

CHAPTER 40

SOIL AND WATER CONSERVATION

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40.03 STATE SOIL AND WATER CONSERVATION BOARD.

Subdivision 1. **Members.** There is hereby established, to serve as an agency within the department of agriculture and to perform the functions conferred upon it in this chapter, the state soil and water conservation board to be composed of 12 members, seven of whom shall be elected supervisors and the following five ex officio members: The director of the agricultural extension service of the University of Minnesota; the deputy vice president of the Institute of Agriculture, Forestry, and Home Economics of the University of Minnesota; the director of the pollution control agency; the commissioner of agriculture; and the commissioner of natural resources. Each ex officio member may designate a person within his organization to act in his stead as a member of the state board, with all his rights and privileges. The designation shall be filed with the secretary of state. The state board shall invite the state conservationist of the United States Soil Conservation Service to serve as an advisory member. The state board may also invite a representative of the state association of soil and water conservation districts, the association of Minnesota counties, the league of Minnesota cities and any other organizations and appropriate agencies deemed necessary to serve as advisory members. The seven members of the state board who are elected supervisors shall be appointed by the governor. In making these appointments the governor may consider persons recommended by the state association of soil and water conservation district. One member shall be appointed from each of the state soil and water conservation board administrative regions.

[For text of subs 1a to 3, see M.S.1984]

Subd. 4. **Powers and duties.** In addition to the powers and duties hereinafter conferred upon the state soil and water conservation board, it shall have the following powers and duties:

(1) Prepare and present to the commissioner of agriculture a budget to finance the activities of the state board and the districts and to administer any law appropriating funds to districts. The board shall receive and disburse any grants made available to the state by the United States Department of Agriculture under the preferred program developed under United States Code, title 16, sections 2001 to 2009;

(2) Offer any appropriate assistance to the supervisors of the districts in implementing any of their powers and programs. Any funds made available to a district for expenditures necessary for the operations of the district shall be a grant to the district to be used only for purposes authorized by the state board pursuant to law. The soil and water conservation district may designate the board of county commissioners to act as the agent of the district to receive and expend these funds at

the direction and with the approval of the board of supervisors of the district. At least annually the state board shall audit, in a manner it prescribes, the expenditure of funds so granted;

(3) Keep the supervisors of each district informed of the activities and experience of all other districts and facilitate cooperation and an interchange of advice and experience among the districts;

(4) Coordinate the programs and activities of the districts with appropriate agencies by advice and consultation;

(5) Approve or disapprove the plans or programs of districts relating to the use of state funds administered by the state board;

(6) Secure the cooperation and assistance of the appropriate agencies in the work of the districts and to develop a program to advise and assist appropriate agencies in obtaining state and federal funds for erosion, sedimentation, flooding and agriculturally related pollution control programs;

(7) Develop and implement a comprehensive public information program concerning the districts' activities and programs, the problems and preventive practices of erosion, sedimentation, agriculturally related pollution, flood prevention, and the advantages of formation of districts in areas where their organization is desirable;

(8) Subdivide and consolidate districts without a hearing or a referendum so as to confine districts within county limits, provided that no district, when feasible and practicable, shall contain less than four full or fractional congressional townships;

(9) Assist in the implementation of a statewide program for inventorying and classification of the types of soils throughout the state as determined by the Minnesota cooperative soil survey;

(10) Identify research needs and cooperate with other public agencies in research concerning the nature and extent of erosion, sedimentation, flooding and agriculturally related pollution, the amounts and sources of sediment and pollutants delivered to the waters of the state, and long-term soil productivity;

(11) Develop programs to reduce or prevent soil erosion, sedimentation, flooding and agriculturally related pollution, including but not limited to structural and land-use management practices;

(12) Develop a system of priorities within the state to identify the erosion, flooding, sediment and agriculturally related pollution problem areas that are most severely in need of control systems; and

(13) Ensure compliance with statewide programs and policies established by the state board pursuant to this section and section 40.02 by advice, consultation, and approval of grant agreements with the districts.

