

## Drainage and Waters

## CHAPTER 104

## FLOOD PLAIN MANAGEMENT

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**104.01 TITLE; LEGISLATIVE FINDINGS; POLICY AND PURPOSE.**

Subdivision 1. Sections 104.01 to 104.07 may be cited as the flood plain management act.

Subd. 2. The legislature finds and declares that: (a) A large portion of the state's land resources is subject to recurrent flooding by overflow of streams and other watercourses causing loss of life and property, disruption of commerce and governmental services, unsanitary conditions, and interruption of transportation and communications, all of which are detrimental to the health, safety, welfare, and property of the occupants of flooded lands and the people of this state; and (b) The public interest necessitates sound land use development as land is a limited and irreplaceable resource, and the flood plains of this state are a land resource to be developed in a manner which will result in minimum loss of life and threat to health, and reduction of private and public economic loss caused by flooding.

Subd. 3. It is the policy of this state and the purpose of sections 104.01 to 104.07 to reduce flood damages through flood plain management, stressing nonstructural measures such as flood plain zoning and flood proofing, and flood warning practices. It is the policy of this state and the purpose of sections 104.01 to 104.07 not to prohibit but to guide development of the flood plains of this state consistent with the enumerated legislative findings to provide state coordination and assistance to local governmental units in flood plain management, to encourage local governmental units to adopt, enforce and administer sound flood plain management ordinances, and to provide the commissioner of natural resources with authority necessary to carry out a flood plain management program for the state and to coordinate federal, state, and local flood plain management activities in this state.

Subd. 4. In furtherance of the policy stated in subdivision 3, the legislature further declares that flood plain management ordinances are to be given primary consideration in the reduction of flood damage in Minnesota and that alternative methods for reducing flood damage may not be carried out before adoption of flood plain management ordinances by local governmental units. Structural projects which have the purpose of controlling floods are to be considered only as elements of a flood plain management program.

**History:** 1969 c 590 s 1; 1969 c 1129 art 10 s 2; 1973 c 351 s 1; 1973 c 412 s 10

**104.02 DEFINITIONS.**

Subdivision 1. **Applicability.** For the purposes of sections 104.01 to 104.07, 104.10, and 104.11, the terms defined in this section have the meanings given them.

Subd. 2. **Regional flood.** "Regional flood" means a flood which is representative of large floods known to have occurred generally in Minnesota and reasonably characteristic of what can be expected to occur on an average frequency in the magnitude of the 100 year recurrence interval.

Subd. 3. **Floodplain.** "Floodplain" means the areas adjoining a watercourse or water basin which has been or hereafter may be covered by the regional flood.

Subd. 4. **Floodway.** "Floodway" means the channel of the watercourse, the bed of water basins, and those portions of the adjoining floodplains which are reasonably required to carry and discharge, and provide storage for the regional flood.

Subd. 5. **Flood fringe.** "Flood fringe" means that portion of the floodplain outside of the floodway.

Subd. 6. **Local governmental unit or local government.** "Local governmental unit" or "local government" means a county, statutory or home rule charter city, town, watershed district, or lake improvement district.

Subd. 7. **Commissioner.** "Commissioner" means the commissioner of natural resources.

Subd. 8. **Structural flood management measures.** "Structural flood management measures" means physical actions taken to modify the behavior and extent of floods and flooding, including the construction of dams, dikes, levees, flood bypass channels, flood storage and retardation structures, and water level control structures, but excluding deepening or straightening of existing stream channels.

Subd. 9. **Nonstructural flood management measures.** "Nonstructural flood management measures" means actions in floodplains designed to reduce the damaging effects of floods on existing and potential users of floodplains, without physically altering the flood behavior. The measures include:

- (1) public acquisition of floodplain lands;
- (2) relocation of public and private structures and facilities;
- (3) floodproofing of public and private facilities;
- (4) installation and operation of flood warning systems and evacuation procedures;
- (5) adoption and enforcement of land use control ordinances and building codes;
- (6) installation of signs and other notifications in regional flood areas; and
- (7) provision of flood insurance and public education.

Subd. 10. **Mitigation.** "Mitigation" means the act of alleviating the effects of floods and flooding by moderating or reducing the severe damages resulting from floods through structural and nonstructural flood management measures.

Subd. 11. **Mitigation measures.** "Mitigation measures" means structural or nonstructural flood management measures, or both.

Subd. 12. **Water basin.** "Water basin" has the meaning given it by section 105.37, subdivision 9.

