



MEMORANDUM

Comfort Lake-Forest Lake Watershed District

Date: November 9, 2023
To: CLFLWD Board of Managers
From: Mike Kinney, District Administrator
Subject: MN Watersheds Resolutions – Delegate Instructions



District Wide

Background/Discussion

The purpose of this agenda item is to present and review the 2023 MN Watersheds resolutions, propose any amendments, and have the Board give the CLFLWD appointed delegates direction on a position to take on each resolution. Managers should come to the November 16th regular board meeting prepared to discuss and take a position on each proposed resolution.

The MN Watersheds Resolutions Committee met on Tuesday, October 10, 2023 to review and discuss the resolutions submitted by Minnesota Watersheds members. Their recommendations are as follows.

#	Resolution Title	Committee Recommendation
1	Require Watershed District Permits for the Department of Natural Resources	Recommends adoption
2	Clarify Budget Adoption Deadlines and Certification Types for Watershed Districts	Does not recommend adoption; recommends working with boards, staff, and legal counsel to understand and confirm best practices
3	Support New Legislation Modeled after HF2687 and SF2419 (2018) Regarding DNR Regulatory Authority over Public Drainage Maintenance and Repairs	Recommends adoption as amended
4	Support Streamlining the DNR Flood Hazard Mitigation Grant Program	Recommends adoption
5	Support Increased Flexibility in Open Meeting Law to Utilize Interactive Technology	Recommends adoption
6	Support Minnesota Watersheds Education and Outreach to Encourage Formation of Watershed Districts in Unserved Areas	Recommends adoption

Attached

- MN Watersheds Resolutions Packet

Resolutions Packet



DATE: October 10, 2023
TO: Minnesota Watersheds Board of Directors
FROM: Linda Vavra, Resolutions Committee Co-Chair
RE: Resolutions Committee Recommendations

The Resolutions Committee met on Tuesday, October 10, 2023 to review and discuss the resolutions submitted by Minnesota Watersheds members. Their recommendations are as follows.

Resolutions Recommendations

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BACKGROUND INFORMATION ON MINNESOTA WATERSHEDS

RESOLUTION 2023-01

Resolution to Request Minnesota Watersheds Support to Require Watershed District Permits for the Department of Natural Resources

Proposing District: Wild Rice Watershed District
Contact Name: Tara Jensen
Phone Number: 218-784-5501
Email Address: tara@wildricewatershed.org

Background that led to submission of this resolution:

Watershed districts are local, special-purpose units of government that work to solve and prevent water-related problems (Minnesota Watersheds website).

While all other government units, such as states, counties, and cities have political boundaries, because water knows no boundaries and goes where it wants to, it makes sense to manage natural resources on a watershed basis. This type of management allows for an overall, holistic approach to resource conservation (Minnesota Watersheds website).

Watershed district have overall plans that are intended to protect, enhance, manage, and maintain the natural resources of the district in the best interest of the citizens and other stakeholders.

Watershed districts currently have rules and permit requirements that are not intended to delay or inhibit development. Rather permits are needed so that the managers are kept informed of planned projects, can advise and in some cases, provide assistance, and can ensure that land disturbing activity and development occurs in an orderly manner and in accordance with the overall plan for the district.

The Minnesota Department of Natural Resources (MNDNR) owns, operations, and maintains wildlife management areas and other conservation-oriented property within the Wild Rice Watershed District (WRWD).

As part of the operation of this property, the MNDNR periodically does improvements (i.e. wetland restorations, channel modifications, etc.) on their land without going through the process of obtaining a permit from watershed districts, because they are currently not subject to 103D.345. Without requiring a permit, the watershed managers are not assured of being adequately kept informed of planned projects to ensure that land disturbing activity and development occurs in an orderly manner and in accordance with the overall plan for the district.

Ideas for how this issue could be solved:

Minnesota Watersheds could seek legislative authority to amend M.S. Chapter 103D.345, Subd. 5 as follows: Subd. 5. Applicability of permit requirements to state. A rule adopted by the managers that requires a permit for an activity applies to the Departments of Transportation and Natural Resources.

Efforts to solve the problem:

We have spoken with state agency staff. They currently submit permit applications as a courtesy to let us know what works are being completed. Without it being required, we worry that this will not continue forever.

Anticipated support or opposition:

We would anticipate support from watersheds and opposition from the MNDNR.

This issue (check all that apply):

Applies only to our district:	_____	Requires legislative action:	_____
Applies only to 1 or 2 regions:	_____	Requires state agency advocacy:	_____ X _____
Applies to the entire state:	_____ X _____	Impacts MW bylaws or MOPP:	_____

MINNESOTA WATERSHEDS RESOLUTION 2023-01

Resolution to Request Minnesota Watersheds Support to Require Watershed District Permits for the Department of Natural Resources

WHEREAS, discussion was had that the Minnesota Department of Natural Resources (MNDNR) has engaged in certain activity on property owned by the MNDNR which would require a permit for such activity as being within the scope of an existing rule of the Wild Rice Watershed District (WRWD), but the MNDNR asserts its position that it is exempt from obtaining any such permit; and

WHEREAS, the WRWD has concerns that the non-permitted work being done by the MNDNR on its property impacts other property owners/residents within the district resulting in such impacted property owners/residents having no recourse for water flowing, seeping, or otherwise being cast upon such other owners/residents; and

WHEREAS, the WRWD desires that Minnesota Statutes § 103D.345, Subd. 5 which pertains to the applicability of watershed permit requirements to the state and provides that a rule adopted by the managers that requires a permit for an activity applies to the Department of Transportation should be expanded to include the MNDNR.

NOW, THEREFORE, BE IT RESOLVED that Minnesota Watersheds supports amending Minnesota Statutes § 103D.345, Subd. 5 to read as follows: Subd. 5. Applicability of permit requirements to state. A rule adopted by the managers that requires a permit for an activity applies to the Departments of Transportation and Natural Resources.

Notes: This resolution is a resubmission of Resolution 2018-04 which expires in December. The committee recommends adoption.

BACKGROUND INFORMATION ON MINNESOTA WATERSHEDS RESOLUTION 2023-02

Resolution Seeking Clarification of Levy and Budget Statutes (103D.911 vs 275.056)

Proposing District: Middle Fork Crow River Watershed District
Contact Name: Dan Coughlin
Phone Number: 320-796-0888
Email Address: dan@mfcrow.org

Background that led to submission of this resolution:

Each year, managers of watershed districts are required to adopt a budget for the following year. The issue facing managers is what deadline for adopting a budget should be followed because the two statutes that apply to a watershed's budgetary process conflict with each other: Minn. Stat. § 275.065, subd. 1 and 103D.911, subd. 2. Minn. Stat. § 275.065, commonly referred to as the "Truth in Taxation" statute, requires special taxing districts to "certify to the county auditor the proposed property tax levy for taxes payable in the following year" by September 30. However, Minn. Stat. § 103D.911, subd. 2 states that "on or before September 15 of each year, the managers [of the watershed district] shall adopt a budget for the next year and decide on the total amount necessary to be raised from...tax levies..." These two statutes create a conflict for managers of watershed districts in Minnesota because it is unclear what deadline needs to be followed. However, historically, this was not the case. The Minnesota legislature amendment Minn. Stat. § 275.065, subd. 1 in 2014 changed the certification deadline from September 15th to September 30th. As written, the "Truth in Taxation" statutes of Minnesota Chapter 275 would apply to watershed districts. Minn. Stat. 275.066(1) states that the term "special taxing districts" includes "watershed districts under chapter 103D." Minn. Stat. 275.065, subd. 1(e) states that "special taxing district shall have the same meaning as stated in Minn. Stat. 275.066. Because watershed districts are included in the special taxing districts, the watershed districts "shall certify to the county auditor the proposed property tax levy for taxes payable the following year" on or before September 30. Minn. Stat 275.065, subd. 1(a). The "Truth in Taxation" statute of 275 conflicts with Minn. Stat. 103D.911, subd.2, which requires managers of a watershed district to adopt a budget for the next year *on or before* September 15. The reference to September 15th in Minn. Stat. 103D.911 conflicts with the Truth in Taxation statute because two different statutory deadlines are provided for. To remedy any conflict, it is proposed that Minn. Stat. § 103D.911, subd. 2 be amended to be in harmony with Minn. Stat. § 275.065, subd. 1, which allows for a proposed levy to be submitted to the county auditor by September 30th. To ensure consistency, it is suggested that the other provisions of Minnesota Statute Chapter 275 be followed in Minnesota Statute Chapter 103D that, allow for a further discussion on the budget between October and November, with the final approval occurring in December.

