

CHAPTER 381—H.F.No. 2888

An act relating to natural resources; authorizing the marking of canoe and boating routes on a portion of the Chippewa river; amending Minnesota Statutes 1998, section 85.32, subdivision 1.

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

Section 1. Minnesota Statutes 1998, section 85.32, subdivision 1, is amended to read:

Subdivision 1. **AREAS MARKED.** The commissioner of natural resources is authorized in cooperation with local units of government and private individuals and groups when feasible to mark canoe and boating routes on the Little Fork, Big Fork, Minnesota, St. Croix, Snake, Mississippi, Red Lake, Cannon, Straight, Des Moines, Crow Wing, St. Louis, Pine, Rum, Kettle, Cloquet, Root, Zumbro, Pomme de Terre within Swift county, Watonwan, Cottonwood, Whitewater, Chippewa from Benson in Swift county to Montevideo in Chippewa county, and Crow rivers which have historic and scenic values and to mark appropriately points of interest, portages, camp sites, and all dams, rapids, waterfalls, whirlpools, and other serious hazards which are dangerous to canoe and watercraft travelers.

Presented to the governor April 10, 2000

Signed by the governor April 13, 2000, 4:57 p.m.

CHAPTER 382—S.F.No. 83

An act relating to natural resources; simplifying and consolidating wetland regulation; amending Minnesota Statutes 1998, sections 103G.005, subdivisions 15 and 19; 103G.201; 103G.222; 103G.2241, subdivisions 1, 3, and 9; 103G.2242, subdivisions 1, 2, 5, 9, 11, and by adding a subdivision; 103G.2372; 103G.2373; 103G.245, subdivision 5; and 645.44, by adding a subdivision; 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 1998, section 103G.005, subdivision 15, is amended to read:

Subd. 15. **PUBLIC WATERS.** (a) "Public waters" means:

(1) waterbasins assigned a shoreland management classification by the commissioner under sections 103F.201 to 103F.221, except wetlands less than 80 acres in size that are classified as natural environment lakes;

(2) waters of the state that have been finally determined to be public waters or navigable waters by a court of competent jurisdiction;

(3) meandered lakes, excluding lakes that have been legally drained;

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(4) waterbasins previously designated by the commissioner for management for a specific purpose such as trout lakes and game lakes pursuant to applicable laws;

(5) waterbasins designated as scientific and natural areas under section 84.033;

(6) waterbasins located within and totally surrounded by publicly owned lands;

(7) waterbasins where the state of Minnesota or the federal government holds title to any of the beds or shores, unless the owner declares that the water is not necessary for the purposes of the public ownership;

(8) waterbasins where there is a publicly owned and controlled access that is intended to provide for public access to the waterbasin;

(9) natural and altered watercourses with a total drainage area greater than two square miles;

(10) natural and altered watercourses designated by the commissioner as trout streams; and

(11) public waters wetlands, unless the statute expressly states otherwise.

(b) Public waters are not determined exclusively by the proprietorship of the underlying, overlying, or surrounding land or by whether it is a body or stream of water that was navigable in fact or susceptible of being used as a highway for commerce at the time this state was admitted to the union.

Sec. 2. Minnesota Statutes 1998, section 103G.005, subdivision 19, is amended to read:

Subd. 19. **WETLANDS.** (a) "Wetlands" means lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. For purposes of this definition, wetlands must have the following three attributes:

(1) have a predominance of hydric soils;

(2) are inundated or saturated by surface or ground water at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and

(3) under normal circumstances support a prevalence of such vegetation.

(b) For the purposes of regulation under this chapter, the term wetlands does not include public waters wetlands as defined in subdivision 15a.

Sec. 3. Minnesota Statutes 1998, section 103G.201, is amended to read:

103G.201 PUBLIC WATERS INVENTORY.

(a) The commissioner shall prepare a public waters inventory map of each county that shows the waters of this state that are designated as public waters under the public waters inventory and classification procedures prescribed under Laws 1979, chapter 199. The public waters inventory map for each county must be filed with the auditor of the county.

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(b) The commissioner is authorized to revise the list of public waters established under Laws 1979, chapter 199, to reclassify those type 3, 4, and 5 wetlands previously identified as public waters wetlands under Laws 1979, chapter 199, as public waters or as wetlands under section 103G.005, subdivision 19. The commissioner may only reclassify public waters wetlands as public waters if:

(1) they are assigned a shoreland management classification by the commissioner under sections 103F.201 to 103F.22; or

(2) they are classified as lacustrine wetlands according to Classification of Wetlands and Deepwater Habitats of the United States (Cowardin, et al., 1979 edition).