**History:** 1969 c 590 s 2; 1969 c 1129 art 3 s 1; 1973 c 123 art 5 s 7; 1987 c 306 s 3

**104.03 FLOOD PLAINS; COMMISSIONER'S DUTIES; USES OF FLOOD PLAINS.**

Subdivision 1. The commissioner shall (a) collect and distribute information relating to flooding and flood plain management; (b) coordinate local, state, and federal flood plain management activities to the greatest extent possible, and to this end shall encourage the United States army corps of engineers and the United States soil conservation service to make their flood control planning data available to local governmental units for planning purposes, in order to allow adequate local participation in the planning process and in the selection of desirable alternatives; (c) assist local

governmental units in their flood plain management activities within the limits of available appropriations and personnel in cooperation with the commissioner of trade and economic development; (d) do all other things, within lawful authority, which are necessary or desirable to manage the flood plains for beneficial uses compatible with the preservation of the capacity of the flood plain to carry and discharge the regional flood. In cooperation with local governmental units, the commissioner shall conduct, whenever possible, periodic inspections to determine the effectiveness of local flood plain management programs, including an evaluation of the enforcement of and compliance with local flood plain management ordinances.

Subd. 2. In places where the flood plain has been delineated by ordinance in the manner required by sections 104.01 to 104.07, no major alteration to a structure in existence on the effective date of the ordinance, and no new fill, structure, deposit, or other flood plain use that is unreasonably hazardous to the public or that unduly restricts the capacity of the flood plain to carry and discharge the regional flood shall be permitted after the effective date of the ordinance delineating the flood plains. As used in this subdivision, major alterations of existing structures shall not include repair or maintenance and shall not include repairs, maintenance or alterations to structures made pursuant to the authority of any other authorized agency of the state or federal government and provided further that this subdivision shall not apply to alterations, repair or maintenance reasonably done under emergency circumstances to preserve or protect life or property. This subdivision applies to alterations to existing structures and to new fill, structures, deposits, or other flood plain uses by the state and its agencies.

Subd. 2a. **Amusement parks in flood plains.** Amusement parks that exist before a flood plain is delineated under this section are exempt from the requirements of sections 104.03 to 104.07 if the amusement park continues to be used as an amusement park within the amusement park boundaries. Notwithstanding any other law, the state is not liable for any damage from flooding to an amusement park operating in a flood plain under this subdivision.

Subd. 3. When emergency flood protection measures are constructed, the affected local governmental unit shall submit to the commissioner a plan outlining their use as a part of a future comprehensive flood emergency program. The plan shall be submitted within the following time limits: As to those measures constructed before May 20, 1973, the plan shall be submitted within 120 days after May 20, 1973; as to those measures constructed on or after May 20, 1973, within 120 days after construction. The commissioner shall review the plan and, in so doing, shall consult with the state office of civil defense and other state and federal agencies as appropriate. Following the review, the commissioner shall accept, require modification, or reject the plan. If required modifications are not made, or if the plan is rejected, the commissioner shall order the removal of the emergency protection measures.

**History:** 1969 c 590 s 3; 1973 c 351 s 2,3; 1981 c 356 s 113; 1983 c 289 s 115 subd 1; 1985 c 264 s 1; 1986 c 444; 1987 c 312 art 1 s 26 subd 2

#### **104.04 FLOOD PLAIN MANAGEMENT ORDINANCES.**

Subdivision 1. In accordance with the provisions of sections 104.01 to 104.07, the rules which the commissioner may promulgate pursuant to sections 104.01 to 104.07, and applicable laws authorizing local governmental units to adopt flood plain management ordinances, local governmental units shall adopt, administer, and enforce flood plain management ordinances, which shall include but not be limited to the delineation of flood plains and floodways, the preservation of the capacity of the flood plain to carry and discharge regional floods, the minimization of flood hazards, and the regulation of the use of land in the flood plain. The ordinances shall be based on adequate technical data and competent engineering advice and shall be consistent with local and regional comprehensive planning.

Subd. 2. No later than June 30, 1970, every local governmental unit shall submit a letter of intent to comply with sections 104.01 to 104.07, on a form provided by the

commissioner including any existing flood plain management ordinances, to the commissioner for review. The letter of intent shall list the watercourses within the boundaries of the local governmental unit in the order of the degree of flood damage potential associated with each watercourse and shall include a description of the type of information that is available for each, such as high watermarks and topographic maps.

