

**Drainage Work Group
2008 Consensus Recommendations
Final 1-8-09**

Policy Recommendations

Topics:

- **Clarify scope, procedures and responsibilities in Section 103E.227 Impounding and diversion of drainage system waters.**
- **Clarify Section 103E.805 Removal of property from and partial abandonment of a drainage system.**
- **Update certain dollar limits and thresholds in Chapter 103E.** (Sections 103E.065, 103E.401, 103E.505, 103E.611)

In the following table, strikethrough indicates recommended text deletion and underline indicates recommended text addition in Minnesota Statutes, Chapter 103E.

Recommended Drainage Law Clarifications	Explanations
<p>103E.227 Impounding, <u>rerouting</u> and diversion of drainage system waters. Subdivision 1. Petition (a) To conserve and make more adequate use of our water resources, a person, public or municipal corporation, governmental subdivision, the state or a department or agency of the state, the commissioner of natural resources, and the United States or any of its agencies, may petition for the installation of dams or other control works in drainage ditch systems <u>to impound, reroute and/or divert drainage system waters for beneficial use.</u> The petition must be directed to the drainage authority where the drainage system is located. (b) <u>If the drainage system is under the jurisdiction of a county drainage authority, the petition must be filed with the auditor of the county. If the drainage system is under the jurisdiction of a joint county drainage authority, the petition must be filed with the county having the largest area of property in the drainage system, where the primary drainage system records are kept. If the system is under the jurisdiction of a watershed district, the petition must be filed with the secretary of the district.</u> (b)(c) The petition must contain the location of the installation, concept plans and specifications for the proposed structure project and a map that identifies <u>the areas likely to be affected by the impoundment or diversion project.</u> (e)(d) The petitioner shall agree to be responsible for the cost of installation and construction of the structure <u>identify the sources of funds to be used to secure the necessary land rights and to construct the project, and the amount and rationale for any drainage system funds requested.</u> (d)(e) The petitioner or drainage authority must also be accompanied by <u>acquire</u> a public waters work permit or a water use permit from the commissioner of natural resources if required under chapter 103G.</p>	<p>Section 103E.227 is needed for wetland restorations and other impoundment or diversion projects on ditch and tile drainage systems that may involve rerouting of the system and/or a system that is in disrepair or failing. The current language is troublesome for these projects. Clarifies where to file a project petition.</p> <p>Clarifies information needed by the drainage authority.</p> <p>Clarifies project funding sources and requested drainage system funding, if any, and rationale.</p> <p>Identifies possible permit requirement. Permit(s) are required to be received prior to construction in Subd. 4.</p>

<p>Subdivision 2. Bond.</p> <p>(a) Upon filing the petition, the petitioners shall file a bond as provided in section 103E.202.</p> <p>(b) A bond is not required if the petition is filed by the state, a state agency or department, the commissioner of natural resources, the United States or any of its agencies, <u>a soil and water conservation district, a watershed district, or a municipality.</u></p>	<p>Clarifies that an SWCD or WD petitioner is not required to submit a bond.</p>
<p>Subdivision 3. Procedure to establish project.</p> <p>(a) After receiving the petition, and bond, and permit, if required, the drainage authority must appoint an engineer to investigate the effect of the proposed installation and file a report of findings.</p> <p>(b) After filing of the engineer’s report notice must be given and a public hearing held as provided in section 103E.261.</p> <p>(c) If from at the hearing it appears from the engineer’s report and other evidence presented that the installation project will be of a public or private benefit and that it will not impair the utility of the ditch drainage system or deprive affected land owners of its benefit, the drainage authority shall make an order modifying the drainage system, <u>including definition of any drainage system funds approved for the project at the discretion of the drainage authority,</u> and issue a <u>permit an order authorizing its installation the project.</u></p>	<p>Moves requirement for receiving permits, if required, to after the engineer’s report and drainage authority order, but prior to construction.</p> <p>The drainage system can be a ditch or tile system.</p> <p>A funding partnership can be appropriate, at the discretion of the drainage authority.</p>
<p>Subdivision 4. <u>Permits and flowage easements required.</u></p> <p>Before installing or constructing an impoundment or diversion <u>the project,</u> the petitioner <u>or drainage authority shall obtain all required permits, and all necessary rights-of-way and flowage easements from owners of land to be affected by it.</u></p>	<p>Better addresses applicable types of projects, permit responsibility and permit timing.</p>
<p>Subdivision 5. <u>Assessment of Construction, operation, maintenance and repair costs responsibilities.</u></p> <p>The order of the drainage authority modifying the drainage system must provide that construction and later <u>identify the responsible parties for construction, operation and maintenance and repairs of the drainage system modification and installation must be done by the petitioner without assessment of the cost to the property owners previously with the drainage system the amount, if any, of drainage system funds for the project. If the part of the drainage system located within the project boundaries is in need of repairs, the petitioner’s engineer shall estimate the current cost of these separable repairs. The drainage authority shall consider the separable repair costs that will be avoided as a result of the petitioned project, as well as any other benefits of the project to the drainage system, when defining if, or how much, drainage system funding to contribute to the petitioned project.</u></p>	<p>Clarifies responsibilities for the drainage system modification and definition of drainage system funds for the project, considering any separable drainage system repair costs avoided with the project.</p>
<p>103E.805 Removal of property from and partial abandonment of a drainage system.</p> <p>Subdivision 1. Petition.</p> <p>After the construction of a drainage system, the owner of benefited property may petition the drainage authority to remove property from the drainage system that is not benefited by the system or abandon any part of the drainage system that is not of public benefit and utility and does not serve a substantial useful purpose to property remaining in the system if:</p>	<p>Section 103E.805 currently includes two separate functions, but combines the definition of procedures in a way that is confusing. It is recommended that these two separate functions be</p>

