



---

# Le Sueur County, MN

Tuesday, June 16, 2015

Board Meeting

## Item 9

**11:30 am Darrell Pettis, County Administrator**

*RE: TH 112 Turn back Project*

*RE: Buffer Initiative*

Staff Contact:



---

1015 W. St. Germain St., Ste. 300, P.O. Box 1497  
St. Cloud, Minnesota 56302-1497  
Direct Dial 320-656-3503  
Telephone 320-251-6700, Fax 320-656-3500  
Email: [JKolb@rinkenoonan.com](mailto:JKolb@rinkenoonan.com)

**Memorandum**

To: Le Sueur County Board of Commissioners  
From: John C. Kolb  
Re: Governor Dayton's Grass Buffer Initiative (HF 846; CCRHF0846)  
Our File: 15741-0011  
Date: June 9, 2015

Darrell asked for a summary of the recently passed (House 83-50, Senate 35-30) Conference Committee Report on House File 846 (Riparian Protection and Water Quality). Subsequent to the passage, Governor Dayton vetoed the comprehensive Agriculture and Environment Finance Bill into which HF 846 was incorporated.

Recently (week of June 1), following discussions of issues to be addressed in a special session of the legislature, the Governor announced that buffers to protect state waterways from pollution, survived the talks and will be included in a new environment measure. I understand from various sources (Jaschke, Bohn and others) that the language approved from the Conference Committee Report will be adopted.

The purpose of the bill is to establish riparian buffers (areas of perennial vegetation or perennially rooted vegetation) and water quality practices to: (1) protect state water resources from erosion and runoff pollution; (2) stabilize soils, shores and banks; and (3) protect or provide riparian corridors. The bill creates three classes of water to be protected by buffers: public waters; public drainage systems; and other watercourses to be determined by local Soil and Water Conservation Districts (SWCD).

Public waters are those waters identified in the public waters inventory process or meeting the definition in statute section 103G.005, subd. 15.<sup>1</sup> Public drainage systems include those systems

---

<sup>1</sup> "Public waters" means: (1) water basins assigned a shoreland management classification by the commissioner under sections 103F.201 to 103F.221; (2) waters of the state that have been finally determined to be public waters or navigable waters by a court of competent jurisdiction; (3) meandered lakes, excluding lakes that have been legally drained; (4) water basins previously designated by the commissioner for management for a specific purpose such as trout lakes and game lakes pursuant to applicable laws; (5) water basins designated as scientific and natural areas under section 84.033; (6) water basins located within and totally surrounded by publicly owned lands; (7) water basins where the state of Minnesota or the federal government holds title to any of the beds or

established under statutes chapter 103E and all “ditches” within the benefited area of public drainage systems.

On or before July 1, 2017, each SWCD must develop, adopt, and submit to each local water management authority<sup>2</sup> within its boundary a summary of watercourses for inclusion in the local water management authority’s plan. A local water management authority that receives a summary of watercourses from the SWCD must revise its comprehensive local water management plan or watershed plan to incorporate the SCWD’s recommendation.

The bill places the obligation on landowners to “maintain” a buffer on the water resources covered by the bill. For public waters, the buffer requirement is the more restrictive of: (1) a 50-foot average width, 30-foot minimum width, continuous buffer of perennially rooted vegetation; or (2) the state shoreland standards where applicable. For public drainage systems, a minimum 16.5-foot buffer is required. The bill provides for alternative riparian protection practices meeting Natural Resource Conservation Service technical guidance or as approved by the Board of Water and Soil Resources (BWSR). For public waters, buffers must be in place by November 1, 2017. For public drainage systems, buffers must be in place by November 1, 2018.

Several categories of land are exempted from the buffer requirement. The exempted lands include those: (1) enrolled in the conservation reserve program; (2) used for public or private water access or recreation; (3) covered by roads, trails, buildings or other structures; or (4) regulated by a National Pollution Discharge Elimination System (NPDES) or State Disposal System (SDS) permits;<sup>3</sup> (5) part of an inundation cropping system; or (6) temporarily non-vegetated due to the planting of perennial vegetation or permitted construction.

The bill requires SWCDs to assist landowners with buffer implementation and requires the DNR or BWSR to provide funding to SWCDs for planning, technical assistance, alternative practice implementation and compliance tracking. SWCDs are responsible for identifying non-compliance and notifying the appropriate local water management authority (County or Watershed District) of the non-compliance. The local water management authority is responsible for enforcement of the buffer requirements.<sup>4</sup>

The enforcement requirements include notice to the non-complying landowner (detailing the required corrective actions and a timeline for completion) and notice to BWSR. Failure to comply after notice may result in administrative penalty or other enforcement action.<sup>5</sup> The bill

---

shores, unless the owner declares that the water is not necessary for the purposes of the public ownership; (8) water basins where there is a publicly owned and controlled access that is intended to provide for public access to the water basin; (9) natural and altered watercourses with a total drainage area greater than two square miles; (10) natural and altered watercourses designated by the commissioner as trout streams; and (11) public waters wetlands, unless the statute expressly states otherwise.

<sup>2</sup> Local Water Management Authority means a watershed district, metropolitan water management organization, or county operating separately or jointly in its role as local water management authority under chapters 103B or 103D.

<sup>3</sup> Under rules part 7090, regulating discharges of storm water from municipal separate storm sewer systems, construction activities, and industrial activities for purposes of abating water pollution associated with storm water discharges from these sources.

<sup>4</sup> The bill does not provide for funding to local water management authorities for enforcement.

<sup>5</sup> For administrative penalty, the local water management authority must adopt a rule to implement penalty authority as provided for in the bill. The bill states that watershed district’s may also enforce under authority found

provides an appeal procedure to BWSR for enforcement orders and compliance determinations.

The bill anticipates the providing of financial assistance or compensation to landowners for the establishment of buffer areas. The landowner may apply for costs share funds and compliance waivers may be issued if cost share funds are not available.<sup>6</sup> For public drainage systems, the provisions of chapter 103E may be used in advance or retroactively to acquire or provide compensation for all or part of buffer establishment.

Finally, the bill provides that the State may withhold funding from a local water management authority or SWCD that fails to implement the new law.

Implications of the bill are substantial for the county. The bill makes clear that the watershed county is responsible for enforcement for covered waters within its jurisdictional boundary – yet no funding is provided for the activity. In its role as drainage authority, the Board has no direct obligations, except that it may initiate or undertake proceedings under 103E to acquire or provide compensation/assistance for implementation on public drainage systems. The potential penalty to the district for non-enforcement could be substantial. Fund withholding may include soil and water program aid, natural resources block grants or other program funding.

If the bill is passed into law in its current form, I recommend early coordination with the watershed districts and SWCDs whose boundaries overlap with the county.

---

in section 103B.101, subd. 12a. However, the referenced authority applies to BWSR and not watershed district boards. If a local water management authority does not adopt rules for enforcement, BWSR may enforce.

<sup>6</sup> Compliance waivers for lack of cost share funds may not extend beyond November 1, 2018.