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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETIETH SESSION

H. F. No. 1004

02/09/2017 Authored by Anderson, P.; Backer; Lueck; Swedzinski and Urdahl
The bill was read for the first time and referred to the Committee on Environment and Natural Resources Policy and Finance

1.1 A bill for an act
1.2 relating to natural resources; modifying certain buffer requirements; requiring
1.3 local review and approval; amending Minnesota Statutes 2016, section 103F.48,
1.4 subdivisions 1, 3, 7, by adding a subdivision.

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

1.6 Section 1. Minnesota Statutes 2016, section 103F.48, subdivision 1, is amended to read:

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

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

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

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

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

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

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

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

2.4 (i) "Public waters" has the meaning given in section 103G.005, subdivision 15. The term
 2.5 public waters as used in this section applies to waters that are on the public waters inventory
 2.6 as provided in section 103G.201, excluding public water wetlands that do not have a
 2.7 shoreland classification adopted under section 103F.211.

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

2.12 Sec. 2. Minnesota Statutes 2016, section 103F.48, is amended by adding a subdivision to
 2.13 read:

2.14 Subd. 2a. **Buffer protection map; local approval.** (a) The commissioner must develop
 2.15 a preliminary buffer protection map. The map must designate:

2.16 (1) public waters subject to a 50-foot average width, 30-foot minimum width, continuous
 2.17 buffer requirement under subdivision 3; and

2.18 (2) public drainage systems established under chapter 103E, subject to a 16.5-foot
 2.19 minimum width continuous buffer under subdivision 3.

2.20 (b) The commissioner must submit a preliminary buffer protection map to each soil and
 2.21 water conservation district for approval by September 1, 2017. Within 90 days of receiving
 2.22 the map and after conducting at least one public meeting, a soil and water conservation
 2.23 district must submit its approval of the map or its requested changes to the map to the
 2.24 commissioner. Within 30 days of receiving a request for change, the commissioner must
 2.25 review the request and either revise the buffer protection map in response or provide a
 2.26 reason for not making the requested change. If no response is received from the soil and
 2.27 water conservation district within the 90-day review period, the commissioner may deem
 2.28 the map approved. The commissioner must publish a final buffer protection map by February
 2.29 1, 2018.

2.30 **EFFECTIVE DATE.** This section is effective the day following final enactment.

3.1 Sec. 3. Minnesota Statutes 2016, section 103F.48, subdivision 3, is amended to read:

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

3.6 (1) for ~~all~~ public waters identified on the buffer protection map, the more restrictive of:

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

3.9 (ii) the state shoreland standards and criteria adopted by the commissioner under section
3.10 103F.211; and

3.11 (2) for public drainage systems established under chapter 103E identified on the buffer
3.12 protection map, a 16.5-foot minimum width continuous buffer as provided in section
3.13 103E.021, subdivision 1. The buffer vegetation shall not impede future maintenance of the
3.14 ditch.

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

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

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

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

4.1 (1) November 1, ~~2017~~ 2018, for public waters; and

4.2 (2) November 1, ~~2018~~ 2019, for public drainage systems.

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

4.6 Sec. 4. Minnesota Statutes 2016, section 103F.48, subdivision 7, is amended to read:

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

4.14 (b) A county or watershed district exercising jurisdiction under this subdivision and the
4.15 enforcement authority granted in section 103B.101, subdivision 12a, shall affirm their
4.16 jurisdiction and identify the ordinance, rule, or other official controls to carry out the
4.17 compliance provisions of this section and section 103B.101, subdivision 12a, by notice to
4.18 the board prior to March 31, ~~2017~~ 2018. A county or watershed district must provide notice
4.19 to the board at least 60 days prior to the effective date of a subsequent decision on their
4.20 jurisdiction.

4.21 (c) If the landowner does not comply with the list of actions and timeline provided, the
4.22 county or watershed district may enforce this section under the authority granted in section
4.23 103B.101, subdivision 12a, or by rule of the watershed district or ordinance or other official
4.24 control of the county. Before exercising administrative penalty authority, a county or
4.25 watershed district must adopt a plan consistent with the plan adopted by the board containing
4.26 procedures for the issuance of administrative penalty orders and may issue orders beginning
4.27 November 1, ~~2017~~ 2018. If a county or watershed district with jurisdiction over the
4.28 noncompliant site has not adopted a plan, rule, ordinance, or official control under this
4.29 paragraph, the board must enforce this section under the authority granted in section
4.30 103B.101, subdivision 12a.

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

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

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

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

5.13 **EFFECTIVE DATE.** This section is effective the day following final enactment or
5.14 retroactively from March 31, 2017, if enacted after that date.