COON CREEK WATERSHED DISTRICT
Request for Board Action

MEETING DATE: March 26, 2018
AGENDA NUMBER: 16
ITEM: House File (HF) 3805

AGENDA: Discussion

ACTION REQUESTED
Staff direction

BACKGROUND
On March 15, 2018 House File 3805 was introduced by Representative Josh Heintzeman (R) District: 10A. The bill was forwarded to the Environment and Natural Resources Policy and Finance, Chaired by Rep. Dan Fabian. There has been no committee or public review on this bill as of Thursday 3/22/18 at noon.

The bill does have a Senate companion SF 3379 authored by Senator Rich Draheim (R) District 20. The Senate bill was also introduced on 3/15/18 and forwarded it the Senate Environment and Natural Resources Policy and Legacy Finance, Chaired by Carrie Ruud (10, R). There is no meeting or hearing scheduled on this Bill as of Thursday 3/22/18 at noon.

ISSUES/CONCERNS
1. The bill proposes approximately 20 changes by amending Minnesota Statutes 2016, sections 103D.311, subdivision 2; 103D.335, by adding a subdivision; 103D.341, subdivisions 2, 3; 103D.515, subdivision 1; 103D.521; 103D.537. Eighteen of the changes are additions. Issues addressed in the Bills are:
   a. Appointment Process
   b. Engineering and Legal Fees
   c. Rule Procedural Requirements (Requires a SONAR for any and all District Rules)
   d. Notification for Rules that Affect Cities
   e. Ensures that pre-existing water rights are recognized
   f. Assures those rights through Due Process
   g. Addresses the appeal process of rules, permit decisions, and orders; evidentiary basis;

2. Intent: It appears that the intent of this bill is to simplify language and put everything into one statute versus relying on other statutes or case law.
PRIOR DECISIONS
None

OPTIONS
1. Discuss

2. Monitor Bill: Neither file have hearings scheduled. Given that there are no hearings scheduled and that committee deadline are impending
   1. 1st deadline - March 22, 2018 at midnight: For committees to act favorably on bills in the house of origin
   2. 2nd deadline - March 29, 2018 at midnight: For committees to act favorably on bills, or companions of bills, that met the first deadline in the other house
   3. 3rd deadline - April 20, 2018 at midnight: For committees to act favorably on major appropriation and finance bills

3. Actively Oppose Bill: Call or contact delegation and committee chairs and voice opposition for bill

4. Actively Support Bill: Call or contact delegation and voice support for bill

RECOMMENDATION
Continue to monitor bill
Current Version - as introduced

A bill for an act

relating to natural resources; modifying provisions for watershed districts; amending
Minnesota Statutes 2016, sections 103D.311, subdivision 2; 103D.335, by adding
a subdivision; 103D.341, subdivisions 2, 3; 103D.515, subdivision 1; 103D.521;
103D.537.

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

Section 1.

Minnesota Statutes 2016, section 103D.311, subdivision 2, is amended to read:

Subd. 2.

Appointment.

(a) At least 30 days before the terms of office of the first
managers named by the board expire, the county commissioners of each county
responsible
for appointing a manager to the watershed district must meet and appoint successors.

(b) The county commissioners must meet at least 30 days before the term of office of
any manager expires and appoint a successor.

(c) A vacancy occurring in an office of a manager must be filled by the appointing county
board. The managers must advise the county commissioners in writing within ten days
after
a manager retires, ceases to attend meetings, or otherwise vacates the position on the board.

(d) Appointing county boards shall provide public notice before making appointments.
Published notice must be given at least once by publication in a newspaper of general
circulation in the watershed district at least 15 days before an appointment or
reappointment
is made. The notice must state that persons interested in being appointed to serve as a
watershed district manager may submit their names to the county board for consideration.

(e) The county commissioners must endeavor to appoint at least one manager that
has
experience or a background in real estate investment or development or in construction.

Sec. 2.

Minnesota Statutes 2016, section 103D.335, is amended by adding a subdivision to read:

Subd. 26.

Engineer and legal fees.

The managers must require annual public reporting of engineer fees and legal fees reimbursed by landowners and an annual summary of all
engineer fees and legal fees paid by the watershed district. The managers must review the fees to determine if the fees are reasonable.
Minnesota Statutes 2016, section 103D.341, subdivision 2, is amended to read:

Subd. 2.

Procedure.

(a) The managers must prepare and review a statement of need and reasonableness, as described in section 14.131, before adopting or amending rules. The statement of need and reasonableness must be made available for public review at least 45 days before the date set for a hearing on the rules. Rules of the watershed district must be adopted or amended by a majority vote of the managers, after public notice and hearing. Rules must be signed by the secretary of the board of managers and recorded in the board of managers' official minute book.

(b) Prior to adoption, the proposed rule or amendment to the rule must be submitted to the board for review and comment. The board's review shall be advisory. The board shall have 45 days from receipt of the proposed rule or amendment to the rule to provide its comments in writing to the watershed district.

(c) At least 45 days before the date set for a hearing on the rules or amendments, the managers must mail a copy of all proposed rules or amendments to the rule to provide review and comment to:

1. all public transportation authorities that have jurisdiction within the watershed district at least 45 days prior to adoption. The public transportation authorities, which have 45 days from receipt of the proposed rule or amendment to the rule to provide comments in writing to the watershed district;

2. all persons who have held permits issued under section 103D.345 within the last five years;

3. all parties that have consulted with the watershed district in the last 12 months about upcoming projects; and

4. all landowners directly impacted by an increase in wetland buffer setback requirements, when applicable.

