

**SENATE**  
**STATE OF MINNESOTA**  
**EIGHTY-NINTH SESSION**

**S.F. No. 2503**

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DATE	D-PG	OFFICIAL STATUS
03/10/2016	4951	Introduction and first reading Referred to Jobs, Agriculture and Rural Development
03/21/2016	5132a	Comm report: To pass as amended and re-refer to Environment and Energy
04/01/2016	5448a	Comm report: To pass as amended and re-refer to Taxes
04/11/2016	5798a	Comm report: To pass as amended
	5799	Second reading
04/14/2016	5817	Special Order
	5818	Third reading Passed
04/25/2016		Returned from House Presentment date 04/25/16

A bill for an act

1.1  
1.2 relating to natural resources; clarifying and modifying certain buffer requirements  
1.3 on public waters and drainage ditches; establishing local government aid for  
1.4 buffer enforcement; appropriating money; amending Minnesota Statutes 2014,  
1.5 section 103E.315, subdivision 8; Minnesota Statutes 2015 Supplement, sections  
1.6 103B.101, subdivision 12a; 103F.48, subdivisions 1, 3, 4, 5, 7, 8, 10; proposing  
1.7 coding for new law in Minnesota Statutes, chapter 477A.

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

1.9 Section 1. Minnesota Statutes 2015 Supplement, section 103B.101, subdivision 12a,  
1.10 is amended to read:

1.11 Subd. 12a. **Authority to issue penalty orders.** (a) A county or watershed  
1.12 district with jurisdiction or the Board of Water and Soil Resources may issue an order  
1.13 requiring violations of the water resources riparian protection requirements under sections  
1.14 103F.415, 103F.421, and 103F.48 to be corrected and administratively assessing monetary  
1.15 penalties up to \$500 for noncompliance commencing on day one of the 11th month  
1.16 after the noncompliance notice was issued. One-half of the proceeds collected from an  
1.17 administrative penalty order issued under this section must be remitted to the county or  
1.18 watershed district with jurisdiction over the noncompliant site.

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

1.21 (c) For the purposes of this section, "with jurisdiction" means that the county or  
1.22 watershed district has adopted a rule or ordinance providing procedures for the issuance of  
1.23 administrative penalty orders, enforcement, and appeals for purposes of this section and  
1.24 section 103F.48. A county or watershed district that has not adopted a rule or ordinance  
1.25 for purposes of this section and section 103F.48 is not considered to be "with jurisdiction."

2.1 Sec. 2. Minnesota Statutes 2014, section 103E.315, subdivision 8, is amended to read:

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

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

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

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

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

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

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

2.16 Sec. 3. Minnesota Statutes 2015 Supplement, section 103F.48, subdivision 1, is  
2.17 amended to read:

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

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

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

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

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

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

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

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

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

3.4 (j) "With jurisdiction" means that the county or watershed district has adopted a rule  
3.5 or ordinance providing procedures for the issuance of administrative penalty orders,  
3.6 enforcement, and appeals for purposes of this section and section 103B.101, subdivision  
3.7 12a.

3.8 Sec. 4. Minnesota Statutes 2015 Supplement, section 103F.48, subdivision 3, is  
3.9 amended to read:

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

3.14 (1) for all public waters with a shoreland management classification, the more  
3.15 restrictive of:

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

3.18 (ii) ~~the state shoreland standards and criteria adopted by the commissioner~~ contained  
3.19 in locally adopted and commissioner-approved shoreland ordinances under section  
3.20 103F.211; and

3.21 (2) for public drainage systems established under chapter 103E, a 16.5-foot  
3.22 minimum width continuous buffer of ~~perennially rooted vegetation on ditches within the~~  
3.23 ~~benefited area of public drainage systems~~ permanent grass, other than invasive plants and  
3.24 noxious weeds, or other perennially rooted vegetation measured outward from the top  
3.25 edge of the constructed channel of the public drainage system. The buffer vegetation shall  
3.26 not impede future maintenance of the ditch.

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

4.1 (c) The width of a buffer must be measured from the top or crown of the bank. Where  
4.2 there is no defined bank, measurement must be from the edge of the normal water level.

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

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

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

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

4.12 Sec. 5. Minnesota Statutes 2015 Supplement, section 103F.48, subdivision 4, is  
4.13 amended to read:

4.14 Subd. 4. **Local water resources riparian protection.** On or before July 1, 2017,  
4.15 the soil and water conservation district shall develop, adopt, and submit to each local  
4.16 water management authority within its boundary a summary of watercourses for inclusion  
4.17 in the local water management authority's plan. A local water management authority that  
4.18 receives a summary of watercourses identified under this subdivision must ~~revise~~ consider  
4.19 revising its comprehensive local water management plan ~~or comprehensive watershed~~  
4.20 ~~management plan~~ as part of a regularly scheduled update to its comprehensive local water  
4.21 management plan or development of a comprehensive watershed management plan under  
4.22 section 103B.801, to incorporate the soil and water conservation district recommendations.

