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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-FIFTH
SESSION

HOUSE FILE No. **1063**

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The bill was read for the first time and referred to the Committee on Public Safety and Civil Justice

1.1 A bill for an act
1.2 relating to environment; adopting the Uniform Environmental Covenants Act;
1.3 amending Minnesota Statutes 2006, sections 115.072; 115B.17, subdivision 15;
1.4 proposing coding for new law as Minnesota Statutes, chapter 114E.

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

1.6 Section 1. **[114E.01] SHORT TITLE.**

1.7 This chapter may be cited as the Uniform Environmental Covenants Act.

1.8 Sec. 2. **[114E.05] DEFINITIONS.**

1.9 Subdivision 1. **Scope.** For the purposes of this chapter, the definitions in this
1.10 subdivision have the meanings given.

1.11 Subd. 2. **Activity and use limitations.** "Activity and use limitations" means
1.12 restrictions or obligations with respect to real property that are associated with an
1.13 environmental response project.

1.14 Subd. 3. **Common interest community.** "Common interest community" means a
1.15 common interest community as defined in chapter 515B.

1.16 Subd. 4. **Environmental agency.** "Environmental agency" means the Pollution
1.17 Control Agency, Agriculture Department, or another state or federal agency that
1.18 determines or approves the environmental response project pursuant to which the
1.19 environmental covenant is created.

1.20 Subd. 5. **Environmental covenant.** "Environmental covenant" means a servitude
1.21 created under this chapter that imposes activity and use limitations.

1.22 Subd. 6. **Environmental response project.** "Environmental response project"
1.23 means a plan or work performed to clean up, eliminate, investigate, minimize, mitigate, or

2.1 prevent the release or threatened release of contaminants affecting real property in order to
 2.2 protect public health or welfare or the environment, including:

2.3 (1) response or corrective actions under federal or state law, including chapters 115B,
 2.4 115C, 115E, and 116, and the Comprehensive Environmental Response, Compensation
 2.5 and Liability Act, United States Code, title 44, section 9601, et seq.;

2.6 (2) corrective actions or response to agricultural chemical incidents under chapters
 2.7 18B, 18C, 18D, and 18E; and

2.8 (3) closure, contingency, or corrective actions required under rules or regulations
 2.9 applicable to waste treatment, storage, or disposal facilities or to above or below ground
 2.10 tanks.

2.11 Subd. 7. **Holder.** "Holder" means any person identified as a holder of an
 2.12 environmental covenant as specified in section 114E.10, paragraph (a).

2.13 Subd. 8. **Person.** "Person" means an individual, corporation, business trust, estate,
 2.14 trust, partnership, limited liability company, association, joint venture, public corporation,
 2.15 political subdivision or special purpose unit of government, agency, or instrumentality of
 2.16 the state or federal government, or any other legal or commercial entity.

2.17 Subd. 9. **Record.** "Record," used as a noun, means information that is inscribed on
 2.18 a tangible medium or that is stored in an electronic or other medium and is retrievable
 2.19 in perceivable form.

2.20 Subd. 10. **Recorded.** "Recorded" means recorded with the county recorder or
 2.21 registrar of title, as applicable, in each county where the real property is located.

2.22 Subd. 11. **State.** "State" means a state of the United States, the District of Columbia,
 2.23 Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject
 2.24 to the jurisdiction of the United States.

2.25 **Sec. 3. [114E.10] NATURE OF RIGHTS; ROLE OF ENVIRONMENTAL**
 2.26 **AGENCY; SUBORDINATION OF INTERESTS.**

2.27 (a) Any person, including a person that owns an interest in the real property subject to
 2.28 the environmental covenant, the environmental agency, or any other political subdivision
 2.29 or unit of local government, may be a holder. An environmental covenant may identify
 2.30 more than one holder. The interest of a holder is an interest in real property. The holder is
 2.31 the grantee of the real property interest conveyed under an environmental covenant.

2.32 (b) Unless an environmental agency is a holder, any right that the agency may have
 2.33 with respect to an environmental covenant does not constitute an interest in real property.
 2.34 Approval of an environmental covenant does not make the environmental agency a holder
 2.35 unless it has authority under law other than this chapter to acquire an interest in real

3.1 property for purposes related to an environmental response project and it is expressly
 3.2 identified as a holder in the environmental covenant.

