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State of Minnesota HOUSE OF REPRESENTATIVES

EIGHTY-SIXTH SESSION

HOUSE FILE No. 162

January 22, 2009

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The bill was read for the first time and referred to the Committee on Environment Policy and Oversight

February 12, 2009

Committee Recommendation and Adoption of Report:

To Pass as Amended and re-referred to the Committee on State and Local Government Operations Reform, Technology and Elections

1.1 A bill for an act
1.2 relating to waters; modifying drainage system provisions; appropriating money;
1.3 amending Minnesota Statutes 2008, sections 103E.065; 103E.227; 103E.401,
1.4 subdivision 3; 103E.505, subdivision 3; 103E.611, subdivision 1; 103E.735,
1.5 subdivision 1; 103E.805; proposing coding for new law in Minnesota Statutes,
1.6 chapter 103E.

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

1.8 Section 1. Minnesota Statutes 2008, section 103E.065, is amended to read:

1.9 103E.065 DRAINAGE INSPECTORS.

1.10 In counties ~~where constructed~~ or watershed districts having drainage systems ~~have~~
1.11 ~~an aggregate cost of more than \$50,000 constructed in accordance with this chapter, the~~
1.12 ~~board~~ drainage authority shall appoint a competent person as ~~county~~ drainage inspector.

1.13 The inspector may be the county highway engineer. The inspector shall examine the
1.14 drainage systems designated by the ~~board~~ drainage authority. The ~~board~~ drainage authority
1.15 shall specify the appointment period and compensation.

1.16 Sec. 2. Minnesota Statutes 2008, section 103E.227, is amended to read:

1.17 103E.227 IMPOUNDING, REROUTING, AND DIVERSION OF DRAINAGE
1.18 SYSTEM WATERS.

1.19 Subdivision 1. **Petition.** (a) To conserve and make more adequate use of our water
1.20 resources, a person, public or municipal corporation, governmental subdivision, the state
1.21 or a department or agency of the state, the commissioner of natural resources, and the
1.22 United States or any of its agencies, may petition ~~for the installation of dams or other~~
1.23 ~~control works in drainage ditch systems~~ to impound, reroute, or divert drainage system

2.1 waters for beneficial use. ~~The petition must be directed to the drainage authority where~~
 2.2 ~~the drainage system is located.~~

2.3 (b) If the drainage system is under the jurisdiction of a county drainage authority, the
 2.4 petition must be filed with the auditor of the county. If the drainage system is under the
 2.5 jurisdiction of a joint county drainage authority, the petition must be filed with the county
 2.6 having the largest area of property in the drainage system, where the primary drainage
 2.7 system records are kept. If the system is under the jurisdiction of a watershed district,
 2.8 the petition must be filed with the secretary of the district.

2.9 ~~(b) (c)~~ (c) The petition must contain the location of the installation, concept plans, and
 2.10 specifications for the proposed structure project, and a map of that identifies the areas
 2.11 likely to be affected by the impoundment or diversion project.

2.12 ~~(c) (d)~~ (d) The ~~petitioner~~ petitioner ~~petition~~ petition shall ~~agree to be responsible for the cost of installation~~
 2.13 ~~and construction of the structure~~ identify the sources of funds to be used to secure the
 2.14 necessary land rights and to construct the project and the amount and rationale for any
 2.15 drainage system funds requested.

2.16 ~~(d) (e)~~ (e) The ~~petition~~ petitioner or drainage authority must also ~~be accompanied by~~
 2.17 acquire a public waters work permit or a water use permit from the commissioner of
 2.18 natural resources if required under chapter 103G.

2.19 Subd. 2. **Bond.** (a) Upon filing the petition, the petitioners shall file a bond as
 2.20 provided in section 103E.202.

2.21 (b) A bond is not required if the petition is filed by the state, a state agency
 2.22 or department, the commissioner of natural resources, the United States or any of its
 2.23 agencies, a soil and water conservation district, a watershed district, or a municipality.

