

**Drainage Work Group  
Recommendations Report  
Drainage System Repair Cost Apportionment Option  
Drainage System Acquisition and Compensation of Buffer Strips  
1-21-19**

**Drainage Work Group Fact Sheet**

*Attachment 1* is a current fact sheet about the Drainage Work Group (DWG), including Purpose, Stakeholder Organizations, Coordination and Process, and a summary of Products to Date.

**Definition of Consensus**

The DWG uses the following two components in its definition of consensus. DWG consensus typically involves substantial investigation and discussion to find common ground, including compromise.

- 1) The drainage stakeholder member and the organization(s) s/he represents **can live with** the applicable DWG recommendations.
- 2) The drainage stakeholder member and the organization(s) s/he represents **will not oppose** the applicable DWG recommendations.

The two sets of DWG recommendations presented here have the consensus of representatives of all of the stakeholder organizations listed in the DWG Fact Sheet, but do not have the consensus of one DWG member representing the Bois de Sioux Watershed District.

**Drainage System Repair Cost Apportionment Option**

The following attached documents explain the DWG consensus recommendations to revise Chapter 103E Drainage, by adding Section 103E.729 Alternative Repair Cost Apportionment Option.

- *Attachment 2, Drainage System Repair Cost Apportionment Option, Overview*, 12-14-18, including Purpose, Characteristics, and Development History of the option.
- *Attachment 3, Chapter 103E Drainage System Repair Cost Apportionment*, 12-21-18, which outlines steps in how drainage system repair cost apportionment is done under existing Chapter 103E provisions, and how it could be done using the proposed option.
- *Attachment 4, DWG recommendations in bill format labeled SC4570-1, 12-21-18.*

**Drainage System Acquisition and Compensation of Buffer Strips**

The following attached documents explain the DWG consensus recommendations to accelerate drainage system acquisition and compensation of Chapter 103E ditch buffer strips.

- *Attachment 5, Drainage System Acquisition and Compensation of Buffer Strips, Overview of Recommendations*, 12-14-18, including Purpose, Summary, and Pertinent History of the recommendations.
- *Attachment 6, DWG recommendations in bill format labeled SC4728, 1-02-19.*

# Drainage Work Group Fact Sheet

## Purpose

The stakeholder Drainage Work Group (DWG) has been meeting since 2006 for the following purposes:

- Foster science-based mutual understanding about drainage topics and issues;
- Develop recommendations for drainage system management and related water management, with a focus on updates of Minnesota Statutes Chapter 103E Drainage and related provisions.

## Stakeholder Organizations

<b>Drainage Authority and Related Organizations</b>	<b>AMC</b> – Association of Minnesota Counties
	<b>MRC</b> – Minnesota Rural Counties
	<b>MAWD</b> – Minnesota Association of Watershed Districts
	<b>RRWMB</b> – Red River Watershed Management Board
	<b>MACATFO</b> – Minnesota Association of County Auditors, Treasurers and Finance Officers
	<b>MVA</b> – Minnesota Viewers Association
	<b>MADI</b> – Minnesota Association of Drainage Inspectors
	<b>MNLICA</b> – Minnesota Land Improvement Contractors Association
	<b>MAT</b> – Minnesota Association of Townships
	<b>Drainage Attorneys</b>
	<b>Drainage Engineers</b>
<b>Agricultural Organizations</b>	<b>MFB</b> – Minnesota Farm Bureau
	<b>MFU</b> – Minnesota Farmers Union
	<b>MAWRC</b> – Minnesota Agricultural Water Resources Center
	<b>MCGA</b> – Minnesota Corn Growers Association
	<b>MSGA</b> – Minnesota Soybean Growers Association
<b>Conservation and Environmental Organizations</b>	<b>MASWCD</b> – Minnesota Association of Soil and Water Conservation Districts
	<b>MCEA</b> – Minnesota Center for Environmental Advocacy
	<b>FWLA</b> – Fish and Wildlife Legislative Alliance
	<b>MCF</b> – Minnesota Conservation Federation
	<b>IWL</b> – Izaak Walton League
<b>TNC</b> – The Nature Conservancy	
<b>University</b>	<b>UMN</b> – University of Minnesota, Water Resources Center
<b>State Agencies</b>	<b>BWSR, DNR, MDA, MPCA, MnDOT</b>
<b>Legislature</b>	House and Senate nonpartisan staff

