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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. 1004

02/11/2019 Authored by Bernardy; Hansen; Lillie; Carlson, L.; Gomez and others
The bill was read for the first time and referred to the Transportation Finance and Policy Division

1.1 A bill for an act
1.2 relating to transportation; regulating highway right-of-way mowing practices;
1.3 providing for pollinator habitat management; amending Minnesota Statutes 2018,
1.4 sections 160.23; 160.232; 160.2715.

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

1.6 Section 1. Minnesota Statutes 2018, section 160.23, is amended to read:

1.7 160.23 DESTRUCTION OF NOXIOUS WEEDS.

1.8 Road authorities, including road authorities of cities shall cause, must cut down, eradicate,
1.9 or otherwise destroy all noxious weeds on their respective highways and streets to be cut
1.10 down or otherwise destroyed or eradicated owned or controlled by the road authority. The
1.11 cutting, eradication, or destruction must occur as often as may be is necessary to prevent
1.12 the ripening or scattering of seed and other propagating parts of such the noxious weeds.
1.13 When destroying noxious weeds within a right-of-way, a road authority must use the most
1.14 effective integrated pest management method that is minimally disruptive to pollinators. If
1.15 noxious weed conditions do not merit full treatment of the entire right-of-way, spot treatment
1.16 must be used.

1.17 Sec. 2. Minnesota Statutes 2018, section 160.232, is amended to read:

1.18 160.232 MOWING DITCHES OUTSIDE CITIES; POLLINATOR
1.19 MANAGEMENT.

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

2.1 (b) "Integrated roadside vegetation management" means an approach to right-of-way
 2.2 maintenance that combines a variety of techniques with sound ecological principles to
 2.3 establish and maintain safe, healthy, and functional roadsides. Integrated roadside vegetation
 2.4 management includes but is not limited to judicious use of herbicides, spot mowing,
 2.5 prescribed burning, mechanical tree and brush removal, erosion prevention and treatment,
 2.6 and prevention and treatment of other right-of-way disturbances.

2.7 (c) "Pollinator" has the meaning given in section 18B.01, subdivision 20a.

2.8 Subd. 2. **Applicability.** (a) The commissioner must comply with the provisions of this
 2.9 section with respect to trunk highways and other roadway rights-of-way owned or controlled
 2.10 by the Department of Transportation.

2.11 (b) Other road authorities, including counties, municipalities, and other local government
 2.12 units, may and are encouraged to comply with the provisions of this section with respect to
 2.13 highway and other roadway rights-of-way owned or controlled by the road authority.

2.14 Subd. 3. **Right-of-way mowing; maintenance.** (a) To provide enhanced roadside habitat
 2.15 for pollinators, nesting birds, and other small wildlife, a road ~~authorities may not mow or~~
 2.16 ~~the~~ authority is prohibited from mowing, burning, tilling, or haying the right-of-way of a
 2.17 highway located outside of a home rule charter or statutory city except as ~~allowed in~~ provided
 2.18 by this section and section 160.23.

2.19 (b) On any highway, the first eight to 16 feet away from the road surface, or shoulder
 2.20 if one exists, may be mowed ~~at any time~~ as necessary for use as a safety zone for vehicles
 2.21 to stop on the roadway or to maintain sight distance for safety.

2.22 (c) ~~One side of an entire right-of-way may be mowed after July 31. From August 31 to~~
 2.23 ~~the following July 31, the entire right-of-way may only be mowed once per year if the road~~
 2.24 ~~authority demonstrates via an on-site evaluation that doing so is necessary for safety or~~
 2.25 ~~maintenance reasons, but may not be mowed to a height of less than 12 inches. A road~~
 2.26 ~~authority is prohibited from mowing both sides of an entire right-of-way during the same~~
 2.27 ~~calendar year.~~

2.28 (d) A right-of-way may be mowed as necessary to maintain sight distance for safety and
 2.29 may be mowed at other times under rules of the commissioner, or by ordinance of a local
 2.30 road authority not conflicting with the rules of the commissioner.

2.31 ~~(e)~~ (d) A right-of-way may be mowed, burned, ~~or~~ tilled, or hayed to prepare the
 2.32 right-of-way ~~for the establishment of~~ to establish or maintain permanent prairie vegetative
 2.33 cover ~~or for prairie vegetation management,~~ including forbs and native flowering plants.

