

A bill for an act

relating to natural resources; modifying Wetland Conservation Act; amending Minnesota Statutes 2010, sections 103G.005, subdivision 10e, by adding a subdivision; 103G.2212; 103G.222, subdivision 3; 103G.2242, subdivisions 2a, 6, 7, 9, 14, by adding subdivisions; 103G.2251; proposing coding for new law in Minnesota Statutes, chapter 103G.

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

Section 1. Minnesota Statutes 2010, section 103G.005, subdivision 10e, is amended to read:

Subd. 10e. **Local government unit.** "Local government unit" means:

(1) outside of the seven-county metropolitan area, a city council, county board of commissioners, or a soil and water conservation district or their delegate;

(2) in the seven-county metropolitan area, a city council, a town board under section 368.01, a watershed management organization under section 103B.211, or a soil and water conservation district or their delegate; ~~and~~

(3) on state land, the agency with administrative responsibility for the land; and

(4) for wetland banking projects included in a permit to mine under section 93.481, the commissioner of natural resources.

Sec. 2. Minnesota Statutes 2010, section 103G.005, is amended by adding a subdivision to read:

Subd. 10f. **Electronic transmission.** "Electronic transmission" means the transfer of data or information through an electronic data interchange system consisting of, but not limited to, computer modems and computer networks. Electronic transmission specifically

2.1 means electronic mail, unless other means of electronic transmission are mutually agreed
2.2 to by the sender and recipient.

2.3 Sec. 3. Minnesota Statutes 2010, section 103G.2212, is amended to read:

2.4 **103G.2212 CONTRACTOR'S RESPONSIBILITY WHEN WORK DRAINS**
2.5 **OR FILLS WETLANDS.**

2.6 Subdivision 1. **Conditions for employees and agents to drain or fill wetlands.**

2.7 An agent or employee of another may not drain or fill a wetland, wholly or partially,
2.8 unless the agent or employee has:

2.9 (1) obtained a signed statement from the property owner stating that the wetland
2.10 replacement plan required for the work has been obtained or that a replacement plan
2.11 is not required; and

2.12 (2) mailed or sent by electronic transmission a copy of the statement to the local
2.13 government unit with jurisdiction over the wetland.

2.14 Subd. 2. **Violation is separate offense.** Violation of this section is a separate and
2.15 independent offense from other violations of sections 103G.2212 to 103G.237.

2.16 Subd. 3. **Form for compliance with this section.** The board shall develop a form
2.17 to be distributed to contractors' associations, local government units, and soil and water
2.18 conservation districts to comply with this section. The form must include:

2.19 (1) a listing of the activities for which a replacement plan is required;

2.20 (2) a description of the penalties for violating sections 103G.2212 to 103G.237;

2.21 (3) the telephone number to call for information on the responsible local government
2.22 unit;

2.23 (4) a statement that national wetland inventory maps are on file with the soil and
2.24 water conservation district office; and

2.25 (5) spaces for a description of the work and the names, mailing addresses or other
2.26 contact information, and telephone numbers of the person authorizing the work and the
2.27 agent or employee proposing to undertake it.

2.28 Sec. 4. Minnesota Statutes 2010, section 103G.222, subdivision 3, is amended to read:

2.29 Subd. 3. **Wetland replacement siting.** (a) ~~Siting wetland replacement~~ Impacted
2.30 wetlands in a 50 to 80 percent area must be replaced in a 50 to 80 percent area or in a less
2.31 than 50 percent area. Impacted wetlands in a less than 50 percent area must be replaced in
2.32 a less than 50 percent area. All wetland replacement must follow this priority order:

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

2.34 (2) in the same watershed as the ~~affected~~ impacted wetland;

(3) in the same county or wetland bank service area as the affected impacted 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 another 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)~~ (5) statewide for public transportation projects, except that wetlands ~~affected impacted~~ in less than 50 percent areas must be replaced in less than 50 percent areas, and wetlands ~~affected impacted~~ 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),~~ The board may approve alternatives to the priority order for 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 as provided in paragraph (a). Board-approved alternatives must be based on a comprehensive inventory approved by the board; and (3) statewide of replacement opportunities or watershed conditions. Prior to adopting any alternative, the board must:

(1) prepare an assessment of the basis for the proposed alternative and provide opportunities for public input and comment; and

(2) provide notice to local governments and other interested parties prior to publishing an alternative in the State Register.

