



May 8, 2019

Minnesota Senate and
Minnesota House of Representatives

Re: Omnibus Environment and Natural Resources Bill - Proposed Right-of- Way Exemption to State
Endangered Species Law (SF 2314-3, Section 14, lines 88.29 – 88.33; page R10 of Revisor
Full-text Side-by-Side)

Please Vote “No”; and

Please Repeal Current “Ditches and Roadway” Exemption and “Ignorance” Exemption

Dear Honorable Senators and Representatives:

We submit this letter on behalf of the Minnesota Native Plant Society (MNNPS), a Minnesota non-profit corporation established in 1983 for the purpose, in part, of conserving Minnesota’s native plants and native plant communities.

MNNPS is concerned about the impacts of SF 2314-3, Section 14, lines 88.29 – 88.33. In a purported attempt to clarify the law, the language actually **weakens the protection of rare plants** under the Minnesota Endangered Species Act (Minn. Stat. 84.0895) and **creates more uncertainty and confusion**.

MNNPS respectfully requests that you vote “No” for the following reasons:

1. EXPANDS EXEMPTION TO WIDEST POSSIBLE AREA. The current law exempts “... ditches and roadways ...” from the requirements of the Minnesota Endangered Species law. [Minn. Stat. 84.0895, Subd. 2(1).] The current language is subject to an interpretation that the exemption includes the driven portion of the road, the shoulder or fore-slope, and ditch.

The bill deletes the present language “... ditches and roadways ...” Instead of creating a narrow exemption, the bill **expands the exemption** width to “public road right-of-way”, defined in Minn. Stat. 84.92, Subd. 6a, as the “**entire right-of-way** of a public road, including the traveled portions, banks, ditches, shoulders, and medians of a roadway that is not privately owned.” In other words, the bill expands the exemption as wide as possible; to land beyond the ditches and to land within the medians.

Endangered and threatened plants occur in public road rights-of-way throughout the state. Local populations are vulnerable to extinction if road authorities are not held responsible for determining whether and where rare plants are present prior to maintenance and construction activities that can result in destruction of the populations (activities such as spraying pesticides and soil disturbance). Road authorities, the Commissioner of Transportation, and the Commissioner of Natural Resources have opportunity to collaborate in determining the status of endangered and threatened plant species in public road rights-of-way and to document those occurrences in the Department of Natural Resource (DNR) Natural Heritage Information System. The DNR specifically has authority under Minn. Stat. 84.0895 to undertake a census that would

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help road authorities make informed and efficient planning decisions related to the protection of endangered and threatened plant species. This is science-based decision making and an opportunity for governing bodies to work together.

We recognize that transportation and safety are priorities for road authorities in their operations and road improvement planning. However, road authorities must still be held accountable for due diligence in following laws related to species that are vulnerable to extinction in Minnesota. The minimal investment necessary for road authorities to address protection of endangered and threatened plant species is reasonable and necessary. It is just one component of a much larger road improvement planning process that road authorities undertake on behalf of the public. We expect that, through the planning process, priority would be given first to avoiding the destruction of populations of endangered and threatened plant species. We would also expect that any unavoidable losses would be mitigated through the Commissioner of Natural Resources' authority to guide transplantation and regulated taking (84.0895 Subd. 5.)

2. DOES NOT CLARIFY THE LAW. Contrary to assertions of the bill's proponents, the bill does not clarify the law. Instead, the bill creates an unnecessary exception to the exemption. The bill states that the roadway exemption does not apply to "... ground not previously disturbed by construction or maintenance ...". A disturbance 100 years ago, when the road was originally constructed, could be included in the exemption. Mowing at any time in the past could qualify the roadway to be included in the exemption. By definition, virtually all existing roads - and right-of-way areas - have been altered sometime in the past, thus allowing the areas to be exempt under the Minnesota Endangered Species law.

Furthermore, the law fails to establish the standard of evidence and burden of proof necessary to establish that the "... ground was not previously disturbed"

3. FAILS TO ALLOW PLANTS TO BE RE-ESTABLISHED. In general, plants have the capacity to reestablish in disturbed areas, if conditions are suitable and they are allowed to grow without further disturbance. The proposed bill does not take into account that some endangered and threatened plants can be reestablished in areas "previously disturbed by construction or maintenance."
4. ADVERSE PRECEDENT. Granting a ditches and roadway exemption from the Minnesota Endangered Species law (i.e. a "free pass") to road authorities has already established an adverse precedent and an incentive for other entities to request special treatment. The bill proposes to expand the "free pass" to road authorities, which will increase the incentive for others to request special treatment – and will further weakens the law's effect.

