

**Sec. 6. EFFECTIVE DATE.**

This act is effective the day following final enactment.

Presented to the governor April 4, 1996

Signed by the governor April 11, 1996, 12:02 p.m.

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**CHAPTER 462—H.F.No. 787**

*An act relating to natural resources; water; modifying wetland protection and management; authorizing rulemaking; appropriating money; amending Minnesota Statutes 1994, sections 84.035, subdivisions 5 and 6; 103B.3355; 103E.701, subdivision 6; 103F.612, subdivisions 2, 3, 5, 6, and 7; 103G.005, subdivision 10a, and by adding subdivisions; 103G.127; 103G.222; 103G.2241; 103G.2242, subdivisions 1, 2, 4, 6, 7, 9, and 12; 103G.237, subdivision 4, and by adding a subdivision; 103G.2373; and 115.03, by adding a subdivision; proposing coding for new law in Minnesota Statutes, chapter 103G; repealing Minnesota Statutes 1994, section 103G.2242, subdivision 13.*

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

Section 1. Minnesota Statutes 1994, section 84.035, subdivision 5, is amended to read:

**Subd. 5. ACTIVITIES IN PEATLAND SCIENTIFIC AND NATURAL AREAS.** Areas designated in subdivision 4 as peatland scientific and natural areas are subject to the following conditions:

(a) Except as provided in paragraph (b), all restrictions otherwise applicable to scientific and natural areas designated under section 86A.05, subdivision 5, apply to the surface use and to any use of the mineral estate which would significantly modify or alter the peatland water levels or flows, peatland water chemistry, plant or animal species or communities, or other natural features of the peatland scientific and natural areas, including, but not limited to, the following prohibitions:

(1) construction of any new public drainage systems after the effective date of Laws 1991, chapter 354, or improvement or repair to a public drainage system in existence on the effective date of Laws 1991, chapter 354, under authority of chapter 103E, or any other alteration of surface water or ground water levels or flows unless specifically permitted under paragraph (b), clause (5) or (6);

(2) removal of peat, sand, gravel, or other industrial minerals;

(3) exploratory boring or other exploration or removal of oil, natural gas, radioactive materials or metallic minerals which would significantly modify or alter the peatland water levels or flows, peatland water chemistry, plant or animal species or communities, or natural features of the peatland scientific and natural areas, except in the event of a national emergency declared by Congress;

(4) commercial timber harvesting;

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(5) construction of new corridors of disturbance, of the kind defined in subdivision 3, after June 5, 1991; and

(6) ditching, draining, filling, or any other activities which modify or alter the peatland water levels or flows, peatland water chemistry, plant or animal species or communities, or other natural features of the peatland scientific and natural areas.

(b) The following activities are allowed:

(1) recreational activities, including hunting, fishing, trapping, cross-country skiing, snowshoeing, nature observation, or other recreational activities permitted in the management plan approved by the commissioner;

(2) scientific and educational work and research;

(3) maintenance of corridors of disturbance, including survey lines and preparation of winter roads, consistent with protection of the peatland ecosystem;

(4) use of corridors of disturbance unless limited by a management plan adopted by the commissioner under subdivision 6;

(5) improvements to a public drainage system in existence on the effective date of Laws 1991, chapter 354, only when it is for the protection and maintenance of the ecological integrity of the peatland scientific and natural area and when included in a management plan adopted by the commissioner under subdivision 6;

(6) repairs to a public drainage system in existence on the effective date of Laws 1991, chapter 354, which crosses a peatland scientific and natural area and is used for the purposes of providing a drainage outlet for lands outside of the peatland scientific and natural area, provided that there are no other feasible and prudent alternative means of providing the drainage outlet. The commissioner shall cooperate with the ditch authority in the determination of any feasible and prudent alternatives. No repairs which would significantly modify or alter the peatland water levels or flows, peatland water chemistry, plant or animal species or communities, or other natural features of the peatland scientific and natural areas shall be made unless approved by the commissioner;

(7) motorized uses that are engaged in, on corridors a corridor of disturbance, if the corridor existed on or before the effective date of Laws 1991, chapter 354 January 1, 1992, provided that recreational motorized users may occur only when the substrate is frozen, or the corridor is snow packed, subject to a management plan developed in accordance with subdivision 6; and

(8) control of forest insects, disease, and wildfires, as described in a management plan adopted by the commissioner under subdivision 6; and

(9) geological and geophysical surveys which would not significantly modify or alter the peatland water levels or flows, peatland water chemistry, plant or animal species or communities, or other natural features of the peatland scientific and natural areas.

Sec. 2. Minnesota Statutes 1994, section 84.035, subdivision 6, is amended to read:

Subd. 6. **MANAGEMENT PLANS.** The commissioner shall develop in consultation with the affected local government unit a management plan for each peatland scientific and natural area designated under section 84.036 in a manner prescribed by section 86A.09.

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The management plan shall address recreational trails. In those peatland scientific and natural areas where no corridor of disturbance was used as a recreational trail on or before January 1, 1992, the plan may permit only one corridor of disturbance, in each peatland scientific and natural area, to be used as a recreational motorized trail.

Sec. 3. Minnesota Statutes 1994, section 103B.3355, is amended to read:

**103B.3355 ~~PUBLIC VALUE CRITERIA FOR WETLANDS~~ WETLAND FUNCTIONS FOR DETERMINING PUBLIC VALUES.**

(a) ~~The board of water and soil resources, in consultation with the commissioner of natural resources, shall adopt rules establishing criteria to determine The public value values of wetlands. The rules must consider the public benefit and use of the wetlands and include must be determined based upon the functions of wetlands for:~~

(1) criteria to determine the benefits of wetlands for water quality, including filtering of pollutants to surface and groundwater, utilization of nutrients that would otherwise pollute public waters, trapping of sediments, shoreline protection, and utilization of the wetland as a recharge area for groundwater;

(2) criteria to determine the benefits of wetlands for floodwater and stormwater retention, including the potential for flooding in the watershed, the value of property subject to flooding, and the reduction in potential flooding by the wetland;

(3) criteria to determine the benefits of wetlands for public recreation and education, including wildlife habitat, hunting and fishing areas, wildlife breeding areas, wildlife viewing areas, aesthetically enhanced areas, and nature areas;

(4) criteria to determine the benefits of wetlands for commercial uses, including wild rice and cranberry growing and harvesting and aquaculture; and

(5) fish, wildlife, native plant habitats; and

(6) low-flow augmentation; and

(7) criteria to determine the benefits of wetlands for other public uses.

(b) The board of water and soil resources, in consultation with the commissioners of natural resources and agriculture and local government units, shall adopt rules establishing:

(1) scientific methodologies for determining the functions of wetlands; and

(2) criteria for determining the resulting public values of wetlands.