3.3 (c) An environmental agency is bound by any obligation it assumes in an
 3.4 environmental covenant, but an environmental agency does not assume obligations merely
 3.5 by signing an environmental covenant. As provided in section 114E.15, an environmental
 3.6 covenant is not valid unless signed by the environmental agency and the environmental
 3.7 agency may set reasonable conditions for its approval of an environmental covenant.
 3.8 Any other person that signs an environmental covenant is bound by the obligations the
 3.9 person expressly assumes in the covenant, but signing the covenant does not change
 3.10 obligations, rights, or protections granted or imposed under law other than this chapter
 3.11 except as provided in the covenant.

3.12 (d) The following rules apply to interests in real property in existence at the time an
 3.13 environmental covenant is created or amended:

3.14 (1) an interest that has priority under other law is not affected by an environmental
 3.15 covenant unless the person that owns the interest subordinates that interest to the covenant;

3.16 (2) this chapter does not require a person that owns a prior interest to subordinate
 3.17 that interest to an environmental covenant or to agree to be bound by the covenant;

3.18 (3) a subordination agreement may be contained in an environmental covenant or
 3.19 in a separate record that is recorded. If the environmental covenant covers commonly
 3.20 owned property in a common interest community, the environmental covenant or the
 3.21 subordination agreement may be signed by any person authorized by the governing board
 3.22 of the owners' association; and

3.23 (4) an agreement by a person to subordinate a prior interest to an environmental
 3.24 covenant affects the priority of that person's interest but does not by itself impose any
 3.25 affirmative obligation on the person with respect to the environmental covenant.

3.26 **Sec. 4. [114E.15] CONTENTS OF ENVIRONMENTAL COVENANT.**

3.27 (a) An environmental covenant must:

3.28 (1) state on its first page that the instrument is an environmental covenant executed
 3.29 pursuant to this chapter;

3.30 (2) contain a legally sufficient description of the real property subject to the covenant;

3.31 (3) describe the activity and use limitations on the real property;

3.32 (4) identify every holder;

3.33 (5) be signed and acknowledged by the environmental agency, every holder, and
 3.34 every owner of the fee simple of the real property subject to the covenant; and

4.1 (6) identify the name and location of any administrative record for the environmental
 4.2 response project reflected in the environmental covenant.

4.3 (b) In addition to the information required by paragraph (a), an environmental
 4.4 covenant may contain other information, restrictions, and requirements agreed to by
 4.5 the persons who signed it, including any:

4.6 (1) requirements for notice of any transfer of a specified interest in, or concerning
 4.7 proposed changes in use of, applications for building permits for, or proposals for any
 4.8 site work affecting the contamination or the environmental response project on, the real
 4.9 property subject to the covenant;

4.10 (2) requirements for periodic reporting describing compliance with the covenant;

4.11 (3) rights of access to the real property granted in connection with implementation
 4.12 or enforcement of the covenant;

4.13 (4) a brief narrative description of the contamination and environmental response
 4.14 project, including the contaminants of concern, the pathways of exposure, limits on
 4.15 exposure, and the location and extent of the contamination;

4.16 (5) limitation on amendment or termination of the covenant in addition to those
 4.17 contained in sections 114E.40 and 114E.45;

4.18 (6) rights of the holder in addition to its right to enforce the covenant pursuant
 4.19 to section 114E.50; and

4.20 (7) waiver of a party's right to consent to the amendment or termination of a
 4.21 covenant under section 114E.45, paragraph (a), clause (3).

4.22 (c) The environmental agency may set reasonable conditions for its approval of an
 4.23 environmental covenant, including:

4.24 (1) requiring that persons specified by the agency that have interests in the real
 4.25 property also sign the covenant;

4.26 (2) requiring that a person who holds a prior interest in the real property subject to
 4.27 the covenant agree to subordinate that interest where applicable; and

4.28 (3) requiring the inclusion within the text of the covenant information, restrictions,
 4.29 or requirements as described in paragraph (b).

4.30 **Sec. 5. [114E.20] VALIDITY; EFFECT ON OTHER INSTRUMENTS.**

4.31 (a) An environmental covenant created under this chapter runs with the land.

4.32 (b) An environmental covenant that is otherwise effective is valid and enforceable
 4.33 even if:

4.34 (1) it is not appurtenant to an interest in real property;

4.35 (2) it can be or has been assigned to a person other than the original holder;

- 5.1 (3) it is not of a character that has been recognized traditionally at common law;
 5.2 (4) it imposes a negative burden;
 5.3 (5) it imposes an affirmative obligation on a person having an interest in the real
 5.4 property or on the holder;
 5.5 (6) the benefit or burden does not touch or concern real property;
 5.6 (7) there is no privity of estate or contract;
 5.7 (8) the holder dies, ceases to exist, resigns, or is replaced; or
 5.8 (9) the owner of an interest in the real property subject to the environmental
 5.9 covenant and the holder are the same person.

