

Drainage Work Group
Summary of Discussions and Conclusions Regarding
HF-2011/SF-2029, HF-2365/SF-2380 and SF-2451/HF-3956
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HF-2011 / SF-2029

HF-2011 was introduced in 2015 by then Rep. Lenczewski as chief author. SF-2029 was introduced during the 2016 legislative session by Sen. Wiklund as chief author. These bills did not receive a hearing during the 2015 or 2016 legislative sessions.

Bill Language

Section 1. Minnesota Statutes 2014, section 103E.011, subdivision 5, is amended to read:

Subd. 5. **Use of external sources of funding.** Notwithstanding other provisions of this chapter, a drainage authority may accept and use funds from sources other than, or in addition to, those derived from assessments based on the benefits of the drainage system for the purposes of watershed-based planning and implementation for the drainage system, wetland preservation or restoration, or creation of water quality improvements or flood control. The sources of funding authorized under this subdivision may also be used outside the benefited area but must be within the watershed of the drainage system.

Summary of DWG Discussions and Conclusions

- 1) Motivation for these bills is unclear. The DWG had previously avoided overlap of drainage law with water planning law, while better enabling coordination, when the DWG recommended updates to Sec. 103E.015 Considerations Before Drainage Work is Done that were adopted in 2014.
- 2) Current Sec. 103E.011, Subd. 5 implicitly includes planning and implementation within the watershed of a drainage system for the three defined purposes.
- 3) Therefore, the DWG does not support revision of this subdivision as proposed.
- 4) The DWG also discussed an alternative revision to further clarify planning and implementation authority in Subd. 5 and water storage / detention as a purpose. There was not collective DWG support for this, because planning and implementation are implicitly included in current Subd. 5, and because storage / detention can be done based on the existing purposes listed in Subd. 5.

HF-2365 / SF-2380

HF-2365 was introduced in 2015 by Rep. Backer as chief author. SF-2380 was introduced in 2016 by Sen. Westrom as chief author. These bills did not pass during the 2016 legislative session. HF-2365 was referred to the Committee on Agriculture Policy which recommended that the bill be re-referred to the Committee on Environment and Natural Resources Policy and Finance. SF-2380 was referred to the Environment and Energy Cmte., which amended it to include a report by the DWG (see below) and re-referred to the Jobs, Agriculture and Rural Development Committee.

Bill Language

Section 1. Minnesota Statutes 2014, section 103E.715, subdivision 4, is amended to read:

Subd. 4. **Hearing on repair report.** (a) The drainage authority shall make findings and order the repair to be made if:

(1) the drainage authority determines from the repair report and the evidence presented that the repairs recommended are necessary for the best interests of the affected property owners; or

(2) the repair petition is signed by the owners of at least 26 percent of the property area affected by and assessed for the original construction of the drainage system, and the drainage authority determines that the drainage system is in need of repair so that it ~~no longer serves~~ can serve its original

purpose and the cost of the repair will not exceed the total benefits ~~determined in the original drainage system proceeding~~ as determined by updating land values based on the county assessor's most recent estimated market value.

(b) The order must direct the auditor and the chair of the board or, for a joint county drainage system, the auditors of the affected counties to proceed and prepare and award a contract for the repair of the drainage system. The contract must be for the repair described in the repair report and as determined necessary by the drainage authority, and be prepared in the manner provided in this chapter for the original drainage system construction.

(Note: The following language was added by amendment to SF-2380 only.)

EFFECTIVE DATE. _____

This section is effective July 1, 2017.

Sec. 2. REPORT.

By February 1, 2017, the drainage work group, created under Minnesota Statutes, section 103B.101, subdivision 13, shall report to the legislature on changes to Minnesota Statutes, chapter 103E, to more efficiently accomplish the updating of benefits and any related measures to accomplish prudent management of public drainage systems.

