

SENATE
STATE OF MINNESOTA
NINETY-FIRST SESSION

S.F. No. 1945

(SENATE AUTHORS: WEBER and Eken)

DATE	D-PG	OFFICIAL STATUS
03/04/2019	622	Introduction and first reading Referred to Environment and Natural Resources Policy and Legacy Finance
03/13/2019	807	Comm report: To pass and re-referred to Judiciary and Public Safety Finance and Policy
03/14/2019	932	Author added Eken
03/20/2019		HF substituted in committee HF1244

1.1 A bill for an act

1.2 relating to natural resources; accelerating public drainage system acquisition and

1.3 compensation of ditch buffer strips; providing runoff and sediment option when

1.4 charging for public drainage ditch repairs; amending Minnesota Statutes 2018,

1.5 sections 17.117, subdivision 11; 103E.021, subdivision 6; 103E.071; 103E.351,

1.6 subdivisions 1, 2, 3; proposing coding for new law in Minnesota Statutes, chapter

1.7 103E.

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

1.9 Section 1. Minnesota Statutes 2018, section 17.117, subdivision 11, is amended to read:

1.10 Subd. 11. **Loans issued to borrower.** (a) Local lenders may issue loans only for projects

1.11 that are approved and certified by the local government unit as meeting priority needs

1.12 identified in a comprehensive water management plan or other local planning documents,

1.13 are in compliance with accepted practices, standards, specifications, or criteria, and are

1.14 eligible for financing under Environmental Protection Agency or other applicable guidelines.

1.15 (b) The local lender may use any additional criteria considered necessary to determine

1.16 the eligibility of borrowers for loans.

1.17 (c) Local lenders shall set the terms and conditions of loans to borrowers, except that:

1.18 (1) no loan to a borrower may exceed \$200,000; and

1.19 ~~(2) no loan for a project may exceed \$200,000; and~~

1.20 ~~(3)~~ (2) no borrower shall, at any time, have multiple loans from this program with a total

1.21 outstanding loan balance of more than \$200,000.

1.22 (d) The maximum term length for projects in this paragraph is ten years.

2.1 (e) Fees charged at the time of closing must:

2.2 (1) be in compliance with normal and customary practices of the local lender;

2.3 (2) be in accordance with published fee schedules issued by the local lender;

2.4 (3) not be based on participation program; and

2.5 (4) be consistent with fees charged other similar types of loans offered by the local
2.6 lender.

2.7 (f) The interest rate assessed to an outstanding loan balance by the local lender must not
2.8 exceed three percent per year.

2.9 Sec. 2. Minnesota Statutes 2018, section 103E.021, subdivision 6, is amended to read:

2.10 Subd. 6. **Incremental ~~implementation~~ establishment; vegetated buffer strips and**
2.11 **side inlet controls.** (a) Notwithstanding other provisions of this chapter requiring
2.12 appointment of viewers and redetermination of benefits and damages, a drainage authority
2.13 may ~~implement~~ make findings and order the establishment of permanent buffer strips of
2.14 perennial vegetation ~~approved by the drainage authority~~ or side inlet controls, or both,
2.15 adjacent to a public drainage ditch, where necessary to control erosion and sedimentation,
2.16 improve water quality, or maintain the efficiency of the drainage system. The drainage
2.17 authority's finding that establishing permanent buffer strips of perennial vegetation or side
2.18 inlet controls is necessary to control erosion and sedimentation, improve water quality, or
2.19 maintain the efficiency of the drainage system is sufficient to confer jurisdiction under this
2.20 subdivision. Preference should be given to planting native species of a local ecotype. The
2.21 approved perennial vegetation ~~shall~~ must not impede future maintenance of the ditch. The
2.22 permanent strips of perennial vegetation shall be 16-1/2 feet in width measured outward
2.23 from the top edge of the existing constructed channel. Drainage system rights-of-way for
2.24 the acreage and additional property required for the permanent strips must be acquired by
2.25 the authority having jurisdiction.

2.26 (b) A project under this subdivision ~~shall~~ must be implemented as a repair according to
2.27 section 103E.705, except that the drainage authority may appoint an engineer to examine
2.28 the drainage system and prepare an engineer's repair report for the project.

2.29 (c) Damages ~~shall~~ must be determined by the drainage authority, or viewers, appointed
2.30 by the drainage authority, according to section 103E.315, subdivision 8. A damages statement
2.31 ~~shall~~ must be prepared, including an explanation of how the damages were determined for
2.32 each property affected by the project, and filed with the auditor or watershed district. Within
2.33 30 days after the damages statement is filed, the auditor or watershed district ~~shall~~ must

3.1 prepare property owners' reports according to section 103E.323, subdivision 1, clauses (1),
 3.2 (2), (6), (7), and (8), and mail a copy of the property owner's report and damages statement
 3.3 to each owner of property affected by the proposed project.

