

HOUSE OF REPRESENTATIVES

EIGHTY-NINTH SESSION

H. F. No. 2866

03/10/2016 Authored by McNamara and Hansen
The bill was read for the first time and referred to the Committee on Environment and Natural Resources Policy and Finance
By motion, recalled and re-referred to the Committee on Mining and Outdoor Recreation Policy
03/17/2016 Adoption of Report: Amended and re-referred to the Committee on Civil Law and Data Practices
03/23/2016 Adoption of Report: Re-referred to the Committee on Government Operations and Elections Policy
03/30/2016 Adoption of Report: Re-referred to the Committee on Environment and Natural Resources Policy and Finance
04/01/2016 Adoption of Report: Placed on the General Register as Amended
Read Second Time

1.1 A bill for an act
1.2 relating to natural resources; providing for control of invasive species; modifying
1.3 wild rice license requirements; providing for streamlined review of certain
1.4 plans and regulations; modifying and providing civil penalties; modifying
1.5 Wildfire Act; prohibiting certain logging in Sand Dunes State Forest; requiring
1.6 reports; amending Minnesota Statutes 2014, sections 17.4982, subdivision 18a;
1.7 84.027, subdivision 13; 84.091, subdivision 2; 84D.01, subdivision 2; 84D.05,
1.8 subdivision 1; 84D.09, subdivision 2; 84D.10, subdivision 4; 84D.108, by adding
1.9 a subdivision; 84D.13, subdivision 4; 88.01, by adding a subdivision; 88.22,
1.10 subdivision 1; 116G.15, by adding a subdivision; Minnesota Statutes 2015
1.11 Supplement, sections 84.027, subdivision 13a; 84D.11, subdivision 1; 84D.13,
1.12 subdivision 5; proposing coding for new law in Minnesota Statutes, chapter 84D.

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

1.14 Section 1. Minnesota Statutes 2014, section 17.4982, subdivision 18a, is amended to
1.15 read:

1.16 Subd. 18a. **Nonindigenous species.** "Nonindigenous species" means a species of
1.17 fish or other aquatic life that is:

- 1.18 (1) not known to have been historically present in the state;
- 1.19 (2) not known to be naturally occurring in a particular part of the state; or
- 1.20 (3) ~~listed~~ designated by rule as a prohibited or regulated invasive species.

1.21 Sec. 2. Minnesota Statutes 2014, section 84.027, subdivision 13, is amended to read:

1.22 Subd. 13. **Game and fish rules.** (a) The commissioner of natural resources may
1.23 adopt rules under sections 97A.0451 to 97A.0459 and this subdivision that are authorized
1.24 under:

- 1.25 (1) chapters 97A, 97B, and 97C to set open seasons and areas, to close seasons and
- 1.26 areas, to select hunters for areas, to provide for tagging and registration of game and fish, to

2.1 prohibit or allow taking of wild animals to protect a species, to prevent or control wildlife
2.2 disease, to open or close bodies of water or portions of bodies of water for night bow
2.3 fishing, and to prohibit or allow importation, transportation, or possession of a wild animal;

2.4 (2) sections 84.093, 84.15, and 84.152 to set seasons for harvesting wild ginseng
2.5 roots and wild rice and to restrict or prohibit harvesting in designated areas; and

2.6 (3) section 84D.12 to ~~list~~ designate prohibited invasive species, regulated invasive
2.7 species, and unregulated nonnative species; and to list infested waters.

2.8 (b) If conditions exist that do not allow the commissioner to comply with sections
2.9 97A.0451 to 97A.0459, including the need to adjust season variables on an annual basis
2.10 based upon current biological and harvest data, the commissioner may adopt a rule
2.11 under this subdivision by submitting the rule to the attorney general for review under
2.12 section 97A.0455, publishing a notice in the State Register and filing the rule with the
2.13 secretary of state and the Legislative Coordinating Commission, and complying with
2.14 section 97A.0459, and including a statement of the conditions and a copy of the rule in the
2.15 notice. The conditions for opening a water body or portion of a water body for night bow
2.16 fishing under this section may include the need to temporarily open the area to evaluate
2.17 compatibility of the activity on that body of water prior to permanent rulemaking. The
2.18 notice may be published after it is received from the attorney general or five business days
2.19 after it is submitted to the attorney general, whichever is earlier.

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

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

2.24 (2) the attorney general approves the rule; and

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

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

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

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

3.1 (g) Notwithstanding section 97A.0458, a rule adopted under this subdivision is
3.2 effective for the period stated in the notice but not longer than 18 months after the rule is
3.3 effective.