(c) The commissioner must provide notice of the reclassification to the local government unit, the county board, the watershed district, if one exists for the area, and the soil and water conservation district. Within 60 days of receiving notice from the commissioner, a party required to receive the notice may provide a resolution stating objections to the reclassification. If the commissioner receives an objection from a party required to receive the notice, the reclassification is not effective. If the commissioner does not receive an objection from a party required to receive the notice, the reclassification of a wetland under paragraph (b) is effective 60 days after the notice is received by all of the parties.

(d) The commissioner shall give priority to the reclassification of public waters wetlands that are or have the potential to be affected by public works projects.

Sec. 4. [103G.2212] CONTRACTOR'S RESPONSIBILITY WHEN WORK DRAINS OR FILLS WETLANDS.

Subdivision 1. CONDITIONS FOR EMPLOYEES AND AGENTS TO DRAIN OR FILL WETLANDS. An agent or employee of another may not drain or fill a wetland, wholly or partially, unless the agent or employee has:

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

(2) mailed a copy of the statement to the local government unit with jurisdiction over the wetland.

Subd. 2. VIOLATION IS SEPARATE OFFENSE. Violation of this section is a separate and independent offense from other violations of sections 103G.2212 to 103G.237.

Subd. 3. FORM FOR COMPLIANCE WITH THIS SECTION. The board shall develop a form to be distributed to contractors' associations, local government units, and soil and water conservation districts to comply with this section. The form must include:

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

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

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

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

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

Sec. 5, Minnesota Statutes 1998, section 103G.222, is amended to read:

103G.222 REPLACEMENT OF WETLANDS.

Subdivision 1. **REQUIREMENTS.** (a) Wetlands must not be drained or filled, wholly or partially, unless replaced by restoring or creating wetland areas of at least equal public value under a replacement plan approved as provided in section 103G.2242, a 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 type 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

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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) Restoration and replacement of wetlands must be accomplished in accordance with the ecology of the landscape area affected.

(e) Replacement shall be within the same watershed or county as the impacted wetlands, as based on the wetland evaluation in section 103G.2242, subdivision 2, except that a greater than 80 percent area may accomplish replacement in less than 50 percent areas. Wetlands impacted by public transportation projects may be replaced statewide, except that wetlands impacted in a less than 50 percent area must be replaced in a less than 50 percent area, and wetlands impacted in the seven-county twin cities metropolitan area by public highways must be replaced:

- (1) in the affected county, or, if no restoration opportunities exist in the county;
- (2) in another seven-county twin cities metropolitan area county.

The board must maintain a public list of restoration opportunities within the metropolitan area. Disputes about restoration opportunities for wetland replacement in a watershed or county may be appealed to the board's committee for dispute resolution. Replacement of wetlands may be accomplished under the rules for wetland banking as provided for under section 103G.2242.

(f) Except as provided in paragraph (g) (f), 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) (f) 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) (g) 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) (h) 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) (i) 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

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

~~(l)~~ (k) For projects involving draining or filling of wetlands associated with a new public transportation project in a greater than 80 percent area, public transportation authorities, other than the state department of transportation, may purchase credits from the state wetland bank established with proceeds from Laws 1994, chapter 643, section 26, subdivision 3, paragraph (c). Wetland banking credits may be purchased at the least of the following, but in no case shall the purchase price be less than \$400 per acre: (1) the cost to the state to establish the credits; (2) the average estimated market value of agricultural land in the township where the road project is located, as determined by the commissioner of revenue; or (3) the average value of the land in the immediate vicinity of the road project as determined by the county assessor. Public transportation authorities in a less than 80 percent area may purchase credits from the state at the cost to the state to establish credits.

~~(m)~~ (l) 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; and

(2) except as provided in clause (3), submit annual project-specific reports by January 15 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 that have been filled or drained during the previous year and a projection of 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.

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tion 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 in critical rural and urban watersheds.

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.

(~~h~~) (m) If a landowner seeks approval of a replacement plan after the proposed project has already ~~impacted~~ affected the wetland, the local government unit may require the landowner to replace the ~~impacted affected~~ wetland at a ratio not to exceed twice the replacement ratio otherwise required.

(~~e~~) (n) 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~~) (o) 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 (~~e~~) (n) or provide a reason why the petition is denied.

