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State of Minnesota

HOUSE OF REPRESENTATIVES

EIGHTY-FIFTH SESSION

HOUSE FILE No. 3625

February 28, 2008

Authored by Hansen

The bill was read for the first time and referred to the Committee on Finance

April 17, 2008

Committee Recommendation and Adoption of Report:

To Pass as Amended and re-referred to the Committee on Ways and Means

April 30, 2008

Committee Recommendation and Adoption of Report:

To Pass

Read Second Time

1.1 A bill for an act
1.2 relating to natural resources; providing for disposition of proceeds from sale of
1.3 administrative sites; providing for administrative penalty orders; modifying
1.4 environmental learning center provisions; providing funding for the Pine Grove
1.5 Zoo; providing for relocation of certain regional forestry office; appropriating
1.6 money; amending Minnesota Statutes 2006, sections 84.0857; 84.0875; 94.16,
1.7 subdivision 3; 297A.94; proposing coding for new law in Minnesota Statutes,
1.8 chapter 103G.

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

1.10 Section 1. Minnesota Statutes 2006, section 84.0857, is amended to read:

1.11 84.0857 FACILITIES MANAGEMENT ACCOUNT.

1.12 (a) The commissioner of natural resources may bill organizational units within
1.13 the Department of Natural Resources for the costs of providing them with building and
1.14 infrastructure facilities. Costs billed may include modifications and adaptations to allow
1.15 for appropriate building occupancy, building code compliance, insurance, utility services,
1.16 maintenance, repair, and other direct costs as determined by the commissioner. Receipts
1.17 shall be credited to a special account in the state treasury and are appropriated to the
1.18 commissioner to pay the costs for which the billings were made.

1.19 (b) Money deposited in the special account from the proceeds of a sale under
1.20 section 94.16, subdivision 3, paragraph (b), is appropriated to the commissioner to acquire
1.21 facilities or renovate existing buildings for administrative use or to acquire land for,
1.22 design, and construct administrative buildings for the Department of Natural Resources.

1.23 Sec. 2. Minnesota Statutes 2006, section 84.0875, is amended to read:

1.24 84.0875 ENVIRONMENTAL LEARNING CENTERS.

2.1           (a) The commissioner may acquire and better, or make grants to counties, home  
2.2 rule charter or statutory cities, or school districts to acquire and better, residential  
2.3 environmental learning centers where students may learn how to use, preserve, and  
2.4 renew the natural resources of this state. A facility and reasonable access to it must be  
2.5 owned by the state or a political subdivision but may be leased to or managed by a  
2.6 nonprofit organization to carry out an environmental learning program established by the  
2.7 commissioner. The lease or management agreement must comply with the requirements  
2.8 of section 16A.695 and must provide for the procurement of liability insurance by the  
2.9 nonprofit organization. A nonprofit organization that is operating an environmental  
2.10 learning center under this section is a municipality for purposes of the liability limitations  
2.11 of section 466.04 while acting within the scope of these activities.

2.12           (b) During the time the center is used for educational programs offered in  
2.13 conjunction with a college or university, the rules and standards related to space  
2.14 requirements are governed by section 144.74.

2.15           Sec. 3. Minnesota Statutes 2006, section 94.16, subdivision 3, is amended to read:

2.16           Subd. 3. **Proceeds from natural resources land.** (a) Except as provided in  
2.17 paragraph (b), the remainder of the proceeds from the sale of lands that were under the  
2.18 control and supervision of the commissioner of natural resources shall be credited to the  
2.19 land acquisition account in the natural resources fund.

2.20           (b) The remainder of the proceeds from the sale of administrative sites under the  
2.21 control and supervision of the commissioner of natural resources shall be credited to the  
2.22 facilities management account established under section 84.0857 and used to acquire  
2.23 facilities or renovate existing buildings for administrative use or to acquire land for,  
2.24 design, and construct administrative buildings for the Department of Natural Resources.

2.25           Sec. 4. **[103G.252] ADMINISTRATIVE PENALTY ORDERS.**

2.26           The commissioner may issue an order requiring violations to be corrected and  
2.27 administratively assessing monetary penalties for violations of chapters 84, 103F, and  
2.28 103G, rules, orders, agreements, settlements, licenses, registrations, or permits for  
2.29 activities affecting the course, current, or cross-section of public waters, appropriation  
2.30 or diversion of waters of the state, or harvest, control, or destruction of aquatic plants.  
2.31 The commissioner must follow the procedures in section 103G.253 when issuing an  
2.32 administrative penalty order. The maximum monetary amount of an administrative  
2.33 penalty order is \$10,000 for each violator for all violations by that violator identified  
2.34 in an inspection or review of compliance.