History: 1985 c 67 s 1; 1Sp1985 c 10 s 47

40.036 COST-SHARING CONTRACTS FOR EROSION CONTROL AND WATER MANAGEMENT.

Subdivision 1. **Allocation to districts.** (a) Within the limits of available funds, the state board may allocate funds to districts to be used to share the cost of implementing any system or practices for erosion or sedimentation control or water quality improvement which are designed to protect and improve the state's soil and water resources. Any district board requesting funds of the state board shall submit a comprehensive plan, an annual work plan, and an application for cost-sharing funds in the form prescribed by the state board. The comprehensive and annual work plans shall be completed as provided in section 40.07, subdivision 9. After

review of the district's comprehensive plan, the state board shall approve it with any necessary amendments or reject it. If the state board approves the comprehensive plan, including the most recent plan amendment, the annual work plan and the application of the district it shall determine the specific amount of funds to allocate to the district for the purpose of cost-sharing contracts. Neither the state board nor the district board shall furnish any financial aid for practices designed only for an increase in land productivity.

(b) The state board shall allocate at least 70 percent of available cost-sharing funds to areas with high priority erosion, sedimentation, or water quality problems. The areas must be selected based on the statewide priorities established by the board. The allocated funds must be used for conservation practices to address high priority problems as identified in the comprehensive and annual work plans of the districts.

(c) The remaining cost-sharing funds may be allocated by the board to districts as follows:

(1) for technical and administrative assistance not to exceed 20 percent of the available cost-sharing funds; and

(2) for conservation practices to address lower priority erosion, sedimentation, or water quality problems.

[For text of subd 2, see M.S.1984]

Subd. 3. **Rules.** The state board shall adopt rules prescribing:

(1) the procedures and criteria for allocating funds to districts for cost-sharing contracts;

(2) the standards and guidelines for all cost-sharing contracts;

(3) the scope and content of comprehensive plans, plan amendments and annual work plans which local districts must submit under section 40.07, subdivision 9, to qualify for cost-sharing funds;

(4) standards and methods necessary for the planning and implementation of a priority cost-sharing program, including guidelines for identifying high priority erosion, sedimentation and water quality problems;

(5) the share of the cost of conservation practices to be paid from state cost-sharing money; and

(6) requirements for all districts to document their efforts to identify and contact land occupiers with high priority erosion problems.

Subd. 4. [Repealed, 1985 c 59 s 3]

Subd. 5. [Repealed, 1985 c 59 s 3]

Subd. 6. [Repealed, 1985 c 59 s 3]

History: 1985 c 59 s 1,2

40.038 TECHNICAL AND ADMINISTRATIVE ASSISTANCE.

Subdivision 1. [Repealed, 1985 c 59 s 3]

[For text of subd 2, see M.S.1984]

40.072 SOIL AND WATER CONSERVATION DISTRICTS; WORKS OF IMPROVEMENT.

[For text of subs 1 and 2, see M.S.1984]

Subd. 3. **Preliminary program plans; application for federal or other aid; cooperation with other agencies; report and recommendations to the county board;**

adoption of improvement work plan. After adoption of the resolution recommending the improvement work unit and program as provided in subdivision 2, with amendments thereto, if any, the board or boards, when the board or boards of county commissioners by resolution so directs, may make or cause to be made such further surveys and studies as may be necessary and thereupon make or cause to be made a preliminary general plan for carrying out the program for the improvement work unit as set forth in the resolution or any part thereof, with cost estimates therefor. The board or boards, at the direction of the county board or boards, may make application for federal aid, state aid, or aid available from any other source for the works embraced in the program or any part thereof under Public Law Number 566 or any act amendatory thereof or supplementary thereto or any other applicable federal or state law, and may take all steps necessary to determine whether such aid will be available and the amount thereof. The board may consider how the cost of the works of improvement or any part thereof above prospective federal or other aid may be met from the funds of the district or from the proceeds of assessments on benefited property or otherwise, and make estimates therefor. If the cooperation or joint action of any adjacent soil and water conservation district or any other public agency is desirable for any purpose under the program or in connection therewith, the board, at the direction of the county board or boards, may negotiate with the authorities concerned for such cooperation or joint action as authorized in this chapter, and acts amendatory thereof, or as otherwise provided by law. Upon completion of the foregoing steps as far as necessary, the board or boards may make and file a report, summarizing its findings thereon and its recommendations for further action on the program or any part thereof. The board or boards shall make the plan together with the preliminary general plan for the improvement work unit available to the county board or boards and to all other public agencies and persons concerned, and may give such publicity thereto as the district board deems advisable. The report shall contain substantially the same engineering information required by section 112.49, subdivisions 1 and 2. The board or boards shall transmit a copy of the report and preliminary plan to any regional development agency created by Minnesota law for the region in which each project is located, and in those cases where the plan involves a project for which a permit is required from the commissioner of natural resources under chapter 105, or for which proceedings will be instituted under sections 106A.005 to 106A.811, to the commissioner of natural resources and to the water resources board. The water resources board shall review the report and plan and, if it concludes that the plan is inconsistent with systematic administration of state water policy, shall report its conclusion to the board or boards and the commissioner of natural resources within 60 days after receiving the report and plan. Thereafter the board or boards may modify and retransmit the report and preliminary plan to the water resources board, or may request a hearing on the report and plan before the water resources board. The water resources board shall hear the matter in the same manner, and follow the same procedures, as provided in sections 105.76 to 105.79, for the hearing of cases where it consents to intervention proceedings. Except where the water resources board concludes that the report and plan are inconsistent with state water policy, the district board or boards, with the approval of the county board or boards, may adopt and sponsor the improvement work unit and a program of work for the unit.