3.4 Sec. 3. Minnesota Statutes 2015 Supplement, section 84.027, subdivision 13a, is
3.5 amended to read:

3.6 Subd. 13a. **Game and fish expedited permanent rules.** (a) In addition to the
3.7 authority granted in subdivision 13, the commissioner of natural resources may adopt rules
3.8 under section 14.389 that are authorized under:

3.9 (1) chapters 97A, 97B, and 97C to describe zone or permit area boundaries, to
3.10 designate fish spawning beds or fish preserves, to select hunters or anglers for areas,
3.11 to provide for registration of game or fish, to prevent or control wildlife disease, or to
3.12 correct errors or omissions in rules that do not have a substantive effect on the intent or
3.13 application of the original rule; or

3.14 (2) section 84D.12 to ~~list~~ designate prohibited invasive species, regulated invasive
3.15 species, and unregulated nonnative species.

3.16 (b) The commissioner of natural resources may adopt rules under section 14.389
3.17 that are authorized under chapters 97A, 97B, and 97C, for purposes in addition to those
3.18 listed in paragraph (a), clause (1), subject to the notice and public hearing provisions
3.19 of section 14.389, subdivision 5.

3.20 Sec. 4. Minnesota Statutes 2014, section 84.091, subdivision 2, is amended to read:

3.21 Subd. 2. **License required; ~~exception~~ exemptions.** (a) Except as provided in
3.22 ~~paragraph (b) this subdivision~~, a person may not harvest, buy, sell, transport, or possess
3.23 aquatic plants without a license required under this chapter. A license shall be issued in
3.24 the same manner as provided under the game and fish laws.

3.25 (b) A resident under the age of 18 years may harvest wild rice without a license, if
3.26 accompanied by a person with a wild rice license.

3.27 (c) Tribal band members who possess a valid tribal identification card from a
3.28 federally recognized tribe located in Minnesota are deemed to have a license to harvest
3.29 wild rice under this section.

3.30 Sec. 5. Minnesota Statutes 2014, section 84D.01, subdivision 2, is amended to read:

3.31 Subd. 2. **Aquatic macrophyte.** "Aquatic macrophyte" means macro algae or a
3.32 macroscopic nonwoody plant, either a submerged, floating leafed, floating, or emergent
3.33 plant that naturally grows in water.

4.1 Sec. 6. Minnesota Statutes 2014, section 84D.05, subdivision 1, is amended to read:

4.2 Subdivision 1. **Prohibited activities.** A person may not possess, import, purchase,
4.3 sell, propagate, transport, or introduce a prohibited invasive species, except:

4.4 (1) under a permit issued by the commissioner under section 84D.11;

4.5 (2) in the case of purple loosestrife, as provided by sections 18.75 to 18.88;

4.6 (3) under a restricted species permit issued under section 17.457;

4.7 (4) when being transported to the department, or another destination as the
4.8 commissioner may direct, in a sealed container for purposes of identifying the species
4.9 or reporting the presence of the species;

4.10 (5) when being transported for disposal as part of a harvest or control activity
4.11 when specifically authorized under a permit issued by the commissioner according to
4.12 section 103G.615, when being transported for disposal as specified under a commercial
4.13 fishing license issued by the commissioner according to section 97A.418, 97C.801,
4.14 97C.811, 97C.825, 97C.831, or 97C.835, or when being transported as specified by the
4.15 commissioner;

4.16 ~~(6) when the specimen has been lawfully acquired dead and, in the case of plant
4.17 species, all seeds are removed or are otherwise secured in a sealed container;~~

4.18 ~~(7) in the form of herbaria or other preserved specimens;~~

4.19 ~~(8)~~ (6) when being removed from watercraft and equipment, or caught while angling,
4.20 and immediately returned to the water from which they came; or

4.21 ~~(9)~~ (7) as the commissioner may otherwise prescribe by rule.

4.22 Sec. 7. **[84D.075] NONNATIVE SPECIES, AQUATIC PLANTS, AND AQUATIC**
4.23 **MACROPHYTES; PARTS AND LIFE STAGE.**

4.24 A law relating to a nonnative species, aquatic plant, or aquatic macrophyte applies in
4.25 the same manner to a part of a nonnative species, aquatic plant, or aquatic macrophyte,
4.26 whether alive or dead, and to any life stage or form.