Subd. 2. **ROAD CREDIT FUNDING.** ~~At least 50 percent of money appropriated for road repair wetland replacement credit under this section must be used for wetland restoration in the seven-county metropolitan area.~~

The board shall give priority to restoration projects that will:

(1) ~~intensify will encourage~~ land use that leads to more compact development or redevelopment;

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(2) will encourage public or private infrastructure investments which connect urban neighborhoods and suburban ecosystems and communities, attract private sector investment in commercial or residential properties adjacent to the public improvement; or

(3) complement projects receiving funding under section 473.253 are located in critical rural and urban watersheds.

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) in an adjacent watershed or county to the affected wetland; and

(5) statewide, only for wetlands affected in greater than 80 percent areas and 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 in the affected county or, if no restoration opportunities exist in the county, in another seven-county metropolitan area county.

(b) The exception in paragraph (a), clause (5), 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.

(c) 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.

(d) 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.

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

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Sec. 6. Minnesota Statutes 1998, section 103G.2241, subdivision 1, is amended to read:

Subdivision 1. **AGRICULTURAL ACTIVITIES.** (a) A replacement plan for wetlands is not required for:

(1) activities in a wetland that was planted with annually seeded crops, was in a crop rotation seeding of pasture grass or legumes, or was required to be set aside to receive price support or other payments under United States Code, title 7, sections 1421 to 1469, in six of the last ten years prior to January 1, 1991;

(2) activities in a wetland that is or has been enrolled in the federal conservation reserve program under United States Code, title 16, section 3831, that:

(i) was planted with annually seeded crops, was in a crop rotation seeding, or was required to be set aside to receive price support or payment under United States Code, title 7, sections 1421 to 1469, in six of the last ten years prior to being enrolled in the program; and

(ii) has not been restored with assistance from a public or private wetland restoration program;

(3) activities in a wetland that has received a commenced drainage determination provided for by the federal Food Security Act of 1985, that was made to the county agricultural stabilization and conservation service office prior to September 19, 1988, and a ruling and any subsequent appeals or reviews have determined that drainage of the wetland had been commenced prior to December 23, 1985;

(4) activities in a type 1 wetland on agricultural land, except for bottomland hardwood type 1 wetlands, and activities in a type 2 or type 6 wetland that is less than two acres in size and located on agricultural land;

(5) aquaculture activities including pond excavation and construction and maintenance of associated access roads and dikes authorized under, and conducted in accordance with, a permit issued by the United States Army Corps of Engineers under section 404 of the federal Clean Water Act, United States Code, title 33, section 1344, but not including construction or expansion of buildings;

(6) wild rice production activities, including necessary diking and other activities authorized under a permit issued by the United States Army Corps of Engineers under section 404 of the federal Clean Water Act, United States Code, title 33, section 1344;

(7) normal agricultural practices to control noxious or secondary weeds as defined by rule of the commissioner of agriculture, in accordance with applicable requirements under state and federal law, including established best management practices; and

(8) agricultural activities in a wetland that is on agricultural land:

(i) annually enrolled in the federal Food, Agricultural, Conservation, and Trade Act of 1990, United States Code, title 16, section 3821, subsection (a), clauses (1) to (3), as amended, Agriculture Improvement and Reform Act of 1996 and is subject to sections 1421 to 1424 of the federal act United States Code, title 16, sections 3821 to

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3823, in effect on January 1, 1991, except that 2000; or

(ii) subject to subsequent federal farm program restrictions that meet minimum state standards under this chapter and sections 103A.202 and 103B.3355 and that have been approved by the board of water and soil resources, the commissioners of natural resources and agriculture, and the pollution control agency.

(b) Land enrolled in a federal farm program under paragraph (a), clause (8), is eligible for easement participation for those acres not already compensated under a federal program.

(b) (c) The exemption under paragraph (a), clause (4), may be expanded to additional acreage, including types 1, 2, and 6 wetlands that are part of a larger wetland system, when the additional acreage is part of a conservation plan approved by the local soil and water conservation district, the additional draining or filling is necessary for efficient operation of the farm, the hydrology of the larger wetland system is not adversely affected, and wetlands other than types 1, 2, and 6 are not drained or filled.