**Note:** Other stakeholders are on the DWG email list and attend meetings, sometimes based on the agenda topics.

## Coordination and Process

- The Board of Water and Soil Resources (BWSR) coordinates the DWG in accordance with drainage stakeholder coordination authority provided in Minnesota Statutes Section 103B.101, Subd. 13.
- When the DWG began in 2006, it agreed to operate on a consensus basis for its products. In 2018, the DWG added a consensus and non-consensus report option, with limitations, if full consensus cannot be achieved.

## Products to Date

The Drainage Work Group has developed recommendations to update Chapter 103E and related provisions, prepared reports to the Legislature, and responded to other requests. Following is a summary.

Chapter 103E revisions and other recommendations adopted in 2007:

- Revise Chapter 103E provisions regarding buffer strips, side inlet controls and other conservation practices;
- Revise Chapter 103E regarding ditch inspection frequency, including when there are buffer strip violations;
- Support for drainage records modernization, including guidelines and state cost-share;
- Support for updating of the Minnesota Public Drainage Manual;
- Support for establishment of an interagency drainage assistance team.

Chapter 103E and Chapter 103B revisions adopted in 2010, and report requested by the Legislature:

- Update Chapter 103E to better enable wetland restorations and impoundments involving public drainage systems, including system rerouting, partial abandonment and public-private funding partnerships;
- Require all Chapter 103E drainage authorities to have a drainage inspector;
- Update various dollar limits and thresholds in Chapter 103E, primarily for inflation;
- Provide authority to BWSR in Section 103B.101, Subd. 13 for drainage stakeholder coordination;
- *Study of Riparian Buffer Areas, Feb. 2010*, report to the Legislature (BWSR in consultation with the DWG).

Chapter 103E revisions adopted in 2013:

- Update several key definitions in Chapter 103E;
- Enable reestablishment of drainage system records that are lost, destroyed or incomplete;
- Enable an official copy of drainage system records when there is a transfer of part of a drainage system between a county and a watershed district;
- Clarify authority for wetland and water quality improvements for repairs and certain projects;
- Enable a 2-stage ditch cross-section for petitioned repairs.

Chapter 103E revisions adopted in 2014:

- Update environmental, land use and multipurpose water mgmt. considerations for “drainage projects”;
- Require investigation of external sources of funding for public-private partnering with drainage projects and petitioned repairs for multipurpose water management.

Chapter 103E and Section 103F.48 revisions adopted in 2016, and Minnesota Public Drainage Manual update:

- Revise the state buffer law (Section 103F.48) and Chapter 103E drainage law to better enable acquisition, compensation and maintenance of public drainage ditch buffer strips by Chapter 103E drainage systems;
- Participation on the project advisory committee for update of the Minnesota Public Drainage Manual.

Report to legislators in 2017:

- Review of three sets of bills involving drainage introduced in 2016, and report to applicable legislators.

Request response, report to the Legislature, Chapter 103E revisions & related recommendations, 2018 & 2019:

- Response to the Clean Water Council Policy Committee about a draft policy statement for water storage;
- *Recommendations for Accelerating Public Drainage System Acquisition and Establishment of Buffer Strips and Alternative Practices, Report to the Legislature, Feb. 1, 2018* (BWSR in collaboration with the DWG);
- Chapter 103E revisions, and Section 17.117 and related recommendations to accelerate Chapter 103E drainage system acquisition of ditch buffer strips required by Section 103F.48 and Chapter 103E;
- Chapter 103E revisions to add a Drainage System Repair Cost Apportionment Option.

**Drainage Work Group  
Drainage System Repair Cost Apportionment Option  
Overview**

**Purpose of the Option**

To provide county and watershed district drainage authorities a **voluntary option** for drainage system repair cost apportionment under Chapter 103E drainage law, using current and future technology that can:

- 1) provide property owners more consistent, equitable, timely, and cost-effective repair cost apportionment; and
- 2) provide an incentive for property owners to adopt land use and cropping systems that reduce runoff and sediment contributions to a public drainage system.

