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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. **1700**

04/04/2013 Authored by Hansen

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

1.1 A bill for an act
1.2 relating to agriculture; establishing a system of licensure for agricultural drainage
1.3 system installers; prohibiting county commissioners from acting as public
1.4 drainage inspectors; requiring public drainage viewer and inspector training;
1.5 appropriating money; amending Minnesota Statutes 2012, section 103E.065;
1.6 proposing coding for new law in Minnesota Statutes, chapter 103E; proposing
1.7 coding for new law as Minnesota Statutes, chapter 18K.

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

1.9 Section 1. **[18K.01] DEFINITIONS.**

1.10 Subdivision 1. **Definitions.** The definitions in this section apply to this chapter.

1.11 Subd. 2. **Agricultural drainage system or system.** "Agricultural drainage system"
1.12 or "system" means a drainage system installed or modified to improve the productivity
1.13 of agricultural land and includes all tile, pipe, or tubing of any material beneath the
1.14 surface and any associated inlets and outlets. It does not mean a public drainage project
1.15 or system regulated under chapter 103E.

1.16 Subd. 3. **Commercial installer.** "Commercial installer" means a person who has or
1.17 is required to have a commercial installer license.

1.18 Subd. 4. **Commissioner.** "Commissioner" means the commissioner of agriculture or
1.19 an agent authorized by the commissioner.

1.20 Subd. 5. **Inspector.** "Inspector" means a person appointed to examine a public
1.21 drainage system under chapter 103E.

1.22 Subd. 6. **Private installer.** "Private installer" means a person who has or is required
1.23 to have a private installer license.

1.24 Subd. 7. **Viewer.** "Viewer" means a person appointed to assess public drainage
1.25 system benefits and damages under chapter 103E.

2.1 Sec. 2. **[18K.02] AGRICULTURAL DRAINAGE SYSTEM INSTALLER**
2.2 **REGULATORY ACCOUNT.**

2.3 An agricultural drainage system installer regulatory account is established in the
2.4 agricultural fund. Fees, assessments, and penalties collected under this chapter must
2.5 be deposited in the agricultural fund and credited to the agricultural drainage system
2.6 installer regulatory account. Money in the account, including interest, is appropriated to
2.7 the commissioner for administration and enforcement of this chapter.

2.8 Sec. 3. **[18K.03] DRAINAGE EDUCATION AND TRAINING.**

2.9 Subdivision 1. **Education and training.** (a) The commissioner, in consultation with
2.10 the commissioners of natural resources and pollution control and the Board of Water
2.11 and Soil Resources, shall develop innovative educational and training programs for
2.12 commercial installers, private installers, inspectors, and viewers. Educational and training
2.13 programs must address drainage system concerns including water quality protection, soil
2.14 erosion, flood control, and invasive species.

2.15 (b) The commissioner shall appoint educational planning committees which must
2.16 include representatives of industry.

2.17 (c) Specific current regulatory concerns must be discussed and, if appropriate,
2.18 incorporated into each training session.

2.19 (d) The commissioner may approve programs from private industry, higher
2.20 education institutions, and nonprofit organizations that meet minimum requirements for
2.21 education, training, and certification.

2.22 Subd. 2. **Training manual and examination development.** The commissioner,
2.23 in conjunction with the University of Minnesota Extension Service and the Minnesota
2.24 State Colleges and Universities system, shall continually revise and update drainage
2.25 system training manuals and examinations. Responsible agencies must determine
2.26 the examination questions. Manuals and examinations must include drainage system
2.27 installation, modification, and management practices that minimize or prevent negative
2.28 impacts on surface water quality, groundwater quality and quantity, soil erosion, flooding,
2.29 and invasive species dissemination.

2.30 Sec. 4. **[18K.04] COMMERCIAL INSTALLER LICENSE.**

2.31 Subdivision 1. **Requirement.** (a) A person may not install or modify an agricultural
2.32 drainage system for hire without a commercial installer license.

2.33 (b) A commercial installer must have a valid license identification card when
2.34 installing or modifying an agricultural drainage system for hire and must display it upon

3.1 demand by an authorized representative of the commissioner or a law enforcement officer.
3.2 The commissioner shall prescribe the information required on the license identification
3.3 card.

3.4 Subd. 2. **Responsibility.** A commercial installer is responsible for proper
3.5 installation or modification of a system.

3.6 Subd. 3. **License.** A commercial installer license:

3.7 (1) expires on December 31 of the year for which it is issued, unless suspended or
3.8 revoked before that date;

3.9 (2) is not transferable to another person; and

3.10 (3) must be prominently displayed to the public in the commercial installer's place of
3.11 business.