Subd. 3. The commissioner, upon determining that sufficient technical information is available for the delineation of flood plains and floodways on a watercourse, shall notify affected local governmental units that this technical information is available. Within six months after receiving this notice, each local governmental unit shall prepare or amend its flood plain management ordinance in conformance with the provisions of sections 104.01 to 104.07, and shall submit the ordinance to the commissioner for review and approval before adoption. The commissioner shall approve or disapprove the proposed ordinance within 120 days after receiving it. If the proposed ordinance is disapproved, the commissioner shall return it to the local governmental unit with a written statement of reasons for disapproval. Within 90 days thereafter, the local governmental unit shall resubmit an amended proposed ordinance for further review and approval before adoption. The local governmental unit shall adopt a flood plain management ordinance within 90 days after approval by the commissioner. A flood plain management ordinance adopted by a local governmental unit after June 30, 1970, is invalid unless it is approved by the commissioner. A local governmental unit may adopt a flood plain management ordinance in the absence of notification by the commissioner that the required technical data is available, provided that any such ordinance is submitted to the commissioner prior to its adoption for approval. Nothing in sections 104.01 to 104.07 limits the power of a local governmental unit or town to adopt or continue in force a flood plain management ordinance which is more restrictive than that which may be required pursuant to sections 104.01 to 104.07.

Subd. 4. Flood plain management ordinances may be amended by a local governmental unit upon the approval of the commissioner.

Subd. 5. If a local governmental unit fails to adopt a flood plain management ordinance within the time allowed, the commissioner shall adapt an ordinance, which meets the minimum standards established pursuant to section 104.05, to the local governmental unit. The commissioner shall hold at least one public hearing on the proposed ordinance in the manner provided in sections 394.26 or 462.357, as applicable, after giving notice as provided in sections 394.26 or 462.357. The ordinance shall be effective for the local governmental unit on the date and in accordance with such rules relating to compliance as the commissioner shall prescribe. The ordinance shall be enforced as provided in sections 394.37 or 462.362, as applicable. The penalties provided in sections 394.37 or 462.362 apply to violations of the ordinance so adopted by the commissioner.

Subd. 6. The cost incurred by the commissioner in adapting a flood plain management ordinance to the local governmental unit pursuant to subdivision 5 shall be paid by the local governmental unit upon submission to the local governmental unit of an itemized statement of these costs by the commissioner. If the local governmental unit fails to pay these costs within 90 days after the commissioner's statement is received, the commissioner shall file a copy of the statement of these costs with the county auditor within which the local governmental unit lies for collection by special tax levy. The county auditor, upon receiving a statement from the commissioner, shall include the amount of the state's claim in the tax levy for general revenue purposes of the local governmental unit. Upon completion of the tax settlement following this levy, the county treasurer shall remit the amount due to the state to the commissioner for deposit in the state treasury.

**History:** 1969 c 590 s 4; 1973 c 351 s 4-6; 1985 c 248 s 70; 1986 c 444

#### 104.05 RULES.

In the manner provided by chapter 14, the commissioner shall promulgate rules

necessary to carry out the purposes of sections 104.01 to 104.07, including but not limited to the following: (a) criteria for determining the flood plain uses which may be permitted without creating an unreasonable public hazard or unduly restricting the capacity of the flood plain to carry and discharge the regional flood; (b) variance procedures; (c) the establishment of criteria for alternative or supplemental flood plain management measures such as flood proofing, subdivision rules, building codes, sanitary rules, and flood warning systems. Notwithstanding the provisions of any rules promulgated pursuant to this section establishing a flood protection level higher than the elevation of the regional flood, a local governmental unit may elect to adopt and enforce a flood protection level at the elevation of the regional flood in its flood plain ordinance.

**History:** 1969 c 590 s 5; 1979 c 253 s 1; 1982 c 424 s 130; 1985 c 248 s 70

#### **104.06 NECESSARY USE.**

The commissioner in promulgating guidelines pursuant to section 104.05 and local governmental units in preparing flood plain management ordinances shall give due consideration to the needs of an industry whose business requires that it be located within a flood plain.

**History:** 1969 c 590 s 6

#### **104.07 ENFORCEMENT AND PENALTIES.**

Every structure, fill, deposit, or other flood plain use placed or maintained in the flood plain in violation of a flood plain management ordinance adopted under or in compliance with the provisions of sections 104.01 to 104.07 is a public nuisance and the creation thereof may be enjoined and the maintenance thereof abated by an action brought by the commissioner of natural resources or a local governmental unit. A person who violates any of the provisions of sections 104.01 to 104.07 is guilty of a misdemeanor. Each day during which such violation exists is a separate offense.

**History:** 1969 c 590 s 7; 1969 c 1129 art 3 s 1

#### **104.08 FLOOD INSURANCE.**

Subdivision 1. It is the policy of the state of Minnesota that all local governmental units subject to recurrent flooding participate in the national flood insurance program, Public Law Number 90-448, and acts amendatory thereof or supplementary thereto, so that the people of Minnesota may have the opportunity to indemnify themselves from future flood losses through the purchase of this insurance.