**Characteristics of the Option**

- 1) Could only be used for Chapter 103E drainage system repair cost apportionment.
- 2) Would not change or replace the “viewing” provisions in Chapter 103E for “drainage projects” or redetermination of benefits and damages.
- 3) Would utilize current and future technology (such as GIS) and digital data to evaluate runoff and sediment contributions to a drainage system, together with appropriate on-site verification.
- 4) Could be used in combination with other provisions in Chapter 103E to equitably apportion drainage system costs of acquiring easements and compensating landowners for permanent ditch buffer strips.

**Option Development History**

- 1) In October 2011, the Drainage Work Group (DWG) first discussed this option as a utility-based approach for drainage system cost apportionment that could provide incentive for reduced runoff. The Smith Partners LCCMR project report “Minnesota Drainage Law Analysis and Evaluation, August 15, 2011” (Recommendation 2d) addressed this option.
- 2) In 2015, several water management entities presented information to the DWG that utilized GIS to assist drainage system viewing, as well as to determine runoff and/or sediment contributions from land parcels within sub-watersheds and drainage systems.
- 3) In September 2015, the DWG began discussions to provide an option in Chapter 103E drainage law for runoff and sediment based drainage system assessment, including a request for a proof-of-concept prototype method that was developed by December 2016.
- 4) Between October 2016 and March 2018, the DWG reviewed, debated and revised numerous drafts to develop recommendations for Chapter 103E revisions to enable this option for drainage system repair cost apportionment.

## Chapter 103E Drainage System Repair Cost Apportionment

Al Kean, BWSR, 1-11-19

### General description of how repair cost apportionment is done under current drainage law

- 1) Benefited properties and benefits of a drainage system are determined by a team of 3 viewers, when appointed by a drainage authority for a “drainage project”, for a separate redetermination of benefits and damages, or for certain other drainage proceedings.
- 2) Repair costs are apportioned pro rata, based on the benefited properties and benefits of record. (i.e., The cost of a repair is split between all benefited properties in proportion to the determined benefits of each property compared to the total benefits of the drainage system.)
- 3) Benefited properties and benefits remain unchanged until a redetermination of benefits and damages.
- 4) A repair anywhere on a drainage system is paid for by all benefited properties of the drainage system.
- 5) A repair hearing is only required for a petitioned repair, which also requires the appointment of an engineer to prepare a repair report.
- 6) Appeal of a repair cost apportionment that is not done in accordance with drainage law can be pursued through district court and/or the court of appeals under Section 103E.095, based on case law.

### How it could be done using the DWG proposed Drainage System Repair Cost Apportionment Option

- 1) For each repair cost to be apportioned, the drainage authority decides whether to use the existing benefits based method, or the relative runoff and sediment contribution method option. (“Relative” means in proportion to all property contributing to the drainage system.)
- 2) This option could only be used for repair cost apportionment.
- 3) If the relative runoff and sediment contribution method is chosen, the drainage authority appoints one or more persons qualified to use geographic information system (GIS) technology and applicable digital information to equitably apportion repair costs. Digital information to be used includes conditioned digital elevation data, soils data, land use data, and property, road, and utility corridor identification data, together with appropriate on-site verification.
- 4) The option would define property contributing runoff to the drainage system, together with the relative runoff contribution and the relative sediment contribution of each contributing property. Runoff is a measure of the use of the drainage system capacity and sediment is a measure of contribution to the need for a drainage system repair via cleanout.
- 5) The GIS method developed as a proof of concept for the option uses a 5-meter by 5-meter grid for analyses across the drainage area of a drainage system. It can put more or less emphasis on runoff contribution and sediment contribution, depending on the type of repair (e.g., culvert replacement, erosion control, or sediment cleanout). The method considers storage in wetlands that reduces the runoff of the wetland area, and evaluates road corridors based on road type and the applicable right-of-way width.
- 6) This option would require preparation of a repair cost apportionment report and a hearing on the report.
- 7) The repair cost would be apportioned pro rata, based on the relative runoff and sediment contributions of each property contributing runoff to the drainage system.
- 8) This GIS method could be updated based on the current land use and associated digital data. Update could be for a new repair, or in response to a request by an assessed landowner, if the drainage authority determines that the repair cost apportionment report of record no longer reasonably reflects current land use, runoff and sediment contributions.
- 9) Appeal of a repair cost apportionment under this option would be in accordance with Section 103E.095.

