CHAPTER 85--S.F.No. 2503

An act relating to natural resources; clarifying and modifying certain buffer requirements on public waters and drainage ditches;amending Minnesota Statutes 2014, sections 103B.101, subdivision 12; 103E.315, subdivision 8; Minnesota Statutes 2015 Supplement, sections 103B.101, subdivision 12a; 103F.48, subdivisions 1, 3, 4, 7, 8, 10.

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

Section 1. Minnesota Statutes 2014, section 103B.101, subdivision 12, is amended to read:

Subd. 12. **Authority to issue penalty orders.** (a) Except as provided under subdivision 12a, the board may issue an order requiring violations to be corrected and administratively assessing monetary penalties of up to $10,000 per violation for violations of this chapter and chapters 103C, 103D, 103E, 103F, and 103G, any rules adopted under those chapters, and any standards, limitations, or conditions established by the board.

(b) Administrative penalties issued by the board under paragraph (a) or subdivision 12a, may be appealed according to section 116.072, if the recipient of the penalty requests a hearing by notifying the commissioner in writing within 30 days after receipt of the order. For the purposes of this section, the terms "commissioner" and "agency" as used in section 116.072 mean the board. If a hearing is not requested within the 30-day period, the order becomes a final order not subject to further review.

(c) Administrative penalty orders issued under paragraph (a) or subdivision 12a, may be enforced under section 116.072, subdivision 9. Penalty amounts must be remitted within 30 days of issuance of the order.

Sec. 2. Minnesota Statutes 2015 Supplement, section 103B.101, subdivision 12a, is amended to read:

Subd. 12a. **Authority to issue penalty orders.** (a) A county or watershed district with jurisdiction or the Board of Water and Soil Resources may issue an order requiring violations of the water resources riparian protection requirements under sections 103F.415, 103F.421, and 103F.48 to be corrected and administratively assessing monetary penalties up to $500 for noncompliance commencing on day one of the 11th month after the noncompliance notice was issued. ~~One-half of~~ The proceeds collected from an administrative penalty order issued under this section must be remitted to the county or watershed district with jurisdiction over the noncompliant site, or otherwise remitted to the Board of Water and Soil Resources.

(b) Before exercising this authority, the Board of Water and Soil Resources must adopt a plan containing procedures for the issuance of administrative penalty orders by local governments and the board as authorized in this subdivision. This plan, and any subsequent amendments, will become effective 30 days after being published in the State Register. The initial plan must be published in the State Register no later than July 1, 2017.

~~(b)~~ (c) Administrative penalties may be reissued and appealed under paragraph (a) according to section 103F.48, subdivision 9.

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Sec. 3. Minnesota Statutes 2014, section 103E.315, subdivision 8, is amended to read:

Subd. 8. **Extent of damages.** (a) Damages to be paid may include:

(1) the fair market value of the property required for the channel of an open ditch and the permanent strip of perennial vegetation under section 103E.021;

(2) the diminished value of a farm due to severing a field by an open ditch;

(3) loss of crop production during drainage project construction;

(4) the diminished productivity or land value from increased overflow; and

(5) costs to restore a perennial vegetative cover or structural practice existing under a federal or state conservation program adjacent to the permanent drainage system right-of-way and damaged by the drainage project.

(b) When damages are determined to acquire or otherwise provide compensation for buffer strips or alternative riparian water quality practices previously installed as required by section 103F.48, subdivision 3, the viewers and drainage authority shall consider the land use prior to buffer strip or alternative practice installation in determining the fair market value of the property under paragraph (a), clause (1).

Sec. 4. Minnesota Statutes 2015 Supplement, section 103F.48, subdivision 1, is amended to read:

Subdivision 1. **Definitions.** (a) For the purposes of this section, the following terms have the meanings given them.

(b) "Board" means the Board of Water and Soil Resources.

(c) "Buffer" means an area consisting of perennial vegetation, excluding invasive plants and noxious weeds, adjacent to all bodies of water within the state and that protects the water resources of the state from runoff pollution; stabilizes soils, shores, and banks; and protects or provides riparian corridors.