Subd. 2. Within 90 days after May 20, 1973 the commissioner shall prepare a list of local governmental units having areas subject to recurrent flooding and shall notify each local governmental unit included on the list of the findings. If a local governmental unit objects to the commissioner's findings, it shall submit evidence supporting its objections within 45 days after receiving the commissioner's notification. Thereafter the commissioner shall accept or reject the findings of each local governmental unit submitting evidence, shall prepare an amended list of local governmental units having areas subject to recurrent flooding, and shall notify each local governmental unit of its inclusion on the amended list.

Subd. 3. Within 120 days after receiving notice of inclusion on the amended list, each local governmental unit shall apply for participation in the national flood insurance program in the manner prescribed by federal laws and regulations.

**History:** 1973 c 351 s 7; 1986 c 444

#### **104.10 STATE INVENTORY AND ASSESSMENT.**

The commissioner shall conduct a statewide inventory and flood damage assessment of flood prone structures and lands.

**History:** 1987 c 306 s 4

**104.11 FLOOD HAZARD MITIGATION GRANTS.**

Subdivision 1. **Grants authorized.** 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 or implement, or both, flood mitigation measures.

Subd. 2. **Action on grant applications.** (a) Upon receipt of a request for a grant for less than \$75,000 on forms provided by the commissioner, the commissioner shall confer with the local government requesting the grant and may make a grant based on the following considerations:

(1) the extent and effectiveness of mitigation measures already implemented by the local government requesting the grant;

(2) the feasibility, practicality, and effectiveness of the proposed mitigation measures and the associated nonflood related benefits and detriments;

(3) the level of grant assistance that should be provided to the local government, based on available facts regarding the nature, extent, and severity of flood problems;

(4) the frequency of occurrence of severe flooding that has resulted in declaration of the area as a flood disaster area by the president of the United States;

(5) the economic, social, and environmental benefits and detriments of the proposed mitigation measures;

(6) whether the floodplain management ordinance or regulation adopted by the local government meets the minimum standards established by the commissioner, the degree of enforcement of the ordinance or regulation, and whether the local government is complying with the ordinance or regulation;

(7) the degree to which the grant request is consistent with local water plans developed under chapters 110B and 112 and sections 473.875 to 473.883;

(8) the financial capability of the local government to solve its flood hazard problems without financial assistance; and

(9) the estimated cost and method of financing of the proposed mitigation measures based on local money and federal and state financial assistance.

(b) If the amount of the grant requested is \$75,000 or more, the commissioner shall determine, under the considerations in paragraph (a), whether any part of the grant shall be awarded and submit to the governor and the legislature for funding consideration before each odd-numbered year a list of the grant requests or parts of grant requests of \$75,000 or more. The commissioner must prioritize the grant requests, under the considerations in paragraph (a), beginning with the projects the commissioner determines most deserving of financing.

(c) A grant may not exceed one-half the total cost of the proposed mitigation measures.

(d) After July 1, 1991, grants made under this section may be made to local governments whose grant requests are part of, or responsive to, a comprehensive local water plan prepared under chapter 110B or 112 or sections 473.875 to 473.883.

**History:** 1987 c 306 s 5

**104.25 LOWER ST. CROIX WILD AND SCENIC RIVERS ACT OF 1972; STATE RECOGNITION AND IMPLEMENTATION.**

Subdivision 1. **Findings; purpose.** The lower St. Croix river, between the dam near Taylors Falls and its confluence with the Mississippi river, constitutes a relatively undeveloped scenic and recreational asset lying close to the largest densely populated area of Minnesota. The preservation of this unique scenic and recreational asset is in the public interest and will benefit the health and welfare of the citizens of Minnesota. The state of Minnesota therefore recognizes and concurs in the inclusion of the lower St. Croix river into the federal wild and scenic rivers system by the Lower St. Croix

River Act of the 92nd Congress, Public Law Number 92-560. The authorizations of this act of the state of Minnesota are necessary to the preservation and administration of the lower St. Croix river as a wild and scenic river, particularly in relation to those portions of the river which are to be jointly preserved and administered as a wild and scenic river by the states of Minnesota and Wisconsin.

**Subd. 2. Comprehensive master plan.** The commissioner of natural resources shall join with the secretary of the department of the interior and the appropriate agency of the state of Wisconsin in the preparation of the comprehensive master plan relating to boundaries, classification, and development required by section 3 of the Lower St. Croix River Act of 1972, and by section 3(b) of the Wild and Scenic Rivers Act, Public Law Number 90-542.