In addition to the deadline, there is ambiguity surrounding whether a final budget or preliminary budget needs to be certified to the county auditor by the statutory deadline. Currently, Minn. Stat. § 103D.911, subd. 2 simply states a budget shall be adopted. It does not indicate whether that budget is a final budget or a preliminary budget. By following Minnesota Chapter 275, clear statutory guidance will be given on when the proposed budget needs to be presented, and the final budget needs to be adopted.

Ideas for how this issue could be solved:

It is proposed that Minn. Stat. § 103D.911, subd. 2 be amended to apply the statutory timelines of Minnesota Statutes Chapter 275 to watershed districts.

Efforts to solve the problem:

This has been a question many watershed districts are facing. Many watershed districts have turned to their legal counsel for interpretation. However, it is important that all watershed districts follow a consistent budgetary process to avoid legal issues.

Anticipated support or opposition:

Other watershed districts will likely want to partner with the Middle Fork Crow River Watershed District to receive clarification regarding this matter. Both political parties in the State of Minnesota should also want to clarify this ambiguity. Clarity will also benefit the landowners by allowing landowners to be more informed of the budgetary process

through the preliminary property tax levy statements they already are interacting with for township, city, school district and county levy impacts; and would provide another avenue for landowner participation.

This issue (check all that apply):

Applies only to our district:	_____	Requires legislative action:	_____ X _____
Applies only to 1 or 2 regions:	_____	Requires state agency advocacy:	_____
Applies to the entire state:	_____ X _____	Impacts MW bylaws or MOPP:	_____

MINNESOTA WATERSHEDS RESOLUTION 2023-02

Resolution to Clarify Budget Adoption Deadlines and Certification Types for Watershed Districts

WHEREAS, managers of watershed districts in the state of Minnesota are required to annually adopt a budget for the following year; and

WHEREAS, a conflict has arisen due to the divergence between two relevant statutes, namely Minn. Stat. § 275.065, subd. 1 (referred to as the "Truth in Taxation" statute) and Minn. Stat. § 103D.911, subd. 2, concerning the deadlines for budget adoption; and

WHEREAS, the "Truth in Taxation" statute, Minn. Stat. § 275.065, subd. 1, stipulates that special taxing districts, including watershed districts under chapter 103D (as noted in Minn. Stat. § 275.065 subd. 1(e) and 275.066), must certify the proposed property tax levy for the following year by September 30; and

WHEREAS, Minn. Stat. § 103D.911, subd. 2, mandates that managers of watershed districts must adopt a budget for the next year and determine the total amount to be raised from tax levies on or before September 15, leading to a conflict in statutory deadlines; and

WHEREAS, the historical legislative amendment of Minn. Stat. § 275.065, subd. 1, in 2014 changed the certification deadline from September 15th to September 30th; and

WHEREAS, it is imperative to address this conflict to provide clarity and consistency in the budgetary processes of watershed districts in Minnesota and to offer statutory guidance regarding the type of budget to be certified to the county auditor by the statutory deadline; and

WHEREAS, providing a consistent and understandable property tax levy process for all local units of government with ad valorem taxing authority provides property owners with a greater opportunity to become informed of activities and plans of the governmental units that serve them; and

WHEREAS, bringing watershed district budget and levy processes in line with those of other local units of government provides the added benefit of allowing boards of managers and their support staff to establish and refine their annual budgets in a timeframe closer to the start of their next fiscal year; which should allow for more accurate and detailed information to be utilized as part of the processes used to establish final budgets and to set annual property tax levies;

NOW, THEREFORE, BE IT RESOLVED that Minnesota Watersheds supports the following:

1. The Minnesota Legislature shall amend Minn. Stat. § 103D.911, subd. 2, to align with Minn. Stat. § 275.065, subd. 1, by specifying that managers of watershed districts are required to submit the proposed preliminary property tax levy for the following year to the county auditor on or before September 30th.
2. To ensure uniformity and eliminate ambiguity, the budget adoption process in Minnesota Statute Chapter 103D shall adhere to the provisions outlined in Minnesota Statute Chapter 275, which include submitting the associated preliminary budget by September 30th. Furthermore, this alignment allows for further budget discussions between October and November, with approval of the final budget and associated property tax levy occurring in December, in accordance with the framework provided by Minnesota Statute Chapter 275.
3. The amendment to Minn. Stat. § 103D.911, subd. 2, shall explicitly indicate that the budget to be adopted is the preliminary budget and levy, and this levy shall be certified to the county auditor by September 30th, in line with Minn. Stat. § 275.065, subd. 1. Furthermore, the Board of Managers shall include with its preliminary levy certification materials to county auditors the date, time and location of its final budget and levy public hearing so it can be included as part of a county's proposed property tax notifications to property owners.

Notes: After reviewing the background information and discussing this resolution with MAWA at their meeting on September 27, the following information was submitted. Here is the link to the statute: <https://www.revisor.mn.gov/statutes/cite/275.065>. The applicable section is included below.

Subd. 6. Adoption of budget and levy.

(a) The property tax levy certified under section [275.07](#) by a city of any population, county, metropolitan special taxing district, regional library district, or school district must not exceed the proposed levy determined under subdivision 1, except by an amount up to the sum of the following amounts:

(1) the amount of a school district levy whose voters approved a referendum to increase taxes under section [123B.63, subdivision 3](#), or [126C.17, subdivision 9](#), after the proposed levy was certified;

(2) the amount of a city or county levy approved by the voters after the proposed levy was certified;

(3) the amount of a levy to pay principal and interest on bonds approved by the voters under section [475.58](#) after the proposed levy was certified;

(4) the amount of a levy to pay costs due to a natural disaster occurring after the proposed levy was certified, if that amount is approved by the commissioner of revenue under subdivision 6a;

(5) the amount of a levy to pay tort judgments against a taxing authority that become final after the proposed levy was certified, if the amount is approved by the commissioner of revenue under subdivision 6a;

(6) the amount of an increase in levy limits certified to the taxing authority by the commissioner of education or the commissioner of revenue after the proposed levy was certified;

(7) the amount required under section [126C.55](#);

(8) the levy to pay emergency debt certificates under section [475.755](#) authorized and issued after the proposed levy was certified; and

(9) the amount of unallotment under section [16A.152](#) that was recertified under section [275.07, subdivision 6](#).

(b) This subdivision does not apply to towns and special taxing districts other than regional library districts and metropolitan special taxing districts.

(c) Notwithstanding the requirements of this section, the employer is required to meet and negotiate over employee compensation as provided for in chapter 179A.

The Department of Revenue states that the special taxing districts that are subject to Truth in Taxation are limited to the metro.

Towns and special taxing districts (except for the three metropolitan special taxing districts and fire and emergency medical services districts) are not required to hold truth-in-taxation meetings. For towns, under "Meeting Information" it should read "Budget set at your annual town meeting in March 2023." Special taxing districts, other than the metropolitan special taxing districts (if applicable), are not listed under "Meeting Information."

Mark Doneux, Capitol Region WD, submitted the following Analysis and Comparison regarding this subject from his perspective and that of the Ramsey County property tax manager.

