

ARTICLE 4

ENVIRONMENT AND NATURAL RESOURCES STATUTORY CHANGES

Sec. 80. Minnesota Statutes 2014, section 103F.612, subdivision 2, is amended to read:

Subd. 2. Application.

- a) A wetland owner may apply to the county where a wetland is located for designation of a wetland preservation area in a high priority wetland area ~~identified in a comprehensive local water plan, as defined in section 103B.3363, subdivision 3, and located within a high priority wetland region~~ designated by the Board of Water and Soil Resources, if the county chooses to accept wetland preservation area applications. The application must be made on forms provided by the board. If a wetland is located in more than one county, the application must be submitted to the county where the majority of the wetland is located.
- (b) The application shall be executed and acknowledged in the manner required by law to execute and acknowledge a deed and must contain at least the following information and other information the Board of Water and Soil Resources requires:
 - (1) legal description of the area to be approved, which must include an upland strip at least 16-1/2 feet in width around the perimeter of wetlands within the area and may include total upland area of up to four acres for each acre of wetland;
 - (2) parcel identification numbers where designated by the county auditor;
 - (3) name and address of the owner;
 - (4) a statement by the owner covenanting that the land will be preserved as a wetland and will only be used in accordance with conditions prescribed by the Board of Water and Soil Resources and providing that the restrictive covenant will be binding on the owner and the owner's successors or assigns, and will run with the land.
- (c) The upland strip required in paragraph (b), clause (1), must be planted with permanent vegetation other than a noxious weed.

Sec. 81. Minnesota Statutes 2014, section 103G.005, is amended by adding a subdivision to read:

Subd. 10g. In-lieu fee program.

"In-lieu fee program" means a program in which wetland replacement requirements of section 103G.222 are satisfied through payment of money to the board or a board-approved sponsor to develop replacement credits according to section 103G.2242, subdivision 12.

Sec. 82. Minnesota Statutes 2014, section 103G.222, subdivision 1, is amended to read:

Subdivision 1. Requirements.

- (a) Wetlands must not be drained or filled, wholly or partially, unless replaced by ~~restoring or creating wetland areas of actions that provide~~ at least equal public value under a replacement plan approved as provided in section [103G.2242](#), a replacement plan under a local governmental unit's comprehensive wetland protection and management plan approved by the board under section [103G.2243](#), or, if a permit to mine is required under section [93.481](#), under a mining reclamation plan approved by the commissioner under the permit to mine. For project-specific wetland replacement completed prior to wetland impacts authorized or conducted under a permit to mine within the Great Lakes and Rainy River watershed basins, those basins shall be considered a single watershed for purposes of determining wetland replacement ratios. Mining reclamation plans shall apply the same principles and standards for replacing wetlands ~~by restoration or creation of wetland areas~~ that are applicable to mitigation plans approved as provided in section [103G.2242](#). Public value must be determined in accordance with section [103B.3355](#) or a comprehensive wetland protection and management plan established under section [103G.2243](#). Sections [103G.221](#) to [103G.2372](#) also apply to excavation in permanently and semipermanently flooded areas of types 3, 4, and 5 wetlands.
- (b) Replacement must be guided by the following principles in descending order of priority:
- (1) avoiding the direct or indirect impact of the activity that may destroy or diminish the wetland;
 - (2) minimizing the impact by limiting the degree or magnitude of the wetland activity and its implementation;
 - (3) rectifying the impact by repairing, rehabilitating, or restoring the affected wetland environment;
 - (4) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the activity;
 - (5) compensating for the impact by restoring a wetland; and
 - (6) compensating for the impact by replacing or providing substitute wetland resources or environments.

For a project involving the draining or filling of wetlands in an amount not exceeding 10,000 square feet more than the applicable amount in section [103G.2241, subdivision 9](#), paragraph (a), the local government unit may make an on-site sequencing determination without a written alternatives analysis from the applicant.