(d) "Buffer protection map" means buffer maps established and maintained by the commissioner of natural resources.

(e) "Commissioner" means the commissioner of natural resources.

(f) "Executive director" means the executive director of the Board of Water and Soil Resources.

(g) "Local water management authority" means a watershed district, metropolitan water management organization, or county operating separately or jointly in its role as local water management authority under chapter 103B or 103D.

(h) "Normal water level" means the level evidenced by the long-term presence of surface water as indicated directly by hydrophytic plants or hydric soils or indirectly determined via hydrological models or analysis.

(i) "Public waters" has the meaning given in section 103G.005, subdivision 15. The term public waters as used in this section applies to waters that are on the public waters inventory as provided in section 103G.201.

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(j) "With jurisdiction" means a board determination that the county or watershed district has adopted a rule, ordinance, or official controls providing procedures for the issuance of administrative penalty orders, enforcement, and appeals for purposes of this section and section 103B.101, subdivision 12a.

Sec. 5. Minnesota Statutes 2015 Supplement, section 103F.48, subdivision 3, is amended to read:

Subd. 3. **Water resources riparian protection requirements on public waters and public drainage systems.** (a) Except as provided in paragraph (b), landowners owning property adjacent to a water body identified and mapped on a buffer protection map must maintain a buffer to protect the state's water resources as follows:

(1) for all public waters, the more restrictive of:

(i) a 50-foot average width, 30-foot minimum width, continuous buffer of perennially rooted vegetation; or

(ii) the state shoreland standards and criteria adopted by the commissioner under section 103F.211; and

(2) for public drainage systems established under chapter 103E, a 16.5-foot minimum width continuous buffer ~~of perennially rooted vegetation on ditches within the benefited area of public drainage systems~~ as provided in section 103E.021, subdivision 1. The buffer vegetation shall not impede future maintenance of the ditch.

(b) A landowner owning property adjacent to a water body identified in a buffer protection map and whose property is used for cultivation farming may meet the requirements under paragraph (a) by adopting an alternative riparian water quality practice, or combination of structural, vegetative, and management practices, based on the Natural Resources Conservation Service Field Office Technical Guide or other practices approved by the board, that provide water quality protection comparable to the buffer protection for the water body that the property abuts. Included in these practices are retention ponds and alternative measures that prevent overland flow to the water resource.

(c) The width of a buffer on public waters must be measured from the top or crown of the bank. Where there is no defined bank, measurement must be from the edge of the normal water level. The width of the buffer on public drainage systems must be measured as provided in section 103E.021, subdivision 1.

(d) Upon request by a landowner or authorized agent or operator of a landowner, a technical professional employee or contractor of the soil and water conservation district or its delegate may issue a validation of compliance with the requirements of this subdivision. The soil and water conservation district validation may be appealed to the board as described in subdivision 9.

(e) Buffers or alternative water quality practices required under paragraph (a) or (b) must be in place on or before:

(1) November 1, 2017, for public waters; and

(2) November 1, 2018, for public drainage systems.

(f) Nothing in this section limits the eligibility of a landowner or authorized agent or operator of a landowner to participate in federal or state conservation programs, including enrolling or reenrolling in federal conservation programs.

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Sec. 6. Minnesota Statutes 2015 Supplement, section 103F.48, subdivision 4, is amended to read:

Subd. 4. **Local water resources riparian protection.** In consultation with local water management authorities, on or before July 1, 2017, the soil and water conservation district shall develop, adopt, and submit to each local water management authority within its boundary a summary of watercourses for inclusion in the local water management authority's plan. A local water management authority that receives a summary of watercourses identified under this subdivision must ~~revise~~ incorporate an addendum to its comprehensive local water management plan or comprehensive watershed management plan to ~~incorporate~~ include the soil and water conservation district recommendations by July 1, 2018. The incorporation to include the summary of watercourses provided by the soil and water conservation district does not require a plan amendment as long as a copy of the included information is distributed to all agencies, organizations, and individuals required to receive a copy of the plan changes. A local water management authority that receives a summary of watercourses identified under this subdivision must address implementation of the soil and water conservation district recommendations when revising its comprehensive local water management plan as part of a regularly scheduled update to its comprehensive local water management plan or development of a comprehensive watershed management plan under section 103B.801.

