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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-FIFTH
SESSION

HOUSE FILE No. 577

February 5, 2007

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The bill was read for the first time and referred to the Committee on Environment and Natural Resources

February 19, 2007

Committee Recommendation and Adoption of Report:

To Pass as Amended and re-referred to the Committee on Local Government and Metropolitan Affairs

March 8, 2007

Committee Recommendation and Adoption of Report:

To Pass and re-referred to the Committee on Finance

1.1 A bill for an act
1.2 relating to natural resources; modifying requirements for ditch buffers; requiring
1.3 annual drainage authority reports; modifying drainage repair and inspection
1.4 requirements; appropriating money; amending Minnesota Statutes 2006, sections
1.5 103E.021, subdivisions 1, 2, 3, by adding a subdivision; 103E.315, subdivision
1.6 8; 103E.321, subdivision 1; 103E.701, by adding a subdivision; 103E.705,
1.7 subdivisions 1, 2, 3; 103E.728, subdivision 2; proposing coding for new law
1.8 in Minnesota Statutes, chapter 103E.

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

1.10 Section 1. Minnesota Statutes 2006, section 103E.021, subdivision 1, is amended to
1.11 read:

1.12 Subdivision 1. **Spoil banks must be spread and ~~grass-planted~~ permanent**
1.13 **vegetation established.** In any proceeding to establish, construct, improve, or do any
1.14 work affecting a public drainage system under any law that appoints viewers to assess
1.15 benefits and damages, the authority having jurisdiction over the proceeding shall order
1.16 spoil banks to be spread consistent with the plan and function of the drainage system. The
1.17 authority shall order that permanent grass, other than a noxious weed, be planted on
1.18 ~~the banks ditch side slopes and on a strip~~ that a permanent strip of perennial vegetation
1.19 approved by the drainage authority be established on each side of the ditch. Preference
1.20 should be given to planting native species of a local ecotype. The approved perennial
1.21 vegetation shall not impede future maintenance of the ditch. The permanent strips of
1.22 perennial vegetation shall be 16-1/2 feet in width measured outward from the top edge
1.23 of the constructed channel resulting from the proceeding, or to the crown of the leveled
1.24 spoil bank, whichever is the greater, ~~on each side of the top edge of the channel of the~~
1.25 ditch. ~~except for an action by a drainage authority that results only in a redetermination of~~
1.26 benefits and damages, for which the required width shall be 16-1/2 feet. Drainage system

2.1 rights-of-way for the acreage and additional property required for the ~~planting~~ permanent
2.2 strips must be acquired by the authority having jurisdiction.

2.3 Sec. 2. Minnesota Statutes 2006, section 103E.021, subdivision 2, is amended to read:

2.4 Subd. 2. **Reseeding and harvesting grass perennial vegetation**. The authority
2.5 having jurisdiction over the repair and maintenance of the drainage system shall supervise
2.6 all necessary reseeded. The permanent grass strips of perennial vegetation must be
2.7 maintained in the same manner as other drainage system repairs. Harvest of the grass
2.8 vegetation from the grass permanent strip in a manner not harmful to the grass vegetation
2.9 or the drainage system is the privilege of the fee owner or assigns. The ~~county~~ drainage
2.10 inspector shall establish rules for the fee owner and assigns to harvest the grass vegetation.

2.11 Sec. 3. Minnesota Statutes 2006, section 103E.021, subdivision 3, is amended to read:

2.12 Subd. 3. **Agricultural practices prohibited**. Agricultural practices, other than
2.13 those required for the maintenance of a permanent growth of grass perennial vegetation,
2.14 are not permitted on any portion of the property acquired for planting perennial vegetation.