- (c) If a wetland is located in a cultivated field, then replacement must be accomplished through restoration only without regard to the priority order in paragraph (b), provided that the altered wetland is not converted to a nonagricultural use for at least ten years.
- (d) If a wetland is replaced under paragraph (c), or drained under section [103G.2241, subdivision 2](#), paragraph (b) or (e), the local government unit may require a deed restriction that prohibits nonagricultural use for at least ten years. The local government unit may require the deed restriction if it determines the wetland area drained is at risk of conversion to a nonagricultural use within ten years based on the zoning classification, proximity to a municipality or full service road, or other criteria as determined by the local government unit.
- (e) Restoration and replacement of wetlands must be accomplished in accordance with the ecology of the landscape area affected and ponds that are created primarily to fulfill storm water management, and water quality treatment requirements may not be used to satisfy replacement requirements under this chapter unless the design includes pretreatment of runoff and the pond is functioning as a wetland.

- (f) Except as provided in paragraph (g), for a wetland or public waters wetland located on nonagricultural land, replacement must be in the ratio of two acres of replaced wetland for each acre of drained or filled wetland.
- (g) For a wetland or public waters wetland located on agricultural land or in a greater than 80 percent area, replacement must be in the ratio of one acre of replaced wetland for each acre of drained or filled wetland.
- (h) Wetlands that are restored or created as a result of an approved replacement plan are subject to the provisions of this section for any subsequent drainage or filling.
- (i) Except in a greater than 80 percent area, only wetlands that have been restored from previously drained or filled wetlands, wetlands created by excavation in nonwetlands, wetlands created by dikes or dams along public or private drainage ditches, or wetlands created by dikes or dams associated with the restoration of previously drained or filled wetlands may be used in ~~in a statewide banking program established in~~ for wetland replacement according to rules adopted under section [103G.2242, subdivision 1](#). Modification or conversion of nondegraded naturally occurring wetlands from one type to another are not eligible for ~~enrollment in a statewide wetlands bank~~ wetland replacement.
- (j) The Technical Evaluation Panel established under section [103G.2242, subdivision 2](#), shall ensure that sufficient time has occurred for the wetland to develop wetland characteristics of soils, vegetation, and hydrology before recommending that the wetland be deposited in the statewide wetland bank. If the Technical Evaluation Panel has reason to believe that the wetland characteristics may change substantially, the panel shall postpone its recommendation until the wetland has stabilized.
- (k) This section and sections [103G.223](#) to [103G.2242](#), [103G.2364](#), and [103G.2365](#) apply to the state and its departments and agencies.
- (l) For projects involving draining or filling of wetlands associated with a new public transportation project, and for projects expanded solely for additional traffic capacity, public transportation authorities may purchase credits from the board at the cost to the board to establish credits. Proceeds from the sale of credits provided under this paragraph are appropriated to the board for the purposes of this paragraph. For the purposes of this paragraph, "transportation project" does not include an airport project.
- (m) A replacement plan for wetlands is not required for individual projects that result in the filling or draining of wetlands for the repair, rehabilitation, reconstruction, or replacement of a currently serviceable existing state, city, county, or town public road necessary, as determined by the public transportation authority, to meet state or federal design or safety standards or requirements, excluding new roads or roads expanded solely for additional traffic capacity lanes. This paragraph only applies to authorities for public transportation projects that:
 - (1) minimize the amount of wetland filling or draining associated with the project and consider mitigating important site-specific wetland functions on site;
 - (2) except as provided in clause (3), submit project-specific reports to the board, the Technical Evaluation Panel, the commissioner of natural resources, and members of the public requesting a copy at least 30 days prior to construction that indicate the location, amount, and type of wetlands to be filled or drained by the project or, alternatively, convene an annual meeting of the parties required to receive notice to review projects to be commenced during the upcoming year; and

- (3) for minor and emergency maintenance work impacting less than 10,000 square feet, submit project-specific reports, within 30 days of commencing the activity, to the board that indicate the location, amount, and type of wetlands that have been filled or drained.

Those required to receive notice of public transportation projects may appeal minimization, delineation, and on-site mitigation decisions made by the public transportation authority to the board according to the provisions of section [103G.2242, subdivision 9](#). The Technical Evaluation Panel shall review minimization and delineation decisions made by the public transportation authority and provide recommendations regarding on-site mitigation if requested to do so by the local government unit, a contiguous landowner, or a member of the Technical Evaluation Panel.

Except for state public transportation projects, for which the state Department of Transportation is responsible, the board must replace the wetlands, and wetland areas of public waters if authorized by the commissioner or a delegated authority, drained or filled by public transportation projects on existing roads.

