

SENATE
STATE OF MINNESOTA
EIGHTY-SEVENTH LEGISLATURE **S.F. No. 1244**

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DATE	D-PG	OFFICIAL STATUS
04/18/2011	1392	Introduction and first reading Referred to Environment and Natural Resources
04/28/2011	1460a	Comm report: To pass as amended and re-refer to State Government Innovation and Veterans
05/02/2011	1599a	Comm report: Amended Comm report: No recommendation, re-referred to Finance
05/10/2011	1921	Author added Saxhaug
	1958a	Comm report: To pass as amended
	1963	Second reading
05/11/2011	1982	Special Order
	1982	Third reading Passed See SF1115, Sec. 64-75, 87, 101-102

A bill for an act

relating to environment; modifying the Wetland Conservation Act; providing for state environmental permit coordination and management; modifying certain environmental review procedures; authorizing consumptive use of water; requiring rulemaking; amending Minnesota Statutes 2010, sections 103G.005, subdivision 10e, by adding a subdivision; 103G.2212; 103G.222, subdivisions 1, 3; 103G.2242, subdivisions 2a, 6, 7, 9, 12, 14, by adding a subdivision; 103G.2251; 116D.04, subdivision 2a, as amended; proposing coding for new law in Minnesota Statutes, chapters 103G; 116C.

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

2.1 limited to, computer modems and computer networks. Electronic transmission specifically
2.2 means electronic mail, unless other means of electronic transmission are mutually agreed
2.3 to by the sender and recipient.

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

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

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

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

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

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

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

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

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

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

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

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

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

2.29 Sec. 4. Minnesota Statutes 2010, section 103G.222, subdivision 1, is amended to read:

2.30 Subdivision 1. **Requirements.** (a) Wetlands must not be drained or filled, wholly or
2.31 partially, unless replaced by restoring or creating wetland areas of at least equal public
2.32 value under a replacement plan approved as provided in section 103G.2242, a replacement
2.33 plan under a local governmental unit's comprehensive wetland protection and management
2.34 plan approved by the board under section 103G.2243, or, if a permit to mine is required

3.1 under section 93.481, under a mining reclamation plan approved by the commissioner
3.2 under the permit to mine. For project-specific wetland replacement completed prior to
3.3 wetland impacts authorized or conducted under a permit to mine within the Great Lakes
3.4 and Rainy River watershed basins, those basins shall be considered a single watershed
3.5 for purposes of determining wetland replacement ratios. Mining reclamation plans shall
3.6 apply the same principles and standards for replacing wetlands by restoration or creation
3.7 of wetland areas that are applicable to mitigation plans approved as provided in section
3.8 103G.2242. Public value must be determined in accordance with section 103B.3355 or
3.9 a comprehensive wetland protection and management plan established under section
3.10 103G.2243. Sections 103G.221 to 103G.2372 also apply to excavation in permanently
3.11 and semipermanently flooded areas of types 3, 4, and 5 wetlands.

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

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

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

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

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

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

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

3.25 For a project involving the draining or filling of wetlands in an amount not exceeding
3.26 10,000 square feet more than the applicable amount in section 103G.2241, subdivision 9,
3.27 paragraph (a), the local government unit may make an on-site sequencing determination
3.28 without a written alternatives analysis from the applicant.

3.29 (c) If a wetland is located in a cultivated field, then replacement must be
3.30 accomplished through restoration only without regard to the priority order in paragraph
3.31 (b), provided that a deed restriction is placed on the altered wetland prohibiting
3.32 nonagricultural use for at least ten years.

3.33 (d) If a wetland is drained under section 103G.2241, subdivision 2, paragraphs
3.34 (b) and (e), the local government unit may require a deed restriction that prohibits
3.35 nonagricultural use for at least ten years unless the drained wetland is replaced as provided
3.36 under this section. The local government unit may require the deed restriction if it

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4.1 determines the wetland area drained is at risk of conversion to a nonagricultural use within
4.2 ten years based on the zoning classification, proximity to a municipality or full service
4.3 road, or other criteria as determined by the local government unit.

