

CHAPTER 103G

WATERS OF THE STATE

103G.005	Definitions.	103G.298	Landscape irrigation systems.
103G.222	Replacement of wetlands.	103G.611	Water aeration safety.
103G.2242	Wetland value replacement plans.	103G.615	Permits to harvest or destroy aquatic plants.
103G.245	Work in public waters.		
103G.271	Appropriation and use of waters.		

103G.005 DEFINITIONS.

[For text of subs 1 to 10d, see M.S.2002]

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.

[For text of subs 11 to 19, see M.S.2002]

History: 2003 c 128 art 1 s 111

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 types 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 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) Except as provided in paragraph (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.

(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.

(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.

(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.

(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 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.

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

(k) For projects involving draining or filling of wetlands associated with a new public transportation project, and for projects expanded solely for additional traffic capacity, public transportation authorities may purchase credits from the board at the cost to the board to establish credits.

(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;

(2) except as provided in clause (3), submit project-specific reports 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 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 transpor-

tation authority to the board according to the provisions of section 103G.2242, subdivision 9. The Technical Evaluation Panel shall review minimization and delineation 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.

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.

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

(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.

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

[For text of subd 2, see M.S.2002]

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 at a ratio of two to one in: (i) the affected county or, (ii) in another of the seven metropolitan counties, or (iii) in one of the major watersheds that are wholly or partially within the seven-county metropolitan area, but at least one to one must be replaced within the seven-county metropolitan area.

(b) 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.

History: 2003 c 128 art 1 s 112,113

103G.2242 WETLAND VALUE REPLACEMENT PLANS.

[For text of subs 1 to 12, see M.S.2002]

Subd. 14. **Fees established.** Fees must be assessed for managing wetland bank accounts and transactions as follows:

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

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

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

Subd. 15. **Fees paid to board.** All fees established in subdivision 14 must be paid to the Board of Water and Soil Resources and credited to the general fund to be used for the purpose of administration of the wetland bank.

History: 2003 c 128 art 1 s 114,115

103G.245 WORK IN PUBLIC WATERS.

[For text of subs 1 to 4, see M.S.2002]

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 and for wetland areas of public waters affected by a public transportation project as determined by the commissioner, 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 103A.201, 103B.3355, and 103G.222 to 103G.2372, 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.2372, and rules adopted pursuant to these same sections in the public waters work permit.

[For text of subs 6 to 12, see M.S.2002]

History: 2003 c 2 art 1 s 14

103G.271 APPROPRIATION AND USE OF WATERS.

[For text of subs 1 to 5a, see M.S.2002]

Subd. 6. **Water use permit processing fee.** (a) Except as described in paragraphs (b) to (f), a water use permit processing fee must be prescribed by the commissioner in accordance with the schedule of fees in this subdivision for each water use permit in force at any time during the year. The schedule is as follows, with the stated fee in each clause applied to the total amount appropriated:

- (1) \$101 for amounts not exceeding 50,000,000 gallons per year;
- (2) \$3 per 1,000,000 gallons for amounts greater than 50,000,000 gallons but less than 100,000,000 gallons per year;
- (3) \$3.50 per 1,000,000 gallons for amounts greater than 100,000,000 gallons but less than 150,000,000 gallons per year;
- (4) \$4 per 1,000,000 gallons for amounts greater than 150,000,000 gallons but less than 200,000,000 gallons per year;
- (5) \$4.50 per 1,000,000 gallons for amounts greater than 200,000,000 gallons but less than 250,000,000 gallons per year;
- (6) \$5 per 1,000,000 gallons for amounts greater than 250,000,000 gallons but less than 300,000,000 gallons per year;
- (7) \$5.50 per 1,000,000 gallons for amounts greater than 300,000,000 gallons but less than 350,000,000 gallons per year;
- (8) \$6 per 1,000,000 gallons for amounts greater than 350,000,000 gallons but less than 400,000,000 gallons per year;
- (9) \$6.50 per 1,000,000 gallons for amounts greater than 400,000,000 gallons but less than 450,000,000 gallons per year;
- (10) \$7 per 1,000,000 gallons for amounts greater than 450,000,000 gallons but less than 500,000,000 gallons per year; and
- (11) \$7.50 per 1,000,000 gallons for amounts greater than 500,000,000 gallons per year.