The commissioner shall make the proposed comprehensive master plan available to affected local governmental bodies, shoreland owners, conservation and outdoor recreation groups, and the general public. Not less than 30 days after making such information available, the commissioner shall conduct a public hearing on the proposed comprehensive master plan in the county seat of each county which contains a portion of the area covered by the comprehensive master plan, in the manner provided in chapter 14.

**Subd. 3. Powers and duties of commissioner of natural resources; municipal zoning.** After the comprehensive master plan has been adopted and is in effect, the commissioner has the powers and duties necessary to the following: (a) The acquisition, by the commissioner of administration for the commissioner of natural resources, of lands, scenic easements or other interests in land by gift, purchase, or other lawful means, and the commissioner may acquire also by eminent domain the scenic easements interest in land. The acquisitions are those which are proposed for acquisition by the state of Minnesota by the comprehensive master plan; (b) the promulgation of rules in the manner provided in chapter 14, which will establish guidelines and specify standards for local zoning ordinances applicable to the area within the boundaries established pursuant to subdivision 2. The guidelines and standards shall be consistent with the purposes of this act, the federal Wild and Scenic Rivers Act, and the federal Lower St. Croix River Act of 1972. The standards specified in the guidelines shall include but not be limited to the following: (1) The prohibition of new residential, commercial, or industrial uses other than those which are consistent with the above mentioned acts, and (2) the protection of riverway lands by means of acreage, frontage, and setback requirements on development. Cities, counties and towns lying within the areas affected by the guidelines are empowered to and shall adopt zoning ordinances complying with the guidelines and standards promulgated by the commissioner within the time schedule prescribed by the commissioner; (c) the administration, in cooperation with appropriate federal authorities and authorities of the state of Wisconsin, of state lands and waters in conformance with this act, the federal Wild and Scenic Rivers Act, and the federal Lower St. Croix River Act of 1972.

**History:** 1973 c 123 art 5 s 7; 1973 c 246 s 1; 1982 c 424 s 130; 1985 c 248 s 70; 1986 c 444

#### **104.31 WILD AND SCENIC RIVERS ACT.**

Sections 104.31 to 104.40 may be cited as the "Minnesota wild and scenic rivers act."

**History:** 1973 c 271 s 1

#### **104.32 POLICY.**

The legislature finds that certain of Minnesota's rivers and their adjacent lands possess outstanding scenic, recreational, natural, historical, scientific and similar values. Because it is in the interest of present and future generations to retain these values, it is hereby declared to be a policy of Minnesota and an authorized public purpose to preserve and protect these rivers.

**History:** 1973 c 271 s 2

**104.33 SYSTEM; CRITERIA FOR INCLUSION.**

Subdivision 1. The whole or a segment of any river and its adjacent lands in this state that possesses outstanding scenic, recreational, natural, historical, scientific, or similar values shall be eligible for inclusion within the Minnesota wild and scenic rivers system. "River" means a flowing body of water such as a stream or a segment or tributary thereof, and may include lakes through which the river or stream flows.

Subd. 2. Rivers or segments thereof included within the system shall be classified as wild, scenic, or recreational.

(a) "Wild" rivers are those rivers that exist in a free-flowing state, with excellent water quality, and with adjacent lands that are essentially primitive. "Free-flowing" means existing in natural condition without significant artificial modification such as impoundment, diversion, or straightening. The existence, however, of low dams, diversion works or other minor structures at the time any river is proposed for inclusion shall not automatically bar its inclusion as a wild, scenic, or recreational river.

(b) "Scenic" rivers are those rivers that exist in a free-flowing state and with adjacent lands that are largely undeveloped.

(c) "Recreational" rivers are those rivers that may have undergone some impoundment or diversion in the past and may have adjacent lands that are considerably developed, but that are still capable of being managed so as to further the purposes of sections 104.31 to 104.40.

**History:** 1973 c 271 s 3

**104.34 COMMISSIONER'S DUTIES.**

Subdivision 1. The commissioner of natural resources shall be responsible for administering the wild and scenic rivers system. The commissioner's duties shall include but not be limited to conducting studies, developing criteria for classification and designation of rivers, designating rivers for inclusion within the system, and management of the components of the system including promulgation of rules with respect thereto.

Subd. 2. The commissioner shall promulgate, in the manner provided in chapter 14, statewide minimum standards and criteria for the preservation and protection of shorelands within the boundaries of wild, scenic, and recreational rivers. Such standards and criteria (a) may include but need not be limited to the matters covered in the commissioner's standards and criteria for shoreland areas, as set out in section 105.485, except that the distance limitations contained in section 105.485 do not apply to standards and criteria for wild, scenic, and recreational rivers; (b) shall further the purposes of sections 104.31 to 104.40 and of the classifications of rivers established hereunder; and (c) shall apply to the same local governments as are or may hereafter be specified in section 105.485.

