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MN Association of Watershed Districts LEGISLATIVE UPDATE: May 24, 2018

The 2018 legislative session came to an end late Sunday night and the Governor, less than 3 days later, vetoed two out of the three main bills passed during the session. The bonding bill is still pending but there were no veto threats or promises on that bill. The Governor did indicate in presenting his veto messages that he will not call a special session this year.

Because the policy legislation within both the supplemental finance bill and taxes bill will be resurrected in either a special session if one is called or in the 2019 session... not all is lost. At this point we need to consider the approved legislative language a blue print for the future.

With that in mind, we outline below what survived and what didn't make the cut in the bills presented or passed by the legislature. (Green checks = made it to the Governor, red Xs = did not make it to his desk.)

Certainly the legislative majority took a big gamble that the governor would accept all provisions in a large, multiple subject bill that he disagreed with and sign the bill. But, by placing all finance and policy issues into one large omnibus bill (largest bill in the history of the state) it takes only one policy provision the Governor disagrees with to bring down the entire bill. While the legislature did remove many provisions (71 out of 117) that he asked them to remove, it was not enough.

The Governor does have the latitude to line-item veto spending provisions, but not policy provisions unless they are attached to the vetoed funding.

With these vetoes, we, along with many others, are left holding a large empty bag for all our work during the session. We are attaching a copy of one of the Governor's veto messages since it so clearly illustrates the impact partisan politics had on everything this year.

Lastly, we are including a list of the legislation that was proposed by others that we were tracking and at times acting on. These bills did not make it to the Governor's desk.

SF 3656, Chapter 201 Legislative Provisions (Vetoed 5-23-18)

Watershed Planning and Management. We introduced a bill that would significantly reduce the duplicative efforts between the Total Maximum Daily Load (TMDL) studies, the Watershed Restoration and Protection Strategy (WRAPS) reports and One Watershed One Plan (1W1P) efforts. This was a joint effort with the Association of MN Counties (AMC), the MN Association of Soil and Water Conservation Districts (MASWCD), the Board of Water and Soil Resources (BWSR) and the MN Pollution Control Agency (MPCA). We also worked closely with several environmental groups to address concerns they had along the way.



COORDINATED WATERSHED MANAGEMENT (HF 3908 / SF 3647)

MAWD Resolution 2017-01: Advocate for coordination and integration of state watershed programs with local watershed implementation. Included in the supplemental finance bill.

PASSED → SENT to GOVERNOR (but vetoed)

103E Drainage. On behalf of the drainage work group, we worked on five statutory changes that would remove impediments standing in the way of getting buffers established on public ditches. This was a joint effort with AMC and BWSR. We also worked with the MN Department of Agriculture on the Agricultural Best Management Practices (Ag BMP) Loan Program provisions. These recommendations came from a report from the drainage work group sent to the legislature ([report](#)) dated February 1, 2018 entitled "Recommendations for Accelerating Public Drainage System Acquisition and Establishment of Buffer Strips and Alternative Practices."

DWG RECOMMENDATIONS FOR ACCELERATING DITCH BUFFER ESTABLISHMENT

MAWD Board Direction: Promote consensus legislation put forth by the Drainage Work Group.



Recommendation S1. Add a temporary legislative provision to allow, with landowner consent, a drainage authority to seed and establish ditch buffer strips in advance of drainage law proceedings to determine damages and acquire a permanent easement. **PASSED → SENT to GOVERNOR (but vetoed)**



Recommendation S2. Clarify Section 103E.021, Subd. 6, to expressly state that, upon findings and an order, the drainage authority is vested with jurisdiction over property rights acquired for 16.5-ft. ditch buffer strips. **PASSED → SENT to GOVERNOR (but vetoed)**