3.1 ~~(f) When feasible, road authorities are encouraged to utilize low maintenance, native~~
 3.2 ~~vegetation that reduces the need to mow, provides wildlife habitat, and maintains public~~
 3.3 ~~safety.~~

3.4 ~~(g) The commissioner of natural resources shall cooperate with the commissioner of~~
 3.5 ~~transportation to provide enhanced roadside habitat for nesting birds and other small wildlife.~~

3.6 (e) Except as provided under paragraph (d), a road authority is prohibited from mowing,
 3.7 burning, tilling, or haying a right-of-way containing native plantings or designated as a
 3.8 wildflower highway under subdivision 4.

3.9 Subd. 4. Pollinator habitat management practices; right-of-way mapping. (a) In
 3.10 collaboration with the commissioners of agriculture and natural resources and the Board of
 3.11 Water and Soil Resources, the commissioner of transportation must establish pollinator
 3.12 habitat management best practices for public highway and roadway rights-of-way in
 3.13 Minnesota. The pollinator habitat management practices must include the establishment of
 3.14 native plantings and designated wildflower highways where mowing, tilling, burning, or
 3.15 hayage is prohibited.

3.16 (b) When feasible, road authorities are encouraged to utilize low maintenance, native
 3.17 vegetation that reduces the need to mow, provides wildlife habitat, and maintains public
 3.18 safety. The commissioner of natural resources must cooperate with the commissioner of
 3.19 transportation to provide enhanced roadside habitat for nesting birds, pollinators, and other
 3.20 small wildlife.

3.21 (c) The commissioner of transportation must make available on a public website maps
 3.22 indicating where public rights-of-way subject to this section exist, including any newly
 3.23 constructed rights-of-way and any established mowing schedule for the rights-of-way. The
 3.24 maps must also identify public rights-of-way adjacent to: (1) public parks, forests, wildlife
 3.25 management areas, scientific and natural areas, and other lands similarly managed for
 3.26 wildlife or pollinator habitat in grassland areas; (2) private lands managed as wildlife or
 3.27 pollinator habitats; and (3) farmland managed as wildlife or pollinator grassland habitats,
 3.28 including farmland not treated with pesticides. To the extent practicable, the commissioner
 3.29 shall post signs indicating where the areas under paragraph (a) and clauses (1) to (3) exist.

3.30 Subd. 5. Pollinator habitat management performance plan. (a) The commissioner
 3.31 must develop and implement a performance-based pollinator habitat management plan for
 3.32 the trunk highway system to improve the condition of existing pollinator habitat and enhance
 3.33 the effectiveness of pollinator habitat management. The performance plan must include

4.1 strategies to achieve best practices for pollinator habitat management within all trunk
 4.2 highway rights-of-way.

4.3 (b) At a minimum, the performance plan must:

4.4 (1) measure, enhance, and restore acres of trunk highway rights-of-way as prairie lands,
 4.5 wetlands, and recreational lands such as parks, trails, and open space;

4.6 (2) measure and reduce pounds of pesticides and other chemicals applied within trunk
 4.7 highway rights-of-way;

4.8 (3) measure and reduce tons of greenhouse gases produced by mowing within trunk
 4.9 highway rights-of-way;

4.10 (4) measure and reduce energy consumption due to mowing within trunk highway
 4.11 rights-of-way;

4.12 (5) measure financial penalties and settlements paid due to environmental damage,
 4.13 worker safety violations, and worker health violations due to mowing; and

4.14 (6) reduce the number of instances of environmental damage, worker safety violations,
 4.15 and worker health violations due to mowing.

4.16 (c) The commissioner must include annual performance targets to be achieved by each
 4.17 district of the department for each measure under paragraph (b). Additional predictive and
 4.18 consequential performance measures and annual performance targets may be identified in
 4.19 collaboration with the public.

4.20 (d) Annually by December 15, the commissioner must submit the pollinator habitat
 4.21 management plan, including information detailing the department's progress on implementing
 4.22 the plan and an annual investment plan for each district of the department, to the chairs and
 4.23 ranking minority members of the legislative committees having jurisdiction over
 4.24 transportation policy and finance. The pollinator habitat management plan must be signed
 4.25 by a professional engineer licensed in Minnesota.

4.26 Subd. 6. **Mowing permits.** (a) A private landowner may apply for and the road authority
 4.27 that owns or controls the adjacent public right-of way may issue permits to mow or hay the
 4.28 right-of-way.