**History:** 1973 c 271 s 4; 1982 c 424 s 130; 1985 c 248 s 70; 1986 c 444

**104.35 MANAGEMENT PLANS; HEARING; ESTABLISHMENT.**

Subdivision 1. For each river proposed to be included in the wild and scenic rivers system, the commissioner shall prepare a management plan, with no unreasonable restrictions upon compatible, preexisting, economic uses of particular tracts of land to preserve and enhance the values that cause the river to be proposed for inclusion in the system. The plan shall give primary emphasis to the area's scenic, recreational, natural, historical, scientific and similar values. The plan shall set forth the proposed classification of the river and segments thereof, and the boundaries of the area along the river to be included within the system. The boundaries shall include not more than 320 acres per mile on both sides of the river. The plan shall include proposed rules governing the use of public lands and waters within the area, which may differ from any such statewide rules to the extent necessary to take account of the particular attributes of the area. The plan may include proposed standards and criteria adopted pursuant to section 104.34 for local land use controls that differ from the statewide standards and criteria to the extent necessary to take account of the particular attributes of the area.



Subd. 2. The commissioner shall make the proposed management plan available to affected local governmental bodies, shoreland owners, conservation and outdoor recreation groups, the commissioner of trade and economic development, the director of public service, the governor, and the general public. The commissioner of trade and economic development, the director of public service, and the governor shall review the proposed management plan in accordance with the criteria in section 86A.09, subdivision 3, and submit any written comments to the commissioner within 60 days after receipt of the proposed management plan. Not less than 60 days after making such information available, the commissioner shall conduct a public hearing on the proposed management plan in the county seat of each county that contains a portion of the designated area, in the manner provided in chapter 14.

Subd. 3. Upon receipt of the administrative law judge's report, the commissioner shall immediately forward the proposed management plan and the administrative law judge's report to the commissioner of trade and economic development and the director of public service for review under section 86A.09, subdivision 3, except that the review by the commissioner of trade and economic development and the director of public service must be completed or be deemed completed within 30 days after receiving the administrative law judge's report, and the review by the governor must be completed or be deemed completed within 15 days after receipt. Within 60 days after receipt of the administrative law judge's report, the commissioner shall decide whether to designate by order the river or a segment of the river as a wild, scenic, or recreational river and, if so designated, shall adopt a management plan to govern the area. The commissioner shall notify and inform public agencies and private landowners of the plan and its purposes so as to encourage their cooperation in the management and use of their land in a manner consistent with the plan and its purposes.

Subd. 4. The legislature may at any time designate additional rivers to be included within the system, delete rivers previously included in the system, or change the classification of rivers theretofore classified by the commissioner.

**History:** 1973 c 271 s 5; 1975 c 353 s 21; 1978 c 535 s 1,2; 1981 c 356 s 114,115; 1982 c 424 s 130; 1983 c 289 s 115 subd 1; 1984 c 640 s 32; 1985 c 248 s 70; 1987 c 312 art 1 s 3,4

#### **104.36 LOCAL LAND USE ORDINANCES.**

Subdivision 1. Within six months after establishment of a wild, scenic, or recreational river area, each local government containing any portion thereof shall adopt or amend its local ordinances and land use district maps to the extent necessary to comply with the standards and criteria of the commissioner and the management plan. If a local government fails to adopt adequate ordinances, maps, or amendments thereto within six months, the commissioner shall adopt such ordinances, maps, or amendments in the manner and with the effect specified in section 105.485, subdivisions 4 and 5.

Subd. 2. The commissioner shall assist local governments in the preparation, implementation and enforcement of the ordinances required herein, within the limits of available appropriations and personnel.

**History:** 1973 c 271 s 6

#### **104.37 ACQUISITION OF INTERESTS IN LAND; DEVELOPMENT.**

Subdivision 1. To further the purposes of sections 104.31 to 104.40, the commissioner of natural resources may acquire the title, scenic easements or other interests in land, by purchase, grant, gift, devise, exchange, lease, or other lawful means. "Scenic easement" means an interest in land, less than the fee title, which limits the use of such land for the purpose of protecting the scenic, recreational, or natural characteristics of a wild, scenic or recreational river area. Unless otherwise expressly and specifically provided by the parties, such easement shall be (a) perpetually held for the benefit of the people of Minnesota; (b) specifically enforceable by its holder or any beneficiary;

and (c) binding upon the holder of the servient estate, and the holder's heirs, successors and assigns. Unless specifically provided by the parties, no such easement shall give the holder or any beneficiary the right to enter on the land except for enforcement of the easement.

