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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-SEVENTH SESSION

H. F. No. 2393

02/20/2012 Authored by McElfatrick, Torkelson and Crawford

The bill was read for the first time and referred to the Committee on Environment, Energy and Natural Resources Policy and Finance

1.1 A bill for an act
1.2 relating to natural resources; modifying Wetland Conservation Act; amending
1.3 Minnesota Statutes 2010, sections 103G.2241, subdivision 9; 103G.2242,
1.4 subdivision 3; Minnesota Statutes 2011 Supplement, section 103G.222,
1.5 subdivision 1; proposing coding for new law in Minnesota Statutes, chapter
1.6 103G.

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

1.8 Section 1. Minnesota Statutes 2011 Supplement, section 103G.222, subdivision 1,
1.9 is amended to read:

1.10 Subdivision 1. **Requirements.** (a) Wetlands must not be drained or filled, wholly or
1.11 partially, unless replaced by restoring or creating wetland areas of at least equal public
1.12 value under a replacement plan approved as provided in section 103G.2242, a replacement
1.13 plan under a local governmental unit's comprehensive wetland protection and management
1.14 plan approved by the board under section 103G.2243, or, if a permit to mine is required
1.15 under section 93.481, under a mining reclamation plan approved by the commissioner
1.16 under the permit to mine. For project-specific wetland replacement completed prior to
1.17 wetland impacts authorized or conducted under a permit to mine within the Great Lakes
1.18 and Rainy River watershed basins, those basins shall be considered a single watershed
1.19 for purposes of determining wetland replacement ratios. Mining reclamation plans shall
1.20 apply the same principles and standards for replacing wetlands by restoration or creation
1.21 of wetland areas that are applicable to mitigation plans approved as provided in section
1.22 103G.2242. Public value must be determined in accordance with section 103B.3355 or
1.23 a comprehensive wetland protection and management plan established under section
1.24 103G.2243. Sections 103G.221 to 103G.2372 also apply to excavation in permanently
1.25 and semipermanently flooded areas of types 3, 4, and 5 wetlands.

2.1 (b) Replacement must be guided by the following principles in descending order
2.2 of priority:

2.3 (1) avoiding the direct or indirect impact of the activity that may destroy or diminish
2.4 the wetland;

2.5 (2) minimizing the impact by limiting the degree or magnitude of the wetland
2.6 activity and its implementation;

2.7 (3) rectifying the impact by repairing, rehabilitating, or restoring the affected
2.8 wetland environment;

2.9 (4) reducing or eliminating the impact over time by preservation and maintenance
2.10 operations during the life of the activity;

2.11 (5) compensating for the impact by restoring a wetland; and

2.12 (6) compensating for the impact by replacing or providing substitute wetland
2.13 resources or environments.

2.14 For a project involving the draining or filling of wetlands in an amount not exceeding
2.15 10,000 square feet more than the applicable amount in section 103G.2241, subdivision 9,
2.16 paragraph (a), the local government unit may make an on-site sequencing determination
2.17 without a written alternatives analysis from the applicant.

2.18 (c) If a wetland is located in a cultivated field, then replacement must be
2.19 accomplished through restoration only without regard to the priority order in paragraph
2.20 (b), provided that ~~a deed restriction is placed on the altered wetland prohibiting~~ is not
2.21 converted to a nonagricultural use for at least ten years.

2.22 (d) If a wetland is replaced under paragraph (c), or drained under section 103G.2241,
2.23 subdivision 2, ~~paragraphs paragraph (b) and or (e),~~ the local government unit may require
2.24 a deed restriction that prohibits nonagricultural use for at least ten years ~~unless the drained~~
2.25 ~~wetland is replaced as provided under this section.~~ The local government unit may require
2.26 the deed restriction if it determines the wetland area drained is at risk of conversion to
2.27 a nonagricultural use within ten years based on the zoning classification, proximity to a
2.28 municipality or full service road, or other criteria as determined by the local government
2.29 unit.

2.30 (e) Restoration and replacement of wetlands must be accomplished in accordance
2.31 with the ecology of the landscape area affected and ponds that are created primarily to
2.32 fulfill storm water management, and water quality treatment requirements may not be
2.33 used to satisfy replacement requirements under this chapter unless the design includes
2.34 pretreatment of runoff and the pond is functioning as a wetland.

3.1 (f) Except as provided in paragraph (g), for a wetland or public waters wetland
3.2 located on nonagricultural land, replacement must be in the ratio of two acres of replaced
3.3 wetland for each acre of drained or filled wetland.

3.4 (g) For a wetland or public waters wetland located on agricultural land or in a greater
3.5 than 80 percent area, replacement must be in the ratio of one acre of replaced wetland
3.6 for each acre of drained or filled wetland.

