

A bill for an act
relating to capital improvements; appropriating money for the Board of Water and
Soil Resources; authorizing the sale and issuance of bonds; modifying wetland
replacement requirements; amending Minnesota Statutes 2007 Supplement,
section 103G.222, subdivision 1.

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

Section 1. **CAPITAL IMPROVEMENT APPROPRIATIONS.**

The sums shown in the column under "Appropriations" are appropriated from the
bond proceeds fund, or another named fund, to the state agencies or officials indicated,
to be spent for public purposes. Appropriations of bond proceeds must be spent as
authorized by the Minnesota Constitution, article XI, section 5, paragraph (a), to acquire
and better public land and buildings and other public improvements of a capital nature, or
as authorized by the Minnesota Constitution, article XI, section 5, paragraphs (b) to (j), or
article XIV. Unless otherwise specified, the appropriations in this act are available until
the project is completed or abandoned subject to Minnesota Statutes, section 16A.642.

APPROPRIATIONS

Sec. 2. **BOARD OF WATER AND SOIL
RESOURCES**

<u>Subdivision 1. Total Appropriation</u>	<u>\$</u>	<u>48,000,000</u>
<u>To the Board of Water and Soil Resources</u>		
<u>for the purposes specified in this section.</u>		
<u>The board must record in a central location</u>		
<u>each project, funded in whole or in part</u>		

2.1 with funds from this appropriation, that is
2.2 expected to have carbon sequestration value
2.3 in anticipation of guidelines written by an
2.4 interagency committee in conjunction with
2.5 the University of Minnesota for assessing
2.6 changes in carbon budgets resulting from
2.7 bonded restoration projects, including
2.8 identification of relevant carbon pools, time
2.9 frames, and measurement protocols.

2.10 To the extent possible, prairie restorations,
2.11 funded in whole or in part with funds from
2.12 this appropriation, must be made using best
2.13 management practices for native prairie
2.14 restoration as defined under Minnesota
2.15 Statutes, section 84.02, subdivision 2.

2.16 Subd. 2. **RIM Reserve Program** 42,000,000

2.17 To acquire conservation easements from
2.18 landowners to preserve, restore, and enhance
2.19 wetlands, riparian lands, and associated
2.20 uplands in order to protect soil and water
2.21 quality, support fish and wildlife habitat,
2.22 and other public benefits. The provisions of
2.23 Minnesota Statutes, section 103F.515, apply
2.24 to this appropriation, except that the board
2.25 may establish alternative payment rates for
2.26 easements and practices to establish restored
2.27 native prairies, as defined in Minnesota
2.28 Statutes, section 84.02, subdivision 7, and
2.29 to protect uplands. Of this appropriation, up
2.30 to 10 percent may be used to administer the
2.31 program.

2.32 \$2,400,000 of this amount is to be available
2.33 for use in the area designated for relief and
2.34 recovery from the flooding that occurred
2.35 on or after August 18, 2007, in the area

3.1 of southeast Minnesota designated under
3.2 Presidential Declaration of Major Disaster,
3.3 DR-1717. Funds previously appropriated and
3.4 waivers previously authorized to the Board
3.5 of Water and Soil Resources for DR-1717
3.6 flood relief and recovery in Laws 2007, First
3.7 Special Session chapter 2, are available and
3.8 applicable until June 30, 2010.

3.9 The board is authorized to enter into and
3.10 amend past agreements with landowners
3.11 as required by Minnesota Statutes, section
3.12 103F.515, subdivision 5, to allow for
3.13 overseeding and harvesting of native prairie
3.14 vegetation for use for energy production in
3.15 a manner that does not devalue the natural
3.16 habitat, water quality benefits, or carbon
3.17 sequestration functions of the area enrolled
3.18 in the easement. This shall occur after seed
3.19 production and minimize impacts on wildlife.
3.20 Of this appropriation, up to 5 percent may be
3.21 used for overseeding.

3.22 **Subd. 3. Wetland Replacement Due to Public**
3.23 **Road Projects**

4,575,000

3.24 To acquire land for wetland restoration or
3.25 preservation to replace wetlands drained or
3.26 filled as a result of the repair or rehabilitation,
3.27 reconstruction, or replacement of existing
3.28 public roads as required by Minnesota
3.29 Statutes, section 103G.222, subdivision 1,
3.30 paragraphs (l) and (m). Up to ten percent
3.31 may be used to administer the program.