Public transportation authorities at their discretion may deviate from federal and state design standards on existing road projects when practical and reasonable to avoid wetland filling or draining, provided that public safety is not unreasonably compromised. The local road authority and its officers and employees are exempt from liability for any tort claim for injury to persons or property arising from travel on the highway and related to the deviation from the design standards for construction or reconstruction under this paragraph. This paragraph does not preclude an action for damages arising from negligence in construction or maintenance on a highway.

- (n) If a landowner seeks approval of a replacement plan after the proposed project has already affected the wetland, the local government unit may require the landowner to replace the affected wetland at a ratio not to exceed twice the replacement ratio otherwise required.
- (o) A local government unit may request the board to reclassify a county or watershed on the basis of its percentage of presettlement wetlands remaining. After receipt of satisfactory documentation from the local government, the board shall change the classification of a county or watershed. If requested by the local government unit, the board must assist in developing the documentation. Within 30 days of its action to approve a change of wetland classifications, the board shall publish a notice of the change in the Environmental Quality Board Monitor.
- (p) One hundred citizens who reside within the jurisdiction of the local government unit may request the local government unit to reclassify a county or watershed on the basis of its percentage of presettlement wetlands remaining. In support of their petition, the citizens shall provide satisfactory documentation to the local government unit. The local government unit shall consider the petition and forward the request to the board under paragraph (o) or provide a reason why the petition is denied.

Sec. 83. Minnesota Statutes 2014, section 103G.222, subdivision 3, is amended to read:

Subd. 3. Wetland replacement siting.

- (a) Impacted wetlands in a 50 to 80 percent area must be replaced in a 50 to 80 percent area or in a less than 50 percent area. Impacted wetlands in a less than 50 percent area must be replaced in a less than 50 percent area. All wetland replacement must follow this priority order:

- (1) on site or in the same minor watershed as the impacted wetland;
- (2) in the same watershed as the impacted wetland;
- (3) in the same county or wetland bank service area as the impacted wetland; and
- (4) in another wetland bank service area; ~~and~~
- ~~(5) statewide for public transportation projects, except that wetlands impacted in less than 50 percent areas must be replaced in less than 50 percent areas, and wetlands impacted in the seven county metropolitan area must be replaced at a ratio of two to one in: (1) the affected county, or (ii) in another of the seven metropolitan counties, or (iii) in one of the major watersheds that are wholly or partially within the seven county metropolitan area, but at least one to one must be replaced within the seven county metropolitan area.~~

~~(b) The exception in paragraph (a), clause (5), does not apply to replacement completed using wetland banking credits established by a person who submitted a complete wetland banking application to a local government unit by April 1, 1996.~~

(b) Notwithstanding paragraph (a), wetland banking credits approved according to a complete wetland banking application submitted to a local government unit by April 1, 1996, may be used to replace wetland impacts resulting from public transportation projects statewide.

(c) Notwithstanding paragraph (a), clauses (1) and (2), the priority order for replacement by wetland banking begins at paragraph (a), clause (3), according to rules adopted under section 103G.2242, subdivision 1.

~~(d)~~ (d) When reasonable, practicable, and environmentally beneficial replacement opportunities are not available in siting priorities listed in paragraph (a), the applicant may seek opportunities at the next level.

~~(d)~~ (e) For the purposes of this section, "reasonable, practicable, and environmentally beneficial replacement opportunities" are defined as opportunities that:

- (1) take advantage of naturally occurring hydrogeomorphological conditions and require minimal landscape alteration;
- (2) have a high likelihood of becoming a functional wetland that will continue in perpetuity;
- (3) do not adversely affect other habitat types or ecological communities that are important in maintaining the overall biological diversity of the area; and
- (4) are available and capable of being done after taking into consideration cost, existing technology, and logistics consistent with overall project purposes.

~~(e) Applicants and local government units shall rely on board approved comprehensive inventories of replacement opportunities and watershed conditions, including the Northeast Minnesota Wetland Mitigation Inventory and Assessment (January 2010), in determining whether reasonable, practicable, and environmentally beneficial replacement opportunities are available.~~

(f) Regulatory agencies, local government units, and other entities involved in wetland restoration shall collaborate to identify potential replacement opportunities within their jurisdictional areas.

(g) The board must establish wetland replacement ratios and wetland bank service area priorities to implement the siting and targeting of wetland replacement and encourage the use of high priority areas for wetland replacement.

Sec. 84.

Minnesota Statutes 2014, section 103G.2242, subdivision 1, is amended to read:

Subdivision 1.