(c) The methodologies and criteria established under this section or other methodologies and criteria that include the functions in paragraph (a) and are approved by the board, in consultation with the commissioners of natural resources and agriculture and local government units, must be used to determine the functions and resulting public value values of wetlands in the state. The functions listed in paragraph (a) are not listed in order of priority.

(d) Public value criteria established or approved by the board under this section do not apply in areas subject to local comprehensive wetland protection and management plans established under section 103G.2243.

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(e) The board of water and soil resources, in consultation with the commissioner commissioners of natural resources, shall also use the criteria in identifying and agriculture and local government units, may identify regions of the state where preservation, enhancement, restoration, and establishment of wetlands would have high public value. Before the criteria are adopted, The board, in consultation with the commissioner commissioners, may identify high priority wetland regions using available information relating to the factors listed in paragraph (a). The board shall notify local units of government with water planning authority of these high priority regions.

Sec. 4. Minnesota Statutes 1994, section 103E.701, subdivision 6, is amended to read:

Subd. 6. **WETLAND RESTORATION AND MITIGATION.** Repair of a drainage system may include the preservation, restoration, or enhancement of wetlands; wetland replacement under section 103G.222; and the realignment of a drainage system to prevent drainage of a wetland.

Sec. 5. Minnesota Statutes 1994, section 103F.612, subdivision 2, is amended to read:

Subd. 2. **APPLICATION.** (a) A wetland owner may apply to the county where a wetland is located for designation of a wetland preservation area in a high priority wetland area identified in a comprehensive local water plan, as defined in section 103B.3363, subdivision 3, and located within a high priority wetland region designated by the board of water and soil resources, if the county chooses to accept wetland preservation area applications. The application must be made on forms provided by the board. If a wetland is located in more than one county, the application must be submitted to the county where the majority of the wetland is located.

(b) The application must contain at least the following information and other information the board of soil and water resources requires:

(1) legal description of the area to be approved, which must include an upland strip at least 16-1/2 feet in width around the perimeter of wetlands within the area and may include total upland area of up to four acres for each acre of wetland;

(2) parcel identification numbers where designated by the county auditor;

(3) name and address of the owner;

(4) a witnessed signature of the owner covenanting that the land will be preserved as a wetland and will only be used in accordance with conditions prescribed by the board of water and soil resources; and

(5) a statement that the restrictive covenant will be binding on the owner and the owner's successors or assigns, and will run with the land.

(c) The upland strip required in paragraph (b), clause (1), must be planted with permanent vegetation other than a noxious weed.

(d) For registered property, the owner shall submit the owner's duplicate certificate of title with the application.

Sec. 6. Minnesota Statutes 1994, section 103F.612, subdivision 3, is amended to read:

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Subd. 3. **REVIEW AND NOTICE.** Upon receipt of an application, the county shall determine if all material required by subdivision 2 has been submitted and, if so, shall determine that the application is complete. The term "date of application" means the date the application is determined to be complete by the county. The county shall send a copy of the application to the county assessor, ~~the regional development commission, where applicable,~~ the board of water and soil resources, and the soil and water conservation district where the land is located. The soil and water conservation district shall prepare an advisory statement of existing and potential preservation problems or conflicts and send the statement to the owner of record and to the county. The county shall notify the landowner of the acceptance or denial of the application within 60 days from the date of the application.

Sec. 7. Minnesota Statutes 1994, section 103F.612, subdivision 5, is amended to read:

Subd. 5. **COMMENCEMENT OF WETLAND PRESERVATION AREA.** The wetland is a wetland preservation area commencing 30 days from the date the county ~~determines~~ notifies the landowner of acceptance of the application is complete under subdivision 3.

Sec. 8. Minnesota Statutes 1994, section 103F.612, subdivision 6, is amended to read:

Subd. 6. **FEE.** The county may require an application fee, ~~not to exceed \$50 to defray administrative costs of the program.~~

Sec. 9. Minnesota Statutes 1994, section 103F.612, subdivision 7, is amended to read:

Subd. 7. **MAPS.** ~~The board of water and soil resources~~ county shall maintain wetland preservation area maps illustrating land covenanted as wetland preservation areas.

Sec. 10. Minnesota Statutes 1994, section 103G.005, is amended by adding a subdivision to read:

Subd. 2a. **AGRICULTURAL LAND.** "Agricultural land" means: land used for horticultural, row, close grown, pasture, and hayland crops; growing nursery stocks; animal feedlots; farm yards; associated building sites; and public and private drainage systems and field roads located on any of the foregoing.

Sec. 11. Minnesota Statutes 1994, section 103G.005, is amended by adding a subdivision to read:

Subd. 10a. **50 TO 80 PERCENT AREA.** "50 to 80 percent area" means a county or watershed with at least 50 but less than 80 percent of the presettlement wetland acreage intact.

Sec. 12. Minnesota Statutes 1994, section 103G.005, is amended by adding a subdivision to read:

Subd. 10b. **GREATER THAN 80 PERCENT AREA.** "Greater than 80 percent area" means a county or watershed where 80 percent or more of the presettlement wetland acreage is intact and:

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- (1) ten percent or more of the current total land area is wetland; or
- (2) 50 percent or more of the current total land area is state or federal land.

Sec. 13. Minnesota Statutes 1994, section 103G.005, is amended by adding a subdivision to read:

Subd. 10c. HAYLAND. "Hayland" means an area that was mechanically harvested or that was planted with annually seeded crops in a crop rotation seeding of grasses or legumes in six of the last ten years prior to January 1, 1991.

Sec. 14. Minnesota Statutes 1994, section 103G.005, is amended by adding a subdivision to read:

Subd. 10d. LESS THAN 50 PERCENT AREA. "Less than 50 percent area" means a county or watershed with less than 50 percent of the presettlement wetland acreage intact or any county or watershed not defined as a "greater than 80 percent area" or "50 to 80 percent area."

Sec. 15. Minnesota Statutes 1994, section 103G.005, subdivision 10a, is amended to read:

Subd. 10a 10e. LOCAL GOVERNMENT UNIT. "Local government unit" means:

- (1) outside of the seven-county metropolitan area, a city council or county board of commissioners or their delegate; and
- (2) in the seven-county metropolitan area, a city council, a town board under section 368.01, or a watershed management organization under section 103B.211, or their delegate; and
- (3) on state land, the agency with administrative responsibility for the land.

Sec. 16. Minnesota Statutes 1994, section 103G.005, is amended by adding a subdivision to read:

Subd. 14a. PASTURE. "Pasture" means an area that was grazed by domesticated livestock or that was planted with annually seeded crops in a crop rotation seeding of grasses or legumes of the last years prior to January 1, 1991.