103D and 275 Analysis and Comparison

There has been some discussion and questions about 103D and 275 as it pertains to a watershed district levy certification process.

The current 103D.911 and 103D.915 statute is the most straightforward and simple approach for watershed districts to adopt and certify a budget and levy. It would be a disadvantage to be under 275 since watershed districts in multiple counties would then be required to attend multiple TNT hearings and at best add 15 days to the budget and levy process.

Here are the current 103 D statutes:

103D.911 BUDGET.

Subdivision 1. Hearing.

(a) Before adopting a budget, the managers shall hold a public hearing on the proposed budget.

(b) The managers shall publish a notice of the hearing with a summary of the proposed budget in one or more newspapers of general circulation in each county consisting of part of the watershed district. The notice and summary shall be published once each week for two successive weeks before the hearing. The last publication shall be at least two days before the hearing.

Subd. 2. Adoption.

On or before September 15 of each year, the managers shall adopt a budget for the next year and decide on the total amount necessary to be raised from ad valorem tax levies to meet the watershed district's budget.

103D.915 TAX LEVY.

Subdivision 1. Certification to auditor.

After adoption of the budget and no later than September 15, the secretary of the watershed district shall certify to the auditor of each county within the watershed district the county's share of the tax, which shall be an amount bearing the same proportion to the total levy as the net tax capacity of the area of the county within the watershed bears to the net tax capacity of the entire watershed district. The maximum amount of a levy may not exceed the amount provided in section [103D.905](#).

The question of whether watershed districts do fall under the 275 process is yes for September 30th filing deadline. 275.065 clearly state a preliminary levy must be certified by September 30th. See below.

275.065 PROPOSED PROPERTY TAXES; NOTICE.

§Subdivision 1. Proposed levy. (a) Notwithstanding any law or charter to the contrary, on or before September 30, each county, home rule charter or statutory city, town, and special taxing district, excluding the Metropolitan Council and the Metropolitan Mosquito Control Commission, shall certify to the county auditor the proposed property tax levy for taxes payable in the following year.

The debate comes in when considering if watershed districts are part of the Notice process known as Truth in Taxation (TNT) and the related hearings. Based on statute, 275.065, subd 3 watershed districts are NOT required to part of the Notice or TNT process, nor do we want to be. Subd 3 reads that METROPOLITAN taxing districts are subject to the notice/TNT process. When reviewing paragraph (i) that defined metropolitan taxing districts, it only includes the Metropolitan Council, Metropolitan Airports Commission and the Metropolitan Mosquito Control Commission.

See Subd 3 paragraph (c) and (i) below.

Subd. 3. Notice of proposed property taxes. (c) a portion of c

The notice must clearly state for each city that has a population over 500, county, school district, regional library authority established under section 134.201, **metropolitan** taxing districts **as defined in paragraph (i)**, and fire protection and emergency medical services special taxing districts established under section 144F.01, the time and place of a meeting for each taxing authority in which the budget and levy will be discussed and public input allowed, prior to the final budget and levy determination.

Here is paragraph (i)

(i) For purposes of this subdivision and subdivision 6, "**metropolitan** special taxing districts" means the following taxing districts in the seven-county metropolitan area that levy a property tax for any of the specified purposes listed below:

(1) Metropolitan Council under section 473.132, 473.167, 473.249, 473.325, 473.446, 473.521, 473.547, or 473.834;

(2) Metropolitan Airports Commission under section 473.667, 473.671, or 473.672; and

(3) Metropolitan Mosquito Control Commission under section 473.711.

In the end, the current 103D statutes provide clear and simple process for adopting a budget and certifying a levy. Whether it's the 15th or 30th of September really makes no difference in preparing the budget and levy for the following year so going to September 30th only adds 15 days. As far as notification of tax levies to tax payers, watershed district budgets are an extremely minor portion of the overall property tax levy. That is why the notification process only seeks cities over 500 population, counties, and school districts. The entities make up the overwhelming majority of the property taxes and their respective levies can only go down after the November hearings.

Notes: The committee does not recommend adoption of this resolution. The committee recommends working with boards, staff, and legal counsel to understand and confirm best practices.

BACKGROUND INFORMATION ON MINNESOTA WATERSHEDS RESOLUTION 2023-03

Resolution Seeking Support of New Legislation Modeled after HF2687 and SF2419 (2018) Regarding DNR Regulatory Authority over Public Drainage Maintenance and Repairs

Proposing District: Rice Creek Watershed District
Contact Name: Nick Tomczik, Administrator
Phone Number: 763-398-3079
Email Address: ntomczik@ricecreek.org

Background that led to submission of this resolution:

The State enacted several laws related to water resources after the establishment of the public drainage systems. However, there was a commitment that these laws would not restrict existing rights including those related to the existence of, and obligation to maintain, public drainage systems.

The public waters inventory was never intended to restrict the right to maintain existing drainage systems. The legislature specifically exempted repairs from DNR permitting; gave the DNR a mechanism to ensure proposed work was repair; and directed the DNR to provide for the lawful function of public drainage systems that affected public waters. The DNR also adopted a rule exempting repairs from permitting and announced a policy in 1980 that stated repair of public drainage systems should be allowed without permits.

More recent DNR practices have departed from the 1980 policy and clear language in both statute and rule. The agency has increasingly required permits, approvals, and conditions contrary to current law and the 1980 policy. The DNR issued a new guidance document in February 2018 that was intended to provide clarity for both DNR staff and drainage authorities on the role of the DNR regarding public drainage activities (particularly repairs). This guidance has had the opposite effect, creating more uncertainty, expense, and delays in the public waters regulatory program and for drainage system repairs.

HF2687 and SF2419 were introduced during the 2018 legislative session to reinforce the protections given to drainage system repairs. These bills were placed on hold in committee when the DNR issued its new guidance that would address the concerns that drainage authorities had with its current practices (relating to permitting and permission requirements for work affecting public waters). Though these bills were never withdrawn by their authors, they require reintroduction for reconsideration.

The DNR policy and its implementation of that policy do not adequately address drainage authority concerns. Reintroduction and approval of new legislation modeled after HF2687 and SF2419 would reinforce in clear terms the DNR's role in drainage system repairs.

Ideas for how this issue could be solved:

Current disagreements about the DNR's jurisdiction could be resolved through protracted litigation (the least desirable course of action) or by clear legislative directives. New legislation, modeled after HF2687 and SF2419, will provide this clear legislative directive. The legislation would reinforce existing law regarding the DNR and the drainage authorities' roles and responsibilities when maintaining the public drainage systems and reduce the unnecessary expenditure of dollars by the Drainage Authority (passed by statute to landowners) and DNR.

Use draft bill language modeled after HF2687 and SF2419 with suggested amendments to introduce new legislation. Documents are attached to this resolution.

Attachments:

- 1- Proposed amendment to 103E.701
- 2- Proposed amendment to 103G.225
- 3- Proposed amendment to 103G.245

4- Revised SF 2419 bill language

To advance this legislation, we ~~recommend Minnesota Watersheds engage with the Drainage Work Group (DWG) to prioritize this topic for DWG deliberation in 2024. If consensus cannot be reached by the DWG in 2024,~~ we recommend Minnesota Watersheds, along with partner organizations such as the Association of Minnesota Counties (AMC), work with cooperating legislators to draft and introduce new bills in the 2025 legislative session.

Efforts to solve the problem:

RCWD representatives have met with DNR staff leadership multiple times since 2018 regarding the lack of clarity and consistency in DNR’s role on public drainage system repairs across the State. This engagement resulted in the DNR issuing Letters of Permission for two RCWD drainage repair projects, only to rescind the Letters of Permission months later noting that permission was unnecessary. PDA engaged with DNR, yet DNR continues inconsistent jurisdictional response.

