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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. 3549

1.1 A bill for an act

1.2 relating to natural resources; modifying provisions for watershed districts; amending

1.3 Minnesota Statutes 2018, sections 103D.335, by adding a subdivision; 103D.337;

1.4 103D.341, subdivision 2, by adding a subdivision; 103D.345, subdivision 4;

1.5 103D.401, subdivision 1; 103D.405, subdivision 1; 103D.515, subdivision 1;

1.6 103D.537.

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

1.8 Section 1. Minnesota Statutes 2018, section 103D.335, is amended by adding a subdivision

1.9 to read:

1.10 Subd. 26. Engineer and legal fees. The managers must require annual public reporting

1.11 of engineer fees and legal fees reimbursed by landowners and an annual summary of all

1.12 engineer fees and legal fees paid by the watershed district. The managers must review the

1.13 fees to determine if the fees are reasonable.

1.14 Sec. 2. Minnesota Statutes 2018, section 103D.337, is amended to read:

1.15 **103D.337 TECHNICAL ADVISORY COMMITTEES.**

1.16 For a district wholly within the metropolitan area, the ~~board of managers shall establish~~

1.17 local governmental unit as defined in section 473.852 acts as a technical advisory committee

1.18 ~~consisting of representatives of affected statutory and home rule charter cities, counties,~~

1.19 ~~and soil and water conservation districts~~ for purposes of appeals under section 103D.537.

1.20 Sec. 3. Minnesota Statutes 2018, section 103D.341, subdivision 2, is amended to read:

1.21 Subd. 2. **Procedure.** (a) The managers must prepare and review a statement of need and

1.22 reasonableness, as described in section 14.131, before adopting or amending rules. The

2.1 statement of need and reasonableness must be made available for public review at least 45
 2.2 days before the date set for a hearing on the rules. Rules of the watershed district must be
 2.3 adopted or amended by a majority vote of the managers, after public notice and hearing.
 2.4 Rules must be signed by the secretary of the board of managers and recorded in the board
 2.5 of managers' official minute book.

2.6 (b) ~~Prior to~~ Before adoption, the proposed rule or amendment to the rule must be
 2.7 submitted to the board for review and comment. The board's review ~~shall be~~ is considered
 2.8 advisory. The board ~~shall have~~ has 45 days ~~from receipt of~~ after receiving the proposed rule
 2.9 or amendment to the rule to provide its comments in writing to the watershed district.
 2.10 ~~Proposed rules or amendments to the rule shall also be noticed for review and comment to~~
 2.11 ~~all public transportation authorities that have jurisdiction within the watershed district at~~
 2.12 ~~least 45 days prior to adoption. The public transportation authorities have 45 days from~~
 2.13 ~~receipt of the proposed rule or amendment to the rule to provide comments in writing to~~
 2.14 ~~the watershed district.~~

2.15 (c) At least 45 days before the date set for a hearing on the proposed rule or amendment,
 2.16 the managers must mail a copy of the proposed rule or amendment for review and comment
 2.17 to:

2.18 (1) all cities, towns, and public transportation authorities that have jurisdiction within
 2.19 the watershed district, who have 45 days after receiving the proposed rule or amendment
 2.20 to provide comments in writing to the watershed district;

2.21 (2) all parties who have consulted with the watershed district within the past 12 months
 2.22 about upcoming projects or have held permits issued under section 103D.345 within the
 2.23 last two years; and

2.24 (3) all landowners directly impacted by an increase in wetland buffer setback
 2.25 requirements, when applicable.

2.26 ~~(e)~~ (d) For each county affected by the watershed district, the managers must publish a
 2.27 notice of hearings and adopted rules in one or more legal newspapers published in the county
 2.28 and generally circulated in the watershed district. The managers must also provide written
 2.29 notice of adopted or amended rules to public transportation authorities that have jurisdiction
 2.30 within the watershed district. The managers must file adopted rules with the county recorder
 2.31 of each county affected by the watershed district and the board.

2.32 ~~(d)~~ (e) The managers must mail a copy of the rules to the governing body of each
 2.33 municipality affected by the watershed district.

3.1 (f) The rules are effective no earlier than 120 days after adoption.