2.24 Subd. 3. **Procedure to establish project.** (a) After receiving the petition; and ~~and~~ bond,
 2.25 ~~and permit,~~ if required, the drainage authority must appoint an engineer to investigate the
 2.26 effect of the proposed installation and file a report of findings.

2.27 (b) After filing of the engineer's report, notice must be given and a public hearing
 2.28 held as provided in section 103E.261.

2.29 (c) If ~~from~~ at the hearing it appears from the engineer's report and other evidence
 2.30 presented that the installation project will be of a public or private benefit and that it
 2.31 will not impair the utility of the ditch drainage system or deprive affected land owners
 2.32 of its benefit, the drainage authority shall make an order modifying the drainage system,
 2.33 to include the amount, if any, of drainage system funds approved for the project at the
 2.34 discretion of the drainage authority, and issue a permit an order authorizing its installation
 2.35 the project.

3.1 Subd. 4. **Permits and flowage easements required.** Before installing or
3.2 constructing ~~an impoundment or diversion~~ the project, the petitioner or drainage authority
3.3 shall obtain all required permits and all necessary rights-of-way and flowage easements
3.4 from owners of land to be affected by it.

3.5 Subd. 5. **Assessment of Construction, operation, maintenance, and repair**
3.6 **costs responsibilities.** The order of the drainage authority modifying the drainage
3.7 system must ~~provide that construction and later~~ identify the parties responsible for
3.8 construction, operation, and maintenance and repairs of the drainage system modification
3.9 and ~~installation must be done by the petitioner without assessment of the cost to the~~
3.10 ~~property owners previously within the drainage system~~ the amount, if any, of drainage
3.11 system funds for the project. If the part of the drainage system located within the project
3.12 boundaries is in need of repairs, the petitioner's engineer shall estimate the cost at the time
3.13 of petition of these separable repairs. The drainage authority shall consider the separable
3.14 repair costs that will be avoided as a result of the petitioned project, as well as any other
3.15 benefits of the project to the drainage system, when determining whether or how much to
3.16 contribute to the petitioned project.

3.17 Sec. 3. Minnesota Statutes 2008, section 103E.401, subdivision 3, is amended to read:

3.18 Subd. 3. **Petition.** A person seeking authority to use an established drainage system
3.19 as an outlet must petition the drainage authority. When the petition is filed, the drainage
3.20 authority in consultation with the auditor shall set a time and location for a hearing on the
3.21 petition and shall give notice by mail and notice by publication of the hearing. The auditor
3.22 must be paid ~~a fee of \$5 plus 30 cents for each notice mailed in excess of ten~~ the actual
3.23 costs for the hearing notices by the petitioner.

3.24 Sec. 4. Minnesota Statutes 2008, section 103E.505, subdivision 3, is amended to read:

3.25 Subd. 3. **Notice of contract awarding.** The auditor of an affected county shall give
3.26 notice of the awarding of the contract by publication in a newspaper in the county. The
3.27 notice must state the time and location for awarding the contract. For a joint county
3.28 drainage project the auditors shall award the contract at the office of the auditor where
3.29 the proceedings are pending. If the estimated cost of construction is more than ~~\$3,000~~
3.30 \$25,000, the auditor must also place a notice in a drainage construction trade newspaper.
3.31 The trade newspaper notice must state:

3.32 (1) the time and location for awarding the contract;

3.33 (2) the approximate amount of work and its estimated cost;

4.1 (3) that bids may be for the work as one job, or in sections, or separately, for bridges,
4.2 ditches and open work, tile, or tile construction work, if required or advisable;

4.3 (4) that each bid must be accompanied by a certified check or a bond furnished by an
4.4 approved surety corporation payable to the auditors of affected counties for ten percent of
4.5 the bid, as security that the bidder will enter into a contract and give a bond as required
4.6 by section 103E.501; and

4.7 (5) that the drainage authority reserves the right to reject any and all bids.