4.23 Sec. 6. Minnesota Statutes 2015 Supplement, section 103F.48, subdivision 5, is  
4.24 amended to read:

4.25 Subd. 5. **Exemptions.** Land adjacent to waters subject to subdivision 3 is exempt  
4.26 from the water resource protection requirements under subdivision 3, to the extent these  
4.27 exemptions are not inconsistent with the requirements of the state shoreland rules adopted  
4.28 by the commissioner pursuant to section 103F.211, if it is:

4.29 (1) enrolled in the federal Conservation Reserve Program;

4.30 (2) used as a public or private water access or recreational use area including  
4.31 stairways, landings, picnic areas, access paths, beach and watercraft access areas, and  
4.32 permitted water-oriented structures as provided in the shoreland model standards and  
4.33 criteria adopted pursuant to section 103F.211 or as provided for in an approved local  
4.34 government shoreland ordinance;

- 5.1 (3) covered by a road, trail, building, or other structures; or
- 5.2 (4) regulated by a national pollutant discharge elimination system/state disposal
- 5.3 system (NPDES/SDS) permit under Minnesota Rules, chapter 7090, and provides water
- 5.4 resources riparian protection, in any of the following categories:
- 5.5 (i) municipal separate storm sewer system (MS4);
- 5.6 (ii) construction storm water (CSW); or
- 5.7 (iii) industrial storm water (ISW);
- 5.8 (5) part of a water-inundation cropping system; ~~or~~
- 5.9 (6) in a temporary nonvegetated condition due to drainage tile installation and
- 5.10 maintenance, alfalfa or other perennial crop or plant seeding, or construction or
- 5.11 conservation projects authorized by a federal, state, or local government unit; or
- 5.12 (7) a public ditch that is part of a drainage authority plan to install vegetated ditch
- 5.13 buffers under chapter 103E by December 31, 2025.

5.14 Sec. 7. Minnesota Statutes 2015 Supplement, section 103F.48, subdivision 7, is

5.15 amended to read:

5.16 Subd. 7. **Corrective actions.** (a) If the soil and water conservation district

5.17 determines a landowner is not in compliance with this section, the district must notify the

5.18 county or watershed district with jurisdiction over the noncompliant site. The county or

5.19 watershed district with jurisdiction must provide the landowner with a list of corrective

5.20 actions needed to come into compliance and a practical timeline to meet the requirements

5.21 in this section. The county or watershed district with jurisdiction must provide a copy of

5.22 the corrective action notice to the board. If no county or watershed district has jurisdiction

5.23 to initiate enforcement, the soil and water conservation district must notify the board of

5.24 the noncompliance.

5.25 (b) If the landowner does not comply with the list of actions and timeline provided,

5.26 the county or watershed district may enforce this section under the authority granted in

5.27 section 103B.101, subdivision 12a, or by rule of the watershed district or ordinance of the

5.28 county. Before exercising ~~this~~ administrative penalty authority, a county or watershed

5.29 district must adopt a plan containing procedures for the issuance of administrative penalty

5.30 orders and may issue orders beginning November 1, 2017. If a county or watershed

5.31 district with jurisdiction over the noncompliant site has not adopted a plan, rule, or

5.32 ordinance under this paragraph, the board may enforce this section under the authority

5.33 granted in section 103B.101, subdivision 12a.

5.34 (c) If the county, watershed district, or board determines that sufficient steps have

5.35 been taken to fully resolve noncompliance, all or part of the penalty may be forgiven.

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

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

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

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

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

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

6.23 Subd. 10. **Landowner financial assistance and public drainage system procedure.**

6.24 (a) A landowner or drainage authority may contact the soil and water conservation district  
6.25 for information on how to apply for local, state, or federal cost-share grants, contracts, or  
6.26 loans that are available to establish buffers or other water resource protection measures.

6.27 (b) The provisions of sections 103E.011, subdivision 5; 103E.021, ~~subdivision 6~~; and  
6.28 103E.715 may be used in advance or retroactively to acquire or provide compensation for  
6.29 all or part of the buffer strip establishment or alternative riparian water quality practices as  
6.30 required under subdivision 3, paragraph (a), ~~within the benefited area of a public drainage~~  
6.31 ~~system or (b).~~ Implementation of this subdivision is not subject to limitation of project  
6.32 costs to the current benefits adopted for the drainage system.

6.33 Sec. 10. **[477A.21] RIPARIAN PROTECTION; SUPPLEMENTAL AID.**

7.1 (a) Each county is eligible to receive aid under this section to enforce and implement  
7.2 the riparian protection and water quality practices under section 103F.48. Aid to each  
7.3 county shall equal: (1) the number of miles of public waters, as defined in section 103F.48,  
7.4 subdivision 1, paragraph (i), in the county; multiplied by (2) the number of acres in the  
7.5 county classified as class 2a under section 273.13; multiplied by ..... If one or more  
7.6 watershed districts assumes responsibility for the riparian protection and water quality  
7.7 practices under section 103F.48, the county shall proportionately allocate funds received  
7.8 under this section to the district.

7.9 (b) The aid under this section shall be paid in the same manner and at the same time  
7.10 as the aid payments under section 477A.0124.

7.11 (c) The amount necessary to pay supplemental aid under this section is appropriated  
7.12 from the general fund to the commissioner of revenue.

7.13 **EFFECTIVE DATE.** This section is effective beginning with aids payable in 2018  
7.14 and thereafter.