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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. 1887

02/28/2019 Authored by Heintzeman and Scott
The bill was read for the first time and referred to the Committee on Environment and Natural Resources Policy

1.1 A bill for an act
1.2 relating to natural resources; modifying provisions for watershed districts; amending
1.3 Minnesota Statutes 2018, sections 103D.311, subdivision 2; 103D.335, by adding
1.4 a subdivision; 103D.341, subdivisions 2, 3; 103D.515, subdivision 1; 103D.521;
1.5 103D.537.

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

1.7 Section 1. Minnesota Statutes 2018, section 103D.311, subdivision 2, is amended to read:

1.8 Subd. 2. Appointment. (a) At least 30 days before the terms of office of the first
1.9 managers named by the board expire, the county commissioners of each county responsible
1.10 for appointing a manager to the watershed district must meet and appoint successors.

1.11 (b) The county commissioners must meet at least 30 days before the term of office of
1.12 any manager expires and appoint a successor.

1.13 (c) A vacancy occurring in an office of a manager must be filled by the appointing county
1.14 board. The managers must advise the county commissioners in writing within ten days after
1.15 a manager retires, ceases to attend meetings, or otherwise vacates the position on the board.

1.16 (d) Appointing county boards shall provide public notice before making appointments.
1.17 Published notice must be given at least once by publication in a newspaper of general
1.18 circulation in the watershed district at least 15 days before an appointment or reappointment
1.19 is made. The notice must state that persons interested in being appointed to serve as a
1.20 watershed district manager may submit their names to the county board for consideration.

1.21 (e) The county commissioners must endeavor to appoint at least one manager that has
1.22 experience or a background in real estate investment or development or in construction.

2.1 Sec. 2. Minnesota Statutes 2018, section 103D.335, is amended by adding a subdivision
2.2 to read:

2.3 Subd. 26. **Engineer and legal fees.** The managers must require annual public reporting
2.4 of engineer fees and legal fees reimbursed by landowners and an annual summary of all
2.5 engineer fees and legal fees paid by the watershed district. The managers must review the
2.6 fees to determine if the fees are reasonable.

2.7 Sec. 3. Minnesota Statutes 2018, section 103D.341, subdivision 2, is amended to read:

2.8 Subd. 2. **Procedure.** (a) The managers must prepare and review a statement of need and
2.9 reasonableness, as described in section 14.131, before adopting or amending rules. The
2.10 statement of need and reasonableness must be made available for public review at least 45
2.11 days before the date set for a hearing on the rules. Rules of the watershed district must be
2.12 adopted or amended by a majority vote of the managers, after public notice and hearing.
2.13 Rules must be signed by the secretary of the board of managers and recorded in the board
2.14 of managers' official minute book.

2.15 (b) ~~Prior to~~ Before adoption, the proposed rule or amendment to the rule must be
2.16 submitted to the board for review and comment. The board's review ~~shall be~~ is considered
2.17 advisory. The board ~~shall have~~ has 45 days from receipt of the proposed rule or amendment
2.18 to the rule to provide its comments in writing to the watershed district.

2.19 (c) At least 45 days before the date set for a hearing on the rules or amendments, the
2.20 managers must mail a copy of all proposed rules or amendments to the rule shall also be
2.21 ~~noticed~~ for review and comment to:

2.22 (1) all public transportation authorities that have jurisdiction within the watershed district
2.23 at least 45 days prior to adoption. The public transportation authorities, which have 45 days
2.24 from receipt of the proposed rule or amendment to the rule to provide comments in writing
2.25 to the watershed district;

2.26 (2) all persons who have held permits issued under section 103D.345 within the last five
2.27 years;

2.28 (3) all parties that have consulted with the watershed district in the last 12 months about
2.29 upcoming projects; and

2.30 (4) all landowners directly impacted by an increase in wetland buffer setback
2.31 requirements, when applicable.

3.1 ~~(e)~~ (d) For each county affected by the watershed district, the managers must publish a
 3.2 notice of hearings and adopted rules in one or more legal newspapers published in the county
 3.3 and generally circulated in the watershed district. The managers must also provide written
 3.4 notice of adopted or amended rules to public transportation authorities that have jurisdiction
 3.5 within the watershed district. The managers must file adopted rules with the county recorder
 3.6 of each county affected by the watershed district and the board.

3.7 ~~(d)~~ (e) The managers must mail a copy of the rules to the governing body of each
 3.8 municipality affected by the watershed district.

3.9 (f) The rules are effective no earlier than 120 days after adoption.

3.10 Sec. 4. Minnesota Statutes 2018, section 103D.341, subdivision 3, is amended to read:

3.11 Subd. 3. **Rule affecting city; notice.** A rule or resolution that affects land or water within
 3.12 the boundaries of a city is not effective within the city's boundaries ~~until~~ unless the governing
 3.13 body of the city is notified: 45 days before adoption and the city does not object within 30
 3.14 days to the adoption of the rule or resolution. If the city objects, the managers must meet
 3.15 and confer with the city to reasonably resolve the objection before the rule or resolution is
 3.16 adopted. If the managers are unable to resolve the objection after meeting and conferring
 3.17 with the city, the managers may adopt the rule or resolution and the city may opt out of
 3.18 enforcing the rule or resolution within the city's jurisdiction.

3.19 Sec. 5. Minnesota Statutes 2018, section 103D.515, subdivision 1, is amended to read:

3.20 Subdivision 1. **Preexisting water rights recognized.** (a) The rights of private or corporate
 3.21 landowners to use the waters of the watershed district for any purpose continue as the rights
 3.22 existed at the time of the organization of the watershed district.