<p>(1) waters are diverted from property assessed for benefits so that the drainage from the property does not use or affect the drainage system; or (2) a dam authorized by law is constructed in the drainage system so that the property above the dam cannot use or receive benefits from the drainage system.</p>	<p>separated and clarified, including creating Section 103E.806 for the partial abandonment function.</p>
<p>Subdivision 2. Filing. If the drainage system is under the jurisdiction of a <u>county</u> drainage authority, the petition must be filed with the auditor <u>of the county</u>. <u>If the drainage system is under the jurisdiction of a joint county drainage authority, the petition must be filed with the county having the largest area of property in the drainage system, where the primary drainage system records are kept.</u> If the system is under the jurisdiction of a watershed district, the petition must be filed with the secretary of the district.</p>	<p>Clarifies where to file a petition.</p>
<p>Subdivision 3. Hearing. (a) When the petition is filed, the drainage authority, in consultation with the auditor or the secretary, shall set a time and location for a hearing on the partial abandonment petition and shall give notice by publication of the hearing to all persons interested in the drainage system <u>and mailing of a notice to the owners of all property benefited by the drainage system.</u> (b) At the hearing, the drainage authority shall make findings and shall direct, by order, that the petitioners' property be removed from the drainage system if the drainage authority determines: (1) that the waters from the petitioners' property have been diverted from the drainage system, or that a dam has been lawfully constructed and the property cannot <u>significantly, or regularly</u> use the drainage system; (2) that the property is not benefited by the drainage system and does not use or affect the drainage system; and (3) that removing the property from the drainage system will not prejudice the property owners and property remaining in the system. (c) At the hearing, the drainage authority shall make findings and direct, by order that part of the drainage system be abandoned if the drainage authority determines that that part of the drainage system does not serve a substantial useful purpose to any property remaining in the system and is not of a substantial public benefit and utility.</p>	<p>Because removal of property from a drainage system is a major action, it is recommended to add a requirement of a mailed notice to benefited property owners. Waters are not limited to those controlled by a dam. Rare, insignificant overflow would not disqualify removal of the petitioned property. It is recommended to separate the partial abandonment function into the proposed new Section 103E.806.</p>
<p>Subdivision 4. Effect of removing property from a drainage system. The property that has been removed from the drainage system is not affected by the drainage system at any later proceeding for the repair or improvement of the drainage system and a drainage lien or assessment for repairs or improvements may not be made against the property that has been removed on or after the date of the order.</p>	<p>Minor wordsmithing.</p>
<p>Subdivision 5. Liens and assessments on property <u>removed from a drainage system or abandoned.</u> An order under this section does not release the property from a drainage lien filed on account of the drainage system before the date of the order. An order under this section does not release the property from any assessment or a drainage lien filed on or after the date of the order for costs incurred on account of the drainage system before the date of the order.</p>	<p>Completes the focus of Section 103E.805 on removal of property from a drainage system.</p>

