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State of Minnesota  
HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. 2021

02/25/2014 Authored by Erickson, R.,  
The bill was read for the first time and referred to the Committee on Environment and Natural Resources Policy

1.1 A bill for an act  
1.2 relating to natural resources; modifying wetlands provisions; requiring  
1.3 rulemaking; amending Minnesota Statutes 2012, sections 103G.005, subdivision  
1.4 10e; 103G.222, subdivision 3; 103G.2241, subdivision 9; proposing coding for  
1.5 new law in Minnesota Statutes, chapter 103G.

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

1.7 Section 1. Minnesota Statutes 2012, section 103G.005, subdivision 10e, is amended to  
1.8 read:

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

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

1.12 (2) in the seven-county metropolitan area, a city council, a town board under section  
1.13 368.01, a watershed management organization under section 103B.211, or a soil and  
1.14 water conservation district or their delegate;

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

1.16 (4) for wetland ~~banking projects established solely for replacing wetland impacts~~  
1.17 ~~under a permit~~ activities associated with projects requiring permits to mine under section  
1.18 93.481, the commissioner of natural resources.

1.19 Sec. 2. Minnesota Statutes 2012, section 103G.222, subdivision 3, is amended to read:

1.20 Subd. 3. **Wetland replacement siting.** (a) Impacted wetlands in a 50 to 80 percent  
1.21 area must be replaced in a 50 to 80 percent area or in a less than 50 percent area. Impacted  
1.22 wetlands in a less than 50 percent area must be replaced in a less than 50 percent area.

1.23 All wetland replacement must follow this priority order:

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

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

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

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

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

2.18 (1) take advantage of naturally occurring hydrogeomorphological conditions and  
2.19 require minimal landscape alteration;

2.20 (2) have a high likelihood of becoming a functional wetland that will continue  
2.21 in perpetuity;

2.22 (3) do not adversely affect other habitat types or ecological communities that are  
2.23 important in maintaining the overall biological diversity of the area; and

2.24 (4) are available and capable of being done after taking into consideration cost,  
2.25 existing technology, and logistics consistent with overall project purposes.

2.26 (e) Applicants and local government units shall rely on board-approved  
2.27 comprehensive inventories of replacement opportunities and watershed conditions,  
2.28 including the Northeast Minnesota Wetland Mitigation Inventory and Assessment (January  
2.29 2010), in determining whether reasonable, practicable, and environmentally beneficial  
2.30 replacement opportunities are available.

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

2.34 (g) Notwithstanding paragraphs (a) to (f), prime farmland, as defined under Code  
2.35 of Federal Regulations, title 7, section 657.5, must not be considered for replacement  
2.36 opportunities.

3.1 Sec. 3. [103G.2221] GREATER THAN 80 PERCENT AREAS.

3.2 Subdivision 1. County approval required. In a greater than 80 percent area, the  
 3.3 board of the county in which the majority of impacted wetlands are located must by  
 3.4 resolution approve a replacement plan for an individual project before mitigation may  
 3.5 occur or, if a permit to mine is required under section 93.481, the board must by resolution  
 3.6 approve the mining reclamation plan.

3.7 Subd. 2. Equal public value assumption. Evaluation of the public value of a  
 3.8 replacement opportunity under a replacement plan is not required, and the siting priorities  
 3.9 under section 103G.222, subdivision 3, do not apply if:

3.10 (1) the replacement opportunity is for wetlands impacted in a greater than 80 percent  
 3.11 area;

3.12 (2) the replacement opportunity is at least 40 acres and is not located in a greater  
 3.13 than 80 percent area; and

3.14 (3) the commissioners of natural resources and the Pollution Control Agency, the  
 3.15 board, the United States Army Corps of Engineers, and all affected local government  
 3.16 units concur in the replacement.