Sec. 17. Minnesota Statutes 1994, section 103G.005, is amended by adding a subdivision to read:

Subd. 14c. PRESETTLEMENT WETLAND. "Presettlement wetland" means a wetland or public waters wetland that existed in this state at the time of statehood in 1858.

Sec. 18. Minnesota Statutes 1994, section 103G.005, is amended by adding a subdivision to read:

Subd. 14d. PROJECT. "Project" means a specific plan, contiguous activity, proposal, or design necessary to accomplish a goal as defined by the local government unit. As used in this chapter, a project may not be split into components or phases for the sole purpose of gaining additional exemptions.

Sec. 19. Minnesota Statutes 1994, section 103G.005, is amended by adding a subdivision to read:

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Subd. 15b. **SHORELAND WETLAND PROTECTION ZONE.** “Shoreland wetland protection zone” means:

(1) for local government units that have a shoreland management ordinance approved under sections 103F.201 to 103F.221, the shoreland wetland protection zone is:

(i) 1,000 feet from the ordinary high water level of a waterbasin that is a public water identified in the shoreland management ordinance or the shoreland area approved by the commissioner as provided in the shoreland management rules adopted under section 103F.211, whichever is less; or

(ii) 300 feet from the ordinary high water level of a watercourse identified in the shoreland management ordinance or the shoreland area approved by the commissioner as provided in the shoreland management rules adopted under section 103F.211, whichever is less; and

(2) for local government units that do not have a shoreland management ordinance approved under sections 103F.201 to 103F.221, the shoreland wetland protection zone is:

(i) 1,000 feet from the ordinary high water level of a waterbasin that is a public water that is at least ten acres in size within municipalities and at least 25 acres in size in unincorporated areas; or

(ii) 300 feet from the ordinary high water level of a watercourse identified by the public waters inventory under section 103G.201.

Sec. 20. Minnesota Statutes 1994, section 103G.005, is amended by adding a subdivision to read:

Subd. 15c. SILVICULTURE. “Silviculture” means the management of forest trees.

Sec. 21. Minnesota Statutes 1994, section 103G.005, is amended by adding a subdivision to read:

Subd. 15d. UTILITY. “Utility” means a sanitary sewer, storm sewer, potable water distribution, and transmission, distribution, or furnishing, at wholesale or retail, of natural or manufactured gas, electricity, telephone, or radio service or communications.

Sec. 22. Minnesota Statutes 1994, section 103G.005, is amended by adding a subdivision to read:

Subd. 17b. WETLAND TYPE. “Wetland type” means a wetland type classified according to Wetlands of the United States, U.S. Fish and Wildlife Service Circular 39 (1971 edition), as summarized in this subdivision.

(1) “Type 1 wetlands” are seasonally flooded basins or flats in which soil is covered with water or is waterlogged during variable seasonal periods but usually is well-drained during much of the growing season. Type 1 wetlands are located in depressions and in overflow bottomlands along watercourses, and in which vegetation varies greatly according to season and duration of flooding and includes bottomland hardwoods as well as herbaceous growths.

(2) “Type 2 wetlands” are inland fresh meadows in which soil is usually without standing water during most of the growing season but is waterlogged within at least a few

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inches of surface. Vegetation includes grasses, sedges, rushes, and various broad-leaved plants. Meadows may fill shallow basins, sloughs, or farmland sags, or these meadows may border shallow marshes on the landward side.

(3) "Type 3 wetlands" are inland shallow fresh marshes in which soil is usually waterlogged early during a growing season and often covered with as much as six inches or more of water. Vegetation includes grasses, bulrushes, spikerushes, and various other marsh plants such as cattails, arrowheads, pickerelweed, and smartweeds. These marshes may nearly fill shallow lake basins or sloughs, or may border deep marshes on the landward side and are also common as seep areas on irrigated lands.

(4) "Type 4 wetlands" are inland deep fresh marshes in which soil is usually covered with six inches to three feet or more of water during the growing season. Vegetation includes cattails, reeds, bulrushes, spikerushes, and wild rice. In open areas, pondweeds, naiads, coontail, water milfoils, waterweeds, duckweeds, waterlilies, or spatterdocks may occur. These deep marshes may completely fill shallow lake basins, potholes, limestone sinks, and sloughs, or they may border open water in such depressions.

(5) "Type 5 wetlands" are inland open fresh water, shallow ponds, and reservoirs in which water is usually less than ten feet deep and is fringed by a border of emergent vegetation similar to open areas of type 4 wetland.

(6) "Type 6 wetlands" are shrub swamps in which soil is usually waterlogged during growing season and is often covered with as much as six inches of water. Vegetation includes alders, willows, buttonbush, dogwoods, and swamp-privet. This type occurs mostly along sluggish streams and occasionally on floodplains.

(7) "Type 7 wetlands" are wooded swamps in which soil is waterlogged at least to within a few inches of the surface during growing season and is often covered with as much as one foot of water. This type occurs mostly along sluggish streams, on floodplains, on flat uplands, and in shallow basins. Trees include tamarack, arborvitae, black spruce, balsam, red maple, and black ash. Northern evergreen swamps usually have a thick ground cover of mosses. Deciduous swamps frequently support beds of duckweeds and smartweeds.

(8) "Type 8 wetlands" are bogs in which soil is usually waterlogged and supports a spongy covering of mosses. This type occurs mostly in shallow basins, on flat uplands, and along sluggish streams. Vegetation is woody or herbaceous or both. Typical plants are heath shrubs, sphagnum moss, and sedges. In the north, leatherleaf, Labrador-tea, cranberries, carex, and cottongrass are often present. Scattered, often stunted, black spruce and tamarack may occur.

Sec. 23. Minnesota Statutes 1994, section 103G.127, is amended to read:

**103G.127 PERMIT PROGRAM UNDER SECTION 404 OF THE FEDERAL CLEAN WATER ACT.**

Notwithstanding any other law to the contrary, the commissioner, with the concurrence of the board of water and soil resources and the commissioner of agriculture, may adopt rules establishing a permit program for regulating the discharge of dredged and fill material into the waters of the state as necessary to obtain approval from the United States Environmental Protection Agency to administer the permit program under section 404 of the federal Clean Water Act, United States Code, title 33, section 1344. The rules may not

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be more restrictive than the program under section 404, or state law, if it is more restrictive than the federal program.

Sec. 24. Minnesota Statutes 1994, section 103G.222, is amended to read:

103G.222 **REPLACEMENT OF WETLANDS.**

Subdivision 1. **REQUIREMENTS.** (a) ~~After the effective date of the rules adopted under section 103B.3355 or 103G.2242, whichever is later,~~ 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.2242, subdivision 1, paragraph (e) 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.