Summary of DWG Discussions and Conclusions

- 1) These bills originated from legal problems encountered in the Bois de Sioux Watershed District in regard to redetermination of benefits and damages for JD-14 in Traverse County, and subsequent separate petitions for repairs of other drainage systems where benefited lands and benefits on record for the drainage system are substantially out of date.
- 2) The DWG reviewed and discussed a summary of the history of Section 103E.715 compiled by DWG member Greg Knopff, Senate Analyst, and condensed and edited by Al Kean, DWG facilitator.
- 3) The DWG does not support the drainage law revision proposed in the subject bills, because:
 - a. there is significant history of drainage law changes leading to the current provisions in Section 103E.715, Subd. 4;
 - b. the provisions in Section 103E.715, Subd. 4 para. (a), clauses (1) and (2) enable either the drainage authority, based on one or more petitioners; or at least 26% of benefited landowners; to initiate major repairs, albeit the latter option having a limitation on costs of the repair to the drainage system benefits on record;
 - c. case law indicates that drainage authorities have an option to use Section 103E.715, Subd. 4, para. (a), clause (1), which does not limit repair costs to the benefits on record, for all petitioned repairs, as described in Chapter 2 of the updated MN Public Drainage Manual;
 - d. there is substantial DWG reluctance to enable avoiding redetermination of benefits and damages that update outdated determinations of benefited properties and benefits on record to more fairly assess the costs of repairs;
 - e. there is concern about potential unintended consequences of revising this subdivision and reluctance to change drainage law for a unique drainage authority problem.
- 4) Alternative revisions of punctuation to help clarify Section 103E.715, Subd. 4, or revision of references to "original drainage system proceedings", were discussed but not supported. The DWG discussed potentially revising all references to "original" proceedings, construction or benefits, as appropriate throughout Chapter 103E, at one time, to clarify drainage law.
- 5) The DWG also discussed the need to review and discuss Section 103E.351 Redetermination of Benefits and Damages, because that is where the JD-14 and related problems in the Bois de Sioux Watershed District originated. The DWG has prioritized this on its list of discussion topics.

SF-2451 / HF-3956

SF-2451 was introduced in 2016 by Sen. Clausen as chief author, based on a situation in his district. HF-3956 was also introduced in 2016 by Rep. Hansen as chief author. These bills did not receive a hearing during the 2016 legislative session.

Bill Language

Section 1. [103G.2225] SURFACE AND SUBSURFACE DRAINAGE OF AGRICULTURAL LAND REQUIREMENTS; ADEQUACY OF OUTLET.

(a) Before installing surface or subsurface drainage on agricultural land, a person must have received from the local government unit:

- (1) a wetland replacement plan;
- (2) a no-loss determination; or
- (3) an exemption determination.

(b) Before issuing a plan or determination under paragraph (a), the local government unit must determine whether an adequate outlet exists for the proposed surface or subsurface drainage. If water from the installation of surface or subsurface drainage on agricultural land will flow on to land owned by another person, the person owning the agricultural land on which the surface or subsurface drainage is being installed must acquire a flowage easement from the person who owns the overflowed land. If an adequate outlet does not exist, the local government unit must not issue the plan or determination.

Summary of DWG Discussions and Conclusions

- 1) These bills would require outlet adequacy determination along with wetland determinations (including when no wetlands are involved) by a WCA LGU, and flowage easement(s) downstream, for surface and subsurface drainage of ag land.
- 2) It's not completely clear how this would apply to Chapter 103E drainage systems, but it seems to overlap and create inconsistency. Chapter 103E includes an adequacy of outlet determination for a "drainage project" by the drainage authority, based in an engineer's report.
- 3) It's not clear what criteria would apply to adequacy of the outlet and what expertise would be available to make a determination.
- 4) Some DWG members have strong concern about requiring flowage easement(s) from downstream landowner(s) and the effect on any new drainage and the reasonable use doctrine in Minnesota, which is based on a long history of common law and case law. However, it is recognized that unless private drainage is addressed through other local controls, and/or landowners coordinate with their neighbors, legal action by affected landowners may be their only recourse.
- 5) Some DWG members have a strong preference for local controls by a Watershed District, Water Management Organization or Joint Powers Organization for private drainage (agricultural and urban). It was noted that local rules regarding private drainage likely could have addressed the situation that led to this set of bills, and that some LGUs have such local controls that are working.
- 6) Based on these considerations, the DWG does not have consensus support for the subject bills.