Subd. 2. The commissioner of natural resources may designate and develop appropriate areas of public land along wild, scenic, and recreational rivers as water waysides for facilities compatible with the class of river, including, as appropriate, primitive campsites, picnic sites, portages, water access sites, sanitation facilities, and interpretive display.

Subd. 3. The commissioner of natural resources may mark canoe and boating routes along a wild, scenic, or recreational river, consistent with the classification and characteristics of the river, including points of interest, portages, campsites, dams, rapids, waterfalls, whirlpools, and other hazards to navigation. Canoe routes, boating routes, campsites, and portages marked under this subdivision shall not be subject to the provisions of section 160.06.

Subd. 4. The commissioner of natural resources may designate all or a portion of a state wild, scenic, or recreational river that possesses the necessary qualifications as a state trout stream, and make habitat improvement as may be necessary, desirable, and consistent with the classification of the river.

**History:** 1973 c 271 s 7; 1975 c 353 s 22; 1980 c 458 s 15; 1986 c 444

#### **104.38 RESPONSIBILITIES OF OTHER GOVERNMENTAL UNITS.**

All state, local and special governmental units, councils, commissions, boards, districts, agencies, departments and other authorities shall exercise their powers so as to further the purposes of sections 104.31 to 104.40 and management plans adopted by the commissioner hereunder. Land owned by the state, its agencies and subdivisions shall be administered in accordance with the management plan, and no land owned by such governmental bodies within the designated boundaries of a wild, scenic or recreational river area shall be transferred to any other person or entity if such transfer would be inconsistent with such plan.

**History:** 1973 c 271 s 8

#### **104.39 FEDERAL-STATE RELATIONS.**

Nothing in sections 104.31 to 104.40 shall preclude a river in the Minnesota wild and scenic rivers system from becoming a part of the federal wild and scenic rivers system as established in the Wild and Scenic Rivers Act, Public Law Number 90-542; United States Code, title 16, section 1271 et seq., as amended. The commissioner is authorized to seek, alone or in conjunction with other governmental authorities, financial and technical assistance from the federal government and to enter into written cooperative agreements for the joint administration of a Minnesota river in the federal wild and scenic rivers system.

**History:** 1973 c 271 s 9

#### **104.40 CONFLICT WITH OTHER LAWS.**

Each river in the wild and scenic rivers system shall be subject to the provisions of sections 104.31 to 104.40, provided that in case of conflict with some other law of this state the more protective provision shall apply.

**History:** 1973 c 271 s 10

#### **104.42 SOUTHERN MINNESOTA RIVERS BASIN AREA II, GRANTS TO LOCAL GOVERNMENT; DEFINITION.**

For the purposes of sections 104.42 to 104.50, the term "southern Minnesota rivers basin area II" means the area within the watersheds of rivers and streams that are tributaries of the Minnesota River from the south between the cities of Ortonville and

Mankato. Major rivers included within the watershed are the Yellow Bank, Lac Qui Parle, Yellow Medicine, Redwood, and Cottonwood. All of Lac Qui Parle, Yellow Medicine, and Redwood counties, and parts of Lincoln, Lyon, Pipestone, Murray, Cottonwood, and Brown counties are included within the boundaries of the area.

**History:** 1976 c 82 s 1

#### 104.43 PROGRAM.

There shall be a state grant-in-aid pilot program of providing financial assistance to units of local government, including counties, soil and water conservation districts, and watershed districts, located in the southern Minnesota river basin area II for project and construction costs for the building of floodwater retarding and retention structures within a general plan for flood plain management.

**History:** 1976 c 82 s 2

#### 104.44 AID FORMULA.

Grants may be made by the board of water and soil resources to a local governmental unit for the purposes of sections 104.42 to 104.50 in an amount not to exceed 75 percent of the total cost of each project, including site acquisition, engineering, and construction. Provided that if federal funds are being utilized for a portion of the project costs, the state contribution shall not exceed 50 percent of the remaining nonfederal costs unless the structure is located in the state of South Dakota, in which case the two states shall share the nonfederal costs equally. No amount of the money granted by the state shall be used for any project of stream channelization.

**History:** 1975 c 271 s 6; 1976 c 82 s 3; 1976 c 149 s 59; 1987 c 358 s 34; 1987 c 384 art 3 s 42

#### 104.45 OPERATION WITHIN AGENCY.

Subdivision 1. **Board of water and soil resources.** The board of water and soil resources shall supervise the grant-in-aid pilot program pursuant to sections 104.42 to 104.50.

Subd. 2. **Procedures and forms.** The board shall devise procedures and forms for application for grants by the local units of government, and review of and decision on the applications by the state board.