<p><u>103E.806 Partial abandonment of a drainage system.</u> <u>Subdivision 1. Petition.</u> <u>After the construction of a drainage system, the owner of benefited property may petition the drainage authority to abandon any part of the drainage system that is not of public benefit and utility and does not serve a substantial useful purpose to property remaining in the system.</u></p>	<p>A new Section 103E.806 is recommended for the partial abandonment function, using language and procedures from the current and clarified Section 103E.805.</p>
<p><u>Subdivision 2. Filing.</u> <u>If the drainage system is under the jurisdiction of a county drainage authority, the petition must be filed with the auditor of the county. If the drainage system is under the jurisdiction of a joint county drainage authority, the petition must be filed with the county having the largest area of property in the drainage system, where the primary drainage system records are kept. If the system is under the jurisdiction of a watershed district, the petition must be filed with the secretary of the district.</u></p>	<p>Clarifies where to file a petition.</p>
<p><u>Subdivision 3. Hearing.</u> <u>(a) When the petition is filed, the drainage authority, in consultation with the auditor or the secretary, shall set a time and location for a hearing on the petition and shall give notice by publication of the hearing to all persons interested in the drainage system and mailing of a notice to the owners of all property benefited by the drainage system.</u> <u>(b) At the hearing, the drainage authority shall make findings and direct, by order, that part of the drainage system be abandoned, if the drainage authority determines that part of the drainage system does not serve a substantial useful purpose as part of the drainage system to any property remaining in the system and is not of a substantial public benefit and utility.</u></p>	<p>Includes a recommendation to require a mailed notice to the owners of all property benefited by the drainage system. Maintains current criteria for partial abandonment with a clarification to better enable partial abandonment of a portion of the public system that may still have private benefits.</p>
<p><u>Subdivision 4. Effect of partial abandonment.</u> <u>After partial abandonment of a drainage system, a repair petition may not be accepted for the abandoned part of the drainage system and the responsibility of the drainage authority for that part of the drainage system ends.</u></p>	<p>Clarifies focus on partial abandonment and correlates with current 103E.811, Subd. 6 language.</p>
<p><u>Subdivision 5. Liens and assessments on property involved in a partial abandonment.</u> <u>An order under this section does not release the property from a drainage lien filed on account of the drainage system before the date of the order. An order under this section does not release the property from any assessment or a drainage lien filed on or after the date of the order for costs incurred on account of the drainage system before the date of the order.</u></p>	<p>Clarifies focus on partial abandonment, but maintains current applicable 103E.805 language.</p>
<p><u>Section 103E.065 Drainage Inspectors.</u> <u>In counties or watershed districts having where constructed drainage systems constructed in accordance with this chapter have an aggregate cost of more than \$50,000, the board drainage authority shall appoint a competent person as county drainage inspector. The inspector may be the county highway engineer. The inspector shall examine the drainage systems designated by the board drainage authority. The board drainage authority shall specify the appointment period and compensation.</u></p>	<p>Clarifies applicability to watershed districts. Recommends requiring all Chapter 103E drainage authorities to appoint a drainage inspector.</p>