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

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

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

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

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

4.25 (j) The Technical Evaluation Panel established under section 103G.2242, subdivision
4.26 2, shall ensure that sufficient time has occurred for the wetland to develop wetland
4.27 characteristics of soils, vegetation, and hydrology before recommending that the wetland
4.28 be deposited in the statewide wetland bank. If the Technical Evaluation Panel has reason
4.29 to believe that the wetland characteristics may change substantially, the panel shall
4.30 postpone its recommendation until the wetland has stabilized.

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

4.33 (l) For projects involving draining or filling of wetlands associated with a new public
4.34 transportation project, and for projects expanded solely for additional traffic capacity,
4.35 public transportation authorities may purchase credits from the board at the cost to the
4.36 board to establish credits. Proceeds from the sale of credits provided under this paragraph

5.1 are appropriated to the board for the purposes of this paragraph. For the purposes of this
5.2 paragraph, "transportation project" does not include an airport project.

5.3 (m) A replacement plan for wetlands is not required for individual projects that
5.4 result in the filling or draining of wetlands for the repair, rehabilitation, reconstruction,
5.5 or replacement of a currently serviceable existing state, city, county, or town public road
5.6 necessary, as determined by the public transportation authority, to meet state or federal
5.7 design or safety standards or requirements, excluding new roads or roads expanded solely
5.8 for additional traffic capacity lanes. This paragraph only applies to authorities for public
5.9 transportation projects that:

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

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

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

5.22 Those required to receive notice of public transportation projects may appeal
5.23 minimization, delineation, and on-site mitigation decisions made by the public
5.24 transportation authority to the board according to the provisions of section 103G.2242,
5.25 subdivision 9. The Technical Evaluation Panel shall review minimization and delineation
5.26 decisions made by the public transportation authority and provide recommendations
5.27 regarding on-site mitigation if requested to do so by the local government unit, a
5.28 contiguous landowner, or a member of the Technical Evaluation Panel.

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

5.33 Public transportation authorities at their discretion may deviate from federal and
5.34 state design standards on existing road projects when practical and reasonable to avoid
5.35 wetland filling or draining, provided that public safety is not unreasonably compromised.
5.36 The local road authority and its officers and employees are exempt from liability for

6.1 any tort claim for injury to persons or property arising from travel on the highway and
6.2 related to the deviation from the design standards for construction or reconstruction under
6.3 this paragraph. This paragraph does not preclude an action for damages arising from
6.4 negligence in construction or maintenance on a highway.

6.5 (n) If a landowner seeks approval of a replacement plan after the proposed project
6.6 has already affected the wetland, the local government unit may require the landowner to
6.7 replace the affected wetland at a ratio not to exceed twice the replacement ratio otherwise
6.8 required.

6.9 (o) A local government unit may request the board to reclassify a county or
6.10 watershed on the basis of its percentage of presettlement wetlands remaining. After
6.11 receipt of satisfactory documentation from the local government, the board shall change
6.12 the classification of a county or watershed. If requested by the local government unit,
6.13 the board must assist in developing the documentation. Within 30 days of its action to
6.14 approve a change of wetland classifications, the board shall publish a notice of the change
6.15 in the Environmental Quality Board Monitor.

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

6.22 Sec. 5. Minnesota Statutes 2010, section 103G.222, subdivision 3, is amended to read:

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

6.27 (1) on site or in the same minor watershed as the ~~affected~~ impacted wetland;
6.28 (2) in the same watershed as the ~~affected~~ impacted wetland;
6.29 (3) in the same county or wetland bank service area as the ~~affected~~ impacted wetland;
6.30 (4) ~~for replacement by wetland banking, in the same wetland bank service area as~~
6.31 ~~the impacted wetland, except that impacts in a 50 to 80 percent area must be replaced in~~
6.32 ~~a 50 to 80 percent area and impacts in a less than 50 percent area must be replaced in a~~
6.33 ~~less than 50 percent area;~~

6.34 (5) ~~for project specific replacement, in an adjacent watershed to the affected wetland,~~
6.35 ~~or for replacement by wetland banking, in an adjacent~~ another wetland bank service