(b) For once-through cooling systems, a water use processing fee must be prescribed by the commissioner in accordance with the following schedule of fees for each water use permit in force at any time during the year:

- (1) for nonprofit corporations and school districts, \$150 per 1,000,000 gallons; and
- (2) for all other users, \$200 per 1,000,000 gallons.

(c) The fee is payable based on the amount of water appropriated during the year and, except as provided in paragraph (f), the minimum fee is \$100.

(d) For water use processing fees other than once-through cooling systems:

- (1) the fee for a city of the first class may not exceed \$250,000 per year;
- (2) the fee for other entities for any permitted use may not exceed:
 - (i) \$50,000 per year for an entity holding three or fewer permits;
 - (ii) \$75,000 per year for an entity holding four or five permits;
 - (iii) \$250,000 per year for an entity holding more than five permits;
- (3) the fee for agricultural irrigation may not exceed \$750 per year;
- (4) the fee for a municipality that furnishes electric service and cogenerates steam for home heating may not exceed \$10,000 for its permit for water use related to the cogeneration of electricity and steam; and

(5) no fee is required for a project involving the appropriation of surface water to prevent flood damage or to remove flood waters during a period of flooding, as determined by the commissioner.

(e) Failure to pay the fee is sufficient cause for revoking a permit. A penalty of two percent per month calculated from the original due date must be imposed on the unpaid balance of fees remaining 30 days after the sending of a second notice of fees due. A fee may not be imposed on an agency, as defined in section 16B.01, subdivision 2, or federal governmental agency holding a water appropriation permit.

(f) The minimum water use processing fee for a permit issued for irrigation of agricultural land is \$20 for years in which:

(1) there is no appropriation of water under the permit; or

(2) the permit is suspended for more than seven consecutive days between May 1 and October 1.

Subd. 6a. **Payment of fees for past unpermitted appropriations.** An entity that appropriates water without a required permit under subdivision 1 must pay the applicable water use permit processing fee specified in subdivision 6 for the period during which the unpermitted appropriation occurred. The fees for unpermitted appropriations are required for the previous seven calendar years after being notified of the need for a permit. This fee is in addition to any other fee or penalty assessed.

[For text of subd 7, see M.S.2002]

History: 2003 c 128 art 1 s 116,117

103G.298 LANDSCAPE IRRIGATION SYSTEMS.

All automatically operated landscape irrigation systems shall have furnished and installed technology that inhibits or interrupts operation of the landscape irrigation system during periods of sufficient moisture. The technology must be adjustable either by the end user or the professional practitioner of landscape irrigation services.

History: 2003 c 44 s 1

103G.611 WATER AERATION SAFETY.

Subdivision 1. **Requirements.** (a) The fee for a permit to operate an aeration system on public waters during periods of ice cover is \$250. The commissioner may waive the fee for aeration systems that are assisting efforts to maintain angling opportunities through the prevention of winterkill. To be eligible for the fee waiver, the lake being aerated must have public access and aeration must be identified as a desirable management tool in a plan approved by the commissioner. Operation of the aeration system in a manner not consistent with the approved plan represents justification for rescinding the fee waiver. The fee may not be charged to the state or a federal governmental agency applying for a permit. The money received for permits under this subdivision must be deposited in the treasury and credited to the game and fish fund.

(b) A person operating an aeration system on public waters under a water aeration permit must comply with the sign posting requirements of this section and applicable rules of the commissioner.

[For text of subs 2 to 6, see M.S.2002]

History: 2003 c 128 art 1 s 118

103G.615 PERMITS TO HARVEST OR DESTROY AQUATIC PLANTS.

[For text of subd 1, see M.S.2002]

Subd. 2. **Fees.** (a) The commissioner shall establish a fee schedule for permits to harvest aquatic plants other than wild rice, by order, after holding a public hearing. The fees may not exceed \$750 per permit based upon the cost of receiving, processing, analyzing, and issuing the permit, and additional costs incurred after the application to

inspect and monitor the activities authorized by the permit, and enforce aquatic plant management rules and permit requirements.

(b) The fee for a permit for the destruction of rooted aquatic vegetation is \$35 for each contiguous parcel of shoreline owned by an owner. This fee may not be charged for permits issued in connection with lakewide Eurasian water milfoil control programs.

(c) A fee may not be charged to the state or a federal governmental agency applying for a permit.

(d) The money received for the permits under this subdivision shall be deposited in the treasury and credited to the game and fish fund.

[For text of subds 3 to 7, see M.S.2002]

History: 2003 c 128 art 1 s 119