3.4 (d) After a damages statement is filed, the drainage authority ~~shall~~ must set a time, by
 3.5 order, not more than 30 days after the date of the order, for a hearing on the project. At least
 3.6 ten days before the hearing, the auditor or watershed district ~~shall~~ must give notice by mail
 3.7 of the time and location of the hearing to the owners of property and political subdivisions
 3.8 likely to be affected by the project.

3.9 (e) The drainage authority ~~shall~~ must make findings and order the repairs to be made if
 3.10 the drainage authority determines from the evidence presented at the hearing and by the
 3.11 viewers and engineer, if appointed, that the repairs are necessary for the drainage system
 3.12 and the costs of the repairs are within the limitations of section 103E.705.

3.13 Sec. 3. Minnesota Statutes 2018, section 103E.071, is amended to read:

3.14 **103E.071 COUNTY ATTORNEY.**

3.15 The county attorney shall represent the county in all drainage proceedings and related
 3.16 matters without special compensation, except as provided in section 388.09, subdivision 1.
 3.17 A county attorney, the county attorney's assistant, or any attorney associated with the county
 3.18 attorney in business, may not otherwise appear in any drainage proceeding for any interested
 3.19 person.

3.20 Sec. 4. Minnesota Statutes 2018, section 103E.351, subdivision 1, is amended to read:

3.21 Subdivision 1. **Conditions to redetermine benefits and damages; appointing**
 3.22 **viewers.** (a) If the drainage authority determines that the original benefits or damages of
 3.23 record determined in a drainage proceeding do not reflect reasonable present-day present-day
 3.24 land values or that the benefited or damaged areas have changed, or if more than 50 percent
 3.25 of the owners of property benefited or damaged by a drainage system petition for correction
 3.26 of an error that was made at the time of the proceedings that established the drainage system,
 3.27 the drainage authority may appoint three viewers to redetermine and report the benefits and
 3.28 damages and the benefited and damaged areas.

3.29 (b) If more than 26 percent of the owners of property or owners of 26 percent of the
 3.30 property that is benefited or damaged by a drainage system petition to redetermine benefits
 3.31 and damages, the drainage authority must make a determination on the petition according
 3.32 to paragraph (a).

4.1 Sec. 5. Minnesota Statutes 2018, section 103E.351, subdivision 2, is amended to read:

4.2 Subd. 2. **Hearing and procedure.** (a) The redetermination of benefits and damages
4.3 ~~shall~~ must proceed as provided for viewers and the viewers' report in sections 103E.311 to
4.4 103E.321.

4.5 (b) The auditor or secretary must prepare a property owners' report from the viewers'
4.6 report. A copy of the property owners' report must be mailed to each owner of property
4.7 affected by the drainage system.

4.8 (c) The drainage authority ~~shall~~ must hold a final hearing on the report and confirm the
4.9 benefits and damages and benefited and damaged areas. The final hearing ~~shall~~ must proceed
4.10 as provided under sections 103E.325, 103E.335, and 103E.341, ~~except that the hearing shall~~
4.11 ~~be held within 30 days after the property owners' report is mailed.~~

4.12 Sec. 6. Minnesota Statutes 2018, section 103E.351, subdivision 3, is amended to read:

4.13 Subd. 3. **Using redetermined benefits and damages.** The redetermined benefits and
4.14 damages and the redetermined benefited and damaged areas must be used in place of the
4.15 ~~original~~ benefits and damages of record and the benefited and damaged areas of record in
4.16 all subsequent proceedings relating to the drainage system.

4.17 Sec. 7. **[103E.729] APPORTIONING REPAIR COSTS; ALTERNATIVE OPTION.**

4.18 Subdivision 1. **Option.** Notwithstanding any conflicting provision of this chapter, a
4.19 drainage authority may use the option under this section to apportion repair costs on all
4.20 property contributing runoff to the drainage system according to the relative runoff and
4.21 relative sediment delivery determined in an approved report to apportion repair costs prepared
4.22 according to subdivision 2. Repair costs apportioned using the method in this section are
4.23 charges for property contributing runoff to the drainage system that must be considered
4.24 repair cost assessments under this chapter.

4.25 Subd. 2. **Report to apportion repair costs.** (a) When the drainage authority determines
4.26 that a drainage system repair is necessary, the drainage authority may apportion costs for
4.27 repairing a drainage system based on relative runoff and relative sediment delivery from
4.28 any property, public road, street, railway, or other utility contributing runoff to the drainage
4.29 system as provided in this subdivision. If the method under this subdivision is used, costs
4.30 must be determined before ordering the repair of all or any part of a drainage system as
4.31 provided in section 103E.705, subdivision 3, or 103E.715, subdivision 4, or before levying
4.32 an assessment for a repair fund as provided in section 103E.735, subdivision 1.