2.15 Sec. 4. Minnesota Statutes 2006, section 103E.021, is amended by adding a subdivision
2.16 to read:

2.17 Subd. 6. **Incremental implementation of vegetated ditch buffer strips and side**
2.18 **inlet controls**. (a) Notwithstanding other provisions of this chapter requiring appointment
2.19 of viewers and redetermination of benefits and damages, a drainage authority may
2.20 implement permanent buffer strips of perennial vegetation approved by the drainage
2.21 authority or side inlet controls, or both, adjacent to a public drainage ditch, where
2.22 necessary to control erosion and sedimentation, improve water quality, or maintain the
2.23 efficiency of the drainage system. Preference should be given to planting native species of
2.24 a local ecotype. The approved perennial vegetation shall not impede future maintenance
2.25 of the ditch. The permanent strips of perennial vegetation shall be 16-1/2 feet in width
2.26 measured outward from the top edge of the existing constructed channel. Drainage system
2.27 rights-of-way for the acreage and additional property required for the permanent strips
2.28 must be acquired by the authority having jurisdiction.

2.29 (b) A project under this subdivision shall be implemented as a repair according to
2.30 section 103E.705, except that the drainage authority may appoint an engineer to examine
2.31 the drainage system and prepare an engineer's repair report for the project.

2.32 (c) Damages shall be determined by the drainage authority, or viewers, appointed by
2.33 the drainage authority, according to section 103E.315, subdivision 8. A damages statement

3.1 shall be prepared, including an explanation of how the damages were determined for each
 3.2 property affected by the project, and filed with the auditor or watershed district. Within 30
 3.3 days after the damages statement is filed, the auditor or watershed district shall prepare
 3.4 property owners' reports according to section 103E.323, subdivision 1, clauses (1), (2),
 3.5 (6), (7), and (8), and mail a copy of the property owner's report and damages statement to
 3.6 each owner of property affected by the proposed project.

3.7 (d) After a damages statement is filed, the drainage authority shall set a time, by
 3.8 order, not more than 30 days after the date of the order, for a hearing on the project. At
 3.9 least ten days before the hearing, the auditor or watershed district shall give notice by mail
 3.10 of the time and location of the hearing to the owners of property and political subdivisions
 3.11 likely to be affected by the project.

3.12 (e) The drainage authority shall make findings and order the repairs to be made if
 3.13 the drainage authority determines from the evidence presented at the hearing and by the
 3.14 viewers and engineer, if appointed, that the repairs are necessary for the drainage system
 3.15 and the costs of the repairs are within the limitations of section 103E.705.

3.16 **Sec. 5. [103E.067] DITCH BUFFER STRIP ANNUAL REPORTING.**

3.17 The drainage authority shall annually submit a report to the Board of Water and Soil
 3.18 Resources for the calendar year including:

- 3.19 (1) the number and types of actions for which viewers were appointed;
 3.20 (2) the number of miles of buffer strips established according to section 103E.021;
 3.21 (3) the number of drainage system inspections conducted; and
 3.22 (4) the number of violations of section 103E.021 identified and enforcement actions
 3.23 taken.

3.24 **Sec. 6. Minnesota Statutes 2006, section 103E.315, subdivision 8, is amended to read:**

3.25 **Subd. 8. Extent of damages.** Damages to be paid may include:

- 3.26 (1) the fair market value of the property required for the channel of an open ditch
 3.27 and the permanent ~~grass~~ strip of perennial vegetation under section 103E.021;
 3.28 (2) the diminished value of a farm due to severing a field by an open ditch;
 3.29 (3) loss of crop production during drainage project construction; ~~and~~
 3.30 (4) the diminished productivity or land value from increased overflow; and
 3.31 (5) costs to restore a perennial vegetative cover or structural practice existing
 3.32 under a federal or state conservation program adjacent to the permanent drainage system
 3.33 right-of-way and damaged by the drainage project.

4.1 Sec. 7. Minnesota Statutes 2006, section 103E.321, subdivision 1, is amended to read:

4.2 Subdivision 1. **Requirements.** The viewers' report must show, in tabular form,
4.3 for each lot, 40-acre tract, and fraction of a lot or tract under separate ownership that
4.4 is benefited or damaged:

4.5 (1) a description of the lot or tract, under separate ownership, that is benefited or
4.6 damaged;

4.7 (2) the names of the owners as they appear on the current tax records of the county
4.8 and their addresses;

4.9 (3) the number of acres in each tract or lot;

4.10 (4) the number and value of acres added to a tract or lot by the proposed drainage of
4.11 public waters;