7.1 area, ~~except that impacts in a 50 to 80 percent area must be replaced in a 50 to 80 percent~~
7.2 ~~area and impacts in a less than 50 percent area must be replaced in a less than 50 percent~~
7.3 ~~area;~~ and

7.4 ~~(6)~~ (5) statewide for public transportation projects, except that wetlands ~~affected~~
7.5 impacted in less than 50 percent areas must be replaced in less than 50 percent areas, and
7.6 wetlands ~~affected~~ impacted in the seven-county metropolitan area must be replaced at a
7.7 ratio of two to one in: (i) the affected county or, (ii) in another of the seven metropolitan
7.8 counties, or (iii) in one of the major watersheds that are wholly or partially within the
7.9 seven-county metropolitan area, but at least one to one must be replaced within the
7.10 seven-county metropolitan area.

7.11 ~~(b) Notwithstanding paragraph (a), siting wetland replacement in greater than 80~~
7.12 ~~percent areas may follow the priority order under this paragraph: (1) by wetland banking~~
7.13 ~~after evaluating on-site replacement and replacement within the watershed; (2) replaced~~
7.14 ~~in an adjacent wetland bank service area if wetland bank credits are not reasonably~~
7.15 ~~available in the same wetland bank service area as the affected wetland, as determined by~~
7.16 ~~a comprehensive inventory approved by the board; and (3) statewide.~~

7.17 ~~(c) Notwithstanding paragraph (a), siting wetland replacement in the seven-county~~
7.18 ~~metropolitan area must follow the priority order under this paragraph: (1) in the affected~~
7.19 ~~county; (2) in another of the seven metropolitan counties; or (3) in one of the major~~
7.20 ~~watersheds that are wholly or partially within the seven-county metropolitan area, but at~~
7.21 ~~least one to one must be replaced within the seven-county metropolitan area.~~

7.22 ~~(d)~~ The exception in paragraph (a), clause ~~(6)~~ (5), does not apply to replacement
7.23 completed using wetland banking credits established by a person who submitted a
7.24 complete wetland banking application to a local government unit by April 1, 1996.

7.25 ~~(e)~~ (c) When reasonable, practicable, and environmentally beneficial replacement
7.26 opportunities are not available in siting priorities listed in paragraph (a), the applicant
7.27 may seek opportunities at the next level.

7.28 ~~(f)~~ (d) For the purposes of this section, "reasonable, practicable, and environmentally
7.29 beneficial replacement opportunities" are defined as opportunities that:

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

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

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

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

8.3 (e) Applicants and local government units shall rely on board-approved
8.4 comprehensive inventories of replacement opportunities and watershed conditions,
8.5 including the Northeast Minnesota Wetland Mitigation Inventory and Assessment (January
8.6 2010), in determining whether reasonable, practicable, and environmentally beneficial
8.7 replacement opportunities are available.

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

8.11 Sec. 6. Minnesota Statutes 2010, section 103G.2242, subdivision 2a, is amended to
8.12 read:

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

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

8.25 (c) The local government unit decision must be made in compliance with section
8.26 15.99. Within ten calendar days of the decision, the local government unit decision must
8.27 be mailed or sent by electronic transmission to the landowner, members of the Technical
8.28 Evaluation Panel, the watershed district or watershed management organization, if one
8.29 exists, and individual members of the public who request a copy.

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

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

9.4 Sec. 7. Minnesota Statutes 2010, section 103G.2242, subdivision 6, is amended to read:

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

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

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

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

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

9.26 Sec. 8. Minnesota Statutes 2010, section 103G.2242, subdivision 7, is amended to read:

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

9.33 Sec. 9. Minnesota Statutes 2010, section 103G.2242, subdivision 9, is amended to read:

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

10.9 (1) the wetland owner;

10.10 (2) any of those to whom notice is required to be mailed or sent by electronic
10.11 transmission under subdivision 7; or

10.12 (3) 100 residents of the county in which a majority of the wetland is located.