4.8 Sec. 5. Minnesota Statutes 2008, section 103E.611, subdivision 1, is amended to read:

4.9 Subdivision 1. **Payment of drainage lien principal.** (a) Drainage liens against
4.10 property benefited under this chapter are payable to the treasurer of the county in 20 or
4.11 less equal annual installments. The first installment of the principal is due on or before
4.12 November 1 after the drainage lien statement is recorded, and each subsequent installment
4.13 is due on or before November 1 of each year afterwards until the principal is paid.

4.14 (b) The drainage authority may, by order, direct the drainage lien to be paid by 1/15 of
4.15 the principal on or before five years from November 1 after the lien statement is recorded,
4.16 and 1/15 on or before November 1 of each year afterwards until the principal is paid.

4.17 (c) The drainage authority may order that the drainage lien must be paid by one or
4.18 two installments, notwithstanding paragraphs (a) and (b), if the principal amount of a lien
4.19 against a lot or tract of property or against a county or municipality is less than ~~\$50~~ \$500.

4.20 Sec. 6. Minnesota Statutes 2008, section 103E.735, subdivision 1, is amended to read:

4.21 Subdivision 1. **Authority and limits of fund.** To create a repair fund for a
4.22 drainage system to be used only for repairs, the drainage authority may apportion and
4.23 assess an amount against all property and entities assessed for benefits in proceedings
4.24 for establishment of the drainage system, including property not originally assessed
4.25 and subsequently found to be benefited according to law. The fund may not exceed 20
4.26 percent of the assessed benefits of the drainage system or ~~\$40,000~~ \$100,000, whichever is
4.27 greater. If the account in a fund for a drainage system exceeds the larger of 20 percent
4.28 of the assessed benefits of the drainage system or ~~\$40,000~~ \$100,000, assessments for
4.29 the fund may not be made until the account is less than the larger of 20 percent of the
4.30 assessed benefits or ~~\$40,000~~ \$100,000. Assessments must be made pro rata according to
4.31 the determined benefits. Assessments may be made payable, by order, in equal annual
4.32 installments. The auditor shall file a tabular statement as provided in section 103E.731,
4.33 subdivision 4, with the county recorder. Assessments must be collected as provided in
4.34 section 103E.731.

5.1 Sec. 7. Minnesota Statutes 2008, section 103E.805, is amended to read:

5.2 **103E.805 REMOVAL OF PROPERTY FROM ~~AND PARTIAL~~**
5.3 **~~ABANDONMENT OF A DRAINAGE SYSTEM.~~**

5.4 Subdivision 1. **Petition.** After ~~the~~ construction of a drainage system, ~~the~~ an owner
5.5 of benefited property may petition the drainage authority to remove property from the
5.6 drainage system ~~or abandon any part of the drainage system that is not of public benefit~~
5.7 ~~and utility and does not serve a substantial useful purpose to property remaining in the~~
5.8 ~~system if:~~

5.9 ~~(1) waters are diverted from property assessed for benefits so that the drainage from~~
5.10 ~~the property does not use or affect the drainage system; or~~

5.11 ~~(2) a dam authorized by law is constructed in the drainage system so that the~~
5.12 ~~property above the dam cannot use or receive benefits from the drainage system.~~

5.13 Subd. 2. **Filing.** If the drainage system is under the jurisdiction of a county drainage
5.14 authority, the petition must be filed with the auditor of the county. If the drainage system
5.15 is under the jurisdiction of a joint county drainage authority, the petition must be filed with
5.16 the county having the largest area of property in the drainage system, where the primary
5.17 drainage system records are kept. If the system is under the jurisdiction of a watershed
5.18 district, the petition must be filed with the secretary of the district.

5.19 Subd. 3. **Hearing.** (a) When the petition is filed, the drainage authority in
5.20 consultation with the auditor or the secretary shall set a time and location for a hearing on
5.21 the ~~partial abandonment~~ petition and shall give notice ~~by publication~~ of the hearing by
5.22 mail to the owners of all property benefited by the drainage system and by publication to
5.23 all other persons interested in the drainage system.