<p>Section 103E.401 Use of Drainage System as an Outlet Subdivision 3. Petition. A person seeking authority to use an established drainage system as an outlet must petition the drainage authority. When the petition is filed, the drainage authority in consultation with the auditor shall set a time and location for a hearing on the petition and shall give notice by mail and notice by publication of the hearing. The auditor must be paid a fee of \$5 plus 30 cents for each notice mailed in excess of ten.</p>	<p>Recommends elimination of the current nominal fee to mail notices of a hearing on the petition.</p>
<p>Section 103.505 Awarding the construction contract Subdivision 3. Notice of contract awarding. The auditor of an affected county shall give notice of the awarding of the contract by publication in a newspaper in the county. The notice must state the time and location for awarding the contract. For a joint county drainage project the auditors shall award the contract at the office of the auditor where the proceedings are pending. If the estimated cost of construction is more than \$3,000 <u>\$25,000</u>, the auditor must also place a notice in a drainage construction trade newspaper. The trade newspaper notice must state:</p> <ol style="list-style-type: none"> (1) the time and location for awarding the contract; (2) the approximate amount of work and its estimated cost; (3) that bids may be for the work as one job, or in sections, or separately, for bridges, ditches and open work, tile, or tile construction work, if required or advisable; (4) that each bid must be accompanied by a certified check or a bond furnished by an approved surety corporation payable to the auditors of affected counties for ten percent of the bid, as security that the bidder will enter into a contract and give a bond as required by section 103E.501; and (5) that the drainage authority reserves the right to reject any and all bids. 	<p>The \$3,000 threshold was established in 1947. The Bureau of Labor Statistics Inflation Calculator indicates a comparable current value of \$29,400. Based on using round numbers and being consistent with current MN Uniform Municipal Contracting Law thresholds, an updated threshold of \$25,000 is recommended.</p>
<p>Section 103E.611 Payment of Drainage Liens and Interest Subdivision 1. Payment of drainage lien principal. (a) Drainage liens against property benefited under this chapter are payable to the treasurer of the county in 20 or less equal annual installments. The first installment of the principal is due on or before November 1 after the drainage lien statement is recorded, and each subsequent installment is due on or before November 1 of each year afterwards until the principal is paid. (b) The drainage authority may, by order, direct the drainage lien to be paid by 1/15 of the principal on or before five years from November 1 after the lien statement is recorded and 1/15 on or before November 1 of each year afterwards until the principal is paid. (c) The drainage authority may order that the drainage lien must be paid by one or two installments, notwithstanding paragraphs (a) and (b), if the principal amount of a lien against a lot or tract of property or against a county or municipality is less than \$50 <u>\$500</u>.</p>	<p>The \$50 threshold was established in 1961. The Bureau of Labor Statistics Inflation Calculator indicates a comparable current value of \$366. Using round numbers, an updated threshold of \$500 is recommended.</p>
<p>Section 103E.735 Drainage system repair fund. Subdivision 1. Authority and limits of fund. To create a repair fund for a drainage system to be used only for repairs, the drainage authority may apportion and assess an amount against all property and entities assessed for</p>	

<p>benefits in proceedings for establishment of the drainage system, including property not originally assessed and subsequently found to be benefited according to law. The fund may not exceed 20 percent of the assessed benefits of the drainage system or \$40,000 <u>\$100,000</u>, whichever is greater. If the account in a fund for a drainage system exceeds the larger of 20 percent of the assessed benefits of the drainage system or \$40,000 <u>\$100,000</u>, assessments for the fund may not be made until the account is less than the larger of 20 percent of the assessed benefits or \$40,000 <u>\$100,000</u>. Assessments must be made pro rata according to the determined benefits. Assessments may be made payable, by order, in equal annual installments. The auditor shall file a tabular statement as provided in section 103E.731, subdivision 4, with the county recorder. Assessments must be collected as provided in section 103E.731.</p>	<p>The \$40,000 limit was established in 1980. The Bureau of Labor Statistics Inflation Calculator indicates a comparable current value of \$105,133. Using round numbers, an updated limit of \$100,000 is recommended.</p>
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Funding Recommendation

Topic: Drainage Records Modernization

Background

In 2006, the Drainage Work Group recommended \$150,000 of state funding to develop Drainage Records Modernization Guidelines and \$2 million to cost-share with drainage authorities to modernize their drainage records. The 2007 Legislature appropriated \$150,000 to the BWSR in FY 2008 to develop these guidelines and \$500,000 in FY 2009 for associated cost-share. The Drainage Records Modernization Guidelines were completed by the BWSR, in partnership with the Minnesota State University – Mankato, Water Resources Center in September 2008. Applications for Drainage Records Modernization Challenge Grants were received from 44 drainage authorities in October 2008, involving a total of \$1.35 million in requests and \$1.85 million in local match.

Recommendation

The Drainage Work Group recommends that the Legislature, with the support of the Governor, appropriate \$500,000 per year of state challenge grant funding for drainage records modernization for the 2010 – 2011 biennium.