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

10.16 (1) the appeal is ~~meritless~~ without significant merit, trivial, or brought solely for the
10.17 purposes of delay;

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

10.19 (3) expanded technical review is needed;

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

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

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

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

10.35 (e) Notwithstanding section 16A.1283, the board shall establish a fee schedule to
10.36 defray the administrative costs of appeals made to the board under this subdivision. Fees

11.1 established under this authority shall not exceed \$1,000. Establishment of the fee is not
11.2 subject to the rulemaking process of chapter 14 and section 14.386 does not apply.

11.3 Sec. 10. Minnesota Statutes 2010, section 103G.2242, subdivision 12, is amended to
11.4 read:

11.5 Subd. 12. **Replacement credits.** (a) No public or private wetland restoration,
11.6 enhancement, or construction may be allowed for replacement unless specifically
11.7 designated for replacement and paid for by the individual or organization performing the
11.8 wetland restoration, enhancement, or construction, and is completed prior to any draining
11.9 or filling of the wetland.

11.10 (b) Paragraph (a) does not apply to a wetland whose owner has paid back with
11.11 interest the individual or organization restoring, enhancing, or constructing the wetland.

11.12 (c) Notwithstanding section 103G.222, subdivision 1, paragraph (i), the following
11.13 actions, and others established in rule, that are consistent with criteria in rules adopted
11.14 by the board in conjunction with the commissioners of natural resources and agriculture,
11.15 are eligible for replacement credit as determined by the local government unit, including
11.16 enrollment in a statewide wetlands bank:

11.17 (1) reestablishment of permanent native, noninvasive vegetative cover on a wetland
11.18 on agricultural land that was planted with annually seeded crops, was in a crop rotation
11.19 seeding of pasture grasses or legumes, or was in a land retirement program during the
11.20 past ten years;

11.21 (2) buffer areas of permanent native, noninvasive vegetative cover established or
11.22 preserved on upland adjacent to replacement wetlands;

11.23 (3) wetlands restored for conservation purposes under terminated easements or
11.24 contracts; and

11.25 (4) water quality treatment ponds constructed to pretreat storm water runoff prior
11.26 to discharge to wetlands, public waters, or other water bodies, provided that the water
11.27 quality treatment ponds must be associated with an ongoing or proposed project that
11.28 will impact a wetland and replacement credit for the treatment ponds is based on the
11.29 replacement of wetland functions and on an approved storm water management plan
11.30 for the local government.

11.31 (d) Notwithstanding section 103G.222, subdivision 1, paragraphs (f) and (g), the
11.32 board may establish by rule different replacement ratios for restoration projects with
11.33 exceptional natural resource value.

11.34 (e) A wetland banking program established by the board may include designation of
11.35 single-user or other dedicated wetland banking accounts.

12.1 Sec. 11. Minnesota Statutes 2010, section 103G.2242, subdivision 14, is amended to
12.2 read:

12.3 Subd. 14. **Fees established.** (a) Fees must be assessed for managing wetland bank
12.4 accounts and transactions as follows:

12.5 (1) account maintenance annual fee: one percent of the value of credits not to
12.6 exceed \$500;

12.7 (2) account establishment, deposit, or transfer: 6.5 percent of the value of credits not
12.8 to exceed \$1,000 per establishment, deposit, or transfer; and

12.9 (3) withdrawal fee: 6.5 percent of the value of credits withdrawn.

12.10 (b) The board may establish fees at or below the amounts in paragraph (a) for
12.11 single-user or other dedicated wetland banking accounts.

12.12 (c) Fees for single-user or other dedicated wetland banking accounts established
12.13 pursuant to section 103G.005, subdivision 10, paragraph (e), clause (4), are limited to
12.14 establishment of a wetland banking account and are assessed at the rate of 6.5 percent of
12.15 the value of the credits not to exceed \$1,000.