4.27 Sec. 8. Minnesota Statutes 2014, section 84D.09, subdivision 2, is amended to read:

4.28 Subd. 2. **Exceptions.** Unless otherwise prohibited by law, a person may transport
4.29 aquatic macrophytes:

4.30 (1) that are duckweeds in the family Lemnaceae;

4.31 (2) for purposes of constructing shooting or observation blinds in amounts sufficient
4.32 for that purpose, provided that the aquatic macrophytes are emergent and cut above the
4.33 waterline;

- 5.1 (3) when legally purchased or traded by or from commercial or hobbyist sources for
 5.2 aquarium, wetland or lakeshore restoration, or ornamental purposes;
- 5.3 (4) when harvested for personal or commercial use if in a motor vehicle;
- 5.4 (5) to the department, or another destination as the commissioner may direct, in a
 5.5 sealed container for purposes of identifying a species or reporting the presence of a species;
- 5.6 (6) that are wild rice harvested under section 84.091;
- 5.7 (7) in the form of fragments of emergent aquatic macrophytes incidentally transported
 5.8 in or on watercraft or decoys used for waterfowl hunting during the waterfowl season; ~~or~~
- 5.9 (8) when removing water-related equipment from waters of the state for purposes of
 5.10 cleaning off aquatic macrophytes before leaving a water access site; or
- 5.11 (9) when being transported from riparian property to a legal disposal site that is at
 5.12 least 100 feet from any surface water, ditch, or seasonally flooded land, provided the
 5.13 aquatic macrophytes are in a covered commercial vehicle specifically designed and used
 5.14 for hauling trash.

5.15 Sec. 9. Minnesota Statutes 2014, section 84D.10, subdivision 4, is amended to read:

5.16 Subd. 4. **Persons transporting water-related equipment.** (a) When leaving
 5.17 ~~waters~~ a water of the state, a person must drain water-related equipment holding water
 5.18 and live wells and bilges by removing the drain plug before transporting the water-related
 5.19 equipment ~~off the water access site or riparian property.~~ For the purposes of this
 5.20 paragraph, "transporting" includes moving water-related equipment over land between
 5.21 connected or unconnected water bodies, but does not include moving water-related
 5.22 equipment within the immediate area required for loading and preparing the water-related
 5.23 equipment for transport over land.

5.24 (b) Drain plugs, bailers, valves, or other devices used to control the draining of water
 5.25 from ballast tanks, bilges, and live wells must be removed or opened while transporting
 5.26 water-related equipment.

5.27 (c) Emergency response vehicles and equipment may be transported on a public road
 5.28 with the drain plug or other similar device replaced only after all water has been drained
 5.29 from the equipment upon leaving the water body.

5.30 (d) Portable bait containers used by licensed aquatic farms, portable bait containers
 5.31 when fishing through the ice except on waters listed infested for viral hemorrhagic
 5.32 septicemia, and marine sanitary systems are exempt from this subdivision.

5.33 (e) A person must not dispose of bait in waters of the state.

6.1 (f) A boat lift, dock, swim raft, or associated equipment that has been removed
6.2 from any water body may not be placed in another water body until a minimum of 21
6.3 days have passed.

6.4 (g) A person who transports water that is appropriated from noninfested surface
6.5 water bodies and that is transported by a commercial vehicle, excluding watercraft, or
6.6 commercial trailer, which vehicle or trailer is specifically designed and used for water
6.7 hauling, is exempt from paragraphs (a) and (b), provided that the person does not discharge
6.8 the transported water to other surface waters or within 100 feet of a surface water body.

6.9 (h) A person transporting water from noninfested surface water bodies for
6.10 firefighting or emergencies that threaten human safety or property is exempt from
6.11 paragraphs (a) and (b).

6.12 Sec. 10. Minnesota Statutes 2014, section 84D.108, is amended by adding a
6.13 subdivision to read:

6.14 Subd. 2a. **Lake Minnetonka pilot study.** (a) The commissioner may issue an
6.15 additional permit to service providers to return to Lake Minnetonka water-related
6.16 equipment with zebra mussels attached after the equipment has been seasonally
6.17 stored, serviced, or repaired. The permit must include verification and documentation
6.18 requirements and any other conditions the commissioner deems necessary.

6.19 (b) Water-related equipment with zebra mussels attached may be returned only
6.20 to Lake Minnetonka (DNR Division of Waters number 27-0133) by service providers
6.21 permitted under subdivision 1.

6.22 (c) The service provider's place of business must be within the Lake Minnetonka
6.23 Conservation District as established according to sections 103B.601 to 103B.645.

6.24 (d) A service provider applying for a permit under this subdivision must, if approved
6.25 for a permit and before the permit is valid, furnish a corporate surety bond in favor of the
6.26 state for \$50,000 payable upon violation of this chapter.

6.27 (e) This subdivision expires December 1, 2018.