3.17 Sec. 4. Minnesota Statutes 2012, section 103G.2241, subdivision 9, is amended to read:

3.18 Subd. 9. **De minimis.** (a) Except as provided in paragraphs (d), (e), (f), (g), (h), and  
 3.19 (i), a replacement plan for wetlands is not required for draining or filling the following  
 3.20 amounts of wetlands as part of a project outside of the shoreland wetland protection zone:

3.21 (1) ~~10,000~~ 20,000 square feet of type 1, 2, 6, or 7 wetland, excluding white cedar  
 3.22 and tamarack wetlands, in a greater than 80 percent area;

3.23 (2) 5,000 square feet of type 1, 2, 6, or 7 wetland, excluding white cedar and tamarack  
 3.24 wetlands, in a 50 to 80 percent area, except within the 11-county metropolitan area;

3.25 (3) 2,000 square feet of type 1, 2, 6, or 7 wetland, excluding white cedar and tamarack  
 3.26 wetlands, in a less than 50 percent area, except within the 11-county metropolitan area; or

3.27 (4) 100 square feet of type 3, 4, 5, or 8 wetland or white cedar and tamarack wetland.

3.28 (b) Except as provided in paragraphs (e), (f), (g), (h), and (i), a replacement plan  
 3.29 for wetlands is not required for draining or filling the following amounts of wetlands  
 3.30 as part of a project within the shoreland wetland protection zone beyond the shoreland  
 3.31 building setback zone:

3.32 (1) 400 square feet of type 1, 2, 6, or 7 wetland; or

3.33 (2) 100 square feet of type 3, 4, 5, or 8 wetland or white cedar and tamarack wetland.

3.34 In a greater than 80 percent area, the de minimis amount allowed under clause (1)  
 3.35 may be increased up to 1,000 square feet if the wetland is isolated and is determined

4.1 to have no direct surficial connection to the public water or if permanent water runoff  
4.2 retention or infiltration measures are established in proximity as approved by the shoreland  
4.3 management authority.

4.4 (c) Except as provided in paragraphs (e), (f), (g), (h), and (i), a replacement plan  
4.5 for wetlands is not required for draining or filling up to 20 square feet of wetland as part  
4.6 of a project within the shoreland building setback zone, as defined in the local shoreland  
4.7 management ordinance. The amount in this paragraph may be increased to 100 square feet  
4.8 if permanent water runoff retention or infiltration measures are established in proximity as  
4.9 approved by the shoreland management authority.

4.10 (d) Except as provided in paragraphs (b), (c), (e), (f), (g), (h), and (i), a replacement  
4.11 plan is not required for draining or filling amounts of wetlands as part of a project:

4.12 (1) 2,500 square feet of type 1, 2, 6, or 7 wetland, excluding white cedar and  
4.13 tamarack wetlands, outside of the shoreland wetland protection zone in a 50 to 80 percent  
4.14 area within the 11-county metropolitan area; or

4.15 (2) 1,000 square feet of type 1, 2, or 6 wetland, outside of the shoreland wetland  
4.16 protection zone in a less than 50 percent area within the 11-county metropolitan area.

4.17 For purposes of this subdivision, the 11-county metropolitan area consists of the  
4.18 counties of Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Sherburne,  
4.19 Washington, and Wright.

4.20 (e) The amounts listed in paragraphs (a), (b), and (c) may not be combined on  
4.21 a project.

4.22 (f) This exemption no longer applies to a landowner's portion of a wetland when  
4.23 the cumulative area drained or filled of the landowner's portion since January 1, 1992, is  
4.24 the greatest of:

4.25 (1) the applicable area listed in paragraph (a), (b), or (c), if the landowner owns  
4.26 the entire wetland;

4.27 (2) five percent of the landowner's portion of the wetland; or

4.28 (3) 400 square feet.

4.29 (g) This exemption may not be combined with another exemption in this section on  
4.30 a project.

4.31 (h) Property may not be divided to increase the amounts listed in paragraph (a).

4.32 (i) If a local ordinance or similar local control is more restrictive than this  
4.33 subdivision, the local standard applies.

4.34 Sec. 5. **RULEMAKING.**

- 5.1            The Board of Water and Soil Resources shall amend Minnesota Rules, chapter
- 5.2            8420, to conform with this act.