A similar resolution was proposed and adopted by MAWD in 2018. This resolution is sunseting in 2023. We are unaware of any actions from MAWD / Minnesota Watersheds that resulted from that resolution.

Anticipated support or opposition from other governmental units?

Wild Rice Watershed District is supportive of this resolution. All public drainage authorities (counties, watershed districts) should support this legislation. Non-governmental environmental organizations in the state and the DNR may oppose this legislation.

This issue (check all that apply):

Applies only to our district:	_____	Requires legislative action:	_____ X _____
Applies only to 1 or 2 regions:	_____	Requires state agency advocacy:	_____
Applies to the entire state:	_____ X _____	Impacts MW bylaws or MOPP:	_____

103E.701 REPAIRS.

Subd. 2. Repairs affecting public waters.

A. Where as-built records, ~~reestablished~~reestablished records under section 103E.101, subd. 4a, or prior concurrence of the commissioner exist, the Drainage authority may proceed with a drainage system repair consistent with the definition above without further concurrence, review or permission of the commissioner under section 103E.011, subd. 3.

B. Where as-built records, ~~reestablished~~reestablished records under section 103E.101, subd. 4a, or prior concurrence of the commissioner do not exist, B~~efore~~ before a repair is ordered, the drainage authority must notify the commissioner if the repair ~~may affect~~will be conducted in, through or adjacent to public waters. Notice to the commissioner must include the proposed repair design and configuration. Within 60 days of notice, the commissioner must concur or non-concur that the proposed repair is, in fact, repair as defined in this section. Failure of the commissioner to concur or non-concur with the repair design and configuration within 60 days shall be deemed concurrence. If the commissioner ~~disagrees-non-concurs~~ with the repair design and configuration~~depth~~, the engineer, a representative appointed by the director, and a soil and water conservation district technician must jointly determine authorized repair as defined in this section~~the repair depth~~ using existing records and evidence, including, but not limited to, applicable aerial photographs, soil borings or test pits, culvert dimensions and invert elevations, and bridge design records.~~soil borings, field surveys, and other available data or appropriate methods.~~ Costs for determining the repair ~~depth~~ design and configuration beyond the initial meeting must be shared equally by the drainage system and the commissioner. The determined repair design and configuration~~depth~~ must be recommended to the drainage authority. The drainage authority may accept the joint recommendation and proceed with the repair.

C. Commissioner concurrence with repair design and configuration or drainage authority acceptance of a repair design and configuration recommendation shall constitute permission of the commissioner under section 103E.011, subd. 3.

103G.225 STATE WETLANDS AND PUBLIC DRAINAGE SYSTEMS.

If the state has inventoried and designated public water courses, basins or wetlands on or adjacent to existing public drainage systems, the state shall consider the use of the public waters ~~wetlands~~ as part of the drainage system. If the commissioner's desired management or protection of public waters ~~wetlands~~ interfere with or prevent the authorized functioning of the public drainage system, the state shall provide for necessary work to allow proper use and maintenance of the drainage system while still preserving the public waters wetlands.

103G.245 WORK IN PUBLIC WATERS.

Subd. 2.Exceptions.

A public-waters-work permit is not required for:

(1) work in altered natural watercourses that are part of drainage systems established under chapter 103D or 103E if the work in the waters is undertaken according to chapter 103D or 103E;

(2) repair of a public drainage system lawfully established under Minnesota Statutes, chapters 103D and or 103E, and sponsored by the public drainage authority consistent with the definition of "repair" in Minnesota Statutes, section 103E.701, subdivision 1.

(3) a drainage project for a drainage system established under chapter 103E that does not substantially affect public waters; or

(34) culvert restoration or replacement of the same size and elevation, if the restoration or replacement does not impact a designated trout stream.

SENATE
STATE OF MINNESOTA
NINETIETH SESSION

S.F. No. 2419

(SENATE AUTHORS: WESTROM, Weber, Eken, Sparks and Ingebrigtsen)

DATE
05/21/2017

D-PG
5448

Introduction and first reading

OFFICIAL STATUS

Referred to Environment and Natural Resources Policy and Legacy Finance

1.1 A bill for an act
 1.2 relating to natural resources; clarifying public waters and public drainage system
 1.3 laws; amending Minnesota Statutes 2016, sections 103E.701, subdivision 2;
 1.4 103G.225; 103G.245, subdivision 2.

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

1.6 Section 1. Minnesota Statutes 2016, section 103E.701, subdivision 2, is amended to read:

1.7 Subd. 2. **Repairs affecting public waters.** (a) Where as-built records, reestablished
 1.8 records under section 103E.101, subdivision 4a, or prior concurrence of the commissioner
 1.9 exists, the drainage authority may proceed with a drainage system repair as provided in this
 1.10 section without further concurrence, review, or permission of the commissioner under
 1.11 section 103E.011, subdivision 3.

1.12 (b) Where as-built records, reestablished records under section 103E.101, subdivision
 1.13 4a, or prior concurrence of the commissioner does not exist, before a repair is ordered, the
 1.14 drainage authority must notify the commissioner if the repair ~~may affect~~ will be conducted
 1.15 in, through, or adjacent to public waters. Notice to the commissioner must include the
 1.16 proposed repair design and configuration. Within 60 days of notice, the commissioner must
 1.17 concur or not concur that the proposed repair is, in fact, repair as provided in this section.
 1.18 Failure of the commissioner to concur or not concur with the repair design and configuration
 1.19 within 60 days is deemed concurrence. If the commissioner ~~disagrees~~ does not concur with
 1.20 the repair ~~depth~~ design and configuration, the engineer, a representative appointed by the
 1.21 director, and a soil and water conservation district technician must jointly determine the
 1.22 repair ~~depth~~ allowed under this section using soil borings, field surveys, and other available
 1.23 data or appropriate methods existing records and evidence, including but not limited to
 1.24 applicable aerial photographs, soil borings, test pits, culvert dimensions, invert elevations,

2.1 and bridge design records. Costs for determining the repair ~~depth~~ design and configuration
 2.2 beyond the initial meeting must be shared equally by the drainage system and the
 2.3 commissioner. The determined repair ~~depth~~ design and configuration must be recommended
 2.4 to the drainage authority. The drainage authority may accept the joint recommendation and
 2.5 proceed with the repair.

2.6 (c) The commissioner's concurrence with repair design and configuration or the drainage
 2.7 authority or an accepted joint recommendation acceptance of a repair design and configuration
 2.8 recommendation under this
 2.9 subdivision constitutes permission of the commissioner under section 103E.011, subdivision
 2.9 3.

2.10 Sec. 2. Minnesota Statutes 2016, section 103G.225, is amended to read:

2.11 **103G.225 STATE WETLANDS PUBLIC WATERS AND PUBLIC DRAINAGE**
 2.12 **SYSTEMS.**

2.13 If the state ~~owns~~ has inventoried and designated public water courses, basins, or public
 2.14 waters wetlands on or adjacent to existing public drainage systems, the state shall consider
 2.15 the use of the public waters wetlands as part of the drainage system. If the commissioner's
 2.16 desired management or protection of public waters wetlands interfere with or prevent the
 2.17 authorized functioning of the public drainage system, the state shall provide for necessary
 2.18 work to allow proper use and maintenance of the drainage system while still preserving the
 2.19 public waters wetlands.

2.20 Sec. 3. Minnesota Statutes 2016, section 103G.245, subdivision 2, is amended to read:

2.21 Subd. 2. **Exceptions.** A public-waters-work permit is not required for:

2.22 (1) work in altered natural watercourses that are part of drainage systems established
 2.23 under chapter 103D or 103E if the work in the waters is undertaken according to chapter
 2.24 103D or 103E;

2.25 (2) repair of a public drainage system lawfully established under chapters 103D or
 2.26 103E and sponsored by the public drainage authority as provided in section 103E.701;

2.27 (3) a drainage project for a drainage system established under chapter 103E that does
 2.28 not substantially affect public waters; or

2.29 (3) ~~(4)~~ culvert restoration or replacement of the same size and elevation, if the restoration
 2.30 or replacement does not impact a designated trout stream.