5.1 (b) The drainage authority must appoint one or more persons qualified to use geographic
5.2 information system technology and applicable digital information, including but not limited
5.3 to conditioned topographic data, soils and land use data, and property, road, and utility
5.4 corridor identification data, together with appropriate on-site verification, to equitably
5.5 apportion repair costs.

5.6 (c) The person or persons conducting the cost apportionment must file a report to
5.7 apportion repair costs with the drainage authority explaining in nontechnical language the
5.8 method, data, and interpretations used and the results of the cost apportionment. The report
5.9 must present data and results in a format so that individual property owners, political
5.10 subdivisions, and utilities can clearly examine the information applicable to their property,
5.11 public road, street, railway, or other utility, including for each parcel having a separate
5.12 property identification number.

5.13 Subd. 3. **Hearing on report.** (a) When a report to apportion repair costs is filed, the
5.14 drainage authority, in consultation with the auditor or secretary, must set a time, by order,
5.15 for a hearing on the report not more than 30 days after the date of the order. At least 20 days
5.16 before the hearing, the auditor or secretary must give notice by mail of the time and location
5.17 of the hearing to the owners of property, political subdivisions, and utilities proposed to be
5.18 assessed in the report. The notice of hearing must include a copy of the portion of the report
5.19 explaining in nontechnical language the method, data, and interpretations used; the results
5.20 of the cost apportionment applicable to the property owner, political subdivision, or utility
5.21 receiving notice; and a statement of the location where the entire report to apportion repair
5.22 costs has been filed for public inspection.

5.23 (b) At the hearing, the drainage authority must hear and consider the testimony presented
5.24 by all interested parties. At least one person responsible for preparing the report to apportion
5.25 repair costs must be present at the initial hearing.

5.26 (c) If the drainage authority determines that the apportionment of costs is inequitable,
5.27 the drainage authority may amend the report to apportion repair costs and must make
5.28 necessary and proper findings and an order in relation to the report, or resubmit matters to
5.29 the report preparer for further consideration. If matters are resubmitted, the hearing may be
5.30 continued as necessary to make and hear an amended report. The report preparer must
5.31 proceed promptly to reconsider resubmitted matters and must make and file an amended
5.32 report. The drainage authority may replace the original report with the amended report to
5.33 apportion repair costs and make necessary and proper findings and an order to approve the
5.34 amended report. The jurisdiction of the drainage authority continues in the property given
5.35 proper notice, and new or additional notice is not required for that property.

6.1 Subd. 4. **Findings; approval.** After considering the report to apportion repair costs, any
6.2 amended report, and all evidence presented, the drainage authority must make findings,
6.3 approve the report, and apportion repair costs consistent with the values in the report to
6.4 apportion repair costs the drainage authority finds that the cost apportionment is equitable
6.5 because:

6.6 (1) the weighting of relative runoff and relative sediment delivery is appropriate for the
6.7 type of repair;

6.8 (2) the data inputs are reliable; and

6.9 (3) the computation method is reliable.

6.10 Subd. 5. **Report updates.** The drainage authority may continue to apportion repair costs
6.11 consistent with the values in the report to apportion repair costs of record. After a report to
6.12 apportion repair costs has been approved under this subdivision, an owner of property, a
6.13 political subdivision, or a utility assessed in the report of record may request in writing that
6.14 the drainage authority update the report based on changed land use. The request must be
6.15 filed with the auditor of the county where the property is located or the secretary. Before
6.16 the drainage authority approves a repair cost assessment for the drainage system, the drainage
6.17 authority must determine if the report to apportion repair costs of record reasonably reflects
6.18 current land use, relative runoff, and relative sediment delivery. If it does not so reflect, the
6.19 drainage authority must make findings and must appoint one or more persons to prepare
6.20 and file an updated report to apportion repair costs for the drainage system in accordance
6.21 with subdivision 2.

6.22 Subd. 6. **Conservation lands.** Proper consideration must be given to property that is
6.23 used for conservation that prohibits development or land use change by ownership, deed
6.24 restriction, or conservation easement, or is enrolled in a program that prohibits agricultural
6.25 crop production.

6.26 Subd. 7. **Appeals.** The owner of any property subject to cost apportionment listed in the
6.27 adopted report to apportion repair costs may appeal the findings of the drainage authority
6.28 under subdivision 4 as provided in section 103E.095.

6.29 Subd. 8. **Definitions.** For purposes of this section:

6.30 (1) "relative runoff" means the surface and subsurface runoff potential from a specific
6.31 property compared on an equitable basis to all other properties contributing runoff to the
6.32 drainage system; and

- 7.1 (2) "relative sediment delivery" means the sediment delivery potential from a specific
7.2 property compared on an equitable basis to all other properties contributing runoff to the
7.3 drainage system.