4.29 (b) A permit issued under this subdivision authorizes the permit holder to mow or hay
 4.30 the right-of-way adjacent to the permit holder's private property, or another area determined
 4.31 by the commissioner, once per calendar year at the time specified by the permit.

5.1 (c) A road authority is prohibited from issuing a permit or permits that would result in
 5.2 a violation of subdivision 3, paragraph (c) or (e).

5.3 (d) A private landowner may apply for and the road authority that owns or controls the
 5.4 adjacent public right-of way may issue pollinator maintenance permits that authorize the
 5.5 private landowner to (1) foster pollinator habitat, and (2) refrain from mowing or haying a
 5.6 designated portion of a right-of-way.

5.7 Subd. 7. **Exceptions.** (a) This section does not apply to private easements or private
 5.8 rights-of-way.

5.9 (b) If a permit is obtained under subdivision 6, a public or private landowner may mow
 5.10 or maintain a public right-of-way that abuts the property and is within 100 feet in either
 5.11 direction of a driveway entrance to the property.

5.12 Subd. 8. **Enforcement.** (a) The commissioner must establish a unique telephone number,
 5.13 e-mail address, and public website that allows private citizens to report suspected violations
 5.14 of this section to the department.

5.15 (b) The commissioner must investigate credible reports submitted under paragraph (a),
 5.16 and must provide follow-up information to the individual who submitted the suspected
 5.17 violation.

5.18 (c) If a violation of this section is confirmed, the commissioner may (1) work with the
 5.19 violator to take remedial action, or (2) refer the violation to law enforcement to issue a
 5.20 citation.

5.21 Sec. 3. Minnesota Statutes 2018, section 160.2715, is amended to read:

5.22 **160.2715 RIGHT-OF-WAY USE; MISDEMEANORS.**

5.23 (a) Except for the actions of the road authorities, their agents, employees, contractors,
 5.24 and utilities in carrying out their duties imposed by law or contract, and except as herein
 5.25 provided, it ~~shall be~~ is unlawful to:

5.26 (1) obstruct any highway or deposit snow or ice thereon;

5.27 (2) plow or perform any other detrimental operation within the ~~road~~ roadway right-of-way
 5.28 ~~except in the preparation of the land for planting permanent vegetative cover or as authorized~~
 5.29 ~~under section 160.232;~~

5.30 (3) violate section 160.23 or 160.232, subject to the exceptions contained in those
 5.31 sections;

6.1 ~~(3)~~ (4) erect a fence on the right-of-way of a trunk highway, county state-aid highway,
6.2 county highway, or town road, except to erect a lane fence to the ends of a livestock pass;

6.3 ~~(4)~~ (5) erect or reconstruct driveway headwalls in or on the right-of-way of a highway
6.4 or road, except as may be allowed by permit from the road authority imposing reasonable
6.5 regulations as are necessary to prevent interference with the construction, maintenance, and
6.6 safe use of the highway or road and its appurtenances;

6.7 ~~(5)~~ (6) dig any holes in any highway, except to locate markers placed to identify sectional
6.8 corner positions and private boundary corners;

6.9 ~~(6)~~ (7) remove any earth, gravel, or rock from any highway;

6.10 ~~(7)~~ (8) obstruct any ditch draining any highway or drain any noisome materials into any
6.11 ditch;

6.12 ~~(8)~~ (9) place or maintain any building or structure within the limits of any highway;

6.13 ~~(9)~~ (10) place or maintain any advertisement within the limits of any highway, except
6.14 as provided in section 160.27, subdivision 7;

6.15 ~~(10)~~ (11) paint, print, place, or affix any advertisement or any object within the limits
6.16 of any highway, except as provided in section 160.27, subdivision 7;

6.17 ~~(11)~~ (12) deface, mar, damage, or tamper with any structure, work, material, equipment,
6.18 tools, signs, markers, signals, paving, guardrails, drains, or any other highway appurtenance
6.19 on or along any highway;

6.20 ~~(12)~~ (13) remove, injure, displace, or destroy right-of-way markers, or reference or
6.21 witness monuments, or markers placed to preserve section or quarter-section corners;

6.22 ~~(13)~~ (14) improperly place or fail to place warning signs and detour signs as provided
6.23 by law; or

6.24 ~~(14)~~ (15) drive over, through, or around any barricade, fence, or obstruction erected for
6.25 the purpose of preventing traffic from passing over a portion of a highway closed to public
6.26 travel or to remove, deface, or damage any such barricade, fence, or obstruction.

6.27 (b) Any violation of this section is a misdemeanor.