September 13, 2023

Rice Creek Watershed District
4325 Pheasant Ridge Drive NE, Suite 611
Blaine, MN 55449

RE: WILD RICE WATERSHED DISTRICT SUPPORT OF MN WATERSHEDS 2023
RESOLUTION

Dear Rice Creek Watershed District (RCWD):

The Wild Rice Watershed District (WRWD) Board of Managers had considered the MN Watersheds 2023 Resolution – *Support of New Legislation Modeled After HF2687 and SF2419 (2018) Regarding DNR Regulatory Authority over Public Drainage Maintenance and Repairs* (hereafter “MN Watersheds Resolution”) at Exhibit “A,” which has been adopted by the RCWD Board of Managers.

This letter, executed by the undersigned Chairman of the WRWD Board of Managers, on behalf of the WRWD Board of Managers, is being sent in support and agreement with the terms of the MN Watersheds Resolution regarding the commitment of lobbying efforts toward the passage of legislation modeled after HF2687 and SF2419 in subsequent legislative sessions.

Sincerely,



GREG HOLMVIK

Chairman – Wild Rice Watershed District Board of Managers

MINNESOTA WATERSHEDS RESOLUTION 2023-03

Resolution Seeking Support of New Legislation Modeled After HF2687 and SF2419 (2018) Regarding DNR Regulatory Authority over Public Drainage Maintenance and Repairs

WHEREAS, many watershed districts are drainage authorities 103E for all public drainage systems within their jurisdictional boundaries pursuant to the statute chapter; and

WHEREAS, statute chapter 103E places an obligation on drainage authorities to maintain public drainage systems on behalf of benefitted landowners; and

WHEREAS, courts have identified the rights of benefitted landowners to have public drainage systems maintained as a property right; and

WHEREAS, the State enacted laws related to water resources after the establishment of the public drainage systems with the commitment that these laws would not restrict existing rights to maintain public drainage systems; and

WHEREAS, DNR practices have departed from past policy and extended beyond the limits of its authority by regulating, permitting, and restricting drainage system repairs; and

WHEREAS, HF2687 and SF2419 were introduced during the 2018 legislative session to restate the protections given to drainage system repairs and were placed on hold in committee to await new DNR guidance that would address the concerns of the drainage authorities; and

WHEREAS, the DNR issued guidance in February 2018 that did not address the public drainage authority concerns and has created more uncertainty, expense, and delays in the public waters regulatory program and for drainage system repairs; and

WHEREAS, Though HF2687 and SF2419 were never withdrawn by their authors, the biennial legislative process requires that they be reintroduced for consideration.

WHEREAS, legislation modeled after HF2687 and SF2419 does not eliminate DNR or public input on repair depths; rather it clarifies how and when this is to occur in the process.

NOW, THEREFORE, BE IT RESOLVED that Minnesota Watersheds supports the introduction of new legislation, modeled after HF2687 and SF2419, ~~commits its staff to vetting this topic through the Drainage Work Group in 2024, and commits its lobbying efforts toward promoting the passage of the bills in subsequent sessions.~~

Notes: The committee recommends adoption of this resolution.

BACKGROUND INFORMATION ON MINNESOTA WATERSHEDS

RESOLUTION 2023-04

Resolution Seeking Action for Streamlining the DNR Flood Hazard Mitigation Grant Program

Proposing District: Two Rivers Watershed District
Contact Name: Dan Money, Administrator
Phone Number: 218-843-3333
Email Address: dan.money@tworiverswd.com

Background that led to the submission of this resolution:

DNR’s Flood Hazard Mitigation Grant program is authorized under MN Statute 103F. There is currently a lack of openness and transparency on the part of DNR in managing this program. There is lack of communication to grant applicants regarding how their project is scored, ranked, and prioritized for funding. Some of the projects have been waiting more than five years for funding, with little to no communication from DNR as to their status.

There is also a lack of information regarding DNR’s and the Legislature’s intent to fund applications to this program. Funding for the program relies on the legislative bonding cycle (See attached Analysis of Funds Allocated and Concerns about FHMP process). For example, in 2022-2023 there were requests for over \$150 million from this program. However, the DNR’s request to the legislature to fund the program is typically in the range of only \$20 million. At that pace, it would take over eight years to fund the projects currently on the list, and longer considering future new applications. Some projects have already been on the list for seven or more years and have not been funded. DNR does not communicate with applicants as to project status, and they do not seem to have a plan to fund projects and move them to construction.

Ideas for how this issue could be solved:

- Work with DNR to rectify the communication problem. Scoring, ranking, and funding priority should be more transparent so applicants know where they stand from year to year.
- Work with the legislature to promote the program and point out its social, economic, and scientific impacts. Most of the projects, and especially those in the Red River Basin, contain not only flood control elements, but also natural resources enhancement components. Minnesota Watersheds should promote the concept of fully funding the program with the intent to complete projects that qualify and are on the DNR list within two to four years of eligibility.
- Work with partners like cities, counties, and watershed management organizations to seek changes to program management.

Efforts to solve the problem:

- The Red River Watershed Management Board has met with partner organizations to identify the problem and help gain support. General support for streamlining and funding the program has been communicated.
- The RRWMB has been meeting with DNR representatives from northwest Minnesota to discuss the program and potential solutions. They have indicated a willingness to address some of the issues raised and have developed a workplan to help improve the program delivery (see attached FHM Work Plan). However, more work needs to be done to further address the issues.

Anticipated support or opposition:

Partners could be counties, cities, WMOs, and the RRWMB. Not sure about opposition.

This issue (check all that apply):

Applies only to our district:	_____	Requires legislative action:	_____ (X)
Applies only to 1 or 2 regions:	_____	Requires state agency advocacy:	_____ X
Applies to the entire state:	_____ X	Impacts MW bylaws or MOPP:	_____

Concerns About the FHMP Process

- ▶ Lack of openness/transparency - and little coordination and communication with local government.
 - ▶ DNR coordination with other agencies - how does this work.
 - ▶ Only 1 full-time staff designated by DNR for FHMP administration - some administrative assistance is available.
 - ▶ Limited or no information about:
 - Scoring and ranking process by DNR.
 - Internal DNR processes and procedures.
 - Who final decision-makers are at DNR.
 - How DNR develops its preliminary and final recommendations to fund the FHMP for Governor's budget.
 - ▶ Limited communication and promotion of the FHMP by DNR at legislature.
- ▶ FHMP gets lost in the shuffle during the state budget process.
 - ▶ Inadequate and inconsistent funding by the legislature:
 - Affects timing and coordination of other local, state, and federal funds to construct water storage/flood mitigation projects.
 - Places increased pressure on local government to fund FHM - WSPs through local taxes.
 - Inflation!
 - ▶ Continued deferred FHMP funding reduces local government's ability to meet climate resiliency goals/reduce downstream impacts.
 - ▶ Everyone wants water storage - but no one wants to fund it consistently and adequately.

FHM Program Improvement Work Plan - MN DNR

Updated 06-16-2023

Project Name: Flood Hazard Mitigation (FHM) Grant Assistance Program Communication and Delivery Improvement Project

Project Goal: A transparent funding award process, where DNR and stakeholders have ready access to and better understanding of program history, funding eligibility, application and prioritization process, and allocation of appropriations in each funding cycle.