1.1 A bill for an act  
1.2 relating to natural resources; providing a runoff and sediment delivery option for  
1.3 public drainage ditch repair charges; proposing coding for new law in Minnesota  
1.4 Statutes, chapter 103E.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. **[103E.729] ALTERNATIVE REPAIR COST APPORTIONMENT**  
1.7 **OPTION.**

1.8 Subdivision 1. **Option.** Notwithstanding any conflicting provision of this chapter, a  
1.9 drainage authority may use the option under this section to apportion repair costs on all  
1.10 property contributing runoff to the drainage system, based on relative runoff and relative  
1.11 sediment delivery in an approved repair cost apportionment report, in accordance with  
1.12 subdivision 2. Repair costs apportioned using the method in this section are charges for  
1.13 property contributing runoff to the drainage system that shall be considered repair cost  
1.14 assessments in this chapter.

1.15 Subd. 2. **Repair cost apportionment report.** (a) When the drainage authority has  
1.16 determined that a drainage system repair is necessary, the drainage authority may apportion  
1.17 costs for the repair of a drainage system based on relative runoff and relative sediment  
1.18 delivery from any property, public road, street, railway, or other utility contributing runoff  
1.19 to the drainage system as provided in this subdivision. If this cost apportionment method  
1.20 is used, costs must be determined prior to ordering the repair of all or any part of a drainage  
1.21 system as provided in section 103E.705, subdivision 3, or 103E.715, subdivision 4, or prior  
1.22 to levying a repair fund assessment as provided in section 103E.735, subdivision 1.

2.1 (b) The drainage authority shall appoint one or more persons qualified to use geographic  
2.2 information system technology and applicable digital information, including but not limited  
2.3 to conditioned topographic data, soils and land use data, and property, road, and utility  
2.4 corridor identification data, together with appropriate on-site verification, to equitably  
2.5 apportion repair costs.

2.6 (c) The person or persons conducting the cost apportionment shall file a repair cost  
2.7 apportionment report with the drainage authority explaining in nontechnical language the  
2.8 method, data, and interpretations used, and the cost apportionment results. The report shall  
2.9 present data and results in a format so that individual property owners, political subdivisions,  
2.10 and utilities can clearly examine the information applicable to their property, public road,  
2.11 street, railway, or other utility, including for each parcel having a separate property  
2.12 identification number.

2.13 Subd. 3. **Hearing on report.** (a) When a repair cost apportionment report is filed, the  
2.14 drainage authority, in consultation with the auditor or secretary, shall set a time, by order,  
2.15 for a hearing on the report not more than 30 days after the date of the order. At least 20 days  
2.16 before the hearing, the auditor or secretary shall give notice by mail of the time and location  
2.17 of the hearing to the owners of property, political subdivisions, and utilities proposed to be  
2.18 assessed in the report. The notice of hearing must include a copy of the portion of the report  
2.19 explaining in nontechnical language the method, data, and interpretations used, the cost  
2.20 apportionment results applicable to the property owner, political subdivision, or utility  
2.21 receiving notice, and a statement of the location where the entire repair cost apportionment  
2.22 report has been filed for public inspection.

2.23 (b) At the hearing, the drainage authority shall hear and consider the testimony presented  
2.24 by all interested parties. At least one person responsible for preparing the repair cost  
2.25 apportionment report shall be present at the initial hearing.

2.26 (c) If the drainage authority determines that the apportionment of costs is not equitable,  
2.27 the drainage authority may amend the repair cost apportionment report and shall make  
2.28 necessary and proper findings and an order in relation to the report, or resubmit matters to  
2.29 the preparer of the repair cost apportionment report for further consideration. If matters are  
2.30 resubmitted, the hearing may be continued as necessary to make and hear an amended report.  
2.31 The report preparer shall proceed promptly to reconsider resubmitted matters and shall make  
2.32 and file an amended report. The drainage authority may replace the original report with the  
2.33 amended report for apportionment of repair costs and make necessary and proper findings  
2.34 and an order to approve the amended report. The jurisdiction of the drainage authority

3.1 continues in the property given proper notice, and new or additional notice is not required  
3.2 for that property.