Sec. 7. Minnesota Statutes 1998, section 103G.2241, subdivision 3, is amended to read:

Subd. 3. **FEDERAL APPROVALS.** A replacement plan for wetlands is not required for:

(1) activities exempted from federal regulation under United States Code, title 33, section 1344(f), as in effect on January 1, 1991;

(2) activities authorized under, and conducted in accordance with, an applicable general permit issued by the United States Army Corps of Engineers under section 404 of the federal Clean Water Act, United States Code, title 33, section 1344, except the nationwide permit in Code of Federal Regulations, title 33, section 330.5, paragraph (a), clauses (14), limited to when a new road crosses a wetland, and (26), as in effect on January 1, 1991; or

(3) activities authorized under the federal Clean Water Act, section 404, or the Rivers and Harbors Act, section 10, regulations that meet minimum state standards under this chapter and sections 103A.202 and 103B.3355 and that have been approved by the board of water and soil resources, the commissioners of natural resources and agriculture, and the pollution control agency.

Sec. 8. Minnesota Statutes 1998, section 103G.2241, subdivision 9, is amended to read:

Subd. 9. **DE MINIMIS.** (a) Except as provided in paragraphs (b), and (c), and (d), a replacement plan for wetlands is not required for draining or filling the following amounts of wetlands as part of a project, ~~regardless of the total amount of wetlands filled as part of a project:~~

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

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(2) 5,000 square feet of type 1, 2, 6, or 7 wetland, excluding white cedar and tamarack wetlands, outside of the shoreland wetland protection zone in a 50 to 80 percent area;

(3) 2,000 square feet of type 1, 2, or 6 wetland, outside of the shoreland wetland protection zone in a less than 50 percent area;

(4) 400 square feet of wetland types not listed in clauses (1) to (3) outside of shoreland wetland protection zones in all counties; or

(5) 400 square feet of type 1, 2, 3, 4, 5, 6, 7, or 8 wetland, in the shoreland wetland protection zone, except that in a greater than 80 percent area, the local government unit may increase the de minimis amount up to 1,000 square feet in the shoreland protection zone in areas beyond the building setback if the wetland is isolated and is determined to have no direct surficial connection to the public water. To the extent that a local shoreland management ordinance is more restrictive than this provision, the local shoreland ordinance applies.

(b) The amounts listed in paragraph (a), clauses (1) to (5), may not be combined on a project.

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

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

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

(3) 400 square feet.

~~(d) Persons proposing to conduct an activity under this subdivision shall contact the board at a toll-free number to be provided for information on minimizing wetland impacts. Failure to call by the person does not constitute a violation of this subdivision.~~

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

Sec. 9. Minnesota Statutes 1998, section 103G.2242, subdivision 1, is amended to read:

Subdivision 1. **RULES.** (a) The board, in consultation with the commissioner, shall adopt rules governing the approval of wetland value replacement plans under this section and public waters work permits affecting public waters wetlands under section 103G.245. These rules must address the criteria, procedure, timing, and location of acceptable replacement of wetland values; may address the state establishment and administration of a wetland banking program for public and private projects, which may include provisions allowing monetary payment to the wetland banking program for alteration of wetlands on agricultural land; the administrative, monitoring, and enforcement procedures to be used; and a procedure for the review and appeal of decisions under this section. In the case of peatlands, the replacement plan rules must

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consider the impact on carbon balance described in the report required by Laws 1990, chapter 587, and include the planting of trees or shrubs.

(b) After the adoption of the rules, a replacement plan must be approved by a resolution of the governing body of the local government unit, consistent with the provisions of the rules or a comprehensive wetland protection and management plan approved under section 103G.2243.

(c) If the local government unit fails to apply the rules, or fails to implement a local comprehensive wetland protection and management plan established under section 103G.2243, the government unit is subject to penalty as determined by the board.

Sec. 10. Minnesota Statutes 1998, section 103G.2242, subdivision 2, is amended to read:

Subd. 2. **EVALUATION.** (a) Questions concerning the public value, location, size, or type of a wetland shall be submitted to and determined by a technical evaluation panel after an on-site inspection. The technical evaluation panel shall be composed of a technical professional employee of the board, a technical professional employee of the local soil and water conservation district or districts, and a technical professional with expertise in water resources management appointed by the local government unit, and a technical professional employee of the department of natural resources for projects affecting public waters or wetlands adjacent to public waters. The panel shall use the "United States Army Corps of Engineers Wetland Delineation Manual" (January 1987), including updates, supplementary guidance, and replacements, if any, "Wetlands of the United States" (United States Fish and Wildlife Service Circular 39, 1971 edition), and "Classification of Wetlands and Deepwater Habitats of the United States" (1979 edition). The panel shall provide the wetland determination and recommendations on other technical matters to the local government unit that must approve a replacement plan under this section, wetland banking plan, exemption determination, no-loss determination, or wetland boundary or type determination and may recommend approval or denial of the plan. The authority must consider and include the decision of the technical evaluation panel in their approval or denial of a plan or determination.