5.10 (c) Any instrument that imposes activity and use limitations, including any
 5.11 conservation easement, declaration, restrictive covenant, or similar instrument created
 5.12 before the effective date of this chapter remains valid and enforceable as provided in
 5.13 the law under which it was created. This chapter does not apply in any other respect to
 5.14 such an instrument.

5.15 (d) This chapter does not invalidate or render unenforceable any interest, whether
 5.16 designated as an environmental covenant or other interest, that is otherwise enforceable
 5.17 under the law of this state.

5.18 **Sec. 6. [114E.25] RELATIONSHIP TO OTHER LAND USE LAW.**

5.19 (a) This chapter does not authorize a use of real property that is otherwise prohibited
 5.20 by zoning, by law other than this chapter regulating use of real property, or by a recorded
 5.21 instrument that has priority over the environmental covenant.

5.22 (b) An environmental covenant may prohibit or restrict uses of real property which
 5.23 are authorized by zoning or by law other than this chapter.

5.24 (c) An environmental agency that exercises authority under law other than this
 5.25 chapter to require as part of an environmental response project the performance of a
 5.26 response or corrective action that would not otherwise be an authorized use of real
 5.27 property under zoning or other real property law or prior recorded instruments may
 5.28 include such requirement as an affirmative obligation in an environmental covenant.

5.29 **Sec. 7. [114E.30] NOTICE.**

5.30 (a) A copy of an environmental covenant, and any amendments or notices of
 5.31 termination thereof, must be provided by the persons and in the manner required by the
 5.32 environmental agency to:

5.33 (1) each person that signed the covenant or their successor or assign;

6.1 (2) each person holding a recorded interest in the real property subject to the
 6.2 covenant;

6.3 (3) each person in possession of the real property subject to the covenant;

6.4 (4) each political subdivision in which real property subject to the covenant is
 6.5 located; and

6.6 (5) any other person the environmental agency requires.

6.7 (b) The validity of a covenant is not affected by failure to provide a copy of the
 6.8 covenant as required under this section.

6.9 **Sec. 8. [114E.35] RECORDING.**

6.10 (a) An environmental covenant and any amendment or termination of the covenant
 6.11 must be recorded with the county recorder or registrar of titles, as applicable, in every
 6.12 county in which any portion of the real property subject to the covenant is located. For
 6.13 purposes of indexing, a holder shall be treated as a grantee.

6.14 (b) Except as otherwise provided in section 114E.40, paragraph (f), an environmental
 6.15 covenant is subject to the laws of this state governing recording and priority of interests in
 6.16 real property.

6.17 **Sec. 9. [114E.40] DURATION; MODIFICATION OR TERMINATION BY**
 6.18 **ADMINISTRATIVE OR COURT ACTION.**

6.19 (a) An environmental covenant is perpetual unless it is:

6.20 (1) by its terms limited to a specific duration or terminated by the occurrence of a
 6.21 specific event;

6.22 (2) terminated by consent pursuant to section 114E.45;

6.23 (3) terminated pursuant to paragraph (b) or (e);

6.24 (4) terminated by foreclosure of an interest that has priority over the environmental
 6.25 covenant; or

6.26 (5) terminated or modified in an eminent domain proceeding, but only if:

6.27 (i) the environmental agency that signed the covenant is a party to the proceeding;

6.28 (ii) all persons identified in paragraph (c) are given notice of the pendency of the
 6.29 proceeding; and

6.30 (iii) the court determines, after hearing, that the activity and use limitations subject
 6.31 to termination or modification are no longer required to protect public health or welfare
 6.32 or the environment.

6.33 (b) The environmental agency that approved an environmental covenant may
 6.34 determine whether to terminate or reduce the burden on the real property of the covenant

7.1 if the agency determines that some or all of the activity and use limitations under the
7.2 covenant are no longer required to protect public health or welfare or the environment or
7.3 modify the covenant if the agency determines that modification is required to adequately
7.4 protect public health or welfare or the environment.