3.3 Subd. 4. **Findings; approval.** After consideration of the repair cost apportionment report,  
3.4 any amended report, and all evidence presented, the drainage authority shall make findings,  
3.5 approve the report, and apportion repair costs consistent with the values in the repair cost  
3.6 apportionment report if it finds that the cost apportionment is equitable based on:

3.7 (1) the weighting of relative runoff and relative sediment delivery is appropriate for the  
3.8 type of repair;

3.9 (2) the data inputs are reliable; and

3.10 (3) the computation method is reliable.

3.11 Subd. 5. **Report updates.** The drainage authority may continue to apportion repair costs  
3.12 consistent with the values in the repair cost apportionment report of record. After a repair  
3.13 cost apportionment report has been approved under this subdivision, an owner of property,  
3.14 a political subdivision, or a utility assessed in the repair cost apportionment report of record  
3.15 may request in writing that the drainage authority update the report based on changed land  
3.16 use. The request shall be filed with the auditor of the county where the property is located  
3.17 or the secretary. Prior to the next approval by the drainage authority of a repair cost  
3.18 assessment for the drainage system, the drainage authority shall determine if the repair cost  
3.19 apportionment report of record reasonably reflects current land use, relative runoff, and  
3.20 relative sediment delivery. If it does not, the drainage authority shall make findings and  
3.21 shall appoint one or more persons to prepare and file an updated repair cost apportionment  
3.22 report for the drainage system in accordance with subdivision 2.

3.23 Subd. 6. **Conservation lands.** Proper consideration must be given to property that is  
3.24 used for conservation that prohibits development or land use change by ownership, deed  
3.25 restriction, or conservation easement, or is enrolled in a program that prohibits agricultural  
3.26 crop production.

3.27 Subd. 7. **Appeals.** The owner of any property subject to cost apportionment listed in the  
3.28 adopted repair cost apportionment report may appeal findings of the drainage authority  
3.29 under subdivision 4 as provided in section 103E.095.

3.30 Subd. 8. **Definitions.** For the purpose of this section:

3.31 (1) "relative runoff" means the surface and subsurface runoff potential from a specific  
3.32 property compared on an equitable basis to all other properties contributing runoff to the  
3.33 drainage system; and

- 4.1 (2) "relative sediment delivery" means the sediment delivery potential from a specific  
4.2 property compared on an equitable basis to all other properties contributing runoff to the  
4.3 drainage system.

**Drainage Work Group  
Drainage System Acquisition and Compensation of Buffer Strips  
Overview of Recommendations**

**Purpose**

To better enable public drainage systems to acquire, compensate and maintain ditch buffer strips.

**Summary of Recommendations**

- 1) *Clarify Section 103E.021, Subd. 6. **Incremental implementation; vegetated buffer strips and side inlet controls** 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.* This is in response to a Court of Appeals unpublished opinion (Zimmermann, et al. vs. Sauk River Watershed District, 2-16-16), which concluded that this subdivision currently does not adequately define drainage authority jurisdiction. This subdivision provides permissive authority for Chapter 103E drainage authorities, “where necessary to control erosion and sedimentation, improve water quality, or maintain the efficiency of the drainage system”, and is implemented as a repair, without a requirement to appoint viewers.
- 2) *Revise Section 103E.351 **Redetermining 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 of record and more equitably apportion drainage system costs, including for ditch buffer strips.* The drainage authority has discretion to appoint viewers to determine benefits and damages. (Drainage system improvement, improvement of an outlet, and laterals require 26% for a petition.)
- 3) *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.* This would clarify and connect Chapter 103E to an applicable authority in statute enabling counties to hire private attorneys to assist the county attorney.
- 4) *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.* The Section 17.117 **Agricultural Best Management Practices Loan Program** includes ditch buffer strips as an eligible practice for low interest loans. It is recommended that Section 17.117 more clearly enable a Chapter 103E drainage system, which typically involves multiple landowners, to use program loan funds for acquisition and compensation of ditch buffer strips without a separate project cost limitation.