Recommendation S3. Revise Section 103E.351 Redetermination of Benefits and Damages to enable 26 percent of benefited landowners, or owners of 26 percent of the benefited lands, to petition for a redetermination of benefits in order to update benefited area(s) and benefits on record and more equitably apportion drainage system costs, including for ditch buffer strips. NOTE: Currently landowners can only petition to correct an error. **PASSED as AMENDED (50 percent required, not 26 percent) → SENT to GOVERNOR (but vetoed)**



Recommendation S6. Clarify Section 103E.071 County Attorney, to make it clear that drainage authorities, including counties, may hire outside legal counsel per Section 388.09, Subd. 1. **PASSED → SENT to GOVERNOR (but vetoed)**



Recommendation P4. For a ditch system that does not have adequate cash flow capability, modify an existing or create a new loan program for buffer strip acquisition and establishment. **Provisions to modify the Ag BMP Loan Program to allow drainage authorities to borrow money on behalf of multiple landowners was PASSED → SENT to GOVERNOR (but vetoed)**

Note: The Ag BMP Loan Program provisions were also placed in the Ag Policy Bill (Chapter 190, HF4133) and sent to the governor. The legislation was promptly vetoed (May 21) by the governor because of other provisions in the legislation that he disagreed with.

Legacy Appropriations. In an unusual turn of events, \$26M dollars went unspent from the Clean Water Fund. This money became available because there was more revenue from sales tax than was expected and the legislature returned \$22M from the general fund as promised in last year's legislation IF there was a surplus. The House had a bill that outlined how to spend the money, but unfortunately the Senate wasn't interested in spending it. The senate position to not spend the money this year was unfortunate, but it will be available next year. NOTE: The Lessard-Sams Outdoor Heritage Council appropriations passed in a standalone bill with projects in several watershed districts. The Governor has not acted on this bill yet.

CLEAN WATER FUND (HF 4269)



This bill specified how the nearly \$26M extra Clean Water Funds were to be spent in FY 2019. There was \$4.3M for additional One Watershed One Plan implementation grants, \$3.5M for competitive grants, \$5M for buffer cost share, \$10M for CREP, and a few other items. **DID NOT PASS THE LEGISLATURE**



OUTDOOR HERITAGE FUND (HF 3423)

Description: This bill specifies how \$113.9M will be spent in FY 2019 with projects identified in the Shell Rock River, Buffalo-Red River, and Minnehaha Creek WDs. **PASSED AS A STAND-ALONE BILL → SENT to GOVERNOR (he has not signed or vetoed this bill yet)**

- \$1.421M for Shell Rock River Watershed Habitat Restoration Program - Phase VII
- \$1.195M for Buffalo River Watershed Stream Habitat Program
- \$0.567M for Six Mile Creek – Halsted Bay Habitat Restoration

Water Resource Issues. Unfortunately, the legislation providing limited liability protection to certified commercial salt applicators did not make it to Governor’s desk.



LIMITED LIABILITY FOR COMMERCIAL SALT APPLICATION (HF 3577 / SF 3199)

MAWD Resolution 2017-04: Support limited liability protections for certified commercial salt applicators. **REMOVED FROM FINAL OMNIBUS BILL**

Bonding Bill HF 4425, Chapter 214 (No Action by Governor Yet)

Bonding: This legislation passed after being rejected by the full senate. Also included in this \$1.56 billion-dollar bill was \$98M funded by dollars from the Environmental Trust Fund. In addition to the \$10M in CREP funding and \$6.7M in Wetland Road Replacement funds, the good news for bonding is that the flood hazard mitigation money did not have any earmarks ensuring projects ready to build will be funded and provides more flexibility within the program to provide maximum funding for those projects on the DNR’s funding list.