3.7 (h) Wetlands that are restored or created as a result of an approved replacement plan
3.8 are subject to the provisions of this section for any subsequent drainage or filling.

3.9 (i) Except in a greater than 80 percent area, only wetlands that have been restored
3.10 from previously drained or filled wetlands, wetlands created by excavation in nonwetlands,
3.11 wetlands created by dikes or dams along public or private drainage ditches, or wetlands
3.12 created by dikes or dams associated with the restoration of previously drained or filled
3.13 wetlands may be used in a statewide banking program established in rules adopted under
3.14 section 103G.2242, subdivision 1. Modification or conversion of nondegraded naturally
3.15 occurring wetlands from one type to another are not eligible for enrollment in a statewide
3.16 wetlands bank.

3.17 (j) The Technical Evaluation Panel established under section 103G.2242, subdivision
3.18 2, shall ensure that sufficient time has occurred for the wetland to develop wetland
3.19 characteristics of soils, vegetation, and hydrology before recommending that the wetland
3.20 be deposited in the statewide wetland bank. If the Technical Evaluation Panel has reason
3.21 to believe that the wetland characteristics may change substantially, the panel shall
3.22 postpone its recommendation until the wetland has stabilized.

3.23 (k) This section and sections 103G.223 to 103G.2242, 103G.2364, and 103G.2365
3.24 apply to the state and its departments and agencies.

3.25 (l) For projects involving draining or filling of wetlands associated with a new public
3.26 transportation project, and for projects expanded solely for additional traffic capacity,
3.27 public transportation authorities may purchase credits from the board at the cost to the
3.28 board to establish credits. Proceeds from the sale of credits provided under this paragraph
3.29 are appropriated to the board for the purposes of this paragraph. For the purposes of this
3.30 paragraph, "transportation project" does not include an airport project.

3.31 (m) A replacement plan for wetlands is not required for individual projects that
3.32 result in the filling or draining of wetlands for the repair, rehabilitation, reconstruction,
3.33 or replacement of a currently serviceable existing state, city, county, or town public road
3.34 necessary, as determined by the public transportation authority, to meet state or federal
3.35 design or safety standards or requirements, excluding new roads or roads expanded solely

4.1 for additional traffic capacity lanes. This paragraph only applies to authorities for public
4.2 transportation projects that:

4.3 (1) minimize the amount of wetland filling or draining associated with the project
4.4 and consider mitigating important site-specific wetland functions on site;

4.5 (2) except as provided in clause (3), submit project-specific reports to the board, the
4.6 Technical Evaluation Panel, the commissioner of natural resources, and members of the
4.7 public requesting a copy at least 30 days prior to construction that indicate the location,
4.8 amount, and type of wetlands to be filled or drained by the project or, alternatively,
4.9 convene an annual meeting of the parties required to receive notice to review projects to
4.10 be commenced during the upcoming year; and

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

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

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

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

4.34 (n) If a landowner seeks approval of a replacement plan after the proposed project
4.35 has already affected the wetland, the local government unit may require the landowner to

5.1 replace the affected wetland at a ratio not to exceed twice the replacement ratio otherwise
5.2 required.

5.3 (o) A local government unit may request the board to reclassify a county or
5.4 watershed on the basis of its percentage of presettlement wetlands remaining. After
5.5 receipt of satisfactory documentation from the local government, the board shall change
5.6 the classification of a county or watershed. If requested by the local government unit,
5.7 the board must assist in developing the documentation. Within 30 days of its action to
5.8 approve a change of wetland classifications, the board shall publish a notice of the change
5.9 in the Environmental Quality Board Monitor.

5.10 (p) One hundred citizens who reside within the jurisdiction of the local government
5.11 unit may request the local government unit to reclassify a county or watershed on the basis
5.12 of its percentage of presettlement wetlands remaining. In support of their petition, the
5.13 citizens shall provide satisfactory documentation to the local government unit. The local
5.14 government unit shall consider the petition and forward the request to the board under
5.15 paragraph (o) or provide a reason why the petition is denied.

