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# State of Minnesota

## HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. **66**

01/14/2013 Authored by Hansen, Torkelson, Poppe, Hamilton, Gunther and others

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 waters; modifying drainage system provisions; amending Minnesota  
1.3 Statutes 2012, sections 103E.005, subdivisions 4, 6, by adding a subdivision;  
1.4 103E.101, subdivisions 2, 3, 4, 5, by adding subdivisions; 103E.227, subdivision  
1.5 1; 103E.525, subdivision 1; 103E.701, subdivisions 1, 6; 103E.715, subdivision 6.

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

1.7 Section 1. Minnesota Statutes 2012, section 103E.005, subdivision 4, is amended to  
1.8 read:

1.9 Subd. 4. **Board.** "Board" means the board of commissioners of the county, a joint  
1.10 county board, or the board of managers of the watershed district that serves as the drainage  
1.11 authority where the drainage system or project is located.

1.12 Sec. 2. Minnesota Statutes 2012, section 103E.005, subdivision 6, is amended to read:

1.13 Subd. 6. **Director.** "Director" means the director of the Division of ~~Waters~~  
1.14 Ecological and Water Resources in the Department of Natural Resources.

1.15 Sec. 3. Minnesota Statutes 2012, section 103E.005, is amended by adding a subdivision  
1.16 to read:

1.17 Subd. 28a. **Secretary.** "Secretary" means the secretary of the watershed district that  
1.18 serves as the drainage authority for the applicable drainage system.

1.19 Sec. 4. Minnesota Statutes 2012, section 103E.101, subdivision 2, is amended to read:

1.20 Subd. 2. **Record requirements.** All maps, plats, profiles, plans, and specifications  
1.21 prepared and used in relation to a proceeding must:

1.22 (1) be uniform;

(2) have each sheet ~~bound and~~ marked to identify the proceeding by the drainage project and system number;

(3) show the name of the person preparing the sheet;

(4) show the date the sheet was prepared; and

(5) conform to rules and standards prescribed by the director ~~of the Division of Waters~~.

Sec. 5. Minnesota Statutes 2012, section 103E.101, subdivision 3, is amended to read:

Subd. 3. **Index of proceedings and records.** The auditor or secretary shall keep all orders, exhibits, maps, charts, profiles, plats, plans, specifications, and records of the proceedings. These records may not be removed except when the board makes a written order to remove them. The auditor or secretary shall keep an accurate index of the proceedings and related documents in a ~~bound book~~ readily usable, resilient, and secure manner.

Sec. 6. Minnesota Statutes 2012, section 103E.101, subdivision 4, is amended to read:

Subd. 4. **Engineer's documents.** All original plats, profiles, records, and field books made by the engineer during the proceedings or the construction of a drainage project are public records and the property of the drainage authority. These public records must be filed with the auditor or secretary under the direction of the drainage authority when construction is completed or when the engineer stops acting for the drainage project, whichever is earlier.

Sec. 7. Minnesota Statutes 2012, section 103E.101, is amended by adding a subdivision to read:

Subd. 4a. **Reestablishment of drainage system records.** (a) If, after thorough investigation of drainage system records, a drainage authority finds that records establishing the alignment, cross-section, profile, or right-of-way of a drainage system that it administers are lost, destroyed, or otherwise incomplete, it may, by order, reestablish records defining the alignment; cross-section; profile; hydraulic structure locations, materials, dimensions, and elevations; or right-of-way of the drainage system as originally constructed or subsequently improved in accordance with this chapter. The procedure for reestablishing drainage system records must involve, at a minimum, investigation and a report of findings by a professional engineer licensed in Minnesota supported by existing records and evidence, including, but not limited to, applicable aerial photographs, soil borings or test pits, culvert dimensions and invert elevations, and bridge design records. The existing and reestablished records together must define the alignment;

cross-section; profile; hydraulic structure locations, materials, dimensions, and elevations; and right-of-way of the drainage system. Drainage system records reestablished under this subdivision do not interrupt prescriptive occupation.

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

(c) When a drainage authority directs by resolution or when a petition is filed under this subdivision, the drainage authority, in consultation with the auditor or secretary, shall set a time and location for a hearing after the engineer's report is complete. The auditor or secretary shall give notice of the hearing by mail to the commissioner of natural resources, the executive director of the Board of Water and Soil Resources, the petitioner or petitioners, and all property owners benefited or damaged by the drainage system and shall give notice to other interested parties either in a newspaper of general circulation in the drainage system area or by publication on a Web site of the drainage authority.

(d) Drainage system records reestablished under this subdivision constitute official drainage system records. A finding of drainage system right-of-way in the applicable order is a defense to a trespass claim and shall be given due weight in any subsequent court proceeding to establish the existence or nature of a property encumbrance.

Sec. 8. Minnesota Statutes 2012, section 103E.101, subdivision 5, is amended to read:

**Subd. 5. Filing and storage facilities.** County boards shall provide the auditor, and watershed district boards shall provide the secretary, with necessary filing and storage facilities to protect the files and records of all proceedings under its jurisdiction. The county boards and watershed district boards may provide for the copying and filing of the documents and records of proceedings by photographic devices as provided for public records under section 15.17. In the event of loss of the originals, the photographic copies are originals after authentication by the auditor or secretary.

Sec. 9. Minnesota Statutes 2012, section 103E.101, is amended by adding a subdivision to read:

**Subd. 5a. Transfer of drainage system records.** (a) When a watershed district assumes authority for a drainage system according to section 103D.625, the county or

joint county board transferring authority shall transfer all of the original records for the drainage system to the watershed district, except as provided in paragraph (b).