FLOOD HAZARD PROGRAMS / BONDING (miscellaneous bills)

MAWD Resolution 2017-06: Support stable funding for the DNR's Flood Damage Reduction Grant Program. Support bonding requests from watershed districts for the Flood Hazard Mitigation Program (2016)

- \$20.0M for Flood Hazard Mitigation (with no earmarks) **PASSED → SENT to GOVERNOR (he has not signed or vetoed this bill yet)**

Tax Bill HF 947, Chapter 205 (Vetoed 5-23-18)

Levy Authorities. Although there was little interest from legislators this year to sponsor a bill that would increase the general levy, we had movement on improving the flexibility of how our project tax levy authority can be used to match more types of grants, such as from the Clean Water Fund. Currently the statute (MN Statute 103D.905 subd. 9) only allows a levy for a project being funded by a Clean Water Partnership grant or loan. This legislation made it into the original Senate tax bill but was not included in the final omnibus tax bill that emerged after the conference committee met.



PROJECT LEVY STATUTE MODIFICATION (HF 2456/SF3077)

2016 MAWD Resolution: Advocate for a statutory clarification to allow broader use of levy funds with new state sources of project funding. **INCLUDED IN SENATE TAX BILL, BUT NOT INCLUDED IN THE FINAL OMNIBUS TAX BILL**

DRAINAGE LIEN PRINCIPAL INTEREST RATE MODIFICATION (HF 3512 / SF 3097)

MAWD Board Direction: Monitor and act on any changes to the 103E.

Description: This bill would increase the interest rate minimum cap set by the state court to 6%. MAWD was neutral on this issue.

Efforts that MAWD will Continue Administratively (Non-Legislatively)

HF 3834 / SF 3499 ELECTRONIC MEETING ATTENDANCE

2016 MAWD Resolution: Amend the Open Meeting Law to allow electronic meeting participation by WD managers & outside of WD boundaries.

Next Steps: MAWD will meet with various stakeholders on this issue and get clarification on various legal interpretations.

Legislation Proposed by Others – DID NOT PASS

HF 2989 / SF 3407 METRO “SLOW THE FLOW”

MAWD Board Direction: Monitor and act on proposed changes to 103B.

Description: This bill would **require** metro watershed management programs to slow the movement of water to improve water quality and increase groundwater recharge, as well as protect and enhance surface water and groundwater used for drinking water.

HF 3805 / SF 3379 DISTRICT PROVISIONS MODIFIED (Lambert bill)

MAWD Board Direction: Monitor and act on proposed changes to 103D.

Description: This bill would make significant changes to the rule-making procedures and authorities of WDs.

Next Steps: MAWD will meet again with proponents of this legislation to discuss their concerns.

HF 3603 DISTRICT PLANNING REQUIREMENTS MODIFIED (Rep. Loon bill)

MAWD Board Direction: Monitor and act on proposed changes to 103D.

Description: This bill recognizes that municipalities and counties affected by watershed management plans may make recommendations on the plan to the WD and notify affected property owners.

HF 3940 / SF 3620 NUTRIENT REDUCTION STRATEGY WORKGROUP IN MN RIVER BASIN

2015 MAWD Resolution: Support establishment of watershed-based water management organizations in the MN River basin. Description: This bill would convene a technical stakeholder group to design a comprehensive nutrient reduction strategy for point and nonpoint sources in the MN River basin.

HF 2876 / SF3181 ALLOW BENEFITS TO BE UPDATED BASED ON MARKET VALUES FOR REPAIR PROJECTS

MAWD Board Direction: Monitor and act on any changes to the 103E.

HF 3512 / SF 3097 CONSERVATION EASEMENT TAX RELIEF

2016 MAWD Resolution: Advocate for allowing more favorable tax treatment of conservations easements.

HF 2687 / SF2419 DNR PERMITS FOR 103E PROJECTS

MAWD Board Direction: Monitor and act on any changes to the 103E.

Description: This bill would clarify when DNR permits are required for ditch system repair projects.

HF 4395 / SF 3960 BUFFER TAX CREDIT

Description: Use the Clean Water Fund to fund a \$50/acre tax credit for land taken out of production due to the buffer law. This would be an ongoing tax credit estimated to take \$12M-\$15M out of the fund annually.