(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; ~~and~~

(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) 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

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that counties or watersheds in which a greater than 80 percent or more of the presettlement wetland acreage is intact area may accomplish replacement in counties or watersheds in which less than 50 percent or more of the presettlement wetland acreage has been filled, drained, or otherwise degraded areas. Wetlands impacted by public transportation projects may be replaced statewide, provided they are approved by the commissioner under an established wetland banking system, or 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), for a 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) For a wetland located on agricultural land or in counties or watersheds in which a greater than 80 percent or more of the presettlement wetland acreage exists area, replacement must be in the ratio of one acre of replaced wetland for each acre of drained or filled wetland.

(h) 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) Except in counties or watersheds where a greater than 80 percent or more of the presettlement wetlands are intact 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) 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.

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

(l) For projects involving draining or filling of wetlands associated with a new public transportation project in a greater than 80 percent area, public transportation authori-

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ties, 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) 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) submit annual reports by January 15 to the board and members of the public requesting a copy 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 during the upcoming year.

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 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.

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

(o) 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

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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) 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 (o) 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 land use that leads to more compact development or redevelopment;
- (2) encourage public infrastructure investments which connect urban neighborhoods and suburban 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.

Sec. 25. Minnesota Statutes 1994, section 103G.2241, is amended to read:

103G.2241 **EXEMPTIONS.**

(a) Subject to the conditions in paragraph (b), 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 grasses 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 necessary to repair and maintain existing public or private drainage systems as long as wetlands that have been in existence for more than 20 years are not drained;

(4) 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 agri-

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cultural 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;

(5) activities exempted from federal regulation under United States Code, title 33, section 1344(f);

(6) 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), clause (14), limited to when a new road crosses a wetland, and all of clause (26);

(7) activities in a type 1 wetland on agricultural land, as defined in United States Fish and Wildlife Circular No. 39 (1971 edition) except for bottomland hardwood type 1 wetlands;

(8) activities in a type 2 wetland that is two acres in size or less located on agricultural land;

(9) activities in a wetland restored for conservation purposes under a contract or easement providing the landowner with the right to drain the restored wetland;

(10) activities in a wetland created solely as a result of:

(i) beaver dam construction;

(ii) blockage of culverts through roadways maintained by a public or private entity;

(iii) actions by public entities that were taken for a purpose other than creating the wetland; or

(iv) any combination of (i) to (iii);

(11) placement, maintenance, repair, enhancement, or replacement of utility or utility-type service, including the transmission, distribution, or furnishing, at wholesale or retail, of natural or manufactured gas, electricity, telephone, or radio service or communications if:

(i) the impacts of the proposed project on the hydrologic and biological characteristics of the wetland have been avoided and minimized to the extent possible; and

(ii) the proposed project significantly modifies or alters less than one-half acre of wetlands;

(12) activities associated with routine maintenance of utility and pipeline rights-of-way, provided the activities do not result in additional intrusion into the wetland;

(13) alteration of a wetland associated with the operation, maintenance, or repair of an interstate pipeline;

(14) temporarily crossing or entering a wetland to perform silvicultural activities, including timber harvest as part of a forest management activity, so long as the activity limits the impact on the hydrologic and biologic characteristics of the wetland; the activities do not result in the construction of dikes, drainage ditches, tile lines, or buildings; and the timber harvesting and other silvicultural practices do not result in the drainage of the wetland or public waters;

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(15) permanent access for forest roads across wetlands so long as the activity limits the impact on the hydrologic and biologic characteristics of the wetland; the construction activities do not result in the access becoming a dike, drainage ditch or tile line; with filling avoided wherever possible; and there is no drainage of the wetland or public waters;

(16) draining or filling up to one-half acre of wetlands for the repair, rehabilitation, or replacement of a previously authorized, currently serviceable existing public road, provided that minor deviations in the public road's configuration or filled area, including those due to changes in materials, construction techniques, or current construction codes or safety standards, that are necessary to make repairs, rehabilitation, or replacement are allowed if the wetland draining or filling resulting from the repair, rehabilitation, or replacement is minimized;

(17) emergency repair and normal maintenance and repair of existing public works, provided the activity does not result in additional intrusion of the public works into the wetland and do not result in the draining or filling, wholly or partially, of a wetland;

(18) normal maintenance and minor repair of structures causing no additional intrusion of an existing structure into the wetland, and maintenance and repair of private crossings that do not result in the draining or filling, wholly or partially, of a wetland;

(19) duck blinds;

(20) 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;

(21) 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;

(22) normal agricultural practices to control pests or weeds, defined by rule as either noxious or secondary weeds, in accordance with applicable requirements under state and federal law, including established best management practices;

(23) activities in a wetland that is on agricultural land 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, and is subject to sections 1421 to 1424 of the federal act in effect on January 1, 1991, except that land enrolled in a federal farm program is eligible for easement participation for those acres not already compensated under a federal program;

(24) development projects and ditch improvement projects in the state that have received preliminary or final plat approval, or infrastructure that has been installed, or having local site plan approval, conditional use permits, or similar official approval by a governing body or government agency, within five years before July 1, 1991. In the seven-county metropolitan area and in cities of the first and second class, plat approval must be preliminary as approved by the appropriate governing body; and

(25) activities that result in the draining or filling of less than 400 square feet of wetlands.

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(b) For the purpose of paragraph (a), clause (16), "currently serviceable" means usable as is or with some maintenance, but not so degraded as to essentially require reconstruction. Paragraph (a), clause (16), authorizes the repair, rehabilitation, or replacement of public roads destroyed by storms, floods, fire, or other discrete events, provided the repair, rehabilitation, or replacement is commenced or under contract to commence within two years of the occurrence of the destruction or damage.

(c) A person conducting an activity in a wetland under an exemption in paragraph (a) shall ensure that:

(1) appropriate erosion control measures are taken to prevent sedimentation of the water;

(2) the activity does not block fish passage in a watercourse; and

(3) the activity is conducted in compliance with all other applicable federal, state, and local requirements, including best management practices and water resource protection requirements established under chapter 103H.

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;

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(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 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, and is subject to sections 1421 to 1424 of the federal act in effect on January 1, 1991, except that land enrolled in a federal farm program is eligible for easement participation for those acres not already compensated under a federal program.

(b) 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.

Subd. 2. DRAINAGE. (a) For the purposes of this subdivision, "public drainage system" means a drainage system as defined in section 103E.005, subdivision 12, and any ditch or tile lawfully connected to the drainage system.