(b) Physical or electronic copies of drainage system records that are authenticated by the county auditor having the original records may be used in place of the originals by the watershed district until the watershed district has necessary records storage facilities to protect the original records or, in the case of a partial transfer of a drainage system, until the entire drainage system is transferred to the watershed district.

Sec. 10. Minnesota Statutes 2012, section 103E.227, subdivision 1, is amended to read:

Subdivision 1. **Petition.** (a) To conserve and make more adequate use of our water resources or to incorporate wetland or water quality enhancing elements as authorized by section 103E.011, subdivision 5, a person, public or municipal corporation, governmental subdivision, the state or a department or agency of the state, the commissioner of natural resources, and the United States or any of its agencies, may petition to impound, reroute, or divert drainage system waters for beneficial use.

(b) If the drainage system is under the jurisdiction of a county drainage authority, the petition must be filed with the auditor of the county. If the drainage system is under the jurisdiction of a joint county drainage authority, the petition must be filed with the county having the largest area of property in the drainage system, where the primary drainage system records are kept, and a copy of the petition must be submitted to the auditor of each of the other counties participating in the joint county drainage authority. If the system is under the jurisdiction of a watershed district, the petition must be filed with the secretary of the district. The auditor of an affected county or the secretary of a watershed district must make a copy of the petition available to the public.

(c) The petition must contain the location of the installation, concept plans for the proposed project, and a map that identifies the areas likely to be affected by the project.

(d) The petition shall identify the sources of funds to be used to secure the necessary land rights and to construct the project and the amount and rationale for any drainage system funds requested.

(e) The petitioner or drainage authority must also acquire a public waters work permit or a water use permit from the commissioner of natural resources if required under chapter 103G.

Sec. 11. Minnesota Statutes 2012, section 103E.525, subdivision 1, is amended to read:

Subdivision 1. **Hydraulic capacity.** A public or private bridge or culvert may not be constructed or maintained across or in a drainage system with less hydraulic capacity than

5.1 specified in the detailed survey report, except with the written approval of the director  
5.2 ~~of the division of waters~~. If the detailed survey report does not specify the hydraulic  
5.3 capacity, a public or private bridge or culvert in or across a drainage system ditch may not  
5.4 be constructed without the director's approval of the hydraulic capacity.

5.5 Sec. 12. Minnesota Statutes 2012, section 103E.701, subdivision 1, is amended to read:

5.6 Subdivision 1. **Definition.** The term "repair," as used in this section, means to  
5.7 restore all or a part of a drainage system as nearly as practicable to the same ~~condition~~  
5.8 hydraulic capacity as originally constructed and subsequently improved, including  
5.9 resloping of ditches and leveling of ~~waste~~ spoil banks if necessary to prevent further  
5.10 deterioration, realignment to original construction if necessary to restore the effectiveness  
5.11 of the drainage system, and routine operations that may be required to remove obstructions  
5.12 and maintain the efficiency of the drainage system. "Repair" also includes:

5.13 (1) incidental straightening of a tile system resulting from the tile-laying technology  
5.14 used to replace tiles; and

5.15 (2) replacement of tiles with the next larger size that is readily available, if the  
5.16 original size is not readily available.

5.17 Sec. 13. Minnesota Statutes 2012, section 103E.701, subdivision 6, is amended to read:

5.18 Subd. 6. **Wetland restoration and ~~mitigation~~ replacement; water quality**  
5.19 **protection and improvement**. Repair of a drainage system may include the preservation,  
5.20 restoration, or enhancement of wetlands; wetland replacement under section 103G.222;  
5.21 ~~and the realignment of a drainage system to prevent drainage of a wetland; and the~~  
5.22 incorporation of measures to reduce channel erosion and otherwise protect or improve  
5.23 water quality.

5.24 Sec. 14. Minnesota Statutes 2012, section 103E.715, subdivision 6, is amended to read:

5.25 Subd. 6. **Repair by resloping ditches, incorporating multistage ditch**  
5.26 **cross-section, leveling waste spoil banks, installing erosion control, and or removing**  
5.27 **trees**. (a) For a drainage system that is to be repaired by resloping ditches, incorporating  
5.28 a multistage ditch cross-section, leveling waste spoil banks, installing erosion control  
5.29 measures, or removing trees, before ordering the repair, the drainage authority must  
5.30 appoint viewers to assess and report on damages and benefits if it determines that:

5.31 (1) the resloping, incorporation of a multistage ditch cross-section, spoil bank  
5.32 leveling, installing installation of erosion control measures, or tree removal will require

6.1 the taking of any property not contemplated and included in the ~~original~~ proceeding for  
6.2 the establishment or subsequent improvement of the drainage system; or

6.3 (2) any ~~waste~~ spoil bank leveling or tree removal will directly benefit property where  
6.4 the spoil bank leveling or tree removal is specified; ~~and~~.

6.5 ~~(3) the installation of erosion control measures will aid the long-term efficiency~~  
6.6 ~~of the drainage system.~~

6.7 (b) The viewers shall assess and report damages and benefits as provided by sections  
6.8 103E.315 and 103E.321. The drainage authority shall hear and determine the damages  
6.9 and benefits as provided in sections 103E.325, 103E.335, and 103E.341. The hearing shall  
6.10 be held within 30 days after the property owners' report is mailed. Damages must be paid  
6.11 as provided by section 103E.315 as a part of the cost of the repair, and benefits must be  
6.12 added to the benefits previously determined as the basis for the pro rata assessment for the  
6.13 repair of the drainage system for the repair proceeding only.