Subd. 4. Action on work project pursuant to report; petition and hearing. The county board or boards, acting jointly under section 471.59, may take action on a project within the improvement work unit for construction or installation of works of improvement or part thereof pursuant to the recommendations in the report only upon a petition for a project signed by at least 25 percent of the owners of the land over which the proposed improvement work passes or upon which it is located, or by

the owners of at least 30 percent of the area of such land, describing such land and requesting the county board or joint county board to hold a hearing on the practicability and desirability of carrying out the project in accordance with the preliminary plan and the recommendations in the report of the district board or boards. If the report specifies that any part of the cost of the project is to be paid from the proceeds of assessments on benefited property, one or more of the petitioners, upon the filing of the petition and before any action is taken thereon, shall file a bond to the county or counties acting jointly conditioned as provided by section 106A.205 in the case of a county drainage system, to be approved by the chairman of the board. The county board or joint county board shall set a time and place for the hearing on the petition, and cause notice thereof to be given as provided in section 106A.261, subdivision 1. If upon the hearing the county board or joint county board finds that the carrying out of the project as requested in the petition will be feasible, in accordance with the recommendations of the report, and in furtherance of the objectives and purposes therein set forth, and that the estimated cost will not exceed the funds which may reasonably be expected to be available for payment thereof, the county board or joint county board may adopt a resolution so determining and directing further action on the project as hereinafter provided. By such resolution the county board or joint county board shall determine the amount to be paid from the respective sources of available or potentially available funds, including federal aid, district funds, assessments on benefited property, and other funds, if any. The amount payable from district funds may be commensurate with but shall not exceed the value of the general public benefit of the project to the district as determined by the board or boards.

Subd. 5. Action on project without assessments. If no part of the project cost is to be paid from assessments on benefited property, the county board or joint county board may proceed with complete surveys and detailed plans and specifications and make its order establishing the project. The order shall contain findings substantially conforming to those required by section 106A.341, subdivision 2. Notice summarizing the findings and order shall be served upon those persons entitled to receive notice of a county drainage project pursuant to section 106A.325, in the manner therein provided unless such notice is waived in writing by each person entitled to receive such notice. The waiver of notice shall be filed with the county auditor. Unless an appeal is taken within 30 days after the notice is given, the county board or joint county board may proceed to acquire necessary rights or property, procure materials, let contracts, and take any other steps appropriate to complete the project. The county board or joint county board may delegate its duties and powers under this subdivision to the district board or joint district board provided that the district board or joint district board shall not exercise the power of eminent domain.

Subd. 6. Action on project with assessments. If any part of the cost of the project is to be paid from the proceeds of assessments on benefited property, viewers shall be appointed as provided in section 106A.305, and shall report as required by sections 106A.311, 106A.315, and 106A.321. The board or joint board of county commissioners shall direct the petitioners or, with its consent, the board or joint board of supervisors, to provide such engineering services as may be necessary to produce final plans adequate for the construction of the proposed improvement. The county board or joint county board shall then give notice of and conduct a final hearing substantially in accordance with sections 106A.325 to 106A.341 inclusive, as in the case of a county drainage proceeding, so far as these sections are consistent with this chapter, and acts amendatory thereof. If it is determined that the total benefits to property are not as much as the amount payable from the proceeds of

