

## Buffer and Soil Loss Legislation

*Laws of Minnesota 2015, 1<sup>st</sup> Special Session, Chapter 4, Article 4*

Sec. 72. Minnesota Statutes 2014, section 103B.101, is amended by adding a subdivision to read:

Subd. 12a. **Authority to issue penalty orders.** (a) A county or watershed district with jurisdiction or the Board of Water and Soil Resources may issue an order requiring violations of the water resources riparian protection requirements under sections 103F.48, 103F.415, and 103F.421, to be corrected and administratively assessing monetary penalties up to \$500 for noncompliance commencing on day one of the 11th month after the noncompliance notice was issued. One-half of the proceeds collected from an administrative penalty order issued under this section must be remitted to the county or watershed district with jurisdiction over the noncompliant site.

(b) Administrative penalties may be reissued and appealed under paragraph (a) according to section 103F.48, subdivision 9.

Sec. 77. Minnesota Statutes 2014, section 103F.421, subdivision 4, is amended to read:

Subd. 4. **Application for cost-sharing funds.** The landowner has 90 days after a mediated settlement is filed ~~complaint is substantiated~~ to apply for state cost-sharing funds ~~that will provide 75 percent of the cost of the permanent conservation practices. Only 50~~ Fifty percent of the cost share will be provided if the application is not made within 90 days after the settlement is filed, ~~unless the soil and water conservation district or the board provides an extension. An extension must be granted if funds are not available. The landowner must apply for 50 percent of the cost share within 270 days after the mediated settlement is filed.~~

Sec. 78. Minnesota Statutes 2014, section 103F.421, is amended by adding a subdivision to read:

Subd. 6. **Application of state and federal law.** Nothing in this section is intended to preclude the application of other applicable state or federal law.

Sec. 79. **[103F.48] RIPARIAN PROTECTION AND WATER QUALITY PRACTICES.**

Subdivision 1. **Definitions.** (a) For the purposes of this section, the following terms have the meanings given them.

(b) "Board" means the Board of Water and Soil Resources.

(c) "Buffer" means an area consisting of perennial vegetation, excluding invasive plants and noxious weeds, adjacent to all bodies of water within the state and that protects the water resources of the state from runoff pollution; stabilizes soils, shores, and banks; and protects or provides riparian corridors.

(d) "Buffer protection map" means buffer maps established and maintained by the commissioner of natural resources.

(e) "Commissioner" means the commissioner of natural resources.

(f) "Executive director" means the executive director of the Board of Water and Soil Resources.

(g) "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 chapter 103B or 103D.

(h) "Normal water level" means the level evidenced by the long-term presence of surface water as indicated directly by hydrophytic plants or hydric soils or indirectly determined via hydrological models or analysis.

(i) "Public waters" has the meaning given in section 103G.005, subdivision 15.

Subd. 2. **Purpose.** It is the policy of the state to establish riparian buffers 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.

Subd. 3. **Water resources riparian protection requirements on public waters and public drainage systems.** (a) Except as provided in paragraph (b), landowners owning property adjacent to a water body identified and mapped on a buffer protection map must maintain a buffer to protect the state's water resources as follows:

(1) for all public waters, the more restrictive of:

(i) a 50-foot average width, 30-foot minimum width, continuous buffer of perennially rooted vegetation; or

(ii) the state shoreland standards and criteria adopted by the commissioner under section 103F.211; and

(2) for public drainage systems established under chapter 103E, a 16.5-foot minimum width continuous buffer of perennially rooted vegetation on ditches within the benefited area of public drainage systems.

(b) A landowner owning property adjacent to a water body identified in a buffer protection map and whose property is used for cultivation farming may meet the requirements under paragraph (a) by adopting an alternative riparian water quality practice, or combination of structural, vegetative, and management practices, based on the Natural Resources Conservation Service Field Office Technical Guide or other practices approved by the board, that provide water quality protection comparable to the buffer protection for the water body that the property abuts.

(c) The width of a buffer must be measured from the top or crown of the bank. Where there is no defined bank, measurement must be from the edge of the normal water level.

(d) Upon request by a landowner or authorized agent or operator of a landowner, a technical professional employee or contractor of the soil and water conservation district or its delegate may issue a validation of compliance with the requirements of this subdivision. The soil and water conservation district validation may be appealed to the board as described in subdivision 9.

(e) Buffers or alternative water quality practices required under paragraph (a) or (b) must be in place on or before:

(1) November 1, 2017, for public waters; and

(2) November 1, 2018, for public drainage systems.

**Subd. 4. Local water resources riparian protection.** On or before July 1, 2017, the soil and water conservation district shall develop, adopt, and submit to each local water management authority 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 identified under this subdivision must revise its comprehensive local water management plan or comprehensive watershed management plan to incorporate the soil and water conservation district recommendations.