**REPEAL EXEMPTION FOR ROADWAYS
AND
DITCHES WITHIN PUBLIC RIGHT-OF-WAYS**

The present "roadway" exemption from the Minnesota Endangered Species law should be repealed. [Minn. Stat. 84.0895, Subd. 2(a).] Ditches within the public right-of-way should not be exempted. (The exemption should apply only to ditches outside of public right-of-way.) The reasons are:

1. There is no rational basis to grant road authorities an exemption to the requirements of the Minnesota Endangered Species law.

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2. There is no evidence in the record that road authorities are less able to comply with the law than any other person or entity.
3. It is only fair and equitable that road construction and maintenance by road authorities should be subject to the same requirements as any other activity under the Minnesota Endangered Species law.

REPEAL THE IGNORANCE EXEMPTION

The Minnesota Endangered Species law presently contains another exemption:

“The accidental taking of an endangered plant, where the existence of the plant is not known at the time of the taking, is not a violation of subdivision 1.” [Minn. Stat. 84. 09895, Subd. 2(d).]

This statute unjustifiably rewards ignorance and creates no incentive to investigate the consequences of a proposed action. Ironically, the statute creates no exemption for “threatened” species, which are, by definition, in less immediate danger of extinction. In most circumstances, ignorance is not a defense to a harmful activity. Citizens should be responsible for their actions. Therefore, the above language should be repealed.

SUMMARY OF REQUESTS

On behalf of the Minnesota Native Plant Society, we thank you in advance for your kind consideration. **Please vote “NO” on this bill. Furthermore, please amend the present Minnesota Endangered Species law by repealing: (1) the exemption for roadways and ditches within public right-of-ways [contained in Minn. Stat. 84.0895, Subd. 2(a)(1)]; and (2) the exemption that rewards ignorance [Minn. Stat. 84.0895, Subd. 2(d)].**

Sincerely yours,



Thomas E. Casey
Board Member and Conservation Committee Chair
Minnesota Native Plant Society



Scott A. Milburn
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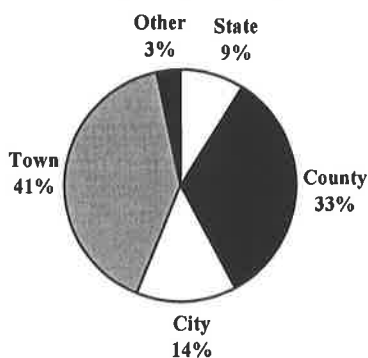
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Minnesota Highway Mileage

Minnesota has about 135,000 miles of streets and highways, one of the largest such totals in the country. The table below shows highway mileage as of June 2005.

State trunk highways	Interstate highways	914
	Other trunk highways	10,983
	Total state trunk highways	11,897
County highways	County state-aid highways	30,459
	Other county highways	14,752
	Total county highways	45,211
City streets	Municipal state-aid streets	2,970
	Other city streets	16,005
	Total city streets	18,975
Town roads	Town roads	54,785
Other roads	Roads in unorganized townships	1,300
	State & U. S. forest roads	2,379
	Indian reservations	383
	Other	361
	Total other roads	4,423

Minnesota Highway Mileage 2005



For more information: See the House Research Short Subjects *Trunk Highway Fund*, *County State-Aid Highway Fund*, and *Municipal State-Aid Street Fund*.

The Research Department of the Minnesota House of Representatives is a nonpartisan office providing legislative, legal, and information services to the entire House.

White Bear Area Neighborhood Concerned Citizens Group (NCCG) was started by a group of citizens with no prior experience in politics or community or environmental activism.

The White Bear area experienced highly excessive exposure to TCE for 17+ years. Including, in 2018 when Water Gremlin was working with the MPCA and ‘somehow’ their machines emitted 120 tons of TCE vs. their permit of 10 tons. Add up the data over the 17 years – they emitted over 1000 tons of TCE, against a total permit of 170 tons.

When the Water Gremlin TCE exposure issue came to the public’s attention, we were individually motivated to do more than talk about it – we wanted action. Through that desire for action, we found each other and began coordinating our individual efforts. This resulted in the forming of Neighborhood Concerned Citizens Group with the purpose of advocating for the health and environment of those impacted by the Water Gremlin contamination.

We are united by our passion for the community, for our local environment and for the health of our families and friends. We strongly believe both corporations and government have accountability to the community, and we strive to keep those players honest, accountable and transparent in their actions.

Phasing out TCE isn’t a White Bear issue. This is a MN state wide issue. And, even a national issue. The citizens of Minnesota have had numerous issues with excessive TCE exposure over the decades. Nothing has been done to protect citizens from this toxin. Exposure to TCE is linked to many other diseases, birth defects and more. Harmful levels of TCE have been found in our water, soil and air, including in Minneapolis, Fridley, Bayport, Edina, the St. Paul Como area,

St. Louis Park and many other areas, including the upper northern part of Minnesota.