(b) A replacement plan is not required for draining of type 1 wetlands, or up to five acres of type 2 or 6 wetlands, in an unincorporated area on land that has been assessed drainage benefits for a public drainage system, provided that:

(1) during the 20-year period that ended January 1, 1992:

(i) there was an expenditure made from the drainage system account for the public drainage system;

(ii) the public drainage system was repaired or maintained as approved by the drainage authority; or

(iii) no repair or maintenance of the public drainage system was required under section 103E.705, subdivision 1, as determined by the public drainage authority; and

(2) the wetlands are not drained for conversion to:

(i) platted lots;

(ii) planned unit, commercial, or industrial developments; or

(iii) any development with more than one residential unit per 40 acres.

If wetlands drained under this paragraph are converted to uses prohibited under clause (2) during the ten-year period following drainage, the wetlands must be replaced under section 103G.222.

(c) A replacement plan is not required for draining or filling of wetlands, except for draining types 3, 4, and 5 wetlands that have been in existence for more than 25 years, resulting from maintenance and repair of existing public drainage systems.

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(d) A replacement plan is not required for draining or filling of wetlands, except for draining wetlands that have been in existence for more than 25 years, resulting from maintenance and repair of existing drainage systems other than public drainage systems.

(e) A replacement plan is not required for draining or filling of wetlands resulting from activities conducted as part of a public drainage system improvement project that received final approval from the drainage authority before July 1, 1991, and after July 1, 1986, if:

- (1) the approval remains valid;
- (2) the project remains active; and
- (3) no additional drainage will occur beyond that originally approved.

(f) The public drainage authority may, as part of the repair, install control structures, realign the ditch, construct dikes along the ditch, or make other modifications as necessary to prevent drainage of the wetland.

(g) Wetlands of all types that would be drained as a part of a public drainage repair project are eligible for the permanent wetlands preserve, under section 103F.516. The board shall give priority to acquisition of easements on types 3, 4, and 5 wetlands that have been in existence for more than 25 years on public drainage systems and other wetlands that have the greatest risk of drainage from a public drainage repair project.

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.

Subd. 4. **WETLAND RESTORATION.** A replacement plan for wetlands is not required for activities in a wetland restored for conservation purposes under a contract or easement providing the landowner with the right to drain the restored wetland.

Subd. 5. **INCIDENTAL WETLANDS.** A replacement plan for wetlands is not required for activities in a wetland created solely as a result of:

- (1) beaver dam construction;
- (2) blockage of culverts through roadways maintained by a public or private entity;
- (3) actions by public or private entities that were taken for a purpose other than creating the wetland; or
- (4) any combination of clauses (1) to (3).

Subd. 6. **UTILITIES; PUBLIC WORKS.** A replacement plan for wetlands is not required for:

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(1) placement, maintenance, repair, enhancement, or replacement of utility or utility-type service if:

(i) the impacts of the proposed project on the hydrologic and biological characteristics of the wetland have been avoided and minimized to the extent possible; and

(ii) the proposed project significantly modifies or alters less than one-half acre of wetlands;

(2) activities associated with routine maintenance of utility and pipeline rights-of-way, provided the activities do not result in additional intrusion into the wetland;

(3) alteration of a wetland associated with the operation, maintenance, or repair of an interstate pipeline within all existing or acquired interstate pipeline rights-of-way;

(4) emergency repair and normal maintenance and repair of existing public works, provided the activity does not result in additional intrusion of the public works into the wetland and does not result in the draining or filling, wholly or partially, of a wetland;

(5) normal maintenance and minor repair of structures causing no additional intrusion of an existing structure into the wetland, and maintenance and repair of private crossings that do not result in the draining or filling, wholly or partially, of a wetland; or

(6) repair and updating of existing individual sewage treatment systems as necessary to comply with local, state, and federal regulations.

Subd. 7. FORESTRY. A replacement plan for wetlands is not required for:

(1) temporarily crossing or entering a wetland to perform silvicultural activities, including timber harvest as part of a forest management activity, so long as the activity limits the impact on the hydrologic and biologic characteristics of the wetland; the activities do not result in the construction of dikes, drainage ditches, tile lines, or buildings; and the timber harvesting and other silvicultural practices do not result in the drainage of the wetland or public waters; or

(2) permanent access for forest roads across wetlands so long as the activity limits the impact on the hydrologic and biologic characteristics of the wetland; the construction activities do not result in the access becoming a dike, drainage ditch, or tile line; filling is avoided wherever possible; and there is no drainage of the wetland or public waters.

Subd. 8. APPROVED DEVELOPMENT. A replacement plan for wetlands is not required for development projects and ditch improvement projects in the state that have received preliminary or final plat approval or have infrastructure that has been installed or has local site plan approval, conditional use permits, or similar official approval by a governing body or government agency, within five years before July 1, 1991. As used in this subdivision, "infrastructure" means public water facilities, storm water and sanitary sewer piping, outfalls, inlets, culverts, bridges, and any other work defined specifically by a local government unit as constituting a capital improvement to a parcel within the context of an approved development plan.

Subd. 9. DE MINIMIS. (a) Except as provided in paragraphs (b), (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:

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

(2) 5,000 square feet of type 1, type 2, type 6, or type 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, type 2, or type 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, type 2, type 3, type 4, type 5, type 6, type 7, or type 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.

Subd. 10. WILDLIFE HABITAT. A replacement plan for wetlands is not required for:

(1) deposition of spoil resulting from excavation within a wetland for a wildlife habitat improvement project, if:

(i) the area of deposition does not exceed five percent of the wetland area or one-half acre, whichever is less, and the spoil is stabilized and permanently seeded to prevent erosion;

(ii) the project does not have an adverse impact on any species designated as endangered or threatened under state or federal law; and

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(iii) the project will provide wildlife habitat improvement as certified by the soil and water conservation district; or

(2) duck blinds.

Subd. 11. EXEMPTION CONDITIONS. (a) A person conducting an activity in a wetland under an exemption in subdivisions 1 to 10 shall ensure that:

(1) appropriate erosion control measures are taken to prevent sedimentation of the water;

(2) the activity does not block fish passage in a watercourse; and

(3) the activity is conducted in compliance with all other applicable federal, state, and local requirements, including best management practices and water resource protection requirements established under chapter 103H.

(b) An activity is exempt if it qualifies for any one of the exemptions, even though it may be indicated as not exempt under another exemption.

(c) Persons proposing to conduct an exempt activity are encouraged to contact the local government unit or the local government unit's designee for advice on minimizing wetland impacts.