3.2 Sec. 4. Minnesota Statutes 2018, section 103D.341, is amended by adding a subdivision
3.3 to read:

3.4 Subd. 4. **Rule standards.** The managers may not adopt or enforce a rule that:

3.5 (1) requires the landowner to pay the watershed district's legal fees or engineer fees
3.6 without the ability to object and appeal the fees to the managers for review;

3.7 (2) limits the availability of variances by adopting a variance standard other than the
3.8 practical difficulty standard of review;

3.9 (3) unreasonably denies or terminates a landowner's permit rights without due process;

3.10 (4) requires landowners to apply anything other than existing conditions standards for
3.11 storm water treatment as part of the permit application; or

3.12 (5) requires storm water standards that exceed the lesser of either minimum impact
3.13 design standards (MIDS) or the Minnesota Pollution Control Agency requirements without
3.14 approval from all impacted local government units within the watershed districts.

3.15 Sec. 5. Minnesota Statutes 2018, section 103D.345, subdivision 4, is amended to read:

3.16 Subd. 4. **Bond.** The managers may require an applicant for a permit to file a bond, letter
3.17 of credit, or escrow with the managers in an amount set by the managers and conditioned
3.18 on performance by the applicant of authorized activities in conformance with the terms of
3.19 the permit. The managers must not duplicate any other bond, letter of credit, or escrow
3.20 required of the applicant and must return the security to the applicant within 60 days of
3.21 substantial completion of the permit project.

3.22 Sec. 6. Minnesota Statutes 2018, section 103D.401, subdivision 1, is amended to read:

3.23 Subdivision 1. **Contents.** (a) The managers must adopt a watershed management plan
3.24 for any or all of the purposes for which a watershed district may be established. The
3.25 watershed management plan must give a narrative description of existing water and
3.26 water-related problems within the watershed district, possible solutions to the problems,
3.27 and the general objectives of the watershed district. The watershed management plan must
3.28 also conform closely with watershed management plan guidelines as adopted and amended
3.29 from time to time by the Board of Water and Soil Resources. For all metropolitan area
3.30 watershed districts, any deviation from the guidelines provided by the Board of Water and

4.1 Soil Resources requires approval by all local governmental units within the watershed
4.2 district.

4.3 (b) The watershed management plan may include a separate section on proposed projects.
4.4 If the watershed district is within the metropolitan area, the separate section of proposed
4.5 projects or petitions for projects to be undertaken according to the watershed management
4.6 plan is a comprehensive plan of the watershed district for purposes of review by the
4.7 Metropolitan Council under section 473.165.

4.8 Sec. 7. Minnesota Statutes 2018, section 103D.405, subdivision 1, is amended to read:

4.9 Subdivision 1. **Requirements.** (a) The managers and the board must revise the watershed
4.10 management plan for the watershed district at least once every ten years after the original
4.11 watershed management plan is approved. The revised watershed management plan of the
4.12 district must conform closely with adopted watershed management plan guidelines of the
4.13 Board of Water and Soil Resources. For all metropolitan area watershed districts, any
4.14 deviation from the guidelines provided by the Board of Water and Soil Resources requires
4.15 approval by all local governmental units within the watershed district.

4.16 (b) The managers must include the following items in the revised watershed management
4.17 plan:

4.18 (1) updates and supplements of the existing hydrological and other statistical data of the
4.19 watershed district;

4.20 (2) specific projects and programs to be considered for implementation;

4.21 (3) a statement of the extent that the purposes for which the watershed district had been
4.22 established have been accomplished;

4.23 (4) a description of problems requiring future action by the watershed district;

4.24 (5) a summary of completed studies on active or planned projects, including financial
4.25 data; and

4.26 (6) an analysis of the effectiveness of the watershed district's rules and permits in
4.27 achieving its water management objectives in the watershed district.

4.28 (c) A revised watershed management plan must be transmitted, reviewed, recommended,
4.29 and approved as provided in subdivisions 2 to 4 and 6.

5.1 Sec. 8. Minnesota Statutes 2018, section 103D.515, subdivision 1, is amended to read:

5.2 Subdivision 1. **Preexisting water rights recognized.** (a) The rights of private or corporate
 5.3 landowners to use the waters of the watershed district for any purpose continue as the rights
 5.4 existed at the time of the organization of the watershed district.

