

SENATE
STATE OF MINNESOTA
EIGHTY-SEVENTH LEGISLATURE

S.F. No. 1404

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DATE	D-PG	OFFICIAL STATUS
05/09/2011	1847	Introduction and first reading Referred to Environment and Natural Resources

1.1 A bill for an act
1.2 relating to natural resources; modifying wetlands provisions; amending
1.3 Minnesota Statutes 2010, sections 103G.005, by adding a subdivision; 103G.222,
1.4 subdivisions 1, 3.

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

1.6 Section 1. Minnesota Statutes 2010, section 103G.005, is amended by adding a
1.7 subdivision to read:

1.8 Subd. 17c. **Wetland bank service area.** "Wetland bank service area" means the
1.9 geographic area established by rule in which permitted impacts may be replaced by
1.10 wetland restoration or purchase of wetland bank credits.

1.11 Sec. 2. Minnesota Statutes 2010, section 103G.222, subdivision 1, is amended to read:

1.12 Subdivision 1. **Requirements.** (a) Wetlands must not be drained or filled, wholly
1.13 or partially, unless replaced by restoring or creating wetland areas of at least equal
1.14 public value under a replacement plan approved as provided in section 103G.2242, a
1.15 replacement plan under a local governmental unit's comprehensive wetland protection
1.16 and management plan approved by the board under section 103G.2243, or, if a permit to
1.17 mine is required under section 93.481, under a mining reclamation plan approved by the
1.18 commissioner under the permit to mine. Mining reclamation plans shall apply the same
1.19 principles and standards for replacing wetlands by restoration or creation of wetland areas
1.20 that are applicable to mitigation plans approved as provided in section 103G.2242. Public
1.21 value must be determined in accordance with section 103B.3355 or a comprehensive
1.22 wetland protection and management plan established under section 103G.2243. Sections

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2.1 103G.221 to 103G.2372 also apply to excavation in permanently and semipermanently
2.2 flooded areas of types 3, 4, and 5 wetlands.

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

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

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

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

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

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

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

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

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

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

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

3.1 wetland. For actions occurring under paragraph (n), replacement of wetlands must not be
3.2 inconsistent with any established management plan for the publicly owned lands.

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

3.6 (g) Except as provided in paragraph (n), for a wetland or public waters wetland
3.7 located on agricultural land or in a greater than 80 percent area, replacement must be in
3.8 the ratio of one acre of replaced wetland for each acre of drained or filled wetland.

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

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

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

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

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

3.33 (m) A replacement plan for wetlands is not required for individual projects that
3.34 result in the filling or draining of wetlands for the repair, rehabilitation, reconstruction,
3.35 or replacement of a currently serviceable existing state, city, county, or town public road
3.36 necessary, as determined by the public transportation authority, to meet state or federal

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4.1 design or safety standards or requirements, excluding new roads or roads expanded solely
4.2 for additional traffic capacity lanes. This paragraph only applies to authorities for public
4.3 transportation projects that:

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

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

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

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

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

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

4.35 (n) For actions taken by a unit of government as part of public water resource
4.36 projects, which actions are implemented as part of a watershed or local water resource

5.1 management plan under chapter 103B or 103D or within an area covered by a
5.2 comprehensive wetland protection and management plan and result in wetland or public
5.3 waters wetland losses, the wetland losses may be replaced by restoration, creation, or
5.4 enhancement of wetlands on publicly owned lands. The state and its agencies shall
5.5 cooperate with units of government to allow for the replacement on publicly owned lands
5.6 and shall not charge units of government for the privilege of replacing wetland impacts
5.7 on publicly owned lands. In addition to the replacement actions recognized in section
5.8 103G.2242, subdivision 12, replacement occurring under this paragraph includes the
5.9 reestablishment of permanent native, noninvasive vegetative cover on a wetland degraded
5.10 by invasive vegetation. Replacement occurring under this paragraph shall be made in the
5.11 ratio of one acre of replaced wetland for each acre of drained or filled wetland.

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

5.16 ~~(o)~~ (p) A local government unit may request the board to reclassify a county or
5.17 watershed on the basis of its percentage of presettlement wetlands remaining. After
5.18 receipt of satisfactory documentation from the local government, the board shall change
5.19 the classification of a county or watershed. If requested by the local government unit,
5.20 the board must assist in developing the documentation. Within 30 days of its action to
5.21 approve a change of wetland classifications, the board shall publish a notice of the change
5.22 in the Environmental Quality Board Monitor.

5.23 ~~(p)~~ (q) One hundred citizens who reside within the jurisdiction of the local
5.24 government unit may request the local government unit to reclassify a county or watershed
5.25 on the basis of its percentage of presettlement wetlands remaining. In support of their
5.26 petition, the citizens shall provide satisfactory documentation to the local government unit.
5.27 The local government unit shall consider the petition and forward the request to the board
5.28 under paragraph ~~(o)~~ (p) or provide a reason why the petition is denied.

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

5.30 Subd. 3. **Wetland replacement siting.** (a) Siting wetland replacement must follow
5.31 this priority order:

5.32 (1) on site or in the same minor watershed as the affected wetland;

5.33 (2) in the same watershed as the affected wetland;

5.34 (3) in the same county as the affected wetland;

6.1 (4) for replacement by wetland banking, in the same wetland bank service area as
6.2 the impacted wetland, except that impacts in a 50 to 80 percent area must be replaced in
6.3 a 50 to 80 percent area and impacts in a less than 50 percent area must be replaced in a
6.4 less than 50 percent area;

6.5 (5) for project specific replacement, in an adjacent watershed to the affected wetland,
6.6 or for replacement by wetland banking, in an adjacent wetland bank service area, except
6.7 that impacts in a 50 to 80 percent area must be replaced in a 50 to 80 percent area and
6.8 impacts in a less than 50 percent area must be replaced in a less than 50 percent area; ~~and~~

6.9 (6) for replacement occurring under subdivision 1, paragraph (n), in: (i) areas
6.10 identified as priority locations for wetland restoration in a plan, report, or mapping
6.11 system of a nongovernmental organization, conservation group, or state agency; or (ii)
6.12 the watershed of the impact unless reasonable, practical, and environmentally beneficial
6.13 replacement opportunities do not exist on publicly owned lands in the watershed of the
6.14 impact. If reasonable, practical, and environmentally beneficial replacement opportunities
6.15 do not exist on publicly owned lands in the watershed of the impact, then replacement
6.16 shall occur, in order of priority, in the wetland bank service area where the impact occurs
6.17 or in an adjacent wetland bank service area. The siting requirements of paragraph (c) do
6.18 not apply to replacements occurring under subdivision 1, paragraph (n); and

6.19 ~~(6)~~ (7) statewide for public transportation projects, except that wetlands affected in
6.20 less than 50 percent areas must be replaced in less than 50 percent areas, and wetlands
6.21 affected in the seven-county metropolitan area must be replaced at a ratio of two to one in:
6.22 (i) the affected county or, (ii) in another of the seven metropolitan counties, or (iii) in one
6.23 of the major watersheds that are wholly or partially within the seven-county metropolitan
6.24 area, but at least one to one must be replaced within the seven-county metropolitan area.

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

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

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

7.4 (e) When reasonable, practicable, and environmentally beneficial replacement
7.5 opportunities are not available in siting priorities listed in paragraph (a), the applicant
7.6 may seek opportunities at the next level.

7.7 (f) For the purposes of this section, "reasonable, practicable, and environmentally
7.8 beneficial replacement opportunities" are defined as opportunities that:

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

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

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

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

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