Sec. 26. Minnesota Statutes 1994, section 103G.2242, subdivision 1, is amended to read:

Subdivision 1. **RULES.** (a) By July 1, 1993, The board, in consultation with the commissioner, shall adopt rules governing the approval of wetland value replacement plans under this section. 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 methodology to be used in identifying and evaluating wetland functions; 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 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) The board may approve as an alternative to the rules adopted under this subdivision a comprehensive wetland protection and management plan developed by a local government unit, provided that the plan:

(1) incorporates sections 103A.201, subdivision 2, and 103G.222;

(2) is adopted as part of an approved local water plan under sections 103B.231 and 103B.311; and

(3) is adopted as part of the local government's official controls.

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

Sec. 27. Minnesota Statutes 1994, section 103G.2242, subdivision 2, is amended to read:

Subd. 2. **EVALUATION.** 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. The panel shall use the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands" (January 1989), "United States Army Corps of Engineers Wetland Delineation Manual" (January 1987), "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 to the local government unit that must approve a replacement plan under this section, 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.

Sec. 28. Minnesota Statutes 1994, section 103G.2242, subdivision 4, is amended to read:

Subd. 4. **DECISION.** Upon receiving and considering all required data, the local government unit approving a reviewing replacement plan applications, banking plan applications, and exemption or no-loss determination requests must act on all replacement plan applications for plan approval within 60 days, banking plan applications, and exemption or no-loss determination requests in compliance with section 15.99.

Sec. 29. Minnesota Statutes 1994, section 103G.2242, subdivision 6, is amended to read:

Subd. 6. **NOTICE OF APPLICATION.** (a) Except as provided in paragraph (b), within ten days of receiving an application for approval of a replacement plan under this section, a copy of the application must be submitted to the board for publication in the Environmental Quality Board Monitor and separate copies of the complete application must be mailed to individual members of the public who request a copy, the board of supervisors of the soil and water conservation district, the members of the technical evaluation panel, the managers of the watershed district if one exists, the board of county commissioners, and the commissioner of agriculture, and the mayors of the cities within the area watershed. At the same time, the local government unit must give general notice to the public in a general circulation newspaper within the area affected, natural resources. Individual members of the public who request a copy shall be provided information to identify the applicant and the location and scope of the project.

(b) Within ten days of receiving an application for approval of a replacement plan under this section for an activity affecting less than 10,000 square feet of wetland, a summary of the application must be submitted for publication in the Environmental Quality Board Monitor and separate copies mailed to the members of the technical evaluation

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panel, individual members of the public who request a copy, and the managers of the watershed district, if applicable. At the same time, the local government unit must give general notice to the public in a general circulation newspaper within the area affected commissioner of natural resources.

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

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

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

Sec. 30. Minnesota Statutes 1994, section 103G.2242, subdivision 7, is amended to read:

Subd. 7. **NOTICE OF DECISION.** (a) Except as provided in paragraph (b), at least 30 days prior to the effective date of the approval or denial of a replacement plan under this section, a copy summary of the approval or denial must be submitted for publication in the Environmental Quality Board Monitor and separate copies mailed to members of the technical evaluation panel, the applicant, the board, individual members of the public who request a copy, the board of supervisors of the soil and water conservation district, the managers of the watershed district, the board of county commissioners, if one exists, and the commissioner of agriculture, and the mayors of the cities within the area watershed natural resources.

(b) Within ten days of the decision approving or denying a replacement plan under this section for an activity affecting less than 10,000 square feet of wetland, a summary of the approval or denial must be submitted for publication in the Environmental Quality Board Monitor and separate copies mailed to the applicant, individual members of the public who request a copy, the members of the technical evaluation panel, and the managers of the watershed district, if applicable. At the same time, the local government unit must give general notice to the public in a general circulation newspaper within the area affected.

Sec. 31. Minnesota Statutes 1994, section 103G.2242, subdivision 9, is amended to read:

Subd. 9. **APPEAL.** Appeal of the a replacement plan, exemption, or no-loss decision may be obtained by mailing a notice of appeal petition and payment of a filing fee of \$200, which shall be retained by the board to defray administrative costs, to the board within 30 15 days after the postmarked date of the mailing specified in subdivision 7. If appeal is not sought within 30 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 the wetland owner, by any of those to whom notice is required to be mailed under subdivision 7, or by 100 residents of the county in which a majority of the wetland is located. Within 30 days after receiving a peti-

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tion, the board shall decide whether to grant the petition and hear the appeal. The board shall grant the petition unless the board finds that the appeal is meritless, trivial, or brought solely for the purposes of delay; that the petitioner has not exhausted all local administrative remedies; or that the petitioner has not posted a letter of credit, cashier's check, or cash if required by the local government unit. 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. 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. The 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. 32. Minnesota Statutes 1994, section 103G.2242, subdivision 12, is amended to read:

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

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

(c) Notwithstanding section 103G.222, subdivision 1, paragraph (i), the following actions are eligible for replacement credit as determined by the local government unit, including enrollment in a statewide wetlands bank:

(1) Reestablishment of permanent vegetative cover on a wetland that was planted with annually seeded crops, was in a crop rotation seeding of pasture grasses or legumes, or was required to be set aside to receive price supports 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. Replacement credit may not exceed 50 percent of the total wetland area vegetatively restored;

(2) Buffer areas of permanent vegetative cover established on upland adjacent to replacement wetlands, provided that the upland buffer must be established at the time of wetland replacement and replacement credit for the buffer may not exceed 75 percent of the replacement wetland area and may only be used for replacement above a 1:1 ratio;

(3) Wetlands restored for conservation purposes under terminated easements or contracts, provided that up to 75 percent of the restored wetland area is eligible for replacement credit and adjacent upland buffer areas reestablished to permanent vegetative cover are eligible for replacement credit above a 1:1 ratio in an amount not to exceed 25 percent of the restored wetland area; and

(4) Water quality treatment ponds constructed to pretreat storm water runoff prior to discharge to wetlands, public waters, or other water bodies, provided that the water quality treatment ponds must be associated with an ongoing or proposed project that will im-

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fact a wetland and replacement credit for the treatment ponds may not exceed 75 percent of the treatment pond area and may only be used for replacement above a 1:1 ratio.

**Sec. 33. [103G.2243] LOCAL COMPREHENSIVE WETLAND PROTECTION AND MANAGEMENT PLANS.**

Subdivision 1. GENERAL REQUIREMENTS; NOTICE AND PARTICIPATION. (a) As an alternative to the rules adopted under section 103G.2242, subdivision 1, and the public value criteria established or approved under section 103B.3355, a comprehensive wetland protection and management plan may be developed by a local government unit, or one or more local government units operating under a joint powers agreement, provided that:

(1) a notice is made at the beginning of the planning process to the board, the commissioner of natural resources, the pollution control agency, local government units, and local citizens to actively participate in the development of the plan; and

(2) the plan is implemented by ordinance as part of the local government's official controls under chapter 394, for a county; chapter 462, for a city; chapter 366, for a town; and by rules adopted under chapter 103D, for a watershed district; and chapter 103B, for a watershed management organization.