Sec. 7. Minnesota Statutes 2015 Supplement, section 103F.48, subdivision 7, is amended to read:

Subd. 7. **Corrective actions.** (a) If the soil and water conservation district determines a landowner is not in compliance with this section, the district must notify the county or watershed district with jurisdiction over the noncompliant site and the board. The county or watershed district with jurisdiction or the board must provide the landowner with a list of corrective actions needed to come into compliance and a practical timeline to meet the requirements in this section. The county or watershed district with jurisdiction must provide a copy of the corrective action notice to the board.

(b) A county or watershed district exercising jurisdiction under this subdivision and the enforcement authority granted in section 103B.101, subdivision 12a, shall affirm their jurisdiction and identify the ordinance, rule, or other official controls to carry out the compliance provisions of this section and section 103B.101, subdivision 12a, by notice to the board prior to March 31, 2017. A county or watershed district must provide notice to the board at least 60 days prior to the effective date of a subsequent decision on their jurisdiction.

~~(b)~~ (c) If the landowner does not comply with the list of actions and timeline provided, the county or watershed district may enforce this section under the authority granted in section 103B.101, subdivision 12a, or by rule of the watershed district or ordinance or other official control of the county. Before exercising ~~this~~ administrative penalty authority, a county or watershed district must adopt a plan consistent with the plan adopted by the board containing procedures for the issuance of administrative penalty orders and may issue orders beginning November 1, 2017. If a county or watershed district with jurisdiction over the noncompliant site has not adopted a plan, rule, ordinance, or official control under this paragraph, the board ~~may~~ must enforce this section under the authority granted in section 103B.101, subdivision 12a.

~~(c)~~ (d) If the county, watershed district, or board determines that sufficient steps have been taken to fully resolve noncompliance, all or part of the penalty may be forgiven.

~~(d)~~ (e) An order issued under paragraph ~~(b)~~ (c) may be appealed to the board as provided under subdivision 9.

~~(e)~~ (f) A corrective action is not required for conditions resulting from a flood or other act of nature.

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~~(f)~~ (g) A landowner agent or operator of a landowner may not remove or willfully degrade a riparian buffer or water quality practice, wholly or partially, unless the agent or operator has obtained a signed statement from the property owner stating that the permission for the work has been granted by the unit of government authorized to approve the work in this section or that a buffer or water quality practice is not required as validated by the soil and water conservation district. Removal or willful degradation of a riparian buffer or water quality practice, wholly or partially, by an agent or operator is a separate and independent offense and may be subject to the corrective actions and penalties in this subdivision.

Sec. 8. Minnesota Statutes 2015 Supplement, section 103F.48, subdivision 8, is amended to read:

Subd. 8. **Funding subject to withholding.** The ~~state~~ board may withhold funding from a local water management authority with jurisdiction or a soil and water conservation district that fails to implement this section, or from a local water management authority that fails to implement subdivision 4. ~~Funding subject to withholding includes soil and water program aid, a natural resources block grant, and other project or program funding.~~ Funding may be restored upon the board's approval of a corrective action plan.

Sec. 9. Minnesota Statutes 2015 Supplement, section 103F.48, subdivision 10, is amended to read:

Subd. 10. **Landowner financial assistance and public drainage system procedure.** (a) A landowner or drainage authority may contact the soil and water conservation district for information on how to apply for local, state, or federal cost-share grants, contracts, or loans that are available to establish buffers or other water resource protection measures.

(b) The provisions of sections 103E.011, subdivision 5; 103E.021~~, subdivision 6~~; and 103E.715 may be used in advance or retroactively to acquire or provide compensation for all or part of the buffer strip establishment or alternative riparian water quality practices as required under subdivision 3, paragraph (a)~~, within the benefited area of a public drainage system~~ or (b). ~~Implementation of this subdivision is not subject to limitation of project costs to the current benefits adopted for the drainage system.~~

Presented to the governor April 25, 2016

Signed by the governor April 25, 2016, 11:27 a.m.

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