7.5 (c) The environmental agency shall provide notice of any proposed action under
7.6 paragraph (b) to each person with a current recorded interest in the real property subject
7.7 to the environmental covenant, each holder, all other persons who originally signed the
7.8 environmental covenant, or their successors or assigns, and any other person with rights
7.9 or obligations under the covenant. The environmental agency shall provide 30 days for
7.10 comment on the proposed action by parties entitled to notice. Any person entitled to notice
7.11 under this paragraph may request a contested case under chapter 14 by making the request
7.12 in writing within the 30-day comment period. A determination by an environmental
7.13 agency under this paragraph is a final agency decision subject to judicial review in the
7.14 same manner as provided in sections 14.63 to 14.68 or under applicable federal law.

7.15 (d) Any person entitled to notice under paragraph (c) may apply in writing to the
7.16 environmental agency for a determination under paragraph (b) that an existing covenant
7.17 be terminated, that the burden of a covenant be reduced, or that covenant be modified.
7.18 The application must specify the determination sought by the applicant, the reasons why
7.19 the environmental agency should make the determination, and the information which
7.20 would support it. If the environmental agency fails to commence a proceeding under
7.21 paragraph (b) within 60 days of receipt of the application, the applicant may bring a de
7.22 novo action in the district court for termination, reduction of burden, or modification of
7.23 the environmental covenant pursuant to paragraph (e).

7.24 (e) The district court for the county in which the real property subject to an
7.25 environmental covenant is located may, under the doctrine of changed circumstances,
7.26 terminate the covenant, reduce its burden on the real property, or modify its terms in a de
7.27 novo action if an environmental agency fails to commence a proceeding within 60 days
7.28 as provided under paragraph (d). The applicant under paragraph (d), any party to the
7.29 environmental covenant, or any other person identified in paragraph (c) may commence an
7.30 action under this paragraph. The person commencing the action shall serve notice of the
7.31 action on the environmental agency and any person entitled to notice under paragraph (c).
7.32 The court shall terminate, reduce the burden of, or modify the environmental covenant
7.33 if the court determines that the person bringing the action shows that some or all of the
7.34 activity and use limitations under the covenant do not, or are no longer required to, protect
7.35 public health or welfare or the environment.

8.1 (f) An environmental covenant may not be extinguished, limited, or impaired
8.2 through issuance of a tax deed, foreclosure of a tax lien, or application of the doctrine
8.3 of adverse possession, prescription, abandonment, waiver, lack of enforcement, or
8.4 acquiescence, or a similar doctrine.

8.5 (g) An environmental covenant may not be extinguished, limited, or impaired by
8.6 application of section 500.20 or 541.023.

8.7 **Sec. 10. [114E.45] AMENDMENT OR TERMINATION BY CONSENT.**

8.8 (a) An environmental covenant may be amended or terminated by consent only if
8.9 the amendment or termination is signed by:

8.10 (1) the environmental agency;

8.11 (2) the current owner of the fee simple of the real property subject to the covenant;

8.12 (3) every other original signatory to the covenant, or their successor or assign, unless:

8.13 (i) the person waived the right to consent to termination or modification in the
8.14 environmental covenant or another signed and acknowledged record that is recorded;

8.15 (ii) the person fails to object to the amendment or termination within 60 days after
8.16 a notice requesting the person's consent to amendment or termination was mailed by
8.17 certified mail, return receipt requested, to the person's last known address, as obtained
8.18 from the United States Postal Service; or

8.19 (iii) a court finds that the person no longer exists or cannot be located or identified
8.20 with the exercise of reasonable diligence; and

8.21 (4) each holder, except as otherwise provided in paragraph (d).

8.22 Any person may establish that the notice described in clause (3), item (ii), was properly
8.23 mailed by recording an affidavit to that effect from a person having knowledge of the
8.24 facts, and a certified copy of the recorded affidavit shall be prima facie evidence of the
8.25 facts stated therein.

8.26 (b) If an interest in real property is subject to an environmental covenant, the interest
8.27 is not affected by an amendment of the covenant unless the current owner of the interest
8.28 consents to the amendment or has waived in the environmental covenant or other signed
8.29 record the right to consent to amendments.

8.30 (c) Except for an assignment undertaken pursuant to a governmental reorganization,
8.31 or as otherwise provided in the environmental covenant, assignment of an environmental
8.32 covenant to a new holder is an amendment.

8.33 (d) Except as otherwise provided in paragraph (c) or in an environmental covenant:

8.34 (1) a holder may not assign its interest without consent of the other parties specified
8.35 in paragraph (a);

- 9.1 (2) a holder may be removed and replaced by agreement of the other parties
 9.2 specified in paragraph (a); and
 9.3 (3) a court of competent jurisdiction may fill a vacancy in the position of holder.