Subd. 3. **Staff position.** A professional engineer shall be employed by the board to work exclusively on the technical implementation and engineering of the pilot project established pursuant to sections 104.42 to 104.50. The engineer shall assist the local units of government and the board to achieve the purposes of the project, and shall have duties including:

- (a) Field review and analysis of projects and project sites;
- (b) Preparation of permit applications, including evaluation of environmental effects;
- (c) Development of recommended pertinent provisions of permits for specific projects;
- (d) Preparation of plans for further consideration of remedial flood control structural measures as part of a general rural flood plain management effort; and
- (e) Evaluation of the effectiveness of completed projects constructed under this project.

**History:** 1975 c 271 s 6; 1976 c 82 s 4; 1976 c 149 s 59; 1986 c 444; 1987 c 358 s 34; 1987 c 384 art 3 s 42

#### 104.46 SELECTION OF PROJECTS.

Subdivision 1. **Evaluation of area and sites; federal cooperation.** Before any grants are made, there shall be devised a priority system for the selection of projects to receive the aid. The state board comprising the granting authority shall cooperate with the

United States Army Corps of Engineers, the department of natural resources, the Soil Conservation Service and the Area II Action Committee in analysis of the general flood plain management plan for the area and in hydrological and engineering studies on specific proposed sites. From that information, the granting authority shall determine the relative severity of the flooding problem which would be wholly or partly solved by each project. The range of priorities based on these findings shall provide a basis for selection of project sites.

**Subd. 2. Project requirement for each watershed.** Notwithstanding the requirement in subdivision 1 that project selection be based on a priority system, no more than one project shall be located within any one of the Cottonwood, Lac Qui Parle, Redwood, Yellow Medicine, and Yellow Bank rivers watersheds unless agreed upon by the area II action committee composed of representatives of each of those watersheds.

**History:** 1975 c 271 s 6; 1976 c 82 s 5; 1976 c 149 s 59

#### **104.47 CONDITIONS FOR GRANTS.**

**Subdivision 1. Local expression of willingness.** The local unit of government seeking the grant shall do so by means of a resolution requesting state funding assistance for the construction of a floodwater retention or retarding structure within its jurisdiction. The resolution shall include provisions concerning local funding, if any. The local unit of government shall state its intent to obtain necessary land rights for proposed construction sites and to assume responsibility for maintenance of the structure on its completion.

**Subd. 2. General plan.** The local unit of government shall demonstrate that the construction project which it proposes is consistent with its general plan for flood plain management. The general plan of the local government unit shall be in conformity with the policy and objectives of this chapter and shall, where reasonable and practicable, include nonstructural means of flood plain management.

**Subd. 3. Federal aid availability.** The state board shall complete a detailed analysis of the availability of federal funds and programs to supplement or complement state and local efforts on each project. This shall include the eligibility requirements and time frame for receiving the federal aid.

**Subd. 4. Environmental impact statement.** The local unit of government, assisted by the project staff engineer, shall make a comprehensive evaluation of the positive and negative environmental effects which would be reasonably likely to take place if the particular proposed project would be constructed.

**History:** 1975 c 271 s 6; 1976 c 82 s 6; 1976 c 149 s 59

#### **104.48 APPROVED PROJECTS.**

**Subdivision 1. Contracts.** When a proposed project is approved to receive a grant, the granting authority shall negotiate a contract with the local unit of government involved. The contract shall specify the terms of state and local cooperation, including the financing arrangement for the construction and an agreement on maintenance of the structure after completion.

**Subd. 2. Permits.** Before any of the granted funds are expended on construction of the structure, all permits required for construction shall be obtained from state agencies.

**History:** 1976 c 82 s 7

#### **104.49 INTERSTATE COOPERATION.**

The board of water and soil resources and the staff engineer may enter into a working agreement with the South Dakota-Minnesota Boundary Waters Commission, or successor organization, in regard to those flood retention and retarding structures constructed pursuant to sections 104.42 to 104.50 which involve territory of the state of South Dakota as well as Minnesota.

**History:** 1975 c 271 s 6; 1976 c 82 s 8; 1976 c 149 s 59; 1987 c 358 s 34; 1987 c 384 art 3 s 42

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### 104.50 REPORT TO LEGISLATURE.

When the project has been in operation for a period of two years, the board of water and soil resources and the staff engineer shall prepare and deliver a report to the legislature on the program and its consequences together with an evaluation of the feasibility and benefit of continuing the project.

**History:** 1975 c 271 s 6; 1976 c 82 s 9; 1976 c 149 s 59; 1987 c 358 s 34; 1987 c 384 art 3 s 42