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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-SECOND SESSION

H. F. No. 1320

02/18/2021

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The bill was read for the first time and referred to the Committee on Environment and Natural Resources Finance and Policy

1.1 A bill for an act

1.2 relating to natural resources; modifying drainage and public waters laws to clarify

1.3 relationship between drainage repairs and public-waters-work permit requirements;

1.4 amending Minnesota Statutes 2020, sections 103E.011, subdivision 3; 103E.015,

1.5 subdivision 2; 103E.101, subdivision 4a; 103E.701, subdivision 2; 103G.225;

1.6 103G.245, subdivision 2.

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

1.8 Section 1. Minnesota Statutes 2020, section 103E.011, subdivision 3, is amended to read:

1.9 Subd. 3. **Commissioner's permission; work in public waters; application.** (a) The

1.10 drainage authority must receive permission from the commissioner to:

1.11 (1) remove, construct, or alter a dam affecting public waters;

1.12 (2) establish, raise, or lower the level of public waters; or

1.13 (3) drain any portion of a public water.

1.14 (b) The petitioners for a proposed drainage project or the drainage authority may apply

1.15 to the commissioner for permission to do work in public waters or for the determination of

1.16 public waters status of a water body or watercourse.

1.17 (c) Permission under this section is not required to repair a lawfully established public

1.18 drainage system sponsored by the public drainage authority consistent with the definition

1.19 of "repair" in section 103E.701, subdivision 1.

1.20 Sec. 2. Minnesota Statutes 2020, section 103E.015, subdivision 2, is amended to read:

1.21 Subd. 2. **Determining public utility, benefit, or welfare.** In any proceeding to establish

1.22 a drainage project, or in the construction or repair of or other work affecting a public drainage

2.1 system under any law, the drainage authority or other authority having jurisdiction over the
2.2 proceeding must give proper consideration to conservation of soil, water, wetlands, forests,
2.3 wild animals, and related natural resources, and to other public interests affected, together
2.4 with other material matters as provided by law in determining whether the project will be
2.5 of public utility, benefit, or welfare. These considerations may include but are not limited
2.6 to compliance with chapters 103G and 116D and Minnesota Rules, chapters 4410 and 6115.

2.7 Sec. 3. Minnesota Statutes 2020, section 103E.101, subdivision 4a, is amended to read:

2.8 Subd. 4a. **Reestablishing records.** (a) If, after thorough investigation of drainage system
2.9 records, a drainage authority finds that records establishing the alignment, cross-section,
2.10 profile, or right-of-way of a drainage system that it administers are lost, destroyed, or
2.11 otherwise incomplete, it may, by order, reestablish records defining the alignment;
2.12 cross-section; profile; hydraulic structure locations, materials, dimensions, and elevations;
2.13 or right-of-way of the drainage system as originally constructed or subsequently improved
2.14 in accordance with this chapter. The procedure for reestablishing drainage system records
2.15 must involve, at a minimum, investigation and a report of findings by a professional engineer
2.16 licensed in Minnesota supported by existing records and evidence, including, but not limited
2.17 to, applicable aerial photographs, soil borings or test pits, culvert dimensions and invert
2.18 elevations, and bridge design records. The reestablished records must be based on the weight
2.19 of evidence considered by and available to the engineer. The existing and reestablished
2.20 records together must define the alignment; cross-section; profile; hydraulic structure
2.21 locations, materials, dimensions, and elevations; and right-of-way of the drainage system.
2.22 Drainage system records reestablished under this subdivision do not interrupt prescriptive
2.23 occupation.

2.24 (b) The description of a drainage system under this subdivision may be initiated by the
2.25 drainage authority on its own motion or by any party affected by the drainage system filing
2.26 a petition. If the system is under the jurisdiction of a county board, the petition must be filed
2.27 with the auditor. If the system is under the jurisdiction of a joint county drainage authority,
2.28 the petition must be filed with the auditor of the county with the largest area of property in
2.29 the drainage system. If the system is under the jurisdiction of a watershed district board,
2.30 the petition must be filed with the secretary.

2.31 (c) If the drainage system and the description of the system may affect public waters,
2.32 then, concurrent with the appointment of a professional engineer to perform the investigation
2.33 under paragraph (a), the drainage authority must notify the director of the proceedings.
2.34 Within 30 days after receiving notice, the director may request a technical panel consisting

3.1 of the engineer, a representative appointed by the director, and a soil and water conservation
 3.2 district technician. The panel must investigate and recommend the originally constructed
 3.3 or subsequently improved alignment; cross-section; profile; hydraulic structure locations,
 3.4 materials, dimensions, and elevations; or right-of-way of the drainage system. The drainage
 3.5 authority must consider the recommendation made by a majority of the technical panel,
 3.6 along with other relevant evidence, in a subsequent hearing in the proceedings. The panel
 3.7 recommendation is binding on the state. If the director does not request a technical panel,
 3.8 the state is barred from future challenge of the reestablished records. The panel's
 3.9 responsibility is to locate the actual as-built or lawfully improved profile of the drainage
 3.10 system. If the panel identifies alternative solutions, the panel may recommend consideration
 3.11 of those solutions to the drainage authority.