5.16 Sec. 2. Minnesota Statutes 2010, section 103G.2241, subdivision 9, is amended to read:

5.17 Subd. 9. **De minimis.** (a) Except as provided in ~~paragraphs~~ paragraph (b) and (c), a
5.18 replacement plan for wetlands is not required for draining or filling the following amounts
5.19 of wetlands as part of a project:

5.20 (1) 10,000 square feet of ~~type 1, 2, 6, or 7~~ wetland, excluding white cedar and
5.21 tamarack wetlands, outside of the shoreland wetland protection zone in a greater than
5.22 80 percent area;

5.23 (2) 5,000 square feet of ~~type 1, 2, 6, or 7~~ wetland, excluding white cedar and
5.24 tamarack wetlands, outside of the shoreland wetland protection zone in a 50 to 80 percent
5.25 area, ~~except within the 11-county metropolitan area~~ or less than 50 percent area; or

5.26 ~~(3) 2,000 square feet of type 1, 2, or 6 wetland, outside of the shoreland wetland~~
5.27 ~~protection zone in a less than 50 percent area, except within the 11-county metropolitan~~
5.28 ~~area;~~

5.29 ~~(4) 100 square feet of wetland types not listed in clauses (1) to (3) outside of the~~
5.30 ~~building setback zone of the shoreland wetland protection zones in all counties;~~

5.31 ~~(5) (3) 400 square feet of wetland types listed in clauses (1) to (3)~~ white cedar and
5.32 tamarack wetlands, beyond the building setback zone, as defined in the local shoreland
5.33 management ordinance, but within the shoreland wetland protection zone. In a greater
5.34 than 80 percent area, the local government unit may increase the de minimis amount up to
5.35 1,000 square feet if the wetland is isolated and is determined to have no direct surficial

6.1 connection to the public water. To the extent that a local shoreland management ordinance
6.2 is more restrictive than this provision, the local shoreland ordinance applies;

6.3 ~~(6) up to 20 square feet of wetland, regardless of type or location;~~

6.4 ~~(7) 2,500 square feet of type 1, 2, 6, or 7 wetland, excluding white cedar and~~
6.5 ~~tamarack wetlands, outside of the shoreland wetland protection zone in a 50 to 80 percent~~
6.6 ~~area within the 11-county metropolitan area; or~~

6.7 ~~(8) 1,000 square feet of type 1, 2, or 6 wetland, outside of the shoreland wetland~~
6.8 ~~protection zone in a less than 50 percent area within the 11-county metropolitan area.~~

6.9 ~~For purposes of this paragraph, the 11-county metropolitan area consists of the~~
6.10 ~~counties of Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Sherburne,~~
6.11 ~~Washington, and Wright.~~

6.12 (b) The amounts listed in paragraph (a), clauses (1) to ~~(8)~~ (3), may not be combined
6.13 on a project.

6.14 ~~(c) This exemption no longer applies to a landowner's portion of a wetland when~~
6.15 ~~the cumulative area drained or filled of the landowner's portion since January 1, 1992, is~~
6.16 ~~the greatest of:~~

6.17 ~~(1) the applicable area listed in paragraph (a), if the landowner owns the entire~~
6.18 ~~wetland;~~

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

6.20 ~~(3) 400 square feet.~~

6.21 ~~(d)~~ (c) This exemption may not be combined with another exemption in this section
6.22 on a project.

6.23 ~~(e)~~ (d) Property may not be divided to increase the amounts listed in paragraph (a).

6.24 Sec. 3. Minnesota Statutes 2010, section 103G.2242, subdivision 3, is amended to read:

6.25 Subd. 3. **Replacement completion.** Replacement of wetland values must be
6.26 completed prior to or concurrent with the actual draining or filling of a wetland, ~~or unless~~
6.27 an irrevocable bank letter of credit or other security acceptable to the local government
6.28 unit ~~must be~~ or the board is given to the local government unit or the board to guarantee
6.29 the successful completion of the replacement. The board may establish, sponsor, or
6.30 administer a wetland banking program, which may include provisions allowing monetary
6.31 payment to the wetland bank for impacts to wetlands on agricultural land, for impacts
6.32 that occur in greater than 80 percent areas, and for public road projects. The board shall
6.33 coordinate the establishment and operation of a wetland bank with the United States
6.34 Army Corps of Engineers, the Natural Resources Conservation Service of the United

7.1 States Department of Agriculture, and the commissioners of natural resources, agriculture,
7.2 and the Pollution Control Agency.

7.3 Sec. 4. **[103G.2375] ASSUMPTION OF SECTION 404 OF FEDERAL CLEAN**
7.4 **WATER ACT.**

7.5 Notwithstanding any other law to the contrary, the Board of Water and Soil
7.6 Resources, in consultation with the commissioners of natural resources, agriculture,
7.7 and the Pollution Control Agency, may adopt or amend rules establishing a program
7.8 for regulating the discharge of dredged and fill material into the waters of the state as
7.9 necessary to obtain approval from the United States Environmental Protection Agency to
7.10 administer, in whole or part, the permitting and wetland banking programs under section
7.11 404 of the federal Clean Water Act, United States Code, title 33, section 1344. The rules
7.12 may not be more restrictive than the program under section 404 or state law.