An alternative approved under this paragraph takes effect 30 days after publication in the State Register and shall be in effect for no longer than five years unless renewed through the process provided in this paragraph.

(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. 5. Minnesota Statutes 2010, 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 or sent by electronic transmission 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~~ five 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. 6. Minnesota Statutes 2010, section 103G.2242, subdivision 6, is amended to read:

Subd. 6. **Notice of application.** (a) ~~Except as provided in paragraph (b), within ten days of receiving an~~ Application for approval of a replacement plan under this section; must be reviewed by the local government according to section 15.99, subdivision 3, paragraph (a). Copies of the complete application must be mailed or sent by electronic transmission to the members of the Technical Evaluation Panel, the managers of the watershed district if one exists, and the commissioner of natural resources. Individual members of the public who request a copy shall be provided information to identify the applicant and the location and scope of the project.

~~(b) Within ten days of receiving an application for approval of a replacement plan under this section for an activity affecting less than 10,000 square feet of wetland, a summary of the application must be mailed to the members of the Technical Evaluation Panel, individual members of the public who request a copy, and the commissioner of natural resources.~~

~~(c)~~ For the purpose of this subdivision, "application" includes a revised application for replacement plan approval and an application for a revision to an approved replacement plan if:

(1) the wetland area to be drained or filled under the revised replacement plan is at least ten percent larger than the area to be drained or filled under the original replacement plan; or

(2) the wetland area to be drained or filled under the revised replacement is located more than 500 feet from the area to be drained or filled under the original replacement plan.

Sec. 7. Minnesota Statutes 2010, section 103G.2242, subdivision 7, is amended to read:

Subd. 7. **Notice of decision.** Within ten days of the approval or denial of a replacement plan under this section, ~~a summary of the approval or denial~~ notice of the decision must be mailed or sent by electronic transmission to members of the Technical Evaluation Panel, the applicant, individual members of the public who request a copy, the managers of the watershed district, if one exists, and the commissioner of natural resources.

Sec. 8. Minnesota Statutes 2010, 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. If appeal is not sought within 30 days, the decision becomes final. A decision on an appeal must be made by the local government unit within 45 days from the date of receipt of the appeal. The time for making a decision on the appeal may be extended by consent of the appellant, the landowner if different than the appellant, and the local government unit. A decision on an appeal by the local government unit consistent with this subdivision shall be considered to be within the periods provided by section 15.99.

Sec. 9. Minnesota Statutes 2010, 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 or date of sending by electronic transmission 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 or sent by electronic transmission 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~~ without significant merit, 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, executive director, or dispute resolution committee 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~~ If an appeal is granted, the appeal must be heard by the committee for dispute resolution of the board, and a decision must be made by the board within 60 days of filing the local government unit's record and the written briefs submitted for the appeal and the hearing. The decision must be served by mail ~~on~~ or by electronic transmission to 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 section 16A.1283, the board shall establish a fee schedule to defray the administrative costs of appeals made to the board under this subdivision. Fees established under this authority shall not exceed \$1,000. Establishment of the fee is not subject to the rulemaking process of chapter 14 and section 14.386 does not apply.

Sec. 10. Minnesota Statutes 2010, section 103G.2242, is amended by adding a subdivision to read:

Subd. 9a. Appeals of restoration or replacement orders. A landowner or other responsible party may appeal the terms and conditions of a restoration or replacement order within 30 days of receipt of written notice of the order. The time frame for the appeal may be extended beyond 30 days by mutual agreement, in writing, between the landowner or responsible party, the local government unit, and the enforcement authority. If the written request is not submitted within 30 days, the order is final. The board's executive director must review the request and supporting evidence and render a decision within 60 days of receipt of a petition. A decision on 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.

Sec. 11. Minnesota Statutes 2010, 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.

Sec. 12. Minnesota Statutes 2010, section 103G.2251, is amended to read:

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

In greater than 80 percent areas, preservation of wetlands ~~owned by the state or a local unit of government~~, 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.

Sec. 13. **[103G.2374] ELECTRONIC TRANSMISSION.**

For purposes of sections 103G.2212 to 103G.2372, notices and other documents may be sent by electronic transmission unless the recipient has provided a mailing address and specified that mailing is preferred.