Rules.

(a) The board, in consultation with the commissioner, shall adopt rules governing the approval of wetland value replacement plans under this section and public waters work permits affecting public waters wetlands under section [103G.245](#). These rules must address the criteria, procedure, timing, and location of acceptable replacement of wetland values ; and may address the state establishment and administration of a wetland banking program for public and private projects, ~~which may include including provisions allowing monetary payment to the wetland banking program for alteration of wetlands on agricultural land for an in-lieu fee program~~ ; the administrative, monitoring, and enforcement procedures to be used; and a procedure for the review and appeal of decisions under this section. In the case of peatlands, the replacement plan rules must consider the impact on carbon balance described in the report required by Laws 1990, chapter 587, and include the planting of trees or shrubs. Any in-lieu fee program established by the board must conform with Code of Federal Regulations, title 33, section 332.8, as amended.

(b) After the adoption of the rules, a replacement plan must be approved by a resolution of the governing body of the local government unit, consistent with the provisions of the rules or a comprehensive wetland protection and management plan approved under section [103G.2243](#).

(c) If the local government unit fails to apply the rules, or fails to implement a local comprehensive wetland protection and management plan established under section [103G.2243](#), the government unit is subject to penalty as determined by the board.

Sec. 85. Minnesota Statutes 2014, section 103G.2242, subdivision 2, is amended to read:

Subd. 2. Evaluation.

(a) Questions concerning the public value, location, size, or type of a wetland shall be submitted to and determined by a Technical Evaluation Panel after an on-site inspection. The Technical Evaluation Panel shall be composed of a technical professional employee of the board, a technical professional employee of the local soil and water conservation district or districts, a technical professional with expertise in water resources management appointed by the local government unit, and a technical professional employee of the Department of Natural Resources for projects affecting public waters or wetlands adjacent to public waters. The panel shall use the "United States Army Corps of Engineers Wetland Delineation Manual" (January 1987), including updates, supplementary guidance, and replacements, if any, "Wetlands of the United States" (United States Fish and Wildlife Service Circular 39, 1971 edition), and "Classification of Wetlands and Deepwater Habitats of the United States" (1979 edition). The panel shall provide the wetland determination and recommendations on other technical matters to the local government unit that must approve a replacement plan, ~~wetland banking plan~~ sequencing , exemption determination, no-loss determination, or wetland boundary or type determination and may recommend approval or denial of the plan. The authority must consider and include the decision of the Technical Evaluation Panel in their approval or denial of a plan or determination.

(b) Persons conducting wetland or public waters boundary delineations or type determinations are exempt from the requirements of chapter 326. The board may develop a professional wetland delineator certification program.

(c) The board must establish an interagency team to assist in identifying and evaluating potential wetland replacement sites. The team must consist of members of the Technical Evaluation Panel and representatives from the Department of Natural Resources; the Pollution Control Agency; the United States Army Corps of Engineers, St. Paul district; and other organizations as determined by the board.

Sec. 86. Minnesota Statutes 2014, section 103G.2242, subdivision 3, is amended to read:

Subd. 3. Replacement completion.

(a) Replacement of wetland values must be completed prior to or concurrent with the actual draining or filling of a wetland, unless :

- (1) an irrevocable bank letter of credit or other ~~security~~ financial assurance acceptable to the local government unit or the board is given to the local government unit or the board to guarantee the successful completion of the replacement; or
- (2) the replacement is approved under an in-lieu fee program according to rules adopted under subdivision 1. In the case of an in-lieu fee program established by a board-approved sponsor, the board may require that a financial assurance in an amount and method acceptable to the board be given to the board to ensure the approved sponsor fulfills the sponsor's obligation to complete the required wetland replacement.

The board may establish, sponsor, or administer a wetland banking program, which may include provisions allowing monetary payment to the wetland bank for impacts to wetlands on agricultural land, for impacts that occur in greater than 80 percent areas, and for public road projects. (b) The board may acquire land in fee title, purchase or accept easements, enter into agreements, and purchase existing wetland replacement credits to facilitate the wetland banking program. The board may establish in-lieu fee payment amounts and hold money in an account in the special revenue fund, which is appropriated to the board to be used solely for establishing replacement wetlands and administering the wetland banking program.