12.16 Sec. 12. Minnesota Statutes 2010, section 103G.2242, is amended by adding a
12.17 subdivision to read:

12.18 Subd. 9a. **Appeals of restoration or replacement orders.** A landowner or other
12.19 responsible party may appeal the terms and conditions of a restoration or replacement
12.20 order within 30 days of receipt of written notice of the order. The time frame for the appeal
12.21 may be extended beyond 30 days by mutual agreement, in writing, between the landowner
12.22 or responsible party, the local government unit, and the enforcement authority. If the
12.23 written request is not submitted within 30 days, the order is final. The board's executive
12.24 director must review the request and supporting evidence and render a decision within 60
12.25 days of receipt of a petition. A decision on an appeal must be considered the decision of an
12.26 agency in a contested case for purposes of judicial review under sections 14.63 to 14.69.

12.27 Sec. 13. Minnesota Statutes 2010, section 103G.2251, is amended to read:

12.28 **103G.2251 STATE CONSERVATION EASEMENTS; WETLAND BANK**
12.29 **CREDIT.**

12.30 In greater than 80 percent areas, preservation of wetlands ~~owned by the state or a~~
12.31 ~~local unit of government~~, protected by a permanent conservation easement as defined
12.32 under section 84C.01 and held by the board, may be eligible for wetland replacement
12.33 or mitigation credits, according to rules adopted by the board. To be eligible for credit
12.34 under this section, a conservation easement must be established after May 24, 2008, and

13.1 approved by the board. This section does not apply to wetland areas on private lands if the
13.2 area is protected by a conservation easement that was acquired with public money.

13.3 Sec. 14. **[103G.2373] ELECTRONIC TRANSMISSION.**

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

13.7 Sec. 15. **[116C.10] ENVIRONMENTAL PERMIT MANAGEMENT AND**
13.8 **COORDINATION.**

13.9 (a) All environmental permits that involve more than one state or federal agency shall
13.10 be managed and coordinated by the state agency with primary jurisdiction in permitting
13.11 the project. If environmental review under chapter 116D is or will be conducted for the
13.12 project and a state agency is the responsible governmental unit, the state agency named as
13.13 the responsible governmental unit shall manage and coordinate the state permitting for the
13.14 project. If no state agency is the responsible governmental unit for environmental review
13.15 on the project, the agency responsible for managing and coordinating the state permit
13.16 process shall be selected by the Department of Administration.

13.17 (b) The state agency responsible for managing and coordinating state permits under
13.18 paragraph (a) shall:

13.19 (1) develop a timeline for all permits issued by state and federal agencies and
13.20 coordinate the permits among the agencies;

13.21 (2) provide the project proposer the timeline for all state and federal permits; and

13.22 (3) be the contact person for the project proposer for all state and federal permits.

13.23 Sec. 16. Minnesota Statutes 2010, section 116D.04, subdivision 2a, as amended by
13.24 Laws 2011, chapter 4, section 6, is amended to read:

13.25 Subd. 2a. **When prepared.** Where there is potential for significant environmental
13.26 effects resulting from any major governmental action, the action shall be preceded by a
13.27 detailed environmental impact statement prepared by the responsible governmental unit.
13.28 The environmental impact statement shall be an analytical rather than an encyclopedic
13.29 document which describes the proposed action in detail, analyzes its significant
13.30 environmental impacts, discusses appropriate alternatives to the proposed action and
13.31 their impacts, and explores methods by which adverse environmental impacts of an
13.32 action could be mitigated. The environmental impact statement shall also analyze those
13.33 economic, employment and sociological effects that cannot be avoided should the action

14.1 be implemented. To ensure its use in the decision-making process, the environmental
14.2 impact statement shall be prepared as early as practical in the formulation of an action.
14.3 No mandatory environmental impact statement may be required for an ethanol plant,
14.4 as defined in section 41A.09, subdivision 2a, paragraph (b), that produces less than
14.5 125,000,000 gallons of ethanol annually and is located outside of the seven-county
14.6 metropolitan area.

14.7 (a) The board shall by rule establish categories of actions for which environmental
14.8 impact statements and for which environmental assessment worksheets shall be prepared
14.9 as well as categories of actions for which no environmental review is required under
14.10 this section.