Planned Activities:

Task	Notes	Status
Post relevant existing FHM program information on DNR's website, FHM program page	<ul style="list-style-type: none"> • Program history • List of current unmet needs • Allocation of past appropriations • Map of Projects • FAQ • Explanation of funding process and prioritization 	<ul style="list-style-type: none"> • DONE • DONE • DONE • Updated (not on web yet) • TBD • In progress
Obtain input on FHM program from interested stakeholders and post on web.	<ul style="list-style-type: none"> • Conduct LGU survey. See survey questions and responses. • Conduct LGU listening sessions. See listening session questions and notes. • Complete FHM Grant Assistance Program 2021 Survey and Listening Sessions Results Summary and post on web. 	<ul style="list-style-type: none"> • DONE • DONE • DONE
Internal As-Is Process Description and Review - SOPs	<ul style="list-style-type: none"> • Develop Standard Operating Procedures and supporting documents for DNR's internal, Land Use Programs (LUP) OneNote Manual. 	<ul style="list-style-type: none"> • Nearing completion
Update current FHM application.	<ul style="list-style-type: none"> • Update application to include narrative of program history, goals, eligibility, expansion of project prioritization based upon criteria established in law. • Draft application to be shared with internal and external stakeholders for review and comment prior to finalization. 	<ul style="list-style-type: none"> • Internal draft under review
Develop internal prioritization form based on prioritization criteria in statute and aligned with updated application form.	<ul style="list-style-type: none"> • Collect and review two to three scoring systems used by other grant programs in MN and/or other states. • Develop internal prioritization process. Recognize need for flexibility in working with funding directives from Legislature, statutory requirements, applicant needs, timing and practical implementation considerations. 	<ul style="list-style-type: none"> • DONE collecting other scoring systems. Need to finish review. • TBD
Continue to get input and identify areas for improvement.	<ul style="list-style-type: none"> • Determine timeline and process for periodic review of the FHM program and necessary updates to FHM materials. Once established, this will be an ongoing program maintenance task. 	<ul style="list-style-type: none"> • Initiate once elements above are completed.



ANALYSIS OF FUNDS ALLOCATED TO THE FLOOD HAZARD MITIGATION PROGRAM IN MINNESOTA – 1988 TO 2020

The Red River Watershed Management Board (RRWMB) analyzed statewide allocations to the Flood Hazard Mitigation Program (FHMP) using data available from the Minnesota Department of Natural Resources (DNR). The data used for this analysis is titled “History of Flood Hazard Mitigation Funding Allocations” is available on the DNRs website at this location: https://www.dnr.state.mn.us/waters/watermgmt_section/flood_damage/index.html

Data is available from 1988 to 2020 and below are facts about the FHMP:

- The FHMP started in 1988, has been in existence for over 34 years, with \$2 million being allocated the first year.
- FHMP funds are administered by the DNR and are pass through to Local Governmental Units (LGU) statewide including watershed districts, counties, cities, and townships.
- Since 1988, the FHMP has allocated \$516,819,885 to LGUs.
- No funds were allocated to the FHMP in 1989, 1992, 1996, 2004, 2016, 2019, 2021, and 2022.
- Of the 26 years that funds have been allocated to the FHMP, the average allocation is \$19,877,688 for statewide flood mitigation projects and efforts.
- The table below illustrates how funds have been allocated to LGUs statewide from 1988 to 2020 for the FHMP. A pie chart is also included on the next page depicting this information.

Entity Receiving FHMP Funds Statewide: 1988 to 2020	Amount of Total FHMP Allocations Received Statewide: 1988 to 2020	Percent of Total FHMP Allocations Statewide: 1988 to 2020
Watershed Districts	\$ 73,555,299.00	14.23%
Counties	\$ 34,155,509.00	6.61%
Cities	\$ 377,638,611.00	73.07%
Townships	\$ 30,734,747.00	5.95%
Other*	\$ 735,719.00	0.14%
TOTALS	\$ 516,819,885.00	100%

*Includes FHMP administration funds for the DNR to manage the program.

Contact: For more information, contact RRWMB Executive Director Robert L. Sip via email at rob.sip@rrwmb.us or by cell at 218-474-1084.

February 3, 2023



INFLATION IMPACTS ON CONSTRUCTION OF WATER STORAGE PROJECTS IN THE RED RIVER BASIN

The Red River Watershed Management Board (RRWMB) uses the United States Army Corps of Engineers (USACE) Civil Works Construction Cost Index (CWCCI) to adjust for inflation. The CWCCI is used by the RRWMB to set cost-share rates for member watershed districts when constructing Water Storage Projects (WSP) in the Red River Basin of Minnesota. USACE updates the CWCCI at the end of each federal fiscal year, which is September 30. Below is information from 2000 to 2022 illustrating how the CWCCI has changed annually (*The 2021 index listed is the value published in fall of 2021 – USACE later revised the 2021 value to 984.80). Specific RRWMB information related to inflationary impacts is included on the [next page](#).

At end of Federal Fiscal Year	Index (CWCCI)	Change From Prior Year
2000	497.07	
2001	503.52	1.3%
2002	517.46	2.8%
2003	529.95	2.4%
2004	571.29	7.8%
2005	608.36	6.5%
2006	641.91	5.5%
2007	673.52	4.9%
2008	716.54	6.4%
2009	703.00	-1.9%
2010	724.17	3.0%
2011	756.48	4.5%
2012	773.75	2.3%
2013	787.64	1.8%
2014	804.05	2.1%
2015	804.97	0.1%
2016	810.92	0.7%
2017	835.57	3.0%
2018	862.56	3.2%
2019	888.57	3.0%
2020	897.19	1.0%
2021	971.10	*
2022	1120.25	15.4%

Key Facts Related to Construction of Water Storage in Minnesota:

- The Flood Hazard Mitigation Program (FHMP) is a primary funding source for WSPs and flood mitigation statewide.
- The FHMP is managed by the MN DNR and funds are pass-through to local government across the state of Minnesota.
- One bonding bill of \$17.6 million has been approved in the last 4 years to fund WSPs and flood mitigation efforts statewide.
- The current known need for FHMP funding is approximately \$150 million according to MN DNR data and information as of May 2022.
- Bills of more than \$156 million have been introduced for flood mitigation and WSPs as of February 1, 2023.
- Inconsistent FHMP funding affects timing and coordination of other local, state, and federal funds to construct WSPs/flood mitigation projects.
- Inadequate funds allocated to the FHMP place increased pressure on local government to fund WSPs through local taxes.
- Continued deferred FHMP funding reduces local government's ability to meet climate resiliency goals/reduce downstream impacts.

The table below illustrates cost increases using the USACE CWCCI from 2022 to 2023 for the RRWMB's member watershed districts to construct WSPs/flood mitigation projects. The cost estimate for the WSPs was approximately \$49 million in 2022 and when applying the CWCCI, costs have risen significantly. For 2023, the bonding request is \$73 million for the RRWMB's membership.

Project	2022 RRWMB Cost Estimates	2021 CWCCI 8.20%	2022 CWCCI 15.40%	2023 RRWMB Bonding Request
Redpath Impoundment	\$ 15.4000	\$ 16.9400	\$ 19.3116	\$ 19.2289
City of Perley	\$ 0.6250	\$ 0.6875	\$ 0.7837	\$ 0.6250
Nelson Slough	\$ 4.1500	\$ 4.5650	\$ 5.2041	\$ 11.2580
Lilac Ridge	\$ 3.0000	\$ 3.3000	\$ 3.7620	\$ 8.2500
City of Newfolden	\$ 4.6680	\$ 5.1348	\$ 5.8536	\$ 6.5000
Roseau Lake Bottom	\$ 7.0000	\$ 7.7000	\$ 8.7780	\$ 8.7404
Whitney Lake	\$ 1.0000	\$ 1.1000	\$ 1.2540	\$ 1.2486
Klondike Clean Water Retention	\$ 13.5000	\$ 14.8500	\$ 16.9290	\$ 16.8565
TOTAL	\$ 49.3430	\$ 54.2773	\$ 61.8761	\$ 72.7074

Readiness: All these WSPs are ready to receive funding through the FHMP to get to the finish line. Construction will allow projects to come "on-line" to meet local, regional, and international goals for climate resiliency, water storage, and natural resources goals in the Red River Basin.