Thank you to everyone who played a role in advancing the legislative platform of MAWD this year. It is truly a team effort and very much appreciated!



STATE OF MINNESOTA

Office of Governor Mark Dayton

130 State Capitol ♦ 75 Rev. Dr. Martin Luther King Jr. Blvd ♦ Saint Paul, MN 55155-1611

May 23, 2018

The Honorable Michelle Fischbach
President of the Senate
2113 Minnesota Senate Building
95 University Avenue West
St. Paul, Minnesota 55155

Dear Madame President:

I have vetoed and am returning Chapter 201, SF 3656, the omnibus supplemental budget bill.

Repeatedly over the past several months, I implored the Legislature to send separate bills on Minnesotans' most urgent priorities. We agreed that we must reform elder care, address the opioid epidemic, and ensure safe schools for our children. Yet instead of coming together to find shared solutions to these critical issues, you have deposited them into a 989 page budget bill, with 51 policy provisions, which I oppose. This legislative gamesmanship was terrible, and I will not sign the result.

Despite efforts over the past several months to strengthen existing elder abuse laws, this bill fails to meet the expectations of a large number of lawmakers and of the coalition of nearly every consumer advocacy organization in the state working to stop elder abuse. This legislation does not ensure that there will ever be licensure or protections for assisted living or dementia care. It provides no private rights of enforcement for elderly and vulnerable adults who suffer preventable harm or even death at a long-term care facility. It fails to provide even the basic public right of action protections for elderly people being evicted from their care setting and residence. In fact, advocacy groups believe changes made in this bill would actually make current law less protective. This failure is unacceptable.

The bill also does far too little to combat the opioid epidemic plaguing our State. Several months ago, I proposed investing over \$12 million annually in high impact strategies to treat and prevent opioid abuse, funded through an Opioid Stewardship Fee that would hold partially accountable the pharmaceutical companies, who created this deadly epidemic. Instead, this bill spends only \$7 million in FY 2019 and about \$10 million in FY20/21, entirely from the General Fund. Not one penny is ascribed to the drug companies, through either a "penny-a-pill" or a licensing fee. Evidently, the industry's 32 lobbyists and whatever promises they made outweighed the interests of the people of Minnesota.

The bill does not support a comprehensive approach and instead provides one-time grants and a small rate increase to providers. There is no funding targeted to communities of color or tribal communities that have been devastated by this crisis. The disparities between tribal communities and communities of color and white residents are the highest in the United States. You could have and should have done more.

Included in this enormous bill are workable responses to problems that I sincerely hoped would become law: school safety and HAVA funds. I was sincere in my oft-stated desire to work with you and make these provisions become law. However, you knowingly prevented their enactment by inserting them into a bill, containing policies and agency budget cuts that I had said I would not sign

I made my objections to this bill very clear throughout the Session. My Administration sent you over 100 detailed letters throughout the session, carefully explaining my concerns with each of the proposals.

This terrible bill and the resulting veto are your creations. Never have I seen a legislative session so badly mismanaged, less transparent, and more beholden to monied special interests.

For the above reasons, I have vetoed this bill.

Sincerely,

A handwritten signature in black ink that reads "Mark Dayton". The signature is written in a cursive, flowing style.

Mark Dayton
Governor

cc: Senator Paul E. Gazelka, Senate Majority Leader
Senator Thomas Bakk, Senate Minority Leader
Senator Julie Rosen, Chief Senate Author
Speaker Kurt Daudt, Speaker of the House
Representative Melissa Hortman, House Minority Leader
Representative Jim Knobloch, Chief House Author
The Honorable Steve Simon, Secretary of the State
Mr. Cal Ludeman, Secretary of the Senate
Mr. Patrick Murphy, Chief Clerk of the House of Representatives
Mr. Paul Marinac, Revisor of Statutes