14.11 (b) The responsible governmental unit shall promptly publish notice of the
14.12 completion of an environmental assessment worksheet in a manner to be determined by
14.13 the board and shall provide copies of the environmental assessment worksheet to the board
14.14 and its member agencies. Comments on the need for an environmental impact statement
14.15 may be submitted to the responsible governmental unit during a 30-day period following
14.16 publication of the notice that an environmental assessment worksheet has been completed.
14.17 The responsible governmental unit's decision on the need for an environmental impact
14.18 statement shall be based on the environmental assessment worksheet and the comments
14.19 received during the comment period, and shall be made within 15 days after the close of
14.20 the comment period. The board's chair may extend the 15-day period by not more than 15
14.21 additional days upon the request of the responsible governmental unit.

14.22 (c) An environmental assessment worksheet shall also be prepared for a proposed
14.23 action whenever material evidence accompanying a petition by not less than ~~25~~ 100
14.24 individuals who reside or own property in the county or an adjoining county where the
14.25 proposed action will be located, submitted before the proposed project has received final
14.26 approval by the appropriate governmental units, demonstrates that, because of the nature
14.27 or location of a proposed action, there may be potential for significant environmental
14.28 effects. Petitions requesting the preparation of an environmental assessment worksheet
14.29 shall be submitted to the board. The chair of the board shall determine the appropriate
14.30 responsible governmental unit and forward the petition to it. A decision on the need for
14.31 an environmental assessment worksheet shall be made by the responsible governmental
14.32 unit within 15 days after the petition is received by the responsible governmental unit.
14.33 The board's chair may extend the 15-day period by not more than 15 additional days upon
14.34 request of the responsible governmental unit.

15.1 (d) Except in an environmentally sensitive location where Minnesota Rules, part
15.2 4410.4300, subpart 29, item B, applies, the proposed action is exempt from environmental
15.3 review under this chapter and rules of the board, if:

15.4 (1) the proposed action is:

15.5 (i) an animal feedlot facility with a capacity of less than 1,000 animal units; or

15.6 (ii) an expansion of an existing animal feedlot facility with a total cumulative
15.7 capacity of less than 1,000 animal units;

15.8 (2) the application for the animal feedlot facility includes a written commitment by
15.9 the proposer to design, construct, and operate the facility in full compliance with Pollution
15.10 Control Agency feedlot rules; and

15.11 (3) the county board holds a public meeting for citizen input at least ten business
15.12 days prior to the Pollution Control Agency or county issuing a feedlot permit for the
15.13 animal feedlot facility unless another public meeting for citizen input has been held with
15.14 regard to the feedlot facility to be permitted. The exemption in this paragraph is in
15.15 addition to other exemptions provided under other law and rules of the board.

15.16 (e) The board may, prior to final approval of a proposed project, require preparation
15.17 of an environmental assessment worksheet by a responsible governmental unit selected
15.18 by the board for any action where environmental review under this section has not been
15.19 specifically provided for by rule or otherwise initiated.

15.20 (f) An early and open process shall be utilized to limit the scope of the environmental
15.21 impact statement to a discussion of those impacts, which, because of the nature or location
15.22 of the project, have the potential for significant environmental effects. The same process
15.23 shall be utilized to determine the form, content and level of detail of the statement as well
15.24 as the alternatives which are appropriate for consideration in the statement. In addition,
15.25 the permits which will be required for the proposed action shall be identified during the
15.26 scoping process. Further, the process shall identify those permits for which information
15.27 will be developed concurrently with the environmental impact statement. The board
15.28 shall provide in its rules for the expeditious completion of the scoping process. The
15.29 determinations reached in the process shall be incorporated into the order requiring the
15.30 preparation of an environmental impact statement.

15.31 (g) The responsible governmental unit shall, to the extent practicable, avoid
15.32 duplication and ensure coordination between state and federal environmental review
15.33 and between environmental review and environmental permitting. Whenever practical,
15.34 information needed by a governmental unit for making final decisions on permits or
15.35 other actions required for a proposed project shall be developed in conjunction with the
15.36 preparation of an environmental impact statement.