6.28 Sec. 11. Minnesota Statutes 2015 Supplement, section 84D.11, subdivision 1, is
6.29 amended to read:

6.30 Subdivision 1. **Prohibited invasive species.** (a) The commissioner may issue a
6.31 permit for the propagation, possession, importation, purchase, or transport of a prohibited
6.32 invasive species for the purposes of disposal, decontamination, control, research, or
6.33 education.

7.1 (b) The commissioner may issue a permit as provided under section 84D.108,
 7.2 subdivision 2a, to a service provider to allow water-related equipment to be placed back
 7.3 into the same body of water after being seasonally stored, serviced, or repaired by the
 7.4 service provider. This paragraph expires December 1, 2018.

7.5 Sec. 12. Minnesota Statutes 2014, section 84D.13, subdivision 4, is amended to read:

7.6 Subd. 4. **Warnings; civil citations.** After appropriate training, conservation
 7.7 officers, other licensed peace officers, and other department personnel designated by the
 7.8 commissioner may issue warnings or citations to a person who:

7.9 (1) unlawfully transports prohibited invasive species or aquatic macrophytes;

7.10 (2) unlawfully places or attempts to place into waters of the state water-related
 7.11 equipment that has aquatic macrophytes or prohibited invasive species attached;

7.12 (3) intentionally damages, moves, removes, or sinks a buoy marking, as prescribed
 7.13 by rule, Eurasian watermilfoil;

7.14 (4) fails to remove plugs, open valves, and drain water from water-related equipment
 7.15 before leaving waters of the state or when transporting water-related equipment as
 7.16 provided in section 84D.10, subdivision 4; ~~or~~

7.17 (5) transports infested water, in violation of rule, off riparian property;

7.18 (6) fails to comply with a decontamination order when a decontamination unit
 7.19 is available on site;

7.20 (7) fails to complete decontamination of water-related equipment or to remove
 7.21 invasive species from water-related equipment by the date specified on a tagging notice
 7.22 and order; or

7.23 (8) fails to complete the aquatic invasive species offender training course required
 7.24 under section 86B.13.

7.25 Sec. 13. Minnesota Statutes 2015 Supplement, section 84D.13, subdivision 5, is
 7.26 amended to read:

7.27 Subd. 5. **Civil penalties.** (a) A civil citation issued under this section must impose
 7.28 the following penalty amounts:

7.29 (1) for transporting aquatic macrophytes in violation of section 84D.09, \$100;

7.30 (2) for placing or attempting to place into waters of the state water-related equipment
 7.31 that has aquatic macrophytes attached, \$200;

7.32 (3) for unlawfully possessing or transporting a prohibited invasive species other
 7.33 than an aquatic macrophyte, \$500;

8.1 (4) for placing or attempting to place into waters of the state water-related equipment
8.2 that has prohibited invasive species attached when the waters are not listed by the
8.3 commissioner as being infested with that invasive species, \$500;

8.4 (5) for intentionally damaging, moving, removing, or sinking a buoy marking, as
8.5 prescribed by rule, Eurasian watermilfoil, \$100;

8.6 (6) for failing to have drain plugs or similar devices removed or opened while
8.7 transporting water-related equipment or for failing to remove plugs, open valves, and
8.8 drain water from water-related equipment, other than marine sanitary systems, before
8.9 leaving waters of the state, \$100;

8.10 (7) for transporting infested water off riparian property without a permit as required
8.11 by rule, \$200; ~~and~~

8.12 (8) for failing to have aquatic invasive species affirmation displayed or available for
8.13 inspection as provided in sections 86B.401 and 97C.301, subdivision 2a, \$25;

8.14 (9) for failing to comply with a decontamination order when a decontamination unit
8.15 is available on site, \$250;

8.16 (10) for failing to complete decontamination of water-related equipment or to
8.17 remove invasive species from water-related equipment by the date specified on a tagging
8.18 notice and order, \$250; and

8.19 (11) for failing to complete the aquatic invasive species offender training course
8.20 required under section 86B.13, \$25.

8.21 (b) A civil citation that is issued to a person who has one or more prior convictions
8.22 or final orders for violations of this chapter is subject to twice the penalty amounts listed
8.23 in paragraph (a).

8.24 Sec. 14. Minnesota Statutes 2014, section 88.01, is amended by adding a subdivision
8.25 to read:

8.26 Subd. 28. **Prescribed burn.** "Prescribed burn" means a fire that is intentionally
8.27 ignited, managed, and controlled by an entity meeting certification requirements established
8.28 by the commissioner for the purpose of managing vegetation. A prescribed burn that has
8.29 exceeded its prescribed boundaries and requires suppression action is considered a wildfire.