assessments as specified in the report of the board or boards under subdivision 3, the petition shall be dismissed and further action on the project discontinued except as hereinafter provided, unless the county board or joint county board shall determine that the deficiency may be met by increasing the amount payable from district funds or other funds, subject to the limitations hereinbefore prescribed, in which case further action for completion of the project may be taken as herein provided. If it is determined that the total benefits to property are as much as or more than the amount payable from the proceeds of assessments as specified in the report and that the other applicable requirements of law have been complied with, the county board or joint county board shall by order containing such findings establish the project as reported or amended and adopt and confirm the viewers' report as made or amended. If the total amount of benefits to be assessed upon property pursuant to the viewers' report as so adopted and confirmed is greater than the amount specified as payable from such assessments in the report of the board or boards under subdivision 3, the county board or joint county board may reduce the amounts payable from other sources of funds accordingly in such proportions as it may determine. Further action shall be taken thereon as provided in sections 106A.005 to 106A.811, so far as appropriate, except that each tract of land affected shall be assessed for the full amount of benefits, less damages, if any, as shown by the viewers' report as adopted and confirmed, unless the total amount of such benefits, less damages, exceeds the total actual cost of the project to be paid from the proceeds of assessments, in which case such cost shall be prorated for assessment purposes as provided in section 106A.601. Upon filing of the viewers' report as provided in this section the county board of each county affected shall provide funds to meet its proportionate share of the total cost of the improvement, as shown by the report and order of the county board or joint county board, and for such purposes is authorized to issue bonds of the county in such amount as may be necessary in the manner provided in section 106A.635.

The provision of section 106A.635 requiring the county board to let a contract for construction before issuing bonds shall not be applicable to bonds issued to provide the funds required to be furnished by this section.

The county board or joint county board, pursuant to agreement with the district board or boards, may by resolution direct the district to undertake, construct, install, maintain, and operate the work of improvement upon terms mutually agreed upon. However, if it is necessary to acquire property by eminent domain, the county, or the counties acting jointly, shall exercise the power of eminent domain and shall convey the property to the district or districts pursuant to the agreement.

If, pursuant to an agreement, the responsibility for a work of improvement is vested in a district or districts, the respective county treasurers shall transmit the proceeds of all related assessments or bond issues, when collected, to the treasurer of the district, who shall credit the same to the proper funds under the direction of the district board.

[For text of subds 7 and 8, see M.S.1984]

Subd. 9. Repair. The term "repair" used in this section means restoring the project works of improvement or any part thereof as nearly as practicable to the same condition as when originally constructed or subsequently improved.

After the construction of a project has been completed and accepted by the board of the county or district having authority over the project, the board shall maintain the same or such part thereof as lies within its jurisdiction and provide the repairs required to render it efficient to answer its purpose. This board shall have, exercise, and perform the powers and duties of the drainage authority under sections

106A.701 to 106A.745, except as follows. If this board is a board of a soil and water conservation district, the financing of repairs which require assessments and bond issues shall be the responsibility of the county board or joint county board in a manner similar to that provided for the financing of the cost of original construction of the project and as provided in sections 106A.701 to 106A.745, so far as appropriate.

History: 1985 c 172 s 93-97

40.073 APPEALS.

Any person aggrieved by an order of the board or joint board of county commissioners in any proceedings undertaken pursuant to section 40.072, subdivision 5 or 6, may appeal to the district court upon the grounds and in the manner provided by sections 106A.091 and 106A.095, for a county drainage proceeding. Notices required by sections 106A.091 and 106A.095, to be filed with the county auditor shall also be filed with the board or joint board of supervisors. No appeal shall be permitted from an order of the board or joint board of county commissioners or the board or joint board of supervisors made pursuant to section 40.072, subdivision 5 or 6 which dismisses a petition or refuses to establish a project.

History: 1985 c 172 s 98

40.19 DEFINITIONS.

Subdivision 1. **Applicability.** The definitions in this section apply to Laws 1985, chapter 256, sections 1 to 22 and sections 40.19 to 40.28.

Subd. 2. [Renumbered subd 7a]

Subd. 2a. **Conservation plan.** "Conservation plan" means a set of practices that will decrease soil erosion to the soil loss limits on a particular parcel of land.

