

CHAPTER 456B

SPECIAL PROVISIONS — NATURAL RESOURCES DEPARTMENT

[P]

This chapter not enacted as a part of this title; transferred from
chapter 108 in Code 1993

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456B.1 Definitions.

As used in this chapter unless the context otherwise requires:

1. “*Commission*” means the natural resource commission.
2. “*Department*” means the department of natural resources created under section 455A.2.
3. “*Director*” means the director of the department.
4. “*Protected wetlands*” means type 3, type 4, and type 5 wetlands as described in circular 39, Wetlands of the United States, 1971 Edition, published by the United States department of the interior. However, a protected wetland does not include land where an agricultural drainage well has been plugged causing a temporary wetland or land within a drainage district or levee district.
5. “*Wetlands*” means an area of two or more acres in a natural condition that is mostly under water or waterlogged during the spring growing season and is characterized by vegetation of hydric soils.
86 Acts, ch 1245, §1846
C87, §108.1
90 Acts, ch 1199, §1
C93, §456B.1

456B.2 through 456B.6 Reserved.**456B.7 Stream control on private lands.**

Upon receiving consent in writing from the landowner, the department may enter upon private lands containing waters and streams draining into state-owned lakes and streams, for any or all of the following purposes:

1. Deepening.
2. Filling.
3. Widening.
4. Contracting.
5. Improving and protecting banks.
6. Constructing spillways and discharge structures.
7. Controlling erosion on tributary land.
8. Providing structures or other works conducive to the regulation of stream flow.

Any action taken by the commission under this section is subject to the approval of the environmental protection commission.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §108.7; 82 Acts, ch 1199, §53, 96]
86 Acts, ch 1245, §1847
C93, §456B.7

456B.8 Jurisdiction — public access.

Any such agreement with any landowner shall give the commission jurisdiction of such land, waters, and streams to accomplish the purposes set out in said agreement and in case any improvement contemplated by section 456B.7 is for the sole purpose of improving any stream and not mainly for the purpose of preventing silting in a state-owned lake, then said agreement with the landowner shall include an easement of public access to said stream where improved and along the banks thereof.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §108.8]

C93, §456B.8

456B.9 Accreted land.

Any land created, by any such improvement, in areas now under the jurisdiction of the state will remain under such jurisdiction until otherwise disposed of.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §108.9]

C93, §456B.9

456B.10 Artificial lakes — soil conservation.

In the construction of artificial lakes on intermittent streams, for which funds are appropriated by the general assembly, the commission shall not proceed with actual construction work unless and until soil conservation practices are in effect on at least seventy-five percent of the land comprising the watershed of the proposed impoundment, or a willingness to carry on such practices has been shown by the owners or operators of seventy-five percent of the land by signing of a soil conservation farm plan and co-operative agreements with the local soil and water conservation district governing body.

[C35, §1703-g28; C39, §1703.58; C46, 50, 54, §108.5; C58, 62, 66, 71, 73, 75, 77, 79, 81, §108.10]

86 Acts, ch 1245, §1854; 87 Acts, ch 23, §3

C93, §456B.10

456B.11 Agricultural drainage wells — wetlands — conservation easements.

The department shall develop and implement a program for the acquisition of wetlands and conservation easements on and around wetlands that result from the closure or change in use of agricultural drainage wells upon implementation of the programs specified in section 460.302 to eliminate groundwater contamination caused by the use of agricultural drainage wells. The program shall be coordinated with the department of agriculture and land stewardship. The department may use moneys appropriated for this purpose from the agriculture management account of the groundwater protection fund in addition to other moneys available for wetland acquisition, protection, development, and management.

87 Acts, ch 225, §301

CS87, §108.11

C93, §456B.11

PROTECTED WETLANDS

456B.12 Inventory of protected wetlands.

The department shall inventory the wetlands and marshes of each county and make a preliminary designation as to which constitute protected wetlands. The department shall consult with the county conservation board in making the preliminary designations. Upon completion of the inventory with preliminary designations, the department shall use an existing map or prepare a map and a list of the marshes and wetlands which are designated as protected wetlands in each county. The department shall file at least one copy of the list and map with the county conservation board and the county recorder. The department shall notify the landowners affected by the preliminary wetlands designation by certified mail. The notice shall state that any person may challenge the designation of the protected

wetlands or may request the designation of additional marshes or wetlands as protected wetlands, by doing one of the following:

1. Filing a petition for a hearing with the director within sixty days following the date of notice. The petition shall state specifically the reasons for disputing the preliminary designations of the department. The hearing shall be held in the county within sixty days following the expiration of the sixty-day period for filing petitions.

2. Filing a request for mediation with the farm mediation service as provided in section 654A.16 within sixty days following the date of the notice. The department shall participate in mediation as provided in section 654A.16.

Within sixty days following the completion of the hearing, or the issuance of a mediation release in which both parties agree to the designation or no agreement is reached, the director shall issue an order designating the protected wetlands in the county. The order shall be considered a final decision of the department in a contested case for the purposes of judicial review pursuant to chapter 17A.

90 Acts, ch 1199, §2

C91, §108.12

C93, §456B.12

456B.13 Protection of wetlands.

1. A person shall not drain a protected wetland without first obtaining a permit from the department.

2. The department shall not issue a permit to drain a protected wetland except under one of the following conditions:

- a. The protected wetland is replaced by the applicant with a wetland of equal or greater value as determined by the department.

- b. The protected wetland does not meet the criteria for continued designation as a protected wetland.

3. This section does not prohibit any of the following:

- a. A landowner utilizing the bed of a protected wetland for pasture or cropland if there is no construction of dikes, ditches, tile lines, or buildings and the agricultural use does not result in drainage.

- b. A person maintaining, repairing, or replacing an improvement to a drainage district as provided in chapter 468, as long as the improvement continues to serve the drainage district and the functions of the improvement are not expanded beyond the scope of functions as designed prior to the maintenance, repair, or replacement.

90 Acts, ch 1199, §3

C91, §108.13

91 Acts, ch 172, §1

C93, §456B.13

98 Acts, ch 1025, §1

456B.14 Civil penalty.

A person who violates the permit requirement of section 456B.13 is subject to a civil penalty of not more than five hundred dollars for each day that the violation continues. A civil penalty assessed under this section shall not apply until the fourth day after a violator is given written notification of the violation.

90 Acts, ch 1199, §4

C91, §108.14

C93, §456B.14