8.30 Sec. 15. Minnesota Statutes 2014, section 88.22, subdivision 1, is amended to read:

8.31 Subdivision 1. **Imposition of restrictions.** (a) **Road closure.** When the
8.32 commissioner of natural resources shall determine that conditions conducive to wildfire
8.33 hazards exist in the wildfire areas of the state and that the presence of persons in the
8.34 wildlife areas tends to aggravate wildfire hazards, render forest trails impassable by

9.1 driving thereon during wet seasons and hampers the effective enforcement of state timber
9.2 trespass and game laws, the commissioner may by written order, close any road or trail
9.3 leading into any land used for any conservation purposes, to all modes of travel except
9.4 that considered essential such as residents traveling to and from their homes or in other
9.5 cases to be determined by the authorized forest officers assigned to guard the area.

9.6 (b) **Burning ban.** The commissioner may also, upon such determination, by written
9.7 order, suspend the issuance of permits for open fires or prescribed burns, revoke or suspend
9.8 the operation of a permit previously issued and, to the extent the commissioner deems
9.9 necessary, prohibit the building of all or some kinds of open fires or prescribed burns in all
9.10 or any part of a wildfire area regardless of whether a permit is otherwise required; and the
9.11 commissioner also may, by written order, prohibit smoking except at places of habitation
9.12 or automobiles or other enclosed vehicles properly equipped with an efficient ash tray.

9.13 Sec. 16. Minnesota Statutes 2014, section 116G.15, is amended by adding a
9.14 subdivision to read:

9.15 Subd. 8. **Preparation, review, and approval of plans and regulations.**
9.16 Notwithstanding sections 116G.07 to 116G.10, the commissioner shall establish, by rule,
9.17 procedures for preparation, review, and approval of plans and regulations, and updates
9.18 thereto, that are required by designation of the Mississippi River Corridor Critical Area.
9.19 The commissioner may use the expedited rulemaking process under section 14.389 to
9.20 adopt and amend rules authorized under this subdivision.

9.21 **EFFECTIVE DATE.** This section is effective the day following final enactment.

9.22 Sec. 17. **LAKE SERVICE PROVIDER FEASIBILITY REPORT.**

9.23 The commissioner of natural resources shall report to the chairs of the house and
9.24 senate committees with jurisdiction over natural resources by January 15, 2019, regarding
9.25 the feasibility of expanding permitting to service providers as described in Minnesota
9.26 Statutes, section 84D.108, subdivision 2a, to other water bodies in the state. The report
9.27 must:

9.28 (1) include recommendations for state and local resources needed to implement the
9.29 program;

9.30 (2) assess local government inspection roles under Minnesota Statutes, section
9.31 84D.105, subdivision 2, paragraph (g); and

9.32 (3) assess whether mechanisms to ensure that water-related equipment placed back
9.33 into the same body of water from which it was removed can adequately protect other
9.34 water bodies.

10.1 Sec. 18. **PRESCRIBED BURN REQUIREMENTS; REPORT.**

10.2 The commissioner of natural resources, in cooperation with prescribed burning
10.3 professionals, nongovernmental organizations, and local and federal governments, must
10.4 develop criteria for certifying an entity to conduct a prescribed burn under a general
10.5 permit. The certification requirements must include training, equipment, and experience
10.6 requirements and include an apprentice program to allow entities without experience to
10.7 become certified. The commissioner must establish provisions for decertifying entities.
10.8 The commissioner must not require additional certification or requirements for burns
10.9 conducted as part of normal agricultural practices not currently subject to prescribed burn
10.10 specifications. The commissioner must submit a report with recommendations and any
10.11 legislative changes needed to the chairs and ranking minority members of the house of
10.12 representatives and senate committees and divisions with jurisdiction over environment
10.13 and natural resources by January 15, 2017.

10.14 Sec. 19. **SAND DUNES STATE FOREST; REPORT.**

10.15 (a) Until July 1, 2017, the commissioner of natural resources shall not log, enter into
10.16 a logging contract, or otherwise remove trees for purposes of creating oak savanna in the
10.17 Sand Dunes State Forest. This paragraph does not prohibit work done under contracts
10.18 entered into prior to the effective date of this section or work on school trust lands.

10.19 (b) By January 15, 2017, the commissioner must submit a report to the chairs and
10.20 ranking minority members of the house of representatives and senate committees and
10.21 divisions with jurisdiction over environment and natural resources with the Department of
10.22 Natural Resources' progress on collaborating with local citizens and other stakeholders
10.23 over the past year when making decisions that impact the landscape, including forest
10.24 conversions and other clear-cutting activities, and its progress on other citizen engagement
10.25 activities.

10.26 **EFFECTIVE DATE.** This section is effective the day following final enactment.