(b) An organization that is invited to participate in the development of the local plan, but declines to do so and fails to participate or to provide written comments during the local review process, waives the right during board review to submit comments, except comments concerning consistency of the plan with laws and rules administered by that agency. In determining the merit of an agency comment, the board shall consider the involvement of the agency in the development of the local plan.

Subd. 2. PLAN CONTENTS. A comprehensive wetland protection and management plan may:

(1) provide for classification of wetlands in the plan area based on:

(i) an inventory of wetlands in the plan area;

(ii) an assessment of the wetland functions listed in section 103B.3355, using a methodology chosen by the technical evaluation panel from one of the methodologies established or approved by the board under that section; and

(iii) the resulting public values;

(2) vary application of the sequencing standards in section 103G.222, subdivision 1, paragraph (b), for projects based on the classification and criteria set forth in the plan;

(3) vary the replacement standards of section 103G.222, subdivision 1, paragraphs (f) and (g), based on the classification and criteria set forth in the plan, for specific wetland impacts provided there is no net loss of public values within the area subject to the plan, and so long as:

(i) in a 50 to 80 percent area, a minimum acreage requirement of one acre of replaced wetland for each acre of drained or filled wetland requiring replacement is met within the area subject to the plan; and

(ii) in a less than 50 percent area, a minimum acreage requirement of two acres of replaced wetland for each acre of drained or filled wetland requiring replacement is met

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within the area subject to the plan, except that replacement for the amount above a 1:1 ratio can be accomplished as described in subdivision 12;

(4) in a greater than 80 percent area, allow replacement credit, based on the classification and criteria set forth in the plan, for any project that increases the public value of wetlands, including activities on adjacent upland acres; and

(5) in a greater than 80 percent area, based on the classification and criteria set forth in the plan, expand the application of the exemptions in section 103G.2241, subdivision 1, paragraph (a), clause (4), to also include nonagricultural land, provided there is no net loss of wetland values.

**Subd. 3. BOARD REVIEW AND APPROVAL; MEDIATION; JUDICIAL REVIEW.** (a) The plan is deemed approved 60 days after the local government submits the final plan to the board, unless the board disagrees with the plan as provided in paragraph (d).

(b) The board may not disapprove a plan if the board determines the plan meets the requirements of this section.

(c) In its review of a plan, the board shall advise the local government unit of those elements of the plan that are more restrictive than state law and rules for purposes of section 103G.237, subdivision 5.

(d) If the board disagrees with the plan or any elements of the plan, the board shall, in writing, notify the local government of the plan deficiencies and suggested changes. The board shall include in the response to the local government the scientific justification, if applicable, for the board's concerns with the plan. Upon receipt of the board's concerns with the plan, the local government has 60 days to revise the plan and resubmit the plan to the board for reconsideration, or the local government may request a hearing before the board. The board shall hold a hearing within the boundaries of the jurisdiction of the local government within 60 days of the request for hearing. After the hearing, the board shall, within 60 days, prepare a report of its decision and inform the local government.

(e) If, after the hearing, the board and local government disagree on the plan, the board shall, within 60 days, initiate mediation through a neutral party. If the board and local government unit agree in writing not to use mediation or the mediation does not result in a resolution of the differences between the parties, then the board may commence a declaratory judgment action in the district court of the county where the local government unit is located. If the board does not commence a declaratory judgment action within the applicable 60-day period, the plan is deemed approved.

(f) The declaratory judgment action must be commenced within 60 days after the date of the written agreement not to use mediation or 60 days after conclusion of the mediation. If the board commences a declaratory judgment action, the district court shall review the board's record of decision and the record of decision of the local government unit. The district court shall affirm the plan if it meets the requirements of this subdivision.

**Subd. 4. EFFECTIVE DATE; REPLACEMENT DECISIONS.** (a) The plan becomes effective as provided in subdivision 3, paragraphs (d) to (f), and after adoption of the plan into the official controls of the local government.

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(b) After the effective date of a plan, a local government unit shall make replacement decisions consistent with the plan.

Subd. 5. PLAN AMENDMENTS. Amendments to the plan become effective upon completion of the same process required for the original plan.

Subd. 6. WATER PLANNING PROCESSES APPLY. Except as otherwise provided for in this section, all other requirements relating to development of the plan must be consistent with the water plan processes under sections 103B.231 and 103B.311.

**Sec. 34. [103G.2244] WETLAND CREATION OR RESTORATION WITHIN PIPELINE EASEMENT.**

A person proposing to create or restore a wetland within the easement of a pipeline as defined in section 299J.02, subdivision 11, shall first notify the easement holder and the director of the office of pipeline safety in writing. The person may not create or restore the wetland if, within 90 days after receiving the required notice, the easement holder or the director of the office of pipeline safety provides to the person a written notice of objection that includes the reasons for the objection.

Sec. 35. Minnesota Statutes 1994, section 103G.237, subdivision 4, is amended to read:

Subd. 4. **COMPENSATION.** (a) The board shall award compensation in an amount equal to the greater of:

(1) 50 percent of the value of the wetland, calculated by multiplying the acreage of the wetland by the greater of:

(1) (i) the average equalized estimated market value of agricultural property in the township as established by the commissioner of revenue at the time application for compensation is made; or

(2) (ii) the assessed value per acre of the parcel containing the wetland, based on the assessed value of the parcel as stated on the most recent tax statement; or

(2) \$200 per acre of wetland subject to the replacement plan, increased or decreased by the percentage change of the assessed valuation of land in the township where the wetland is located from the 1995 valuation.

(b) A person who receives compensation under paragraph (a) shall convey to the board a permanent conservation easement as described in section 103F.515, subdivision 4. An easement conveyed under this paragraph is subject to correction and enforcement under section 103F.515, subdivisions 8 and 9.

Sec. 36. Minnesota Statutes 1994, section 103G.237, is amended by adding a subdivision to read:

Subd. 5. **COMPENSATION CLAIMS AGAINST LOCAL GOVERNMENT UNITS.** (a) At the request of a local government unit against which a compensation action is brought based at least in part on the local government unit's application of section 103G.222, 103G.2241, 103G.2242, 103G.2243, 103G.237, or 103G.2372, or rules adopted by the board to implement these sections, the state, through the attorney general, shall intervene in the action on behalf of the local government unit and shall thereafter be

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considered a defendant in the action. A local government unit making a request under this paragraph shall provide the attorney general with a copy of the complaint as soon as possible after being served. If requested by the attorney general, the court shall grant additional time to file an answer equal to the time between service of the complaint on the local government unit and receipt of the complaint by the attorney general.