Subd. 3. [Repealed, 1985 c 256 s 25; 1Sp1985 c 13 s 376]

Subd. 4. [Repealed, 1985 c 256 s 25; 1Sp1985 c 13 s 376]

Subd. 5. **Conservation practices.** "Conservation practices" means practices and standards containing a definition, purpose, and conditions that the practice applies including design requirements, and specifications containing a statement of details required for installing a conservation practice, including kinds, quality, and quantity of work and materials needed to meet the standards. A conservation practice may be a permanent or temporary, vegetative or structural, measure that will aid the control of wind and water erosion. Permanent practices are those that have effective life greater than ten years and include grassed waterways, terraces, field windbreaks, water control structures, grade stabilization structures, sediment retention structures, strip-cropping, and other permanent practices approved by the state soil and water conservation board. Temporary practices include conservation tillage, contour farming, grasses and legumes in rotation, emergency tillage, and any other cultural practices approved by the state soil and water conservation board.

Subd. 6. **Development activity.** "Development activity" means a physical disturbance of the land, that may result in sedimentation of adjacent lands or waters, associated with activities that include clearing, grading, excavating, transporting, and filling lands. Road construction by federal, state, county, and municipal governments designed according to department of transportation standard specifications for construction are not development activities.

Subd. 7. **Erosion.** "Erosion" means any process that removes soil away from the surface of the land by the action of water, wind, or gravity.

Subd. 7a. **Excessive soil loss.** "Excessive soil loss" means soil loss that is greater than the soil loss limits. "Excessive soil loss" may be evidenced by sedimentation on adjoining land or in a body of water.

Subd. 8. [Renumbered subd 9a]

Subd. 9. **Land occupier.** "Land occupier" means a person, firm, corporation, municipality, or other legal entity that holds title to, or is in possession of any lands, as owner, lessee, or otherwise. "Land occupier" includes both the owner and the occupier of the land if they are not the same.

Subd. 9a. **Local government.** "Local government" means the elected governing body of a county, home rule charter or statutory city, or town, or their designated agents. Agents may include soil and water conservation districts, water management organizations, joint powers boards, watershed districts, and other governmental entities responsible for resource management within the local government's jurisdiction.

Subd. 10. [Repealed, 1985 c 256 s 25; 1Sp1985 c 13 s 376]

Subd. 11. **Sediment.** "Sediment" means solid mineral or organic material that is in suspension, is being transported, or has been moved from its original location by air, water, gravity, or ice, and has been deposited at another location.

Subd. 11a. **Soil.** "Soil" means the unconsolidated mineral and organic material on the immediate surface of the earth that serves as natural medium for the growth of land plants.

Subd. 12. [Repealed, 1985 c 256 s 25; 1Sp1985 c 13 s 376]

Subd. 13. **Soil loss limit.** "Soil loss limit" means the maximum amount of soil loss from water or wind erosion, expressed in tons per acre per year, that is allowed by local regulations on a particular soil.

Subd. 14. [Repealed, 1985 c 256 s 25; 1Sp1985 c 13 s 376]

Subd. 15. [Repealed, 1985 c 256 s 25; 1Sp1985 c 13 s 376]

[For text of subd 16, see M.S.1984]

History: 1985 c 256 s 1-11

40.20 SOIL LOSS ORDINANCES.

Each statutory or home rule charter city, town, or county that has planning and zoning authority under sections 366.10 to 366.19, 394.21 to 394.37, or 462.351 to 462.365 is encouraged to adopt a soil loss ordinance. The soil loss ordinance must use the soil loss tolerance for each soil series described in the United States Soil Conservation Service Field Office Technical Guide to determine the soil loss limits but the soil loss limits must be attainable by the best practicable soil conservation practice. A local government that adopts a soil loss ordinance may enter an agreement with its agent allowing the agent to administer the functions and perform the duties of the local government as provided by Laws 1985, chapter 256, sections 12 to 22. Ordinances adopted by local governments within the metropolitan area defined in section 473.121 must be consistent with local water management plans adopted under section 473.879.

History: 1985 c 256 s 12

40.21 RULES, MODEL ORDINANCE, AND PERIODIC REVIEW.

Subdivision 1. **Rules and model ordinance as guide.** The commissioner of agriculture, in consultation with counties, soil and water conservation districts, and

other appropriate agencies, shall adopt a model ordinance and rules that serve as a guide for local governments to carry out the provisions of Laws 1985, chapter 256, sections 12 to 22 and sections 40.20 to 40.26, and provide administrative procedures for the state soil and water conservation board for Laws 1985, chapter 256, sections 12 to 21 and sections 40.20 to 40.26.