5.5 (b) The managers may not adopt or enforce a rule that deprives or divests a private or
 5.6 corporate landowner of the existing water rights, use of existing water runoff conditions,
 5.7 existing buffer or building setbacks, infiltration, drainage, ponding, or flood relief, either
 5.8 before or as a result of a permit application, without paying adequate compensation.

5.9 Sec. 9. Minnesota Statutes 2018, section 103D.537, is amended to read:

5.10 **103D.537 APPEALS OF RULES, PERMIT DECISIONS, AND ORDERS.**

5.11 (a) An order or permit decision of the watershed district or a decision on appeal must
 5.12 be based on the record made in the proceeding together with any other relevant evidence
 5.13 or affidavits provided by the parties.

5.14 (b) Except as provided in section 103D.535, an interested party may appeal a permit
 5.15 decision or order made by the managers by an informal resolution of disputes under section
 5.16 103D.539 or a declaratory judgment action brought under chapter 555. ~~An interested party~~
 5.17 ~~may appeal a rule made by the managers by a declaratory judgment action brought under~~
 5.18 ~~chapter 555 or by appeal to the board. The decision on appeal must be based on the record~~
 5.19 ~~made in the proceeding before the managers. An appeal of a permit decision or order must~~
 5.20 ~~be filed within 30 days of the managers' decision.~~ The decision on appeal must determine
 5.21 whether the watershed district's action or requirement is unreasonable by a preponderance
 5.22 of the evidence. An appeal of a permit decision or order must be filed within 180 days of
 5.23 the managers' decision.

5.24 (c) Except as provided in section 103D.535, an interested party may, by written request
 5.25 to the watershed district, immediately appeal a determination by watershed district staff or
 5.26 engineering or staff enforcement of a watershed rule by:

5.27 (1) an appeal to the technical advisory committee as described in section 103D.337;

5.28 (2) an informal resolution of disputes as described in section 103D.539; or

5.29 (3) a declaratory judgment action brought under chapter 555.

5.30 (d) Watershed district staff have ten days after receiving a written request under paragraph
 5.31 (c) to issue a written statement of the district's official position. The technical advisory
 5.32 committee or the board must, upon request of the interested party, conduct an expedited

6.1 appeal hearing and issue a determination within 30 days or less. An appeal of a determination
 6.2 by watershed district staff or engineering or an appeal of staff enforcement of a watershed
 6.3 rule must be filed within 180 days of the watershed district action. In the event the interested
 6.4 party prevails on appeal, the interested party must be awarded its cost of appeal and the
 6.5 watershed district staff must pay its own costs of the appeal and staff time.

6.6 ~~(b) In addition to the authorities identified in paragraph (a),~~ (e) In addition to the
 6.7 authority granted under paragraph (b), a public transportation authority may appeal a
 6.8 watershed district permit decision to the board. The board shall must, upon request of the
 6.9 public transportation authority, conduct an expedited appeal hearing within 30 days or less
 6.10 from the date of the appeal being accepted.

6.11 ~~(e) (f) By January 1, 2005~~ (f) By January 1, 2022, the board ~~shall~~ must adopt reasonable rules governing
 6.12 appeals to the board under paragraphs ~~(a) and (b) to (e),~~ but must not limit a landowner's
 6.13 right to seek immediate judicial relief. A decision of the board on appeal is subject to judicial
 6.14 review under sections 14.63 to 14.69. The rules authorized in this paragraph are exempt
 6.15 from the rulemaking provisions of chapter 14 except that section 14.386 applies and the
 6.16 proposed rules must be submitted to the members of senate and house of representatives
 6.17 environment and natural resource and transportation policy committees at least 30 days
 6.18 prior to being published in the State Register. The amended rules are effective for two years
 6.19 from the date of publication of the rules in the State Register unless they are superseded by
 6.20 permanent rules.

6.21 (g) A watershed district rule not adopted in accordance with chapter 14, including use
 6.22 of a statement of need and reasonableness as defined in section 14.131, is subject to an
 6.23 appeal by any interested party by an informal resolution of disputes as described in section
 6.24 103D.539 or a declaratory judgment action brought under chapter 555 at any time. The
 6.25 decision on appeal must determine whether the watershed district's rule is arbitrary or
 6.26 capricious by a preponderance of the evidence.