3.1 Sec. 5. [103G.253] ADMINISTRATIVE PENALTY ORDER PROCEDURE.

3.2 Subdivision 1. Contents of order. An order assessing an administrative penalty  
3.3 under section 103G.252 must include:

3.4 (1) a concise statement of the facts alleged to constitute a violation;

3.5 (2) a reference to the law, rule, order, agreement, settlement, license, registration,  
3.6 or permit that has been violated;

3.7 (3) a statement of the corrective order and the amount of the administrative penalty  
3.8 to be imposed and the factors upon which it is based; and

3.9 (4) a statement of the person's right to review the order.

3.10 Subd. 2. Amount of penalty; considerations. (a) In determining the amount or  
3.11 requirements of a penalty under section 103G.252, the commissioner may consider:

3.12 (1) the willfulness of the violation;

3.13 (2) the gravity of the violation, including damage to humans, animals, air, water,  
3.14 land, forests, or other natural resources of the state;

3.15 (3) the history of past violations;

3.16 (4) the number of violations;

3.17 (5) the economic benefit gained by the person by allowing or committing the  
3.18 violation; and

3.19 (6) other factors as justice may require, if the commissioner specifically identifies  
3.20 the additional factors in the commissioner's order.

3.21 (b) For a second or subsequent violation, the commissioner shall, in determining the  
3.22 amount or requirements of a penalty, consider:

3.23 (1) the factors in paragraph (a);

3.24 (2) the similarity of the most recent previous violation and the violation to be  
3.25 penalized;

3.26 (3) the time elapsed since the last violation;

3.27 (4) the number of previous violations; and

3.28 (5) the response of the person to the most recent previous violation identified.

3.29 Subd. 3. Corrective order. (a) The commissioner may issue an order requiring the  
3.30 violations cited in the order to be corrected within the time period specified in the order.  
3.31 Corrective orders may require repair, restoration, replacement, and monetary restitution as  
3.32 determined by the commissioner.

3.33 (b) The person to whom the order was issued shall provide information to the  
3.34 commissioner before the 31st day after the order was received demonstrating that the  
3.35 violation has been corrected or that the person has developed a corrective plan. The  
3.36 commissioner shall determine whether the violation has been corrected or whether the

4.1 corrective plan is acceptable and notify the person to whom the order was issued of the  
4.2 commissioner's determination.

4.3 Subd. 4. **Penalty.** (a) Except as provided in paragraph (c), if the commissioner  
4.4 determines that the violation has been corrected or the person to whom the order was  
4.5 issued has developed a corrective plan acceptable to the commissioner, the monetary  
4.6 penalty may be forgiven in whole or in part.

4.7 (b) Unless the person requests review of the order under subdivision 5 before the  
4.8 monetary penalty is due, the penalty in the order is due and payable on the 31st day after  
4.9 the order was received.

4.10 (c) For repeated or serious violations, the commissioner may issue an order with a  
4.11 monetary penalty that shall not be forgiven after the corrective action is taken.

4.12 (d) Interest at the rate established in section 549.09 begins to accrue on penalties  
4.13 under this subdivision on the 31st day after the order with the penalty was received.

4.14 Subd. 5. **Expedited administrative hearing.** (a) Within 30 days after receiving an  
4.15 order, the person to whom the order was issued may request an expedited hearing, using  
4.16 the procedures adopted under section 14.51, to review the commissioner's action. The  
4.17 hearing request must specifically state the reasons for seeking review of the order. The  
4.18 person to whom the order was issued and the commissioner are the parties to the expedited  
4.19 hearing. The commissioner must notify the person to whom the order was issued of  
4.20 the time and place of the hearing at least 15 days before the hearing. The expedited  
4.21 hearing must be held within 30 days after a request for hearing has been filed with the  
4.22 commissioner unless the parties agree to a later date.

4.23 (b) All written arguments must be submitted within ten days following the close  
4.24 of the hearing. The hearing shall be conducted according to rules adopted under section  
4.25 14.51, as modified by this subdivision. The Office of Administrative Hearings may,  
4.26 in consultation with the commissioner of natural resources, adopt rules specifically  
4.27 applicable to cases under this section.