**Pertinent History**

- 1) In 2007, Section 103E.021, Subd. 6 was added to drainage law based on a DWG recommendation, with language and intent to provide separate, permissive authority for buffer strip and side inlet control implementation, permanent land rights acquisition, and maintenance by Chapter 103E drainage systems.
- 2) In 2013, update of redetermination of benefits and damages provisions in Chapter 103E was first added to the DWG Prioritized Discussion Topics List, in light of problems encountered by the Bois de Sioux Watershed District with use of Section 103E.351.
- 3) County use of private attorneys for Chapter 103E work has not been consistently recognized and used.
- 4) In 2017, the Minnesota Legislature directed the Board of Water and Soil Resources in coordination with the DWG to evaluate and make recommendations to accelerate public drainage system acquisition of ditch buffer strips and alternative practices. The associated report to the Legislature is at: [“Recommendations for Accelerating Public Drainage System Acquisition and Establishment of Buffer Strips and Alternative Practices, February 1, 2018”](#).

1.1 A bill for an act  
 1.2 relating to natural resources; providing for the acceleration of public drainage  
 1.3 system acquisition and compensation of ditch buffer strips; amending Minnesota  
 1.4 Statutes 2018, sections 17.117, subdivision 11; 103E.021, subdivision 6; 103E.071;  
 1.5 103E.351, subdivisions 1, 2, 3.

1.6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.7 Section 1. Minnesota Statutes 2018, section 17.117, subdivision 11, is amended to read:

1.8 Subd. 11. **Loans issued to borrower.** (a) Local lenders may issue loans only for projects  
 1.9 that are approved and certified by the local government unit as meeting priority needs  
 1.10 identified in a comprehensive water management plan or other local planning documents,  
 1.11 are in compliance with accepted practices, standards, specifications, or criteria, and are  
 1.12 eligible for financing under Environmental Protection Agency or other applicable guidelines.

1.13 (b) The local lender may use any additional criteria considered necessary to determine  
 1.14 the eligibility of borrowers for loans.

1.15 (c) Local lenders shall set the terms and conditions of loans to borrowers, except that:

1.16 (1) no loan to a borrower may exceed \$200,000; and

1.17 ~~(2) no loan for a project may exceed \$200,000; and~~

1.18 ~~(3)~~ (2) no borrower shall, at any time, have multiple loans from this program with a total  
 1.19 outstanding loan balance of more than \$200,000.

1.20 (d) The maximum term length for projects in this paragraph is ten years.

1.21 (e) Fees charged at the time of closing must:

- 2.1 (1) be in compliance with normal and customary practices of the local lender;
- 2.2 (2) be in accordance with published fee schedules issued by the local lender;
- 2.3 (3) not be based on participation program; and
- 2.4 (4) be consistent with fees charged other similar types of loans offered by the local
- 2.5 lender.

2.6 (f) The interest rate assessed to an outstanding loan balance by the local lender must not

2.7 exceed three percent per year.

2.8 Sec. 2. Minnesota Statutes 2018, section 103E.021, subdivision 6, is amended to read:

2.9 Subd. 6. **Incremental ~~implementation~~ establishment; vegetated buffer strips and**

2.10 **side inlet controls.** (a) Notwithstanding other provisions of this chapter requiring

2.11 appointment of viewers and redetermination of benefits and damages, a drainage authority

2.12 may ~~implement~~ make findings and order the establishment of permanent buffer strips of

2.13 perennial vegetation approved by the drainage authority or side inlet controls, or both,

2.14 adjacent to a public drainage ditch, where necessary to control erosion and sedimentation,

2.15 improve water quality, or maintain the efficiency of the drainage system. The drainage

2.16 authority's finding that the establishment of permanent buffer strips of perennial vegetation

2.17 or side inlet controls is necessary to control erosion and sedimentation, improve water

2.18 quality, or maintain the efficiency of the drainage system, is sufficient to confer jurisdiction

2.19 under this subdivision. Preference should be given to planting native species of a local

2.20 ecotype. The approved perennial vegetation shall not impede future maintenance of the

2.21 ditch. The permanent strips of perennial vegetation shall be 16-1/2 feet in width measured

2.22 outward from the top edge of the existing constructed channel. Drainage system rights-of-way

2.23 for the acreage and additional property required for the permanent strips must be acquired

2.24 by the authority having jurisdiction.