In addition, Neighborhood Concerns Citizen Group was advocating for TCE Emissions Account Appropriations from a portion of the Civil Penalty to go back to the impacted areas for further independent testing, health assessments, health mapping, cumulative impact studies and monitoring to ensure the communities safety. We support all communities impacted by such horrible exposures the same and demand our legislators and government pass laws of such to ensure safety to ALL citizens in ALL communities.

Minnesota was close to phasing out TCE and becoming the first state to protect citizens from this carcinogen that has been released into the environment throughout the state in excessive levels.

Our citizen's group thought we were actually making a difference and, that at with bipartisan, whole-hearted support from the likes of Representative Ami Wazlawik, Representative Peter Fisher, Representative Jaime Becker-Finn and Senator Roger Chamberlain, Senator Chuck Wiger and Senator Jason Isaacson someone was finally listening to the citizen voice and not allowing the MN Chamber of Commerce or chemical industry or lobbyists have the final say. It is just sad and extremely disappointing that so many of our legislators fell prey to these voices protecting the love of money rather than protecting the health and lives of citizens and especially the most vulnerable - our children.

We asked our legislators to drive these bills home for ALL citizens in ALL communities next session and have Minnesota lead the nation.

Thank you House for your votes and for the bipartisan leadership of Representative Ami Wazelik, Representative Peter Fisher, Representative Jaime Becker-Finn, Senator Roger Chamberlain, Senator Chuck Wiger and Senator Jason Isaacson.

Kind Regards, Neighborhood Concerns Citizen Group of the White Bear Area

Kind Regards,

Sherry Hastings
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Dear Chair Hansen and Committee Members-

I am disappointed to see language adopted in the combined bill that eliminates the Lake Minnetonka Conservation District (LMCD) from regulating dry stack at Marinas on Lake Minnetonka. I was hopeful the MN House would not agree to this provision.

As was noted in testimony, there is only one mechanism to regulate and provide representation between the 14 communities that surround Lake Minnetonka - it is the LMCD. It is inappropriate to allow one city or one marina to independently decide to increase the number of boats that have access to this lake without any input or pathway for expressing/enforcing concerns by the communities that will be directly impacted.

I am asking you to allow LMCD to do the job they were chartered to do and ensure the 14 cities and the citizens of Minnesota have a regulatory body protecting the safety and environmental health of this precious resource. I have lived on this lake for over 30 years and know we need a body to regulate between the cities. Instead of stripping LMCD of their authority, a discussion should be had between LMCD, marina owners, and cities involved - none have been attempted on this topic.

This lake is the busiest in the state and increased boat traffic poses a significant public safety risk to a lake already challenging for safe boating and water activities. It was with great disbelief that those of us attending the first Senate hearing, heard Mayor Rockvam of Spring Park (also owner of Rockvam Marina that has largest number of boats in dry stack) testify that Lake Minnetonka doesn't have a density issue - gasp of disbelief. Anyone who has been on this lake on a weekend knows we have a density issue; barely a day on the lake passes without witnessing a close call or accident.

There are two marina owners who are sponsoring this action. They are the two that serve to benefit. One is Mayor Rockvam who has in an inherent conflict of interest as a city official and marina owner and he chose to testify that we 'don't have a density issue'. If you have seen his marina, you know that you cannot get to the main lake without traveling through Crystal Bay (Minnetonka Beach) or through Seton/Cooks Bay (Mound/Minnetrista). These three cities do not have marinas and will take the brunt of increased boat traffic from Rockvam Marina without any voice or mechanism to restrict. Crystal Bay is already almost unnavigable on weekends and poses a public safety issue with current boat traffic.

This change is being sponsored by two marina owners on the lake that serve to benefit from removing restrictions on the number of boats on Lake Minnetonka. One testified to the Senate (Mayor Rockvam); the other publicly stated in a city council meeting

last week that his strategy is to use Senator Osmeck to completely dismantle the LMCD.

This is bad policy and the result will be either a string of litigation or a return to the legislature for a solution when cities who are impacted have no other regulatory body to whom to appeal.

Again, I am asking you to allow LMCD to do the job they were chartered to do and ensure the 14 cities and the citizens of Minnesota have a voice and regulatory body protecting the safety and environmental health of this precious resource. If there is an issue with dry stack permitting, then the marinas should enter good faith discussions - none have been had with LMCD or the cities involved.

Respectfully,
Cathy Olson
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