3.32 The purchase price paid for acquisition
3.33 of land, fee, or perpetual easement must
3.34 be the fair market value as determined
3.35 by the board. The board may enter into
3.36 agreements with the federal government,

4.1 other state agencies, political subdivisions,
4.2 and nonprofit organizations or fee owners to
4.3 acquire land and restore and create wetlands
4.4 or to acquire wetland banking credits.
4.5 Acquisition of or the conveyance of land may
4.6 be in the name of the political subdivision.

4.7 Subd. 4. **Clean Water Legacy** 1,425,000

4.8 \$800,000 is to acquire conservation
4.9 easements, design and construct water control
4.10 structures and pumping infrastructure, and
4.11 plant native prairie species of a local ecotype
4.12 as defined in Minnesota Statutes, section
4.13 84.02, subdivision 6, in order to restore the
4.14 Grass Lake prairie wetland basins adjacent
4.15 to the city of Willmar in Kandiyohi County.
4.16 This amount must be matched one to one by
4.17 funding from other sources.

4.18 \$475,000 is for a grant to the city of Gaylord
4.19 to improve water quality in the Lake
4.20 Titlow watershed. The funds may be used to
4.21 predesign and design holding ponds upstream
4.22 from Lake Titlow. The design must include
4.23 the best location for the ponds, an estimate
4.24 of the cost of land acquisition or easements,
4.25 construction costs of the holding ponds, and
4.26 the estimated expense of maintaining the
4.27 structures and who will be responsible for
4.28 the expense. The funds may also be used
4.29 to construct and reconstruct storm water
4.30 sewer drains and related facilities to divert
4.31 water that currently drains into Lake Titlow
4.32 into holding ponds south of the city. The
4.33 cost of reconstructing city streets as part of
4.34 this diversion, and as outlined in the city of
4.35 Gaylord's street improvement plan, is the

5.1 responsibility of the city. This diversion
5.2 will keep phosphorus and other chemicals
5.3 from entering the lake and will improve
5.4 the water quality of Lake Titlow. The city
5.5 must also coordinate with state and county
5.6 conservation officials to ensure correct
5.7 conservation practices and improvements in
5.8 the watershed district. For the purposes of
5.9 this appropriation, the criteria, limitations,
5.10 and assessment requirements in Minnesota
5.11 Statutes, sections 103D.701, 103D.705, and
5.12 103D.901, are waived. The information
5.13 gained from this project must be made
5.14 available for public use. This appropriation
5.15 is not available until the commissioner of
5.16 finance determines that \$200,000 has been
5.17 committed to the project from other sources.

5.18 \$150,000 is for a grant to the Lower
5.19 Minnesota Watershed District to acquire
5.20 land for, and to design and construct
5.21 improvements for dredge material site
5.22 projects located within the district.

5.23 Sec. 3. **BOND SALE AUTHORIZATION.**

5.24 To provide the money appropriated in this act from the bond proceeds fund, the
5.25 commissioner of finance shall sell and issue bonds of the state in an amount up to
5.26 \$48,000,000 in the manner, upon the terms, and with the effect prescribed by Minnesota
5.27 Statutes, sections 16A.631 to 16A.675, and by the Minnesota Constitution, article XI,
5.28 sections 4 to 7.

5.29 Sec. 4. Minnesota Statutes 2007 Supplement, section 103G.222, subdivision 1, is
5.30 amended to read:

5.31 Subdivision 1. **Requirements.** (a) Wetlands must not be drained or filled, wholly
5.32 or partially, unless replaced by restoring or creating wetland areas of at least equal
5.33 public value under a replacement plan approved as provided in section 103G.2242, a
5.34 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. 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 a deed restriction is placed on the altered wetland prohibiting nonagricultural use for at least ten years.

(d) If a wetland is drained under section 103G.2241, subdivision 2, paragraphs (b) and (e), the local government unit may require a deed restriction that prohibits nonagricultural use for at least ten years unless the drained wetland is replaced as provided under this section. 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 stormwater 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 a statewide banking program established in 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.

(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 road project, and for public road projects expanded solely for additional traffic capacity, public transportation road 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 purposes of this paragraph, public road authorities include the state of Minnesota, counties, cities, and townships.

(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. 5. EFFECTIVE DATE.

Except as otherwise provided, this act is effective the day following final enactment.