3.12 Subd. 4. **Application.** A person must apply to the commissioner for a commercial
3.13 installer license on forms and in the manner required by the commissioner. The
3.14 commissioner must prescribe and administer a closed-book, monitored examination or
3.15 equivalent measure to determine if the applicant is eligible for the commercial installer
3.16 license.

3.17 Subd. 5. **Renewal application.** (a) A person must apply to the commissioner
3.18 to renew a commercial installer license. The commissioner may renew a commercial
3.19 installer license accompanied by the application fee, subject to reexamination, attendance
3.20 at workshops approved by the commissioner, or other requirements imposed by the
3.21 commissioner to provide the installer with information regarding changing technology and
3.22 to ensure a continuing level of competence and ability to install or modify agricultural
3.23 drainage systems safely and properly. The applicant may renew a commercial installer
3.24 license within 12 months after expiration of the license without having to meet initial
3.25 testing requirements. The commissioner may require additional demonstration of installer
3.26 qualifications if a person had a license suspended or revoked or has a history of violations
3.27 of this chapter.

3.28 (b) An applicant that meets renewal requirements by reexamination instead of
3.29 attending workshops must pay the equivalent workshop fee for the reexamination as
3.30 determined by the commissioner.

3.31 Subd. 6. **Financial responsibility.** (a) The commissioner must not issue a
3.32 commercial installer license unless the applicant furnishes proof of financial responsibility.
3.33 Financial responsibility may be demonstrated by: (1) proof of net assets equal to or
3.34 greater than \$50,000; or (2) a performance bond or insurance of the kind and in an amount
3.35 determined by the commissioner.

4.1 (b) The bond or insurance must cover a period of time at least equal to the term of
 4.2 the applicant's license. The commissioner must immediately suspend the license of a
 4.3 person who fails to maintain the required bond or insurance. The performance bond or
 4.4 insurance policy must contain a provision requiring the insurance or bonding company
 4.5 to notify the commissioner at least ten days before the effective date of cancellation,
 4.6 termination, or any other change of the bond or insurance. If there is recovery against the
 4.7 bond or insurance, additional coverage must be secured to maintain financial responsibility
 4.8 equal to the original amount required.

4.9 (c) An employee of a licensed person is not required to maintain an insurance policy
 4.10 or bond during the time the employer is maintaining the required insurance or bond.

4.11 (d) An application for reinstatement of a license suspended under the provisions of
 4.12 this section must be accompanied by proof of satisfaction of judgments previously rendered.

4.13 Subd. 7. **Application fees.** (a) A person initially applying for or renewing a
 4.14 commercial installer license must pay a nonrefundable application fee of \$50.

4.15 (b) A license renewal application received after March 1 in the year for which the
 4.16 license is to be issued is subject to a penalty fee of 50 percent of the application fee. The
 4.17 commissioner may not issue a renewal license until the person pays the penalty fee.

4.18 (c) An application for a duplicate commercial installer license must be accompanied
 4.19 by a nonrefundable application fee of \$10.

4.20 **Sec. 5. [18K.05] PRIVATE INSTALLER CERTIFICATION.**

4.21 Subdivision 1. **Requirement.** Except for a licensed commercial installer, only a
 4.22 certified private installer may install or modify an agricultural drainage system:

4.23 (1) as a traditional exchange of services without financial compensation;

4.24 (2) on a site owned, rented, or managed by the person or the person's employees; or

4.25 (3) when the private installer is one of two or fewer employees and the owner or
 4.26 operator is a certified private installer.

4.27 Subd. 2. **Certification.** (a) The commissioner shall prescribe certification
 4.28 requirements, provide training to certify private installers, and provide information relating
 4.29 to changing technology to ensure a continuing level of competency and ability to install or
 4.30 modify a system properly and safely. The training may be done through cooperation with
 4.31 other government agencies and must be a minimum of three hours in duration.

4.32 (b) A person must apply to the commissioner for certification as a private installer.
 4.33 After completing the certification requirements, which must include an examination as
 4.34 determined by the commissioner, an applicant must be certified as a private installer of

5.1 agricultural drainage systems. The certification shall expire March 1 of the third calendar
5.2 year after the initial year of certification.

5.3 (c) The commissioner shall issue a private installer card to a private installer.

5.4 Subd. 3. Fees. (a) A person applying to be certified as a private installer must pay a
5.5 nonrefundable \$10 application fee for the certification period.

5.6 (b) An application for a duplicate certificate must be accompanied by a
5.7 nonrefundable application fee of \$5.