**Subd. 5. Exemptions.** Land adjacent to waters subject to subdivision 3 is exempt from the water resource protection requirements under subdivision 3, to the extent these exemptions are not inconsistent with the requirements of the state shoreland rules adopted by the commissioner pursuant to section 103F.211, if it is:

(1) enrolled in the federal Conservation Reserve Program;

(2) used as a public or private water access or recreational use area including stairways, landings, picnic areas, access paths, beach and watercraft access areas, and permitted water-oriented structures as provided in the shoreland model standards and criteria adopted pursuant to section 103F.211 or as provided for in an approved local government shoreland ordinance;

(3) covered by a road, trail, building, or other structures; or

(4) regulated by a national pollutant discharge elimination system/state disposal system (NPDES/SDS) permit under Minnesota Rules, chapter 7090, and provides water resources riparian protection, in any of the following categories:

(i) municipal separate storm sewer system (MS4);

(ii) construction storm water (CSW); or

(iii) industrial storm water (ISW);

(5) part of a water-inundation cropping system; or

(6) in a temporary nonvegetated condition due to drainage tile installation and maintenance, alfalfa or other perennial crop or plant seeding, or construction or conservation projects authorized by a federal, state, or local government unit.

**Subd. 6. Local implementation and assistance.** (a) Soil and water conservation districts must assist landowners with implementation of the water resource riparian protection requirements established in this section. For the purposes of this subdivision, assistance includes planning, technical assistance, implementation of approved alternative practices, and tracking progress towards compliance with the requirements.

(b) The commissioner or the board must provide sufficient funding to soil and water conservation districts to implement this section.

**Subd. 7. Corrective actions.** (a) If the soil and water conservation district determines a landowner is not in compliance with this section, the district must notify the county or watershed district with jurisdiction over the noncompliant site. The county or watershed district must provide the landowner with a list of corrective actions needed to come into compliance and a practical timeline to meet the requirements in this section. The county or watershed district with jurisdiction must provide a copy of the corrective action notice to the board.

(b) If the landowner does not comply with the list of actions and timeline provided, the county or watershed district may enforce this section under the authority granted in section 103B.101, subdivision 12a. Before exercising this authority, a county or watershed district must adopt a plan

containing procedures for the issuance of administrative penalty orders and may issue orders beginning November 1, 2017. If a county or watershed district with jurisdiction over the noncompliant site has not adopted a plan under this paragraph, the board may enforce this section under the authority granted in section 103B.101, subdivision 12a.

(c) If the county, watershed district, or board determines that sufficient steps have been taken to fully resolve noncompliance, all or part of the penalty may be forgiven.

(d) An order issued under paragraph (b) may be appealed to the board as provided under subdivision 9.

(e) A corrective action is not required for conditions resulting from a flood or other act of nature.

(f) A landowner agent or operator of a landowner may not remove or willfully degrade a riparian buffer or water quality practice, wholly or partially, unless the agent or operator has obtained a signed statement from the property owner stating that the permission for the work has been granted by the unit of government authorized to approve the work in this section or that a buffer or water quality practice is not required as validated by the soil and water conservation district. Removal or willful degradation of a riparian buffer or water quality practice, wholly or partially, by an agent or operator is a separate and independent offense and may be subject to the corrective actions and penalties in this subdivision.

Subd. 8. **Funding subject to withholding.** The state may withhold funding from a local water management authority or a soil and water conservation district that fails to implement this section. Funding subject to withholding includes soil and water program aid, a natural resources block grant, and other projector program funding. Funding may be restored upon the board's approval of a corrective action plan.

Subd. 9. **Appeals of validations and penalty orders.** A landowner or agent or operator may appeal the terms and conditions of a soil and water conservation district validation or an administrative penalty order to the board within 30 days of receipt of written or electronic notice of the validation or order. The request for appeal must be in writing. The appealing party must provide a copy of the validation or order that is being appealed, the basis for the appeal, and any supporting evidence. The request for appeal may be submitted personally, by first class mail, or electronically to the executive director. If a written or electronic request for appeal is not submitted within 30 days, the validation or order is final. The executive director shall review the request and supporting evidence and issue a

decision within 60 days of receipt of an appeal. The executive director's decision is appealable directly to the Court of Appeals pursuant to sections 14.63 to 14.69.

**Subd. 10. Landowner financial assistance and public drainage system procedure.** (a) A landowner or drainage authority may contact the soil and water conservation district for information on how to apply for local, state, or federal cost-share grants, contracts, or loans that are available to establish buffers or other water resource protection measures.

(b) The provisions of sections 103E.011, subdivision 5; 103E.021, subdivision 6; and 103E.715 may be used in advance or retroactively to acquire or provide compensation for all or part of the buffer strip establishment or alternative riparian water quality practices as required under subdivision 3, paragraph (a), within the benefited area of a public drainage system. Implementation of this subdivision is not subject to limitation of project costs to the current benefits adopted for the drainage system.

**Subd. 11. State lands.** This section applies to the state and its departments and agencies.

Sec. 146. **INITIAL IMPLEMENTATION; WAIVERS.**

A soil and water conservation district must grant a conditional compliance waiver under Minnesota Statutes, section 103F.48, to landowners who have applied for and maintained eligibility for financial assistance within one year of the dates listed in Minnesota Statutes, section 103F.48, subdivision 3, paragraph (e), according to Minnesota Statutes, section 103F.48. A conditional compliance waiver also must be granted to landowners who are subject to a drainage proceeding commenced under Minnesota Statutes, sections 103E.011, subdivision 5; 103E.021, subdivision 6; and 103E.715. The conditional compliance waiver is valid until financial assistance is available for buffer installation, but not later than November 1, 2018.

Sec. 150. **REPEALER.**

(c) Minnesota Statutes 2014, sections 103F.421, subdivision 5; 103F.451; and 114D.50, subdivision 4a, are repealed.