(b) Persons conducting wetland or public waters boundary delineations or type determinations are exempt from the requirements of chapter 326. By January 15, 2001, the board, in consultation with the Minnesota Association of Professional Soil Scientists, the University of Minnesota, and the Wetland Delineators' Association, shall submit a plan for a professional wetland delineator certification program to the legislature.

Sec. 11. Minnesota Statutes 1998, section 103G.2242, is amended by adding a subdivision 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

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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 with the zoning administrator, 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) 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. 12. Minnesota Statutes 1998, section 103G.2242, subdivision 5, is amended to read:

Subd. 5. **PROCESSING FEE.** The local government unit and soil and water conservation district may charge processing fees in amounts not greater than are necessary to cover the reasonable costs of implementing the rules adopted under subdivision 1 and for technical and administrative assistance to landowners in processing other applications for projects affecting wetlands.

Sec. 13. Minnesota Statutes 1998, section 103G.2242, subdivision 9, is amended to read:

Subd. 9. **APPEAL.** (a) Appeal of a replacement plan, exemption, wetland banking, wetland boundary or type determination, or no-loss decision may be obtained by mailing a petition and payment of a filing fee of \$200, which shall be retained by the board to defray administrative costs, to the board within 15 days after the postmarked date of the mailing specified in subdivision 7. If appeal is not sought within 15 days, the decision becomes final. The local government unit may require the petitioner to post a letter of credit, cashier's check, or cash in an amount not to exceed \$500. 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, by;
- (2) any of those to whom notice is required to be mailed under subdivision 7; or
by
- (3) 100 residents of the county in which a majority of the wetland is located.

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(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; ~~that~~
- (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 ~~that~~
- (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 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.

Sec. 14. Minnesota Statutes 1998, section 103G.2242, subdivision 11, is amended to read:

Subd. 11. **WETLAND HERITAGE ADVISORY COMMITTEE.** The governor shall establish a wetland heritage advisory committee consisting of a balanced diversity of interests including agriculture, environmental, and sporting organizations, land development organizations, local government organizations, and other agencies. The committee must consist of nine members including the commissioner of agriculture, or a designee of the commissioner, the commissioner of natural resources, and seven members appointed by the governor. The governor's appointees must include one county commissioner, one representative each from a statewide sporting organization, a statewide conservation organization, an agricultural commodity group, one faculty member of an institution of higher education with expertise in the natural sciences, and one member each from two statewide farm organizations. The committee shall advise the board on the development of rules under this section and, after rule adoption, shall meet at least twice a year to review implementation of the program, to identify strengths and weaknesses, and to recommend changes to the rules and the law to improve the program. The committee expires on July 1, 2000.

Sec. 15. Minnesota Statutes 1998, section 103G.2372, is amended to read:

103G.2372 **ENFORCEMENT.**

Subdivision 1. **COMMISSIONER OF NATURAL RESOURCES.** The commissioner of natural resources, conservation officers, and peace officers shall enforce

New language is indicated by underline, deletions by ~~strikeout~~.

laws preserving and protecting wetlands and public waters. The commissioner of natural resources, a conservation officer, or a peace officer may issue a cease and desist order to stop any illegal activity adversely affecting a wetland or public waters. In the order, or by separate order, the commissioner, conservation officer, or peace officer may require restoration or replacement of the wetland or public waters, as determined by the local soil and water conservation district for wetlands and the commissioner of natural resources for public waters.

Subd. 2. **MISDEMEANOR.** A violation of an order issued under subdivision 1 is a misdemeanor and must be prosecuted by the county attorney where the wetland is or public waters are located or the illegal activity occurred.

Subd. 3. **RESTITUTION.** The court may, as part of sentencing, require a person convicted under subdivision 2 to restore or replace the wetland or public waters, as determined by the local soil and water conservation district for wetlands and the commissioner of natural resources for public waters.

Sec. 16. Minnesota Statutes 1998, section 103G.2373, is amended to read:

103G.2373 ANNUAL WETLANDS AND PUBLIC WATERS WETLANDS REPORT.

By March 1 of each year, the commissioner of natural resources and the board of water and soil resources shall jointly report to the committees of the legislature with jurisdiction over matters relating to agriculture, the environment, and natural resources on:

- (1) the status of implementation of state laws and programs relating to wetlands and public waters wetlands;
- (2) the quantity, quality, acreage, types, and public value of wetlands and public waters wetlands in the state; and
- (3) changes in the items in clause (2).