16.1 (h) An environmental impact statement shall be prepared and its adequacy
16.2 determined within 280 days after notice of its preparation unless the time is extended by
16.3 consent of the parties or by the governor for good cause. The responsible governmental
16.4 unit shall determine the adequacy of an environmental impact statement, unless within 60
16.5 days after notice is published that an environmental impact statement will be prepared,
16.6 the board chooses to determine the adequacy of an environmental impact statement. If an
16.7 environmental impact statement is found to be inadequate, the responsible governmental
16.8 unit shall have 60 days to prepare an adequate environmental impact statement.

16.9 (i) The proposer of a specific action may include in the information submitted to the
16.10 responsible governmental unit a preliminary draft environmental impact statement under
16.11 this section on that action for review, modification, and determination of completeness and
16.12 adequacy by the responsible governmental unit. A preliminary draft environmental impact
16.13 statement prepared by the project proposer and submitted to the responsible governmental
16.14 unit shall identify or include as an appendix all studies and other sources of information
16.15 used to substantiate the analysis contained in the preliminary draft environmental impact
16.16 statement. The responsible governmental unit shall require additional studies, if needed,
16.17 and obtain from the project proposer all additional studies and information necessary for
16.18 the responsible governmental unit to perform its responsibility to review, modify, and
16.19 determine the completeness and adequacy of the environmental impact statement.

16.20 Sec. 17. **RULEMAKING; ENVIRONMENTAL REVIEW AND SOLID WASTE**
16.21 **LAND DISPOSAL FACILITY PERMITS.**

16.22 Subdivision 1. Environmental Quality Board. The Environmental Quality Board
16.23 shall amend Minnesota Rules, part 4410.0200, subpart 65, to state that if the proposed
16.24 action concerns a solid waste land disposal facility:

16.25 (1) the project review shall be for the ultimate design capacity of the site based
16.26 on the requirements of the category; and

16.27 (2) the responsible governmental unit shall review the project proposed, in
16.28 conjunction with any existing facility impacts, and shall not modify or change the project
16.29 without approval of the proposer.

16.30 Subd. 2. Pollution Control Agency. The Pollution Control Agency shall amend
16.31 Minnesota Rules, part 7001.3500, subpart 1, to extend permit terms to ten years and take
16.32 into account site capacity for a solid waste land disposal facility.

16.33 Sec. 18. **CONSUMPTIVE USE OF WATER.**

17.1 Pursuant to Minnesota Statutes, section 103G.265, subdivision 3, the legislature
17.2 approves of the consumptive use of water under a permit of more than 2,000,000 gallons
17.3 per day average in a 30-day period in Cook County, in connection with snowmaking
17.4 and potable water. Notwithstanding any other law to the contrary, the permit for the
17.5 consumptive use of water approved under this section shall be issued, subject to the
17.6 fees specified under Minnesota Statutes, section 103G.271, without any additional
17.7 administrative process to withdraw up to 200,000,000 gallons of water annually for
17.8 snowmaking and potable water purposes without regard to minimum flow or water level
17.9 requirements.

17.10 Sec. 19. **ENVIRONMENTAL QUALITY BOARD; TEMPORARY EXEMPTION**
17.11 **FROM ENVIRONMENTAL REVIEW.**

17.12 The Environmental Quality Board shall develop additional categories of actions that
17.13 are exempt from environmental review for a five-year period. By January 15, 2012, the
17.14 board shall adopt, by rule, the additional exempt categories of actions. By January 15,
17.15 2013, and each year thereafter until the temporary rules expire, the board shall report to
17.16 the chairs and ranking minority caucus members of the senate and house of representatives
17.17 committees with jurisdiction over environmental policy with an analysis of the temporary
17.18 exemptions from environmental review.

17.19 Sec. 20. **RULE AMENDMENT.**

17.20 The commissioner of the Pollution Control Agency, the commissioner of natural
17.21 resources, and the Environmental Quality Board, must amend rules necessary to conform
17.22 to this act. The commissioners and the board may use the good cause exemption under
17.23 Minnesota Statutes, section 14.388, subdivision 1, clause (3), and Minnesota Statutes,
17.24 section 14.386, does not apply, except as provided in Minnesota Statutes, section 14.388.

17.25 Sec. 21. **EFFECTIVE DATE.**

17.26 This act is effective the day following final enactment.