3.12 ~~(e)~~ (d) When a drainage authority directs by resolution or when a petition is filed under
 3.13 this subdivision, the drainage authority, in consultation with the auditor or secretary, shall
 3.14 set a time and location for a hearing after the engineer's report is complete or the panel
 3.15 recommendation under paragraph (c) is made. The auditor or secretary shall give notice of
 3.16 the hearing by mail to the commissioner of natural resources, the executive director of the
 3.17 Board of Water and Soil Resources, the petitioner or petitioners, and all property owners
 3.18 benefited or damaged by the drainage system and shall give notice to other interested parties
 3.19 either in a newspaper of general circulation in the drainage system area or by publication
 3.20 on a website of the drainage authority.

3.21 ~~(d)~~ (e) At the hearing on reestablishing records, the drainage authority must consider
 3.22 the evidence and recommendation presented by the engineer or technical panel, public
 3.23 comment, and other material evidence in the proceedings and must adopt an order consistent
 3.24 with the record. Drainage system records reestablished under this subdivision constitute
 3.25 official drainage system records. A finding of drainage system right-of-way in the applicable
 3.26 order is a defense to a trespass claim and shall be given due weight in any subsequent court
 3.27 proceeding to establish the existence or nature of a property encumbrance.

3.28 Sec. 4. Minnesota Statutes 2020, section 103E.701, subdivision 2, is amended to read:

3.29 Subd. 2. **Repairs affecting public waters.** (a) Where as-built records; reestablished
 3.30 records under section 103E.101, subdivision 4a; or prior concurrence of the commissioner
 3.31 exists, the drainage authority may proceed with a drainage system repair consistent with
 3.32 the definition in subdivision 1 without further concurrence, review, or action of the
 3.33 commissioner.

4.1 (b) Where as-built records; reestablished records under section 103E.101, subdivision
 4.2 4a; or prior concurrence of the commissioner do not exist before a repair is ordered, the
 4.3 drainage authority must notify the commissioner if the repair ~~may affect~~ will be conducted
 4.4 in, through, or adjacent to public waters. Notice to the commissioner must include the
 4.5 proposed repair design and configuration. Within 60 days after receiving notice, the
 4.6 commissioner must concur or nonconcur that the proposed repair is a repair as defined in
 4.7 this section. Failure of the commissioner to concur or nonconcur with the repair design and
 4.8 configuration within 60 days is deemed concurrence. If the commissioner disagrees with
 4.9 the repair depth does not concur that the proposed repair is a repair as defined in this section,
 4.10 the engineer, a representative appointed by the director, and a soil and water conservation
 4.11 district technician must jointly determine ~~the repair depth~~ an authorized repair as defined
 4.12 in this section using soil borings, field surveys, and other available data or appropriate
 4.13 ~~methods~~ existing records and evidence, including but not limited to applicable aerial
 4.14 photographs, soil borings or test pits, culvert dimensions and invert elevations, and bridge
 4.15 design records. Costs for determining the repair depth design and configuration beyond the
 4.16 initial meeting must be shared equally by the drainage system and the commissioner. The
 4.17 determined repair ~~depth~~ design and configuration must be recommended to the drainage
 4.18 authority. The drainage authority may accept the joint recommendation and proceed with
 4.19 the repair.

4.20 Sec. 5. Minnesota Statutes 2020, section 103G.225, is amended to read:

4.21 **103G.225 STATE WETLANDS PUBLIC WATERS AND PUBLIC DRAINAGE**
 4.22 **SYSTEMS.**

4.23 If the state ~~owns public waters wetlands~~ has inventoried and designated public
 4.24 watercourses, basins, or wetlands on or adjacent to existing public drainage systems, the
 4.25 state shall consider the use of the public waters ~~wetlands~~ as part of the drainage system. If
 4.26 the commissioner's desired management or protection of public waters wetlands interfere
 4.27 with or prevent the authorized functioning of the public drainage system, the state shall
 4.28 ~~provide~~ pay for necessary work to allow proper use and maintenance of the drainage system
 4.29 while still preserving the public waters ~~wetlands~~.

4.30 Sec. 6. Minnesota Statutes 2020, section 103G.245, subdivision 2, is amended to read:

4.31 Subd. 2. **Exceptions.** A public-waters-work permit is not required for:

5.1 (1) work in altered natural watercourses that are part of drainage systems established
5.2 under chapter 103D or 103E if the work in the waters is undertaken according to chapter
5.3 103D or 103E;

5.4 (2) repair of a lawfully established public drainage system sponsored by the public
5.5 drainage authority consistent with the definition of "repair" in section 103E.701, subdivision
5.6 1;

5.7 ~~(2)~~ (3) a drainage project for a drainage system established under chapter 103E that does
5.8 not substantially affect public waters; or

5.9 ~~(3)~~ (4) culvert restoration or replacement of the same size and elevation, if the restoration
5.10 or replacement does not impact a designated trout stream.