New Water Storage: Approximately 100,000 acre-feet of new water storage will be created when the projects below are constructed by RRWMB membership.

Flow Reduction Strategy: The Red River Basin has adopted a 20% flow reduction strategy to reduce flood flows in the Red River. The RRWMB has adopted this strategy.

Farmland Flood Damage Reduction Goal: The Red River Basin also has the goal of providing protection against 10-year summer storm events for intensively farmed agricultural land and 25-year events when feasible.

Current Financial Investments: The RRWMB calculates that \$50 million has been invested in these projects. More detailed information about the projects below can be provided upon request and cost information is in millions of dollars.

Contact: For more information, contact RRWMB Executive Director Robert L. Sip via email at rob.sip@rrwmb.us or via cell at 218-474-1084.

February 6, 2023

MINNESOTA WATERSHEDS RESOLUTION 2023-04

Resolution Seeking Action for Streamlining the DNR Flood Hazard Mitigation Grant Program

WHEREAS, severe flooding is known to occur repeatedly within the State of Minnesota, costing both public and private entities millions of dollars for repair and replacement of infrastructure, damage to homes, erosion and sediment control, and damage to cropland; and

WHEREAS, flooding also has severe and repeated impacts to water quality from erosion, sedimentation, nutrient loading, raw sewage discharges, and chemical spillage; and

WHEREAS, the DNR's Flood Damage Reduction Grant program (FHMG) under Minnesota Statutes 103F has been a successful tool for local governments to utilize to design and build projects to reduce and prevent flooding, protect the environment, and prevent social and economic losses; and

WHEREAS, the DNR's FHMG has historically not been funded adequately by the Legislature, nor have projects been scored, ranked, and prioritized adequately by the DNR; and

WHEREAS, the cost of construction has increased by nearly 28% over the past for years, however in the same time period the legislature has only provided funding (totaling \$17.6 million) in one of those years; and

WHEREAS, proposed flood damage reduction projects that are endorsed by the Red River Flood Damage Reduction Work Group are multi-purpose projects that provide climate resiliency, protection and enhancement of natural resources, habitat for fish and macroinvertebrates, and address water quality impairments.

NOW, THEREFORE, BE IT RESOLVED that Minnesota Watersheds adopt a resolution seeking action requiring the DNR to establish transparent scoring, ranking, and funding criteria for the Flood Hazard Mitigation Program (M.S. Chapter 103F) and asking the Minnesota Legislature to fully fund the state's share of eligible projects that are on the DNR's list within each two-year bonding cycle. Information regarding scoring, ranking, and funding should be provided annually to project applicants.

Notes: Funding for flood damage reduction and flood hazard mitigation is important to our members. I believe this resolution will be supported by our members.

BACKGROUND INFORMATION ON MINNESOTA WATERSHEDS RESOLUTION 2023-05

Resolution Seeking Increased Flexibility in Open Meeting Law to Utilize Interactive Technology

Proposing District: Riley Purgatory Bluff Creek Watershed District
Contact Name: Terry Jeffery, Interim District Administrator
Phone Number: 952-807-6885
Email Address: tjeffery@rpbcwd.org

Background that led to the submission of this resolution:

Due to the impacts of the COVID-19 pandemic, the Open Meeting Law, Minnesota Statutes Chapter 13, was revised by the 2021 Minnesota Session Laws to provide increased flexibility for participation in public meetings by telephone and interactive technology. The revisions to Minnesota Statutes Sections 13D.02 and 13D.021 provide for this additional flexibility in the event that a health pandemic or emergency is declared under Chapter 12 of Minnesota Statutes. When the health pandemic or emergency is no longer declared, the standard, non-emergency meeting participation and notice requirements for remote participation by a member of a public body apply.

The standard, non-emergency language in the Open Meeting Law allows a member of a public body board to remotely attend and participate in a public meeting using interactive technology, provided that participation is from a public and publicly noticed location (13D.02 Subdivision 1 (5)); and 2). A member may participate remotely from a nonpublic location in a public meeting up to three times in a calendar year due to military deployment or medically documented personal health reasons.

Many public bodies, including watershed districts, successfully used interactive technology to conduct business, including public meetings, during the pandemic. Benefits to using these platforms that went beyond health and safety included reduced travel costs and time for the public and the organizations using the platform; increased opportunities for public engagement; lower barriers to public engagement; and increased equity and opportunity for potential leaders and participants.

This proposed resolution declares Minnesota Watersheds support for changes to the Open Meeting Law that would eliminate the requirement that public body board members participating in a meeting remotely by interactive technology be in a public and publicly noticed location, and the limitation on the number of times a member may participate remotely in a calendar year. It requires public bodies to provide members of the public access to public meetings using interactive technology at the regular meeting location, at which at least one representative of the public body must be present. It requires that the public be provided the opportunity to offer public comment during the meeting from remote locations or the regular meeting location. It further requires that a public body conducting public meetings under the revised Open Meeting Law must publish procedures for conducting meetings using interactive technology to put its members and the public on notice.

Ideas for how this issue could be solved:

Revise Minnesota Statutes Section 13D.02 to eliminate the limitation on a member of a public body's remote participation in public meetings by interactive technology, and eliminate the requirement that the location of the member be public and noticed as such; provide opportunity for public participation by interactive technology at the regular meeting location; and require a public body that conducts a public meeting using interactive technology to publish procedures for conducting meetings using interactive technology.

All other requirements of the Open Meeting Law would continue to apply to ensure public access and transparency, including, but not limited to: roll call voting; public comment; ability to be seen and heard; public notice; representation by a member or designated representative at the regular meeting location; and recording and posting of public meeting minutes.

Efforts to solve the problem:

The District has discussed trends in interactive technology use by watershed districts and other public bodies, as well as anticipated legislative action, with its attorneys. The District has no state agency, legislative, or county responses to report.

Anticipated support or opposition:

The District anticipates support from organizations that experienced benefits from use of interactive technology for their public meetings that would like to continue to use the flexibility of interactive technology. The District also anticipates public support for the continued use of interactive technology, which has expanded access to public meetings.

Opposition may come from advocates for the existing Open Meeting Law.

This issue (check all that apply):

Applies only to our district:	_____	Requires legislative action:	_____ X _____
Applies only to 1 or 2 regions:	_____	Requires state agency advocacy:	_____ maybe _____
Applies to the entire state:	_____ X _____	Impacts MW bylaws or MOPP:	_____ _____

**RILEY PURGATORY BLUFF CREEK WATERSHED DISTRICT
PROPOSAL TO AMEND Minnesota States Section 13D.02 as follows:**

13D.02 OTHER ENTITY MEETINGS BY INTERACTIVE TECHNOLOGY.

Subdivision 1. **Conditions.**

(a) A meeting governed by Section 13D.01, subdivisions 1, 2, 4, and 5, and this section may be conducted by interactive technology so long as:

(1) all members of the body participating in the meeting, wherever their physical location, can hear and see one another and can hear and see all discussion and testimony presented at any location at which at least one member is present;

(2) members of the public present at the regular meeting location of the body can hear and see all discussion and testimony and all votes of members of the body;

(3) at least one member of the body, chief legal counsel, or chief administrative officer is physically present at the regular meeting location where participation by interactive technology is available to members of the body and public present, unless participation at the regular meeting location is not practical or prudent under Section 13D.021; and

(4) all votes are conducted by roll call so each member’s vote on each issue can be identified and recorded; ~~and~~

~~(5) each location at which a member of the body is present is open and accessible to the public.~~

(b) A meeting satisfies the requirements of paragraph (a), although a member of the public body participates from a location that is not open or accessible to the public, ~~if the member has not participated more than three times in a calendar year from a location that is not open or accessible to the public, and:~~

~~(1) the member is serving in the military and is at a required drill, deployed, or on active duty; or~~

~~(2) the member has been advised by a health care professional against being in a public place for personal or family medical reasons. This clause only applies when a state of emergency has been declared under section 12.31, and expires 60 days after the removal of the state of emergency.~~

Subdivision 4. **Notice of regular ~~and all member~~ locations.**

If interactive technology is used to conduct a regular, special, or emergency meeting, the public body shall provide notice of the regular meeting location, ~~and notice of any location where a member of the public body will be participating in the meeting by interactive technology, except for the locations of members participating pursuant to subdivision 1, paragraph (b).~~ The timing and method of providing notice must be as described in section 13D.04.

