

A bill for an act

relating to natural resources; modifying provisions for wetland replacement;
amending Minnesota Statutes 2008, sections 103G.222, subdivision 3;
103G.2242, subdivisions 2a, 9, by adding a subdivision.

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

Section 1. Minnesota Statutes 2008, section 103G.222, subdivision 3, is amended to
read:

Subd. 3. **Wetland replacement siting.** (a) Siting wetland replacement must follow
this priority order:

(1) on site or in the same minor watershed as the affected wetland;

(2) in the same watershed as the affected wetland;

(3) in the same county as the affected wetland;

(4) for replacement by wetland banking, in the same wetland bank service area as
the impacted wetland, except that impacts in a 50 to 80 percent area must be replaced in
a 50 to 80 percent area and impacts in a less than 50 percent area must be replaced in a
less than 50 percent area;

(5) for project-specific replacement, in an adjacent watershed to the affected wetland,
or for replacement by wetland banking, in an adjacent wetland bank service area, except
that impacts in a 50 to 80 percent area must be replaced in a 50 to 80 percent area and
impacts in a less than 50 percent area must be replaced in a less than 50 percent area; and

(6) statewide for public transportation projects, except that wetlands affected in less
than 50 percent areas must be replaced in less than 50 percent areas, and wetlands affected
in the seven-county metropolitan area must be replaced at a ratio of two to one in: (i) 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) Notwithstanding paragraph (a), siting wetland replacement in greater than 80 percent areas may follow the priority order under this paragraph: (1) by wetland banking after evaluating on-site replacement and replacement within the watershed; (2) replaced in an adjacent wetland bank service area if wetland bank credits are not reasonably available in the same wetland bank service area as the affected wetland, as determined by a comprehensive inventory approved by the board; and (3) statewide. For project-specific wetland replacement conducted under a permit to mine under section 93.481, wetland bank service areas delineated by the Lake Superior and Rainy River watershed basins shall be considered as a single wetland bank service area.

(c) Notwithstanding paragraph (a), siting wetland replacement in the seven-county metropolitan area must follow the priority order under this paragraph: (1) in the affected county; (2) in another of the seven metropolitan counties; or (3) 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.

(d) The exception in paragraph (a), clause (6), 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.

(e) 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.

(f) 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.

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

Sec. 2. Minnesota Statutes 2008, section 103G.2242, subdivision 2a, is amended to read:

Subd. 2a. **Wetland boundary or type determination.** (a) A landowner may apply for a wetland boundary or type determination from the local government unit. The landowner applying for the determination is responsible for submitting proof necessary to make the determination, including, but not limited to, wetland delineation field data, observation well data, topographic mapping, survey mapping, and information regarding soils, vegetation, hydrology, and groundwater both within and outside of the proposed wetland boundary.

(b) A local government unit that receives an application under paragraph (a) may seek the advice of the Technical Evaluation Panel as described in subdivision 2, and, if necessary, expand the Technical Evaluation Panel. The local government unit may delegate the decision authority for wetland boundary or type determinations to designated staff, or establish other procedures it considers appropriate.

(c) The local government unit decision must be made in compliance with section 15.99. Within ten calendar days of the decision, the local government unit decision must be mailed to the landowner, members of the Technical Evaluation Panel, the watershed district or watershed management organization, if one exists, and individual members of the public who request a copy.

~~(d) Appeals of decisions made by designated local government staff must be made to the local government unit. Notwithstanding any law to the contrary, A ruling on an appeal must be made by the local government unit within 30 days from the date of the filing of the appeal.~~

~~(e)~~ The local government unit decision is valid for three years unless the Technical Evaluation Panel determines that natural or artificial changes to the hydrology, vegetation, or soils of the area have been sufficient to alter the wetland boundary or type.

Sec. 3. Minnesota Statutes 2008, section 103G.2242, is amended by adding a subdivision to read:

Subd. 8a. **Local appeals.** Appeals of decisions made by designated local government staff must be made to the local government unit. Ruling on an appeal must be made by the local government unit within 45 days from the date of the receipt of the appeal. The time period for making a decision may be extended if the appellant and local government unit mutually agree, in writing. The agreement must specify the duration of the extension. These time periods are in addition to the time periods provided in section 15.99.

Sec. 4. Minnesota Statutes 2008, section 103G.2242, subdivision 9, is amended to read:

Subd. 9. ~~Appeal~~ **Appeals to the board.** (a) Appeal of a replacement plan, sequencing, exemption, wetland banking, wetland boundary or type determination, or no-loss decision, ~~or restoration order~~ may be obtained by mailing a petition and payment of a filing fee, which shall be retained by the board to defray administrative costs, to the board within 30 days after the postmarked date of the mailing specified in subdivision 7. If appeal is not sought within 30 days, the decision becomes final. If the petition for hearing is accepted, the amount posted must be returned to the petitioner. Appeal may be made by:

(1) the wetland owner;

(2) any of those to whom notice is required to be mailed under subdivision 7; or

(3) 100 residents of the county in which a majority of the wetland is located.

(b) Within 30 days after receiving a petition, the board shall decide whether to grant the petition and hear the appeal. The board shall grant the petition unless the board finds that:

(1) the appeal is meritless, trivial, or brought solely for the purposes of delay;

(2) the petitioner has not exhausted all local administrative remedies;

(3) expanded technical review is needed;

(4) the local government unit's record is not adequate; or

(5) the petitioner has not posted a letter of credit, cashier's check, or cash if required by the local government unit.

(c) In determining whether to grant the appeal, the board shall also consider the size of the wetland, other factors in controversy, any patterns of similar acts by the local government unit or petitioner, and the consequences of the delay resulting from the appeal.

(d) All appeals must be heard by the committee for dispute resolution of the board, and a decision made within 60 days of filing the local government unit's record and the written briefs submitted for the appeal. The decision must be served by mail on the parties to the appeal, and is not subject to the provisions of chapter 14. A decision whether to grant a petition for appeal and a decision on the merits of an appeal must be considered the decision of an agency in a contested case for purposes of judicial review under sections 14.63 to 14.69.

(e) Notwithstanding any law to the contrary, a landowner or other responsible party may appeal a restoration or replacement order within 30 days of receipt of written notice of the order. The board's executive director must make a final decision to modify, rescind, deny, or stay an appeal of a restoration or replacement order within 60 days of the receipt of a petition.

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5.1 ~~(e)~~ (f) Notwithstanding section 16A.1283, the board shall establish a fee schedule to
5.2 defray the administrative costs of appeals made to the board under this subdivision. Fees
5.3 established under this authority shall not exceed \$1,000. Establishment of the fee is not
5.4 subject to the rulemaking process of chapter 14 and section 14.386 does not apply.