9.4 **Sec. 11. [114E.50] ENFORCEMENT OF ENVIRONMENTAL COVENANT.**

9.5 (a) A civil action for injunctive or other equitable relief for violation of an
 9.6 environmental covenant may be maintained by:

- 9.7 (1) a party to the covenant, including all holders;
 9.8 (2) the environmental agency that signed the covenant;
 9.9 (3) any person to whom the covenant expressly grants power to enforce;
 9.10 (4) a person whose interest in the real property or whose collateral or liability may
 9.11 be affected by the alleged violation of the covenant; or
 9.12 (5) a political subdivision in which the real property subject to the covenant is
 9.13 located.

9.14 (b) This chapter does not limit the regulatory authority of the environmental agency
 9.15 under law other than this chapter with respect to an environmental response project.

9.16 (c) A person is not responsible for or subject to liability arising from a release
 9.17 or threatened release of contamination into the environment, or for remediation costs
 9.18 attendant thereto, solely because it has signed, holds rights to, or otherwise has the right to
 9.19 enforce an environmental covenant.

9.20 **Sec. 12. [114E.60] UNIFORMITY OF APPLICATION AND CONSTRUCTION.**

9.21 In applying and construing this chapter, consideration must be given to the need to
 9.22 promote uniformity of the law with respect to its subject matter among states that enact it.

9.23 **Sec. 13. [114E.65] RELATION TO ELECTRONIC SIGNATURES IN GLOBAL**
 9.24 **AND NATIONAL COMMERCE ACT.**

9.25 This chapter modifies, limits, or supersedes the federal Electronic Signatures in
 9.26 Global and National Commerce Act, United States Code, title 15, section 7001 et seq., but
 9.27 does not modify, limit, or supersede section 101 of that act, United States Code, title 15,
 9.28 section 7001(a), or authorize electronic delivery of any of the notices described in section
 9.29 103 of that act, United States Code, title 15, section 7003(b).

9.30 **Sec. 14. Minnesota Statutes 2006, section 115.072, is amended to read:**

9.31 **115.072 RECOVERY OF LITIGATION COSTS AND EXPENSES.**

10.1 In any action brought by the attorney general, in the name of the state, pursuant
 10.2 to the provisions of this chapter and chapters 114C, 114E, and 116, for civil penalties,
 10.3 injunctive relief, or in an action to compel compliance, if the state shall finally prevail,
 10.4 and if the proven violation was willful, the state, in addition to other penalties provided
 10.5 in this chapter, may be allowed an amount determined by the court to be the reasonable
 10.6 value of all or a part of the litigation expenses incurred by the state. In determining the
 10.7 amount of such litigation expenses to be allowed, the court shall give consideration to the
 10.8 economic circumstances of the defendant.

10.9 Amounts recovered under the provisions of this section and section 115.071,
 10.10 subdivisions 3 to 5, shall be paid into the environmental fund in the state treasury to the
 10.11 extent provided in section 115.073.

10.12 Sec. 15. Minnesota Statutes 2006, section 115B.17, subdivision 15, is amended to read:

10.13 Subd. 15. **Acquisition of property.** The agency may acquire, by purchase
 10.14 or donation, ~~an interest~~ interests in real property, including easements, ~~restrictive~~
 10.15 environmental covenants under chapter 114E, and leases, that the agency determines
 10.16 is are necessary for response action. ~~The validity and duration of a restrictive covenant~~
 10.17 ~~or nonpossessory easement acquired under this subdivision shall be determined in the~~
 10.18 ~~same manner as the validity and duration of a conservation easement under chapter 84C,~~
 10.19 ~~unless the duration is otherwise provided in the agreement.~~ The agency may acquire
 10.20 an easement by condemnation only if the agency is unable, after reasonable efforts, to
 10.21 acquire an interest in real property by purchase or donation. The provisions of chapter 117
 10.22 govern condemnation proceedings by the agency under this subdivision. A donation of an
 10.23 interest in real property to the agency is not effective until the agency executes a certificate
 10.24 of acceptance. The state is not liable under this chapter solely as a result of acquiring an
 10.25 interest in real property under this subdivision. Agency approval of an environmental
 10.26 covenant under chapter 114E is sufficient evidence of acceptance of an interest in real
 10.27 property where the agency is expressly identified as a holder in the covenant.