2.25 (b) A project under this subdivision shall be implemented as a repair according to section

2.26 103E.705, except that the drainage authority may appoint an engineer to examine the drainage

2.27 system and prepare an engineer's repair report for the project.

2.28 (c) Damages shall be determined by the drainage authority, or viewers, appointed by

2.29 the drainage authority, according to section 103E.315, subdivision 8. A damages statement

2.30 shall be prepared, including an explanation of how the damages were determined for each

2.31 property affected by the project, and filed with the auditor or watershed district. Within 30

2.32 days after the damages statement is filed, the auditor or watershed district shall prepare

2.33 property owners' reports according to section 103E.323, subdivision 1, clauses (1), (2), (6),

3.1 (7), and (8), and mail a copy of the property owner's report and damages statement to each  
3.2 owner of property affected by the proposed project.

3.3 (d) After a damages statement is filed, the drainage authority shall set a time, by order,  
3.4 not more than 30 days after the date of the order, for a hearing on the project. At least ten  
3.5 days before the hearing, the auditor or watershed district shall give notice by mail of the  
3.6 time and location of the hearing to the owners of property and political subdivisions likely  
3.7 to be affected by the project.

3.8 (e) The drainage authority shall make findings and order the repairs to be made if the  
3.9 drainage authority determines from the evidence presented at the hearing and by the viewers  
3.10 and engineer, if appointed, that the repairs are necessary for the drainage system and the  
3.11 costs of the repairs are within the limitations of section 103E.705.

3.12 Sec. 3. Minnesota Statutes 2018, section 103E.071, is amended to read:

3.13 **103E.071 COUNTY ATTORNEY.**

3.14 The county attorney shall represent the county in all drainage proceedings and related  
3.15 matters without special compensation, except as provided in section 388.09, subdivision 1.  
3.16 A county attorney, the county attorney's assistant, or any attorney associated with the county  
3.17 attorney in business, may not otherwise appear in any drainage proceeding for any interested  
3.18 person.

3.19 Sec. 4. Minnesota Statutes 2018, section 103E.351, subdivision 1, is amended to read:

3.20 Subdivision 1. **Conditions to redetermine benefits and damages; appointing**  
3.21 **viewers.** (a) If the drainage authority determines that the original benefits or damages of  
3.22 record determined in a drainage proceeding do not reflect reasonable present day land values  
3.23 or that the benefited or damaged areas have changed, or if more than 50 percent of the  
3.24 owners of property benefited or damaged by a drainage system petition for correction of an  
3.25 error that was made at the time of the proceedings that established the drainage system, the  
3.26 drainage authority may appoint three viewers to redetermine and report the benefits and  
3.27 damages and the benefited and damaged areas.

3.28 (b) If more than 26 percent of the owners of property, or owners of 26 percent of the  
3.29 property, benefited or damaged by a drainage system petition for a redetermination of  
3.30 benefits and damages, the drainage authority shall make a determination on the petition in  
3.31 accordance with paragraph (a).

4.1 Sec. 5. Minnesota Statutes 2018, section 103E.351, subdivision 2, is amended to read:

4.2 Subd. 2. **Hearing and procedure.** (a) The redetermination of benefits and damages  
4.3 shall proceed as provided for viewers and the viewers' report in sections 103E.311 to  
4.4 103E.321.

4.5 (b) The auditor or secretary must prepare a property owners' report from the viewers'  
4.6 report. A copy of the property owners' report must be mailed to each owner of property  
4.7 affected by the drainage system.

4.8 (c) The drainage authority shall hold a final hearing on the report and confirm the benefits  
4.9 and damages and benefited and damaged areas. The final hearing shall proceed as provided  
4.10 under sections 103E.325, 103E.335, and 103E.341, ~~except that the hearing shall be held~~  
4.11 ~~within 30 days after the property owners' report is mailed.~~

4.12 Sec. 6. Minnesota Statutes 2018, section 103E.351, subdivision 3, is amended to read:

4.13 Subd. 3. **Using redetermined benefits and damages.** The redetermined benefits and  
4.14 damages and benefited and damaged areas must be used in place of the ~~original~~ benefits  
4.15 and damages and benefited and damaged areas of record in all subsequent proceedings  
4.16 relating to the drainage system.