4.28 (c) The administrative law judge shall issue a report making recommendations about  
4.29 the commissioner's action to the commissioner within 30 days following the close of the  
4.30 record. The administrative law judge may not recommend a change in the amount of  
4.31 the proposed penalty or corrective order unless the administrative law judge determines  
4.32 that, based on the factors in subdivision 2, the monetary penalty or corrective order is  
4.33 unreasonable.

4.34 (d) If the administrative law judge makes a finding that the hearing was requested  
4.35 solely for purposes of delay or that the hearing request was frivolous, the commissioner

5.1 may add to the amount of the penalty the costs charged to the Department of Natural  
5.2 Resources by the Office of Administrative Hearings for the hearing.

5.3 (e) If the administrative law judge issues a report that recommends dismissal of  
5.4 the order assessing the administrative penalty, the commissioner must refund the costs  
5.5 charged to the person receiving the order by the Office of Administrative Hearings for  
5.6 the hearing and reasonable and necessary attorney fees incurred for the hearing. For  
5.7 purposes of this paragraph, the administrative law judge may recommend attorney fees to  
5.8 be refunded, not to exceed the amount of the penalty order.

5.9 (f) If a hearing has been held, the commissioner may not issue a final order until at  
5.10 least five days after receipt of the report of the administrative law judge. The person to  
5.11 whom the order was issued may, within those five days, comment to the commissioner  
5.12 on the recommendations and the commissioner must consider the comments. The final  
5.13 order may be appealed according to sections 14.63 to 14.69

5.14 (g) If a hearing has been held and a final order issued by the commissioner, the  
5.15 penalty must be paid within 30 days after the date the final order is received and the  
5.16 corrective action must be completed within the time period specified by the final order,  
5.17 unless review of the final order is requested under sections 14.63 to 14.69. If review is not  
5.18 requested or the order is reviewed and upheld, the amount due is the penalty, together with  
5.19 interest accruing from 31 days after the original order was received at the rate established  
5.20 in section 549.09.

5.21 Subd. 6. **Alternative dispute resolution.** In addition to review under subdivision  
5.22 5, the commissioner may enter into mediation or other alternative dispute resolution  
5.23 concerning an order issued under this section if the commissioner and the person to whom  
5.24 the order was issued both agree to mediation or other alternative dispute resolution.

5.25 Subd. 7. **Enforcement.** (a) The attorney general may proceed on behalf of the state  
5.26 to enforce penalties that are due and payable under this section in any manner provided by  
5.27 law for the collection of debts.

5.28 (b) The attorney general may petition the district court to file the administrative  
5.29 order as an order of the court. At any court hearing, the only issues parties may contest are  
5.30 procedural and notice issues. Once entered, the administrative order may be enforced in  
5.31 the same manner as a final judgment of the district court.

5.32 (c) If a person fails to pay the penalty or comply with a corrective order, the attorney  
5.33 general may bring a civil action in district court seeking payment of the penalties,  
5.34 injunctive relief, or other appropriate relief including monetary damages, attorney fees,  
5.35 costs, and interest.

6.1            Subd. 8. **Revocation and suspension of permit, license, or registration.** If a  
6.2 person fails to pay a penalty owed under this section, the commissioner may revoke  
6.3 or refuse to reissue or renew the related permit, license, or registration issued by the  
6.4 commissioner.

6.5            Subd. 9. **Cumulative remedy.** The authority of the commissioner to issue a  
6.6 corrective order assessing penalties is in addition to other remedies available under  
6.7 statutory or common law, except that the state may not seek civil penalties under any  
6.8 other provision of law for the violations covered by the administrative penalty order. The  
6.9 payment of a penalty does not preclude the use of other enforcement provisions, under  
6.10 which penalties are not assessed, in connection with the violation for which the penalty  
6.11 was assessed.

6.12            Sec. 6. Minnesota Statutes 2006, section 297A.94, is amended to read:

6.13            **297A.94 DEPOSIT OF REVENUES.**

6.14            (a) Except as provided in this section, the commissioner shall deposit the revenues,  
6.15 including interest and penalties, derived from the taxes imposed by this chapter in the state  
6.16 treasury and credit them to the general fund.