Sec. 17. Minnesota Statutes 1998, section 103G.245, subdivision 5, is amended to read:

Subd. 5. **DELEGATION OF PERMIT AUTHORITY TO LOCAL UNITS OF GOVERNMENT.** (a) The commissioner may delegate public waters work permit authority to the appropriate county or municipality or to watershed districts or watershed management organizations that have elected to assert local authority over protected waters. The public waters work permit authority must be delegated under guidelines of the commissioner and the delegation must be done by agreement with the involved county, municipality, watershed district, or water management organization and in compliance with section 103G.315.

(b) For projects affecting public waters wetlands, the commissioner may waive the requirement for a public waters work permit if the local government unit makes a replacement, no-loss or exemption determination in compliance with sections

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103A.201, 103B.3355, and 103G.222 to 103G.2373, and rules adopted pursuant to these same sections.

(c) For projects affecting both public waters and wetlands, the local government unit may, by written agreement with the commissioner, waive the requirement for a replacement plan, no-loss or exemption determination if a public waters work permit is required and the commissioner includes the provisions of sections 103A.201, 103B.3355, and 103G.222 to 103G.2373, and rules adopted pursuant to these same sections in the public waters work permit.

Sec. 18. Minnesota Statutes 1998, section 645.44, is amended by adding a subdivision to read:

Subd. 13a. WETLANDS. "Wetlands" means lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. For purposes of this definition, wetlands must have the following three attributes:

- (1) have a predominance of hydric soils;
- (2) are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and
- (3) under normal circumstances, support a prevalence of such vegetation.

Sec. 19. REPORT.

By January 15, 2001, the board of water and soil resources and the commissioner of natural resources shall provide a joint report to the house and the senate committees responsible for agriculture and environmental policy on further technical changes to the Wetland Conservation Act and rules to provide for an improved regulatory consolidation process, public water inventory refinement, and other changes to improve wetland regulatory programs. The report shall include the language on any recommended draft law and rule changes.

Sec. 20. EXEMPT RULES.

(a) Within 90 days of the effective date of this section, the board of water and soil resources and the commissioner of natural resources shall adopt rules that amend the rules previously adopted under Minnesota Statutes, sections 103G.2242, subdivision 1; 103B.3355; and 103G.315, subdivision 15, to:

- (1) provide sequencing and standard of application rules for public waters wetlands and permanently and semipermanently flooded areas of type 3, 4, and 5 wetlands under the Wetland Conservation Act;
- (2) incorporate changes to the statutes in this act; and
- (3) other provisions to improve consistency of wetland regulatory processes.

(b) The rules authorized under paragraph (a) are exempt from the rulemaking provisions of Minnesota Statutes, chapter 14, except that Minnesota Statutes, section

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14.386, applies and the proposed rules must be submitted to the members of senate and house environment and natural resource and agriculture policy committees at least 30 days prior to being published in the State Register. The amended rules are effective for two years from the date of publication of the rules in the State Register unless they are superseded by permanent rules.

Sec. 21. **EFFECTIVE DATE.**

Sections 1 to 5, 9 to 10, 14 to 16, and 18 to 20 are effective the day following final enactment.

Presented to the governor April 10, 2000

Signed by the governor April 13, 2000, 4:58 p.m.

CHAPTER 383—S.F.No. 76

VETOED

CHAPTER 384—S.F.No. 3701

An act relating to state government; adding members to the designer selection board; providing the designation of at least two designers for projects at the University of Minnesota or the state colleges and universities; amending Minnesota Statutes 1998, section 16B.33, subdivisions 2 and 3a.

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

Section 1. Minnesota Statutes 1998, section 16B.33, subdivision 2, is amended to read:

Subd. 2. **ORGANIZATION OF BOARD.** (a) **MEMBERSHIP.** The state designer selection board consists of five ~~seven~~ individuals, the majority of whom must be Minnesota residents. Each of the following three ~~four~~ organizations shall nominate one individual whose name and qualifications shall be submitted to the commissioner of administration for consideration: the consulting engineers council of Minnesota after consultation with other professional engineering societies in the state; the AIA Minnesota society of architects; the Minnesota chapter of the associated general contractors after consultation with other commercial contractor associations in the state; and the Minnesota board of the arts. The commissioner may appoint the three ~~four~~ named individuals to the board but may reject a nominated individual and request another nomination. The fifth member shall be a representative of the user agency, the University of Minnesota, or the Minnesota state colleges and universities, designated

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