(e) For each county affected by the watershed district, the managers must publish a notice of hearings and adopted rules in one or more legal newspapers published in the county and generally circulated in the watershed district. The managers must also provide written notice of adopted or amended rules to public transportation authorities that have jurisdiction within the watershed district. The managers must file adopted rules with the county.
recorder of each county affected by the watershed district and the board.

(d) The managers must mail a copy of the rules to the governing body of each municipality affected by the watershed district.

(f) The rules are effective no earlier than 120 days after adoption.

Sec. 4.

Minnesota Statutes 2016, section 103D.341, subdivision 3, is amended to read:

Subd. 3.

Notification for rule that affects city.

A rule or resolution that affects land or water within the boundaries of a city is not effective within the city's boundaries until the governing body of the city is notified. 45 days before adoption and the city does not object within 30 days to the adoption of the rule or resolution. If the city objects, the managers must meet and confer with the city to reasonably resolve the objection before the rule or resolution is adopted. If the managers are unable to resolve the objection after meeting and conferring with the city, the managers may adopt the rule or resolution and the city may opt out of enforcing the rule or resolution within the city's jurisdiction.

Sec. 5.

Minnesota Statutes 2016, section 103D.515, subdivision 1, is amended to read:

Subdivision 1.

Preexisting water rights recognized.

(a) The rights of private or corporate landowners to use the waters of the watershed district for any purpose continue as the rights existed at the time of the organization of the watershed district.

(b) The managers may not adopt or enforce rules that:

(1) require a perpetual, private or public declaration of maintenance, a declaration of easement, or an easement to be recorded against the landowner's title that obligates the landowner and the landowner's successors in title to perform tasks and functions in addition to those provided specifically in the watershed rules;

(2) create any wetland buffer, together with any side slope, grade, or other required setback, that exceeds a cumulative 25 feet;

(3) prohibit buffer averaging;

(4) prohibit reasonable activities in the buffer zones, including tree removal, grading, restoration, creation of walkways and paths, or grading for adjacent storm ponds or facilities;

(5) require the landowner to demonstrate that the landowner's facilities or structures will
not have an adverse impact on local groundwater or natural resources or any other
immeasurable, arbitrary, or subjective standard;
(6) impose requirements or manage the watershed to mimic presettlement or
predevelopment hydrologic conditions;
(7) require recording in the office of the county registrar or recorder any declarations
or instruments before issuing a permit to perform or construct the permitted work;
(8) require the landowner to provide both floodplain replacement volume and water
storage capacity duplicative of the provided storm water ponding capacity;
(9) limit the availability of variances by adopting variance standards that require a
demonstration of undue hardship, prohibit consideration of economic hardship, prohibit
consideration of property-specific situations that might be created by the landowner, or
otherwise limit the landowner to a standard more difficult than the practical difficulty
standard of review;
(10) unreasonably deny or terminate a landowner's permit rights without due
process;
(11) require the landowner to pay the watershed district’s legal fees or engineer fees
without the ability to object and appeal the fees to the managers for review; or
(12) adopt by reference best management practices located on a Web site or
hyperlink
that can randomly and suddenly change with new and subjective content not approved by
a rule or resolution of the watershed district.
Sec. 6.
Minnesota Statutes 2016, section 103D.521, is amended to read:

103D.521 RIGHTS ASSURED DUE PROCESS OF LAW.
(a) A person may not be deprived or divested under this chapter of a previously
established beneficial use or right without due process of law.
(b) The managers may not adopt or enforce rules that deprive or divest a private or
corporate landowner of the use of existing water rights and use of existing water
conditions on an owner’s property relating to storm water runoff, infiltration, drainage, ponding, or
flood relief, without payment of adequate compensation.
Sec. 7.
Minnesota Statutes 2016, section 103D.537, is amended to read:

103D.537 APPEALS OF RULES, PERMIT DECISIONS, AND ORDERS;
EVIDENTIARY BASIS; APPEALS.
(a) An order or permit decision of the watershed district or a decision on appeal must
be based on the record made in the proceeding together with any other relevant evidence
or affidavits provided by the parties.
_rb (b) Except as provided in section 103D.535, an interested party may appeal a permit
decision or an order made by the managers, or staff enforcement of any provision of the
watershed plan or watershed rules by a declaratory judgment action brought under chapter
The decision on appeal must determine whether the watershed district's action or requirement is unreasonable by a preponderance of the evidence. An interested party may appeal a rule made by the managers by a declaratory judgment action brought under chapter 555 or by appeal to the board. The decision on appeal must be based on the record made in the proceeding before the managers. An appeal of a permit decision or order must be filed within 30 days of the managers' decision, except that an appeal of staff enforcement or interpretation of the watershed district rules may be brought:

1. at any time during the permit application process;
2. when the permit is issued or denied;
3. when a variance request is granted or denied;
4. after a permit is issued; or
5. while the permit is active.

(b) In addition to the authorities identified in paragraph (a), a public transportation authority may appeal a watershed district permit decision to the board. The board shall, upon request of the public transportation authority, conduct an expedited appeal hearing within 30 days or less from the date of the appeal being accepted.

(d) By January 1, 2020, the board shall adopt reasonable rules governing appeals to the board under paragraphs (a) and (b), but must not limit a landowner's right to seek immediate judicial relief. A decision of the board on appeal is subject to judicial review under sections 14.63 to 14.69. The rules authorized in this paragraph are exempt from the rulemaking provisions of chapter 14 except that sections 14.131 and 14.386 apply.

(e) The proposed rules must be submitted to the members of senate and house of representatives environment and natural resource and transportation policy committees at least 30 days prior to being published in the State Register. The amended rules are effective for two years from the date of publication of the rules in the State Register unless they are superseded by permanent rules.