5.8 **Sec. 6. [18K.06] ENFORCEMENT.**

5.9 Subdivision 1. Enforcement required. The commissioner shall enforce this
5.10 chapter. Upon request of the commissioner, county attorneys, sheriffs, and other law
5.11 enforcement officers shall take action to the extent of their authority necessary or
5.12 proper for the enforcement of this chapter or special orders, standards, stipulations, and
5.13 agreements of the commissioner.

5.14 Subd. 2. False statement on record. A person must not knowingly make or offer
5.15 a false statement, record, or other information as part of an application for a license or
5.16 certification under this chapter.

5.17 Subd. 3. Commissioner's discretion. If minor violations of this chapter occur
5.18 or when the commissioner believes the public interest will be best served by a suitable
5.19 notice of warning in writing, this chapter does not require the commissioner to report the
5.20 violation for prosecution.

5.21 Subd. 4. Administrative remedies. (a) The commissioner may seek to remedy
5.22 violations by a written warning, administrative meeting, cease and desist, stop-use,
5.23 stop-sale, removal, correction order, or other special order, seizure, stipulation, agreement,
5.24 or administrative penalty, if the commissioner determines that the remedy is in the public
5.25 interest. In determining the amount of an administrative penalty, the commissioner shall
5.26 consider the economic gain received by the person allowing or committing the violation,
5.27 the gravity of the violation in terms of actual or potential damage to human health and the
5.28 environment, and the violator's culpability, good faith, and history of violations.

5.29 (b) The commissioner may, after written notice and hearing, revoke, suspend, or
5.30 refuse to grant or renew a license or certification if a person violates a provision of this
5.31 chapter or has a history within the last three years of violations of this chapter.

5.32 (c) The commissioner may refuse to accept an application for a license or certification
5.33 and may revoke or suspend a previously issued license or certification of a person from
5.34 another state if that person has had a license, certification, or equivalent authorization

6.1 denied, revoked, or suspended by another state for an offense reasonably related to the
 6.2 requirements, qualifications, or duties of a license or certification issued under this chapter.

6.3 (d) The commissioner may cancel a license or certification issued under this chapter
 6.4 after receiving satisfactory evidence that the licensee used fraudulent and deceptive
 6.5 practices in the evasion or attempted evasion of the provisions of this chapter.

6.6 (e) The commissioner may not revoke a license or certification until the person has
 6.7 been given opportunity for a hearing by the commissioner.

6.8 (f) If the commissioner did not have probable cause for an administrative action, a
 6.9 court may allow recovery for damages caused by the administrative action.

6.10 Subd. 5. **Criminal penalties.** A person is guilty of a misdemeanor if the person
 6.11 violates a provision of this chapter or a special order, standard, stipulation, agreement,
 6.12 or schedule of compliance of the commissioner. The county attorney from the county
 6.13 where a criminal violation occurred is responsible for prosecuting a violation of this
 6.14 chapter. If the county attorney refuses to prosecute, the attorney general on request of
 6.15 the commissioner may prosecute.

6.16 Subd. 6. **Civil penalties.** A person who violates this chapter or a special order,
 6.17 standard, stipulation, agreement, or schedule of compliance of the commissioner is subject
 6.18 to a civil penalty of \$7,500 per day of violation as determined by the court. Civil judicial
 6.19 enforcement actions may be brought by the attorney general in the name of the state on
 6.20 behalf of the commissioner. A county attorney may bring a civil judicial enforcement
 6.21 action upon the request of the commissioner and agreement by the attorney general.

6.22 Sec. 7. Minnesota Statutes 2012, section 103E.065, is amended to read:

6.23 **103E.065 DRAINAGE INSPECTORS.**

6.24 In counties or watershed districts having drainage systems constructed in accordance
 6.25 with this chapter, the drainage authority shall appoint a competent person as drainage
 6.26 inspector. The inspector must not be a county commissioner. The inspector may be the
 6.27 county highway engineer. The inspector shall examine the drainage systems designated
 6.28 by the drainage authority. The drainage authority shall specify the appointment period
 6.29 and compensation.

6.30 Sec. 8. **103E.90 VIEWER AND INSPECTOR TRAINING REQUIRED.**

6.31 At least once each calendar year, a person appointed as a viewer or inspector under
 6.32 this chapter must participate in training coordinated by the commissioner of agriculture
 6.33 under chapter 18K.

7.1 Sec. 9. **APPROPRIATION; EDUCATION PROGRAMS.**

7.2 \$100,000 is appropriated in fiscal year 2014 from the clean water fund to the
7.3 commissioner of agriculture to establish the training and education programs required
7.4 under section 3.