Subd. 2. **Model ordinance.** The model ordinance must specify the technical and administrative procedures required to control soil loss and erosion. The model ordinance is the minimum regulation to be adopted. The model ordinance must use the soil loss tolerance for each soil series described in the United States Soil Conservation Service Field Office Technical Guide to determine soil loss limits, but the soil loss limits must be attainable by the best practicable soil conservation practice.

Subd. 3. **Periodic review.** At least once every five years the commissioner of agriculture shall review the rules and model ordinance in cooperation with counties, soil and water conservation districts, and appropriate agencies to ensure their continued applicability and relevance.

History: 1985 c 256 s 13

40.22 EXCESSIVE SOIL LOSS PROHIBITED.

Subdivision 1. **Prohibited activities.** A person may not cause, conduct, contract for, or authorize an activity that causes excessive soil loss.

Subd. 2. **Agricultural land.** A land occupier of agricultural land is not violating subdivision 1 if the occupier is farming by methods that implement the best practicable conservation practices.

[For text of subd 3, see M.S.1984]

History: 1985 c 256 s 14,15

40.23 ENFORCEMENT.

Subdivision 1. **Complaint.** (a) An adversely affected landowner, an elected or appointed official of the local government, or a soil and water conservation district board member may submit a written complaint to the local government if conditions exist that indicate there is excessive soil loss from a tract of land that affects another tract of land or body of water. The written complaint must contain:

- (1) the name and address of the landowner;
- (2) the location of the tract of land with the excessive soil loss;
- (3) land or water that is affected by the excessive soil loss; and
- (4) a description of the nature of the excessive soil loss and resulting sedimentation.

(b) The local government shall submit the complaint to the soil and water conservation district for soil loss determination.

Subd. 2. **District determination of soil loss.** (a) The soil and water conservation district shall determine the average soil loss in tons per acre per year of the tract of land cited in the complaint.

(b) The soil and water conservation district may enter public or private land to make an inspection for the determination of soil loss or to complete the report. The landowners must be notified of the time of the inspections and be given an opportunity to be present when the inspection is made.

(c) The soil and water conservation district shall submit a report to the local government that states the average soil loss in tons per acre per year for each tract of

land and whether the soil loss is excessive under the applicable soil loss limits. If the soil loss is excessive the report must include identification of existing management practices and a conservation plan and time schedule that will prevent excessive soil loss or reduce the soil loss to the most practicable extent.

Subd. 3. Mediation. (a) If the soil and water conservation district report shows that soil loss from the tract of land is excessive and alternative practices are available to reduce the soil loss, the local government shall request the allegedly offending landowner to participate in mediation with the local government.

(b) The local government may appoint the planning and zoning director, a planning commissioner, or other county official to act as a mediator. The local government may also contract with a mediation center to provide mediation services.

(c) The landowner, and the local government or its agent must attempt to agree on conservation practices and times to implement the practice that will reduce soil loss to the local soil loss limits.

(d) A mediated settlement must be in writing, and filed with the local government.

(e) If the local government and the landowner do not agree to a mediated settlement, or if the landowner refuses to participate in mediation, the local government shall forward the complaint to the county attorney. The county attorney may dismiss the complaint or petition for a hearing under section 40.242.

Subd. 4. Application for cost-sharing funds. The landowner has 90 days after a mediated settlement is filed to apply for state cost-sharing funds that will provide 75 percent of the cost of the permanent conservation practices. Only 50 percent cost share will be provided if the application is not made within 90 days after the settlement is filed. The landowner must apply for 50 percent cost share within 270 days after the mediated settlement is filed.

Subd. 5. Penalty. A landowner that does not comply with the provisions of the mediated settlement is subject to a civil penalty up to \$500. Soil conservation practices that are made in good faith and substantial compliance are a complete defense.

History: 1985 c 256 s 16

40.24 [Repealed, 1985 c 256 s 25]

40.242 DISTRICT COURT HEARING.

Subdivision 1. Determination of proper conservation plan. If the landowner and the local government do not agree to a mediated settlement or if the landowner has refused mediation, the county attorney may petition the district court for a hearing. The landowner shall have the opportunity to present the landowner's conservation plan and time schedule as an alternative to the local government conservation plan and time schedule. The court shall order the landowner to implement the conservation plan and time schedule that is the least burdensome to the landowner and will reduce soil loss to at least the soil loss limit. The court may amend the local government's or landowner's conservation plan and time schedule, or develop a new conservation plan and time schedule. The court shall set times to implement, make satisfactory progress, and complete the conservation plan.