3.23 (b) The managers may not adopt or enforce rules that:

3.24 (1) require a perpetual, private or public declaration of maintenance, a declaration of
 3.25 easement, or an easement to be recorded against the landowner's title that obligates the
 3.26 landowner and the landowner's successors in title to perform tasks and functions in addition
 3.27 to those provided specifically in the watershed rules;

3.28 (2) create any wetland buffer, together with any side slope, grade, or other required
 3.29 setback, that exceeds a cumulative 25 feet;

3.30 (3) prohibit buffer averaging;

4.1 (4) prohibit reasonable activities in the buffer zones, including removing trees, grading,
 4.2 restoration, creating walkways and paths, or grading for adjacent storm ponds or facilities;

4.3 (5) require the landowner to demonstrate that the landowner's facilities or structures will
 4.4 not have an adverse impact on local groundwater or natural resources or any other
 4.5 immeasurable, arbitrary, or subjective standard;

4.6 (6) impose requirements or manage the watershed to mimic presettlement or
 4.7 predevelopment hydrologic conditions;

4.8 (7) require recording in the office of the county registrar or recorder any declarations or
 4.9 instruments before issuing a permit to perform or construct the permitted work;

4.10 (8) require the landowner to provide both floodplain replacement volume and water
 4.11 storage capacity duplicative of the provided storm water ponding capacity;

4.12 (9) limit the availability of variances by adopting variance standards that require
 4.13 demonstrating undue hardship, prohibit considering economic hardship, prohibit considering
 4.14 property-specific situations that might be created by the landowner, or otherwise limit the
 4.15 landowner to a standard more difficult than the practical difficulty standard of review;

4.16 (10) unreasonably deny or terminate a landowner's permit rights without due process;

4.17 (11) require the landowner to pay the watershed district's legal fees or engineer fees
 4.18 without the ability to object and appeal the fees to the managers for review; or

4.19 (12) adopt by reference best management practices located on a website or hyperlink
 4.20 that can randomly and suddenly change with new and subjective content not approved by
 4.21 a rule or resolution of the watershed district.

4.22 Sec. 6. Minnesota Statutes 2018, section 103D.521, is amended to read:

4.23 **103D.521 RIGHTS ASSURED DUE PROCESS OF LAW.**

4.24 (a) A person may not be deprived or divested under this chapter of a previously
 4.25 established beneficial use or right without due process of law.

4.26 (b) The managers may not adopt or enforce rules that deprive or divest a private or
 4.27 corporate landowner of the use of existing water rights and use of existing water conditions
 4.28 on an owner's property relating to storm water runoff, infiltration, drainage, ponding, or
 4.29 flood relief, without payment of adequate compensation.

5.1 Sec. 7. Minnesota Statutes 2018, section 103D.537, is amended to read:

5.2 **103D.537 APPEALS OF RULES, PERMIT DECISIONS, AND ORDERS;**
 5.3 **EVIDENTIARY BASIS; APPEALS.**

5.4 (a) An order or permit decision of the watershed district or a decision on appeal must
 5.5 be based on the record made in the proceeding together with any other relevant evidence
 5.6 or affidavits provided by the parties.

5.7 ~~(a)~~ (b) Except as provided in section 103D.535, an interested party may appeal a permit
 5.8 decision or order made by the managers, or staff enforcement of any provision of the
 5.9 watershed plan or watershed rules by a declaratory judgment action brought under chapter
 5.10 555. The decision on appeal must determine whether the watershed district's action or
 5.11 requirement is unreasonable by a preponderance of the evidence. An interested party may
 5.12 appeal a rule made by the managers by a declaratory judgment action brought under chapter
 5.13 555 or by appeal to the board. ~~The decision on appeal must be based on the record made in~~
 5.14 ~~the proceeding before the managers.~~ An appeal of a permit decision or order must be filed
 5.15 within ~~30~~ 180 days of the managers' decision, except that an appeal of staff enforcement
 5.16 or interpretation of the watershed district rules may be brought:

5.17 (1) at any time during the permit application process;

5.18 (2) when the permit is issued or denied;

5.19 (3) when a variance request is granted or denied;

5.20 (4) after a permit is issued; or

5.21 (5) while the permit is active.

5.22 ~~(b)~~ (c) In addition to the authorities identified in paragraph (a), a public transportation
 5.23 authority may appeal a watershed district permit decision to the board. The board shall,
 5.24 upon request of the public transportation authority, conduct an expedited appeal hearing
 5.25 within 30 days or less from the date of the appeal being accepted.

5.26 ~~(e)~~ (d) By January 1, ~~2005~~ 2021, the board shall must adopt reasonable rules governing
 5.27 appeals to the board under paragraphs (a) and (b), but must not limit a landowner's right to
 5.28 seek immediate judicial relief. A decision of the board on appeal is subject to judicial review
 5.29 under sections 14.63 to 14.69. The rules authorized in this paragraph are exempt from the
 5.30 rulemaking provisions of chapter 14 except that ~~section~~ sections 14.131 and 14.386 applies
 5.31 and apply.

6.1 (e) The proposed rules must be submitted to the members of senate and house of
6.2 representatives environment and natural resource and transportation policy committees at
6.3 least 30 days ~~prior to~~ before being published in the State Register. The amended rules are
6.4 effective for two years from the date of publication of the rules in the State Register unless
6.5 they are superseded by permanent rules.