ratio;

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(3) wetlands restored for conservation purposes under terminated easements or contracts, provided that up to 75 percent of the restored wetland area is eligible for replacement credit and adjacent upland buffer areas reestablished to permanent vegetative cover are eligible for replacement credit above a 1:1 ratio in an amount not to exceed 25 percent of the restored wetland area; and

(4) water quality treatment ponds constructed to pretreat storm water runoff prior to discharge to wetlands, public waters, or other water bodies, provided that the water quality treatment ponds must be associated with an ongoing or proposed project that will impact a wetland and replacement credit for the treatment ponds may not exceed 75 percent of the treatment pond area and may only be used for replacement above a 1:1 ratio is based on the replacement of wetland functions and on an approved stormwater management plan for the local government.

(d) Notwithstanding section 103G.222, subdivision 1, paragraphs (e) and (f), the board may establish by rule different replacement ratios for restoration projects with exceptional natural resource value.

Sec. 8. Minnesota Statutes 2000, section 103G.2372, subdivision 1, is amended to read:

Subdivision 1. **COMMISSIONER OF NATURAL RESOURCES.** The commissioner of natural resources, conservation officers, and peace officers shall enforce laws preserving and protecting wetlands and public waters. The commissioner of natural resources, a conservation officer, or a peace officer may issue a cease and desist order to stop any illegal activity adversely affecting a wetland or public waters. In the order, or by separate order, the commissioner, conservation officer, or peace officer may require restoration or replacement of the wetland or public waters, as determined by the local soil and water conservation district for wetlands and the commissioner of natural resources for public waters. Restoration or replacement orders may be recorded or filed in the office of the county recorder or registrar of titles, as appropriate, in the county where the real property is located by the commissioner of natural resources, conservation officers, or peace officers as a deed restriction on the property that runs with the land and is binding on the owners, successors, and assigns until the conditions of the order are met or the order is rescinded. Notwithstanding section 386.77, the agency shall pay the applicable filing fee for any document filed under this section.

Sec. 9. Minnesota Statutes 2000, section 103G.245, subdivision 5, is amended to read:

Subd. 5. **DELEGATION OF PERMIT AUTHORITY TO LOCAL UNITS OF GOVERNMENT.** (a) The commissioner may delegate public waters work permit authority to the appropriate county or municipality or to watershed districts or watershed management organizations that have elected to assert local authority over protected waters. The public waters work permit authority must be delegated under guidelines of the commissioner and the delegation must be done by agreement with the involved county, municipality, watershed district, or water management organization and in compliance with section 103G.315.

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(b) For projects affecting public waters wetlands and for wetland areas of public waters affected by a public transportation project as determined by the commissioner, the commissioner may waive the requirement for a public waters work permit if the local government unit makes a replacement, no-loss, or exemption determination in compliance with sections 103A.201, 103B.3355, and 103G.222 to 103G.2373, and rules adopted pursuant to these same sections.

(c) For projects affecting both public waters and wetlands, the local government unit may, by written agreement with the commissioner, waive the requirement for a replacement plan, no-loss, or exemption determination if a public waters work permit is required and the commissioner includes the provisions of sections 103A.201, 103B.3355, and 103G.222 to 103G.2373, and rules adopted pursuant to these same sections in the public waters work permit.

Sec. 10. BIELOH POND WETLAND RESTORATION.

The department of natural resources, working with the city of Walker, shall restore the Bieloh pond.

Presented to the governor May 17, 2001

Signed by the governor May 21, 2001, 10:36 a.m.

CHAPTER 147—H.F.No. 1367

An act relating to energy; allowing owner-occupied residential housing to be served by an existing energy loan program.

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

Section 1. OWNER-OCCUPIED RESIDENTIAL HOUSING; ENERGY LOAN PROGRAM.

The appropriation made by Laws 1993, chapter 369, section 11, subdivision 6, of oil overcharge money for a rental energy revolving loan program may also be used to serve owner-occupied residential housing and the program contract may be amended to so provide. The restriction of the eligibility for loans under this program to the metropolitan area is eliminated. Loans may be provided in any area of the state.

Sec. 2. EFFECTIVE DATE.

Section 1 is effective the day following final enactment.

Presented to the governor May 17, 2001

Signed by the governor May 21, 2001, 10:36 a.m.

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