(b) The state is liable for costs, damages, fees, and compensation awarded in the action based on the local government unit's adoption or implementation of standards that are required by state law, as determined by the court. The local government unit is liable for costs, damages, fees, and compensation awarded in the action based on local standards that are more restrictive than state law and rules.

(c) For the purposes of this subdivision, "compensation action" means an action in which the plaintiff seeks compensation for a taking of private property under the state or federal constitution.

Sec. 37. Minnesota Statutes 1994, section 103G.2373, is amended to read:

**103G.2373 ANNUAL WETLANDS REPORT.**

By January 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;
- (2) the quantity, quality, acreage, types, and public value of wetlands in the state; and
- (3) changes in the items in clause (2).

Sec. 38. Minnesota Statutes 1994, section 115.03, is amended by adding a subdivision to read:

Subd. 4a. SECTION 401 CERTIFICATIONS. (a) The following definitions apply to this subdivision:

(1) "section 401 certification" means a water quality certification required under section 401 of the federal Clean Water Act, United States Code, title 33, section 1341; and

(2) "nationwide permit" means a nationwide general permit issued by the United States Army Corps of Engineers and listed in Code of Federal Regulations, title 40, part 330, appendix A.

(b) The agency is responsible for providing section 401 certifications for nationwide permits.

(c) Before making a final decision on a section 401 certification for regional conditions on a nationwide permit, the agency shall hold at least one public meeting outside the seven-county metropolitan area.

(d) In addition to other notice required by law, the agency shall provide written notice of a meeting at which the agency will be considering a section 401 certification for regional conditions on a nationwide permit at least 21 days before the date of the meeting to the members of the senate and house of representatives environment and natural re-

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sources committees, the senate agriculture and rural development committee, and the house of representatives agriculture committee.

**Sec. 39. RULES.**

Within 60 days of the effective date of this section, the board, in consultation with the commissioners of natural resources and agriculture, shall adopt rules that amend the rules previously adopted under Minnesota Statutes, sections 103G.2242, subdivision 1, and 103B.3355. These rules are exempt from the rulemaking provisions of Minnesota Statutes, chapter 14, except that Minnesota Statutes, section 14.386, applies and the proposed rules must be submitted to the senate and house environment and natural resource 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. 40. WETLAND BANKING STUDY; REPORT.**

The commissioner of natural resources, in consultation with the board of water and soil resources and the commissioner of agriculture, shall ensure that the wetlands conservation planning process currently under way includes a study of alternative procedures and policies for improving the current wetland banking system in the state. The study and any resulting recommendations must be reported to the appropriate policy committees of the legislature by June 30, 1997, or upon completion of the wetlands conservation planning final report, whichever is later.

**Sec. 41. LINCOLN-PIPESTONE CALCAREOUS FEN.**

The fen management plan prepared pursuant to Minnesota Statutes, section 103G.223 for sections 5, 6, 8, and 17 of T114N, R46W, and the Burr Well Field must be jointly developed by the commissioner of natural resources and the Lincoln-Pipestone rural water district. A fen management plan is not required to appropriate within the existing permitted pumping rate of 750 gallons per minute or permitted volume of up to 400,000,000 gallons per year.

**Sec. 42. APPROPRIATION.**

(a) \$130,000 is appropriated from the general fund to the board of water and soil resources for providing assistance to local governmental units in developing and implementing comprehensive wetland protection and management plans under Minnesota Statutes, section 103G.2243.

(b) \$120,000 is appropriated from the general fund to the board of water and soil resources for grants to local governmental units for developing and implementing comprehensive wetland protection and management plans under Minnesota Statutes, section 103G.2243.

(c) \$100,000 is appropriated from the general fund to the board of water and soil resources for grants to local government units to develop public ditch inventories, including maps and histories of public ditch systems.

(d) \$50,000 is appropriated from the general fund to the board of water and soil resources for a grant to the association of Minnesota counties to conduct workshops for public drainage authorities.

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**Sec. 43. INSTRUCTION TO REVISOR.**

The revisor of statutes shall renumber Minnesota Statutes, section 103G.005, subdivision 18, as section 103G.005, subdivision 15a.

**Sec. 44. REPEALER.**

Minnesota Statutes 1994, section 103G.2242, subdivision 13, is repealed.

**Sec. 45. EFFECTIVE DATE.**

This act is effective the day following final enactment, except that section 24, subdivision 1, paragraph (e), 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.

Presented to the governor April 4, 1996

Signed by the governor April 11, 1996, 11:44 a.m.

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**CHAPTER 463—H.F.No. 3273**

*An act relating to public administration; authorizing spending to acquire and to better public land and buildings and other public improvements of a capital nature with certain conditions; authorizing issuance of bonds; appropriating money; amending Minnesota Statutes 1994, sections 16A.632, by adding a subdivision; 16A.641, subdivision 8; 16A.695, by adding a subdivision; 16B.24, subdivisions 6 and 6a; 41B.19, subdivision 1; 41B.195; 124C.73, subdivision 1; 134.45, subdivisions 5 and 6; 135A.046; 268.917; and 475.58, by adding a subdivision; Minnesota Statutes 1995 Supplement, sections 16A.28, subdivision 5; 16B.335, subdivision 1; 240A.09; 473.894, subdivision 11; and 473.901, subdivision 1; Laws 1990, chapter 535, section 3, subdivision 3; Laws 1994, chapter 643, section 11, subdivision 11, as amended; section 19, subdivision 8, as amended; section 21, subdivision 4, as amended; section 23, subdivision 20; section 27, subdivision 2; section 35, subdivision 3; and section 79, subdivision 8; Laws 1995, First Special Session chapter 2, article 1, section 13; proposing coding for new law in Minnesota Statutes, chapters 268 and 446A; repealing Minnesota Statutes 1994, sections 15.50, subdivision 5; 116.162, as amended; and 446A.071, subdivisions 1, 3, 4, 5, 6, 7, and 8; Minnesota Statutes 1995 Supplement, section 446A.071, subdivision 2; Laws 1994, chapter 643, section 24, subdivision 3.*

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

**Section 1. CAPITAL IMPROVEMENTS APPROPRIATIONS.**

The sums in the column under "APPROPRIATIONS" are appropriated from the bond proceeds fund, or another named fund, to the state agencies or officials indicated, to be spent to acquire and to better public land and buildings and other public improvements of a capital nature, as specified in this act.

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