4.12 (5) the damage, if any, to riparian rights;

4.13 (6) the damages paid for the permanent ~~grass strip~~ of perennial vegetation under
4.14 section 103E.021;

4.15 (7) the total number and value of acres added to a tract or lot by the proposed
4.16 drainage of public waters, wetlands, and other areas not currently being cultivated;

4.17 (8) the number of acres and amount of benefits being assessed for drainage of areas
4.18 which before the drainage benefits could be realized would require a public waters work
4.19 permit to work in public waters under section 103G.245 to excavate or fill a navigable
4.20 water body under United States Code, title 33, section 403, or a permit to discharge into
4.21 waters of the United States under United States Code, title 33, section 1344;

4.22 (9) the number of acres and amount of benefits being assessed for drainage of areas
4.23 that would be considered conversion of a wetland under United States Code, title 16,
4.24 section 3821, if the area was placed in agricultural production;

4.25 (10) the amount of right-of-way acreage required; and

4.26 (11) the amount that each tract or lot will be benefited or damaged.

4.27 Sec. 8. Minnesota Statutes 2006, section 103E.701, is amended by adding a subdivision
4.28 to read:

4.29 Subd. 7. **Restoration; disturbance or destruction by repair.** If a drainage system
4.30 repair disturbs or destroys a perennial vegetative cover or structural practice existing
4.31 under a federal or state conservation program adjacent to the permanent drainage system
4.32 right-of-way, the practice must be restored according to the applicable practice plan or
4.33 as determined by the drainage authority, if a practice plan is not available. Restoration
4.34 costs shall be paid by the drainage system.

5.1 Sec. 9. Minnesota Statutes 2006, section 103E.705, subdivision 1, is amended to read:

5.2 Subdivision 1. **Inspection.** After the construction of a drainage system has been
5.3 completed, the drainage authority shall maintain the drainage system that is located in its
5.4 jurisdiction, ~~including grass~~ the permanent strips of perennial vegetation under section
5.5 103E.021, and provide the repairs necessary to make the drainage system efficient. The
5.6 drainage authority shall have the drainage system inspected on a regular basis by an
5.7 inspection committee of the drainage authority or a drainage inspector appointed by the
5.8 drainage authority. Open drainage ditches shall be inspected at a minimum of every five
5.9 years when no violation of section 103E.021 is found and annually when a violation of
5.10 section 103E.021 is found, until one year after the violation is corrected.

5.11 Sec. 10. Minnesota Statutes 2006, section 103E.705, subdivision 2, is amended to read:

5.12 Subd. 2. ~~Grass~~ **Permanent strip of perennial vegetation inspection and**
5.13 **compliance notice.** (a) The drainage authority having jurisdiction over a drainage system
5.14 must inspect the drainage system for violations of section 103E.021. If an inspection
5.15 committee of the drainage authority or a drainage inspector determines that permanent
5.16 ~~grass~~ strips of perennial vegetation are not being maintained in compliance with section
5.17 103E.021, a compliance notice must be sent to the property owner.

5.18 (b) The notice must state:

5.19 (1) the date the ditch was inspected;

5.20 (2) the persons making the inspection;

5.21 (3) that spoil banks are to be spread in a manner consistent with the plan and function
5.22 of the drainage system and that the drainage system has acquired a ~~grass~~ permanent strip
5.23 ~~16-1/2 feet in width or to the crown of the spoil bank, whichever is greater~~ of perennial
5.24 vegetation, according to section 103E.021;

5.25 (4) the violations of section 103E.021;

5.26 (5) the measures that must be taken by the property owner to comply with section
5.27 103E.021 and the date when the property must be in compliance; and

5.28 (6) that if the property owner does not comply by the date specified, the drainage
5.29 authority will perform the work necessary to bring the area into compliance with section
5.30 103E.021 and charge the cost of the work to the property owner.

5.31 (c) If a property owner does not bring an area into compliance with section 103E.021
5.32 as provided in the compliance notice, the inspection committee or drainage inspector
5.33 must notify the drainage authority.

5.34 (d) This subdivision applies to property acquired under section 103E.021.