5.24 (b) At the hearing, the drainage authority shall make findings and shall direct, by
5.25 order, that the petitioners' property be removed from the drainage system if the drainage
5.26 authority determines:

5.27 (1) that the waters from the petitioners' property have been diverted from the
5.28 drainage system, or that ~~a dam has been lawfully constructed and~~ the property cannot
5.29 significantly or regularly use the drainage system;

5.30 (2) that the property is not benefited by the drainage system ~~and does not use or~~
5.31 ~~affect the drainage system;~~ and

5.32 (3) that removing the property from the drainage system will not prejudice the
5.33 property owners and property remaining in the system.

5.34 ~~(c) The drainage authority shall make findings and direct, by order, that part of~~
5.35 ~~the drainage system be abandoned if the drainage authority determines that part of the~~

6.1 ~~drainage system does not serve a substantial useful purpose to any property remaining in~~
6.2 ~~the system and is not of a substantial public benefit and utility.~~

6.3 Subd. 4. **Effect of removing property from drainage system.** The property that
6.4 has been removed from the drainage system is not affected by the drainage system at any
6.5 later proceeding for the repair or improvement of the drainage system and a drainage lien
6.6 or assessment for repairs or improvements may not be made against the property that has
6.7 been removed on or after the date of the order.

6.8 Subd. 5. **Liens and assessments on property removed ~~or abandoned~~ from a**
6.9 **drainage system.** An order under this section does not release the property from a
6.10 drainage lien filed on account of the drainage system before the date of the order. An
6.11 order under this section does not release the property from any assessment or a drainage
6.12 lien filed on or after the date of the order for costs incurred on account of the drainage
6.13 system before the date of the order.

6.14 Sec. 8. **[103E.806] PARTIAL ABANDONMENT OF A DRAINAGE SYSTEM.**

6.15 Subdivision 1. **Petition.** After construction of a drainage system, an owner of
6.16 benefited property may petition the drainage authority to abandon any part of the drainage
6.17 system that is not of public benefit and utility and does not serve a substantial useful
6.18 purpose to property remaining in the system.

6.19 Subd. 2. **Filing.** If the drainage system is under the jurisdiction of a county drainage
6.20 authority, the petition must be filed with the auditor of the county. If the drainage system
6.21 is under the jurisdiction of a joint county drainage authority, the petition must be filed with
6.22 the county having the largest area of property in the drainage system, where the primary
6.23 drainage system records are kept. If the system is under the jurisdiction of a watershed
6.24 district, the petition must be filed with the secretary of the district.

6.25 Subd. 3. **Hearing.** (a) When the petition is filed, the drainage authority, in
6.26 consultation with the auditor or the secretary, shall set a time and location for a hearing
6.27 on the petition and shall give notice of the hearing by mail to the owners of all property
6.28 benefited by the drainage system and by publication to all other persons interested in
6.29 the drainage system.

6.30 (b) At the hearing, the drainage authority shall make findings and direct, by order,
6.31 that part of the drainage system be abandoned, if the drainage authority determines that
6.32 part of the drainage system does not serve a substantial useful purpose as part of the
6.33 drainage system to any property remaining in the system and is not of a substantial public
6.34 benefit and utility.

7.1 Subd. 4. **Effect of partial abandonment.** After partial abandonment of a drainage
7.2 system, a repair petition may not be accepted for the abandoned part of the drainage system
7.3 and the responsibility of the drainage authority for that part of the drainage system ends.

7.4 Subd. 5. **Liens and assessments on property involved in partial abandonment.**
7.5 An order under this section does not release the property from a drainage lien filed on
7.6 account of the drainage system before the date of the order. An order under this section
7.7 does not release the property from any assessment or a drainage lien filed on or after the
7.8 date of the order for costs incurred on account of the drainage system before the date of
7.9 the order.

7.10 Sec. 9. **APPROPRIATION.**

7.11 \$500,000 in fiscal year 2010 and \$500,000 in fiscal year 2011 are appropriated
7.12 from the general fund to the Board of Water and Soil Resources for drainage records
7.13 modernization challenge grants.