Subdivision 6. **Record.**

The minutes for a meeting conducted under this section must reflect the names of any members appearing by interactive technology, ~~and state the reason or reasons for the appearance by interactive technology.~~

Subdivision 7. **Public comment period.**

If a public body's practice is to offer a public comment period at in-person meetings, members of the public shall be permitted to comment from a remote location during the public comment period of the meeting, to the extent practical.

Subdivision 8. **Rules and procedures.**

A public body that conducts a meeting under this section must publish procedures for conducting meetings using interactive technology no later than December 31, 2022.

MINNESOTA WATERSHEDS RESOLUTION 2023-05

Resolution Seeking Increased Flexibility in Open Meeting Law to Utilize Interactive Technology

WHEREAS, the Open Meeting Law (Minnesota Statutes Chapter 13D) provides that the governing bodies of watershed districts and other units of government may hold meetings and provide for participation by board members through use of interactive technology, so long as there is a declaration of pandemic or emergency;

WHEREAS, during the COVID-19 pandemic, many public bodies, including watershed districts, used interactive technology to conduct public meetings; there were many benefits to using interactive technology platforms, including reduced travel costs and time to the public and the organizations using the platform; increased opportunities for public engagement; decreased barriers to public engagement; and increased equity and opportunity for potential leaders and participants;

WHEREAS, the current statute allows for members to participate in meetings through interactive technology, but absent a declaration of pandemic or emergency, requires that a member participating through interactive technology must be in a location that is open and accessible to the public and noticed as such; an exception is allowed up to three times in a calendar year for military deployment or medically documented personal health reasons (13D.02, subdivision 1(A)(5), subdivision 1(b));

WHEREAS, even absent a declaration of pandemic or emergency, remote meeting participation through the use of interactive technology provides benefits to facilitating member participation while also assuring that decision making is transparent and meetings are accessible to the public;

NOW, THEREFORE, BE IT RESOLVED that the Minnesota Watersheds hereby supports changes to the Open Meeting Law to provide greater flexibility in the use of interactive technology by allowing members to participate remotely in a nonpublic location that is not noticed, without limit on the number of times such remote participation may occur; and allowing public participation from a remote location by interactive technology, or alternatively from the regular meeting location where interactive technology will be made available for each meeting, unless otherwise noticed under Minnesota Statutes Section 13D.021;

BE IT FURTHER RESOLVED that the Minnesota Watersheds supports changes to the Open Meeting Law requiring watershed districts to prepare and publish procedures for conducting public meetings using interactive technology.

Notes: The RPBCWD managers would like to have the membership reconsider the three times in a calendar year which is in the Minnesota Watersheds adopted resolution on this subject. They are uncertain as to why the three-day limit as that seems rather arbitrary. This language is exactly the same as was submitted in 2022. The resolution failed in 2022.

BACKGROUND INFORMATION ON MINNESOTA WATERSHEDS

RESOLUTION 2023-06

Resolution Seeking Minnesota Watersheds Education and Outreach to Encourage Formation of Watershed Districts in Unserved Areas

Proposing District: Comfort Lake-Forest Lake Watershed District
Contact Name: Dave Bakke, Manager; Jackie Anderson Manager
Phone Number: 612-308-7865 (Dave); 612-819-6906 (Jackie)
Email Address: dave.bakke@clflwd.org; jackie.anderson@clflwd.org

Background that led to the submission of this resolution:

Not all areas of Minnesota have a watershed district to support protection and improvement of lakes, rivers and wetlands and other water issues unique to those areas. “The watershed approach is now the national model and new hope for effective management of water resources” (Minnesota Watersheds website). Therefore, this resolution is to increase the number of local watershed districts to serve those areas of the state that lack support. In addition, with the increasing role being played by One Watershed-One Plan organizations throughout the State, it is important that each such entity include one or more watershed districts to advocate for and guide toward a watershed approach. The goal is to have all areas of Minnesota served by a local watershed district to advance responsible watershed-based management both locally and within One Watershed-One Plan organizations regionally.

Ideas for how this issue could be solved:

Minnesota Statutes 103D provides for the establishment of local watershed districts through petitioning by counties, municipalities, or citizens. Through various channels, (state government, counties, cities, lake associations, etc.) Minnesota Watersheds could provide outreach and education to promote and establish new watershed districts across Minnesota where they currently do not exist.

Efforts to solve the problem:

Members of our board of managers, past and present, have served as officers of lake associations and other local water management organizations. In that capacity, we have experienced the tremendous support of the Comfort Lake Forest Lake Watershed District in leading efforts to improve and protect our lakes, rivers and wetlands. Recently, one of our managers joined the Elbow Lake Association, near Lake Vermillion, and found that no watershed district exists to provide the same support needed to protect and improve lakes, rivers and wetlands in NE Minnesota. At a recent Elbow Lake Association meeting, the manager was charged with finding avenues of support for protecting and improving area water and reached out to the CLFLWD board to gather support for this effort to increase the number of watershed districts in Minnesota. This resolution is offered to broaden support for this effort.

Anticipated support or opposition:

The legislature has endorsed watershed-based water resource management as state policy (103A.212). Minnesota Watersheds should expect support from the Minnesota Board of Water and Soil Resources and other state agencies concerned with sound water resource management. It would be hoped that counties and conservation districts would welcome One Watershed One Plan organization members that would bring a specific watershed focus to bear. Some counties or others may not favor the formation of additional watershed districts on the grounds that they would dilute county authority within One Watershed One Plan organizations, or on grounds of general opposition to the creation of additional taxing authorities.

This issue (check all that apply):

Applies only to our district:	_____	Requires legislative action:	_____ X _____
Applies only to 1 or 2 regions:	_____	Requires state agency advocacy:	_____ X _____
Applies to the entire state:	_____ X _____	Impacts MAWD bylaws or MOPP:	_____ _____

MINNESOTA WATERSHEDS RESOLUTION 2023-06

Resolution Seeking Minnesota Watersheds Education and Outreach to Encourage Formation of Watershed Districts in Unserved Areas

WHEREAS, as set forth at Minnesota Statutes §103A.212, the Minnesota legislature has enunciated watershed-based water resource management to be state policy;

WHEREAS, many areas of the State of Minnesota do not lie within the boundaries of a watershed district or other watershed-based water management agency;

WHEREAS, Minnesota Statutes §103D.205 provides for watershed districts to be established by petition of counties, municipalities or residents;

WHEREAS, watershed districts operate on sound watershed-based science to set goals, priorities and implementation plans, and have proven to be responsive to local water resource priorities and needs; and

WHEREAS, as One Watershed – One Plan organizations proliferate at a larger watershed scale, it is essential for such organizations to have as members watershed districts that can advocate for and guide toward a watershed approach;

NOW, THEREFORE, BE IT RESOLVED that Minnesota Watersheds, in consultation with its membership, develop a framework for education and outreach intended to encourage petition and advocacy for the formation of watershed districts in areas of the state not presently served by watershed-based public agencies.

Notes: We have difficulty getting established WDs and WMOs as members. It would be interesting to know what type of education and outreach this WD recommends, as well as what entities.