6.1 Sec. 11. Minnesota Statutes 2006, section 103E.705, subdivision 3, is amended to read:

6.2 Subd. 3. **Drainage inspection report.** For each drainage system that the board
6.3 designates and requires the drainage inspector to examine, the drainage inspector shall
6.4 make a drainage inspection report in writing to the board after examining a drainage
6.5 system, designating portions that need repair or maintenance of ~~grass~~ the permanent
6.6 strips of perennial vegetation and the location and nature of the repair or maintenance.
6.7 The board shall consider the drainage inspection report at its next meeting and may repair
6.8 all or any part of the drainage system as provided under this chapter. The ~~grass~~ permanent
6.9 strips of perennial vegetation must be maintained in compliance with section 103E.021.

6.10 Sec. 12. Minnesota Statutes 2006, section 103E.728, subdivision 2, is amended to read:

6.11 Subd. 2. **Additional assessment for agricultural practices on ~~grass~~ permanent**
6.12 **strip of perennial vegetation.** (a) The drainage authority may, after notice and hearing,
6.13 charge an additional assessment on property that has agricultural practices on or otherwise
6.14 violates provisions related to the permanent ~~grass~~ strip of perennial vegetation acquired
6.15 under section 103E.021.

6.16 (b) The drainage authority may determine the cost of the repair per mile of open
6.17 ditch on the ditch system. Property that is in violation of the ~~grass~~ requirement shall be
6.18 assessed a cost of 20 percent of the repair cost per open ditch mile multiplied by the length
6.19 of open ditch in miles on the property in violation.

6.20 (c) After the amount of the additional assessment is determined and applied to the
6.21 repair cost, the balance of the repair cost may be apportioned pro rata as provided in
6.22 subdivision 1.

6.23 Sec. 13. **APPROPRIATIONS.**

6.24 Subdivision 1. **Drainage records preservation and modernization.** (a) \$2,000,000
6.25 is appropriated in fiscal year 2008 from the general fund to the Board of Water and Soil
6.26 Resources for local water management challenge grants under Minnesota Statutes, sections
6.27 103B.3361 to 103B.3369, to accelerate statewide public drainage records preservation and
6.28 modernization. A grant under this paragraph must be matched by a nonstate contribution.

6.29 (b) \$150,000 is appropriated in fiscal year 2008 from the general fund to the
6.30 Board of Water and Soil Resources to develop and disseminate, in consultation with the
6.31 Drainage Work Group, guidelines for drainage records preservation and modernization.
6.32 The board shall disseminate the guidelines by June 30, 2008. Specific objectives of the
6.33 guidelines include:

6.34 (1) identifying key components of modern drainage records;

7.1 (2) sharing experiences of drainage authorities with modern electronic records
7.2 to reduce costs of drainage records preservation and modernization by other drainage
7.3 authorities; and

7.4 (3) promoting statewide consistency and efficiency of public drainage records and
7.5 drainage system administration.

7.6 Subd. 2. **Drainage manual update.** \$300,000 is appropriated in fiscal year 2008
7.7 from the general fund to the Board of Water and Soil Resources to update, in consultation
7.8 with the Drainage Work Group, the Minnesota Public Drainage Manual to reflect revisions
7.9 and clarifications of Minnesota drainage law since 1991. The board shall include current
7.10 information about drainage system best management practices options, design, and
7.11 partnership opportunities to enhance drainage system management statewide.

7.12 Subd. 3. **Drainage Work Group.** \$..... is appropriated in fiscal year 2008 from
7.13 the general fund to the Board of Water and Soil Resources to facilitate the work of the
7.14 Drainage Work Group. The Drainage Work Group shall continue to develop consensus
7.15 recommendations to present to the legislature, agencies, and other stakeholders on
7.16 additional drainage issues and topics brought forward by its members.

7.17 Subd. 4. **Drainage assistance team.** \$..... is appropriated in fiscal year 2008 from
7.18 the general fund to the Board of Water and Soil Resources to staff a drainage assistance
7.19 team. The team shall work with drainage authorities and other stakeholders to enable
7.20 multipurpose projects involving drainage infrastructure in Minnesota.