Subd. 2. Cost-sharing funds. (a) If the court orders implementation of the landowner's conservation plan and time schedule, or amends the conservation plan and time schedule, or if the court develops a new conservation plan and time schedule, the landowner is eligible to apply for 75 percent cost-share funds for permanent conservation practices. The landowner must apply for the cost share

within 90 days after the court order. If the landowner does not apply within 90 days for the cost-sharing funds the cost share is reduced to 50 percent. The court shall establish a time when the landowner is not eligible for cost-sharing funds if an application is not made.

(b) If the court orders a plan and time schedule developed by the district in its report, the landowner is eligible for 50 percent cost share if the landowner applies within 90 days after the court order.

History: 1985 c 256 s 17

40.244 SOIL AND WATER CONSERVATION ASSISTANCE.

A landowner who has filed a mediated settlement under section 40.23 or who has received a court order under section 40.242 may request the soil and water conservation district to assist in the planning, design, and application of practices necessary to reduce soil loss to the applicable soil loss limit amounts or to the greatest practical extent. The soil and water conservation district must give the landowner a high priority for technical and cost-sharing assistance.

History: 1985 c 256 s 18

40.246 ATTORNEY AND LOCAL GOVERNMENT MAY PERFORM DUTY OF COUNTY.

The city attorney or town attorney may perform the duties of a county attorney. A city or town may perform the duties of a local government only if the city or town adopts a soil loss ordinance and the land in the complaint is located within the city or town.

History: 1985 c 256 s 19

40.25 EROSION CONTROL PLAN FOR DEVELOPMENT ACTIVITIES.

Subdivision 1. **Sedimentation control plan.** (a) A person engaged in a development activity that will disturb over one acre of land must submit a sedimentation control plan and time schedule that will prevent excessive soil loss to the local government having jurisdiction over the land before the development activity is to begin.

(b) A sedimentation control plan and time schedule must specify how the movement of soil and damage to other property during the construction will be minimized, including the use of temporary seeding, fiber mats, plastic, straw, mulch, sediment control basins, and other measures to prevent erosion and sediment damage. The time schedule must establish deadlines for the implementation and completion of each phase or element of the sedimentation control plan.

Subd. 2. **Permit required.** The local government may appoint the zoning and planning director, building inspector, county engineer, or the soil and water conservation district to review the plan and time schedule. If the sedimentation control plan and time schedule will prevent excessive soil loss to the most practicable extent, the local government must issue a permit that authorizes the development activity contingent upon the implementation and completion of the sedimentation control plan.

Subd. 3. **Penalty.** A person engaged in a development activity who does not obtain a sedimentation control plan permit or does not commence or complete the plan or make satisfactory progress to complete the plan is subject to a civil penalty. Soil conservation practices made in good faith and substantial compliance are a defense.

Subd. 4. **Application.** For counties, the provisions of this section apply only to county jurisdiction over unincorporated areas.

History: 1985 c 256 s 20

40.26 APPLICATION FOR COST-SHARING FUNDS.

(a) Except for a development activity, a land occupier may not be required to establish soil conservation practices unless state cost-sharing funds have been specifically approved for that land and have been made available to the land occupier under sections 40.23 and 40.242, equal to at least 75 percent of the cost of the permanent conservation practices on a voluntary basis, or a 50 percent cost share if an application for cost share is not made within 90 days after the board approves a mediated written agreement or within 90 days after the court orders implementation of a plan and time schedule prepared by the landowner or the court. For mediated settlements, a court order that implements the landowner's alternatives or the court's alternatives must state the time schedule for application for 50 percent cost share. If the court orders implementation of the district's plan and time schedule, a landowner is only eligible for 50 percent cost share.

(b) The state soil and water conservation board shall review these requirements at least once each year, and may authorize a district to provide a higher percentage of cost sharing than is required by this section. To aid in this determination, the state board may consider the location of the affected area in relation to the priority areas as established in the soil and water conservation district annual and long-range plans.

History: 1985 c 256 s 21

40.28 PENALTY.

A person who violates section 40.22, subdivision 1, is subject to a civil penalty up to \$500.

History: 1985 c 256 s 22