(c) The board shall coordinate the establishment and operation of a wetland bank with the United States Army Corps of Engineers, the Natural Resources Conservation Service of the United States Department of Agriculture, and the commissioners of natural resources, agriculture, and the Pollution Control Agency.

Sec. 87. Minnesota Statutes 2014, section 103G.2242, subdivision 4, is amended to read:

Subd. 4. Decision.

Upon receiving and considering all required data, the local government unit reviewing replacement plan applications, ~~banking plan~~ sequencing applications, and exemption or no-loss determination requests must act on all replacement plan applications, ~~banking plan~~ sequencing applications, and exemption or no-loss determination requests in compliance with section [15.99](#).

Sec. 88. Minnesota Statutes 2014, section 103G.2242, subdivision 12, is amended to read:

Subd. 12. Replacement credits.

(a) No public or private wetland restoration, enhancement, or construction may be allowed for replacement unless specifically designated for replacement and paid for by the individual or organization performing the wetland restoration, enhancement, or construction, ~~and is completed prior to any draining or filling of the wetland.~~

- (b) Paragraph (a) does not apply to a wetland whose owner has paid back with interest the individual or organization restoring, enhancing, or constructing the wetland.
- (c) Notwithstanding section [103G.222, subdivision 1](#), paragraph (i), the following actions, and others established in rule, that are consistent with criteria in rules adopted by the board in conjunction with the commissioners of natural resources and agriculture, are eligible for replacement credit as determined by the local government unit or the board, including enrollment in a statewide wetlands bank:
 - (1) reestablishment of permanent native, noninvasive vegetative cover on a wetland on agricultural land that was planted with annually seeded crops, was in a crop rotation seeding of pasture grasses or legumes, or was in a land retirement program during the past ten years;
 - (2) buffer areas of permanent native, noninvasive vegetative cover established or preserved on upland adjacent to replacement wetlands;
 - (3) wetlands restored for conservation purposes under terminated easements or contracts;
 - (4) water quality treatment ponds constructed to pretreat storm water runoff prior to discharge to wetlands, public waters, or other water bodies, provided that the water quality treatment ponds must be associated with an ongoing or proposed project that will impact a wetland and replacement credit for the treatment ponds is based on the replacement of wetland functions and on an approved storm water management plan for the local government-; and
 - (5) in a greater than 80 percent area, restoration and protection of streams and riparian buffers that are important to the functions and sustainability of aquatic resources.
- (d) Notwithstanding section [103G.222, subdivision 1](#), paragraphs (f) and (g), the board may establish by rule different replacement ratios for restoration projects with exceptional natural resource value.

Sec. 89. Minnesota Statutes 2014, section 103G.2242, subdivision 14, is amended to read:

Subd. 14. Fees established.

- (a) Fees must be assessed for managing wetland bank accounts and transactions as follows:
 - (1) account maintenance annual fee: one percent of the value of credits not to exceed \$500;
 - (2) account establishment, deposit, or transfer: 6.5 percent of the value of credits not to exceed \$1,000 per establishment, deposit, or transfer; and
 - (3) withdrawal fee: 6.5 percent of the value of credits withdrawn.
- (b) The board may establish fees at or below the amounts in paragraph (a) for single-user or other dedicated wetland banking accounts.
- (c) Fees for single-user or other dedicated wetland banking accounts established pursuant to section [103G.005, subdivision 10e](#), clause (4), are limited to establishment of a wetland banking account and are assessed at the rate of 6.5 percent of the value of the credits not to exceed \$1,000.
- (d) The board may assess a fee to pay the costs associated with establishing conservation easements, or other long-term protection mechanisms prescribed in the rules adopted under subdivision 1, on property used for wetland replacement.

Sec. 90. Minnesota Statutes 2014, section 103G.2251, is amended to read:

103G.2251 STATE CONSERVATION EASEMENTS; WETLAND BANK CREDIT.

In greater than 80 percent areas, preservation of wetlands, riparian buffers, and watershed areas essential to maintaining important functions and sustainability of aquatic resources in the watershed that are protected by a permanent conservation easement as defined under section [84C.01](#) and held by the board may be eligible for wetland replacement or mitigation credits, according to rules adopted by the board. To be eligible for credit under this section, a conservation easement must be established after May 24, 2008, and approved by the board. Wetland areas on private lands preserved under this section are not eligible for replacement or mitigation credit if the area has been protected using public conservation funds.