6.17            (b) The commissioner shall deposit taxes in the Minnesota agricultural and economic  
6.18 account in the special revenue fund if:

6.19            (1) the taxes are derived from sales and use of property and services purchased for  
6.20 the construction and operation of an agricultural resource project; and

6.21            (2) the purchase was made on or after the date on which a conditional commitment  
6.22 was made for a loan guaranty for the project under section 41A.04, subdivision 3.

6.23            The commissioner of finance shall certify to the commissioner the date on which the  
6.24 project received the conditional commitment. The amount deposited in the loan guaranty  
6.25 account must be reduced by any refunds and by the costs incurred by the Department of  
6.26 Revenue to administer and enforce the assessment and collection of the taxes.

6.27            (c) The commissioner shall deposit the revenues, including interest and penalties,  
6.28 derived from the taxes imposed on sales and purchases included in section 297A.61,  
6.29 subdivision 3, paragraph (g), clauses (1) and (4), in the state treasury, and credit them  
6.30 as follows:

6.31            (1) first to the general obligation special tax bond debt service account in each fiscal  
6.32 year the amount required by section 16A.661, subdivision 3, paragraph (b); and

6.33            (2) after the requirements of clause (1) have been met, the balance to the general  
6.34 fund.

7.1 (d) The commissioner shall deposit the revenues, including interest and penalties,  
7.2 collected under section 297A.64, subdivision 5, in the state treasury and credit them to the  
7.3 general fund. By July 15 of each year the commissioner shall transfer to the highway user  
7.4 tax distribution fund an amount equal to the excess fees collected under section 297A.64,  
7.5 subdivision 5, for the previous calendar year.

7.6 (e) For fiscal year 2001, 97 percent; for fiscal years 2002 and 2003, 87 percent; and  
7.7 for fiscal year 2004 and thereafter, 72.43 percent of the revenues, including interest and  
7.8 penalties, transmitted to the commissioner under section 297A.65, must be deposited by  
7.9 the commissioner in the state treasury as follows:

7.10 (1) 50 percent of the receipts must be deposited in the heritage enhancement account  
7.11 in the game and fish fund, and may be spent only on activities that improve, enhance, or  
7.12 protect fish and wildlife resources, including conservation, restoration, and enhancement  
7.13 of land, water, and other natural resources of the state;

7.14 (2) 22.5 percent of the receipts must be deposited in the natural resources fund, and  
7.15 may be spent only for state parks and trails;

7.16 (3) 22.5 percent of the receipts must be deposited in the natural resources fund, and  
7.17 may be spent only on metropolitan park and trail grants;

7.18 (4) three percent of the receipts must be deposited in the natural resources fund, and  
7.19 may be spent only on local trail grants; and

7.20 (5) two percent of the receipts must be deposited in the natural resources fund,  
7.21 and may be spent only for the Minnesota Zoological Garden, the Como Park Zoo  
7.22 and Conservatory, the Pine Grove Zoo in Little Falls, and the Duluth Zoo. Zoos not  
7.23 currently accredited by the American Zoological Association may expend funds under this  
7.24 paragraph only for purposes that will assist the zoo to obtain accreditation.

7.25 (f) The revenue dedicated under paragraph (e) may not be used as a substitute  
7.26 for traditional sources of funding for the purposes specified, but the dedicated revenue  
7.27 shall supplement traditional sources of funding for those purposes. Land acquired with  
7.28 money deposited in the game and fish fund under paragraph (e) must be open to public  
7.29 hunting and fishing during the open season, except that in aquatic management areas or  
7.30 on lands where angling easements have been acquired, fishing may be prohibited during  
7.31 certain times of the year and hunting may be prohibited. At least 87 percent of the money  
7.32 deposited in the game and fish fund for improvement, enhancement, or protection of fish  
7.33 and wildlife resources under paragraph (e) must be allocated for field operations.

7.34 Sec. 7. **IMPLEMENTATION PLAN; RULEMAKING EXEMPTION.**

8.1 The commissioner of natural resources shall prepare a plan to implement the  
8.2 administrative penalty order according to Minnesota Statutes, sections 103G.252 to  
8.3 103G.254. The commissioner shall provide a 30-day period for public comment on the  
8.4 plan. The plan must be finalized by December 31, 2008.

8.5 **Sec. 8. CLOQUET AREA FORESTRY OFFICE.**

8.6 If the commissioner of natural resources relocates or closes the northeast regional  
8.7 forestry office that is currently located in the city of Cloquet, the commissioner shall  
8.8 relocate the office to a location within a ten-mile radius of the city of Cloquet.