

8420.0544 REPLACEMENT FOR PUBLIC TRANSPORTATION PROJECTS.

A. Impacts resulting from public transportation projects must be replaced according to the requirements of this chapter except as provided in this part.

B. Wetlands impacted by public transportation projects:

(1) outside the seven-county metropolitan area may be replaced statewide, except that impacts in less than 50 percent areas must be replaced in less than 50 percent areas; and

(2) in the seven-county metropolitan area must be replaced in the seven-county metropolitan area or in one of the major watersheds that are wholly or partially within the seven-county metropolitan area, but at least one-to-one must be replaced within the seven-county metropolitan area.

This item does not apply to replacement completed using wetland banking credits established by an applicant who submitted a complete wetland banking application to a local government unit by April 1, 1996.

C. A replacement plan is required for public transportation projects that involve new roads or roads expanded solely for additional traffic capacity lanes.

D. A replacement plan is not required for individual public road projects that impact 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 road authority, to meet state or federal design or safety standards or requirements. This item only applies to authorities for public road projects that:

(1) minimize impacts associated with the project and consider replacing important site-specific wetland functions on site; and

(2) provide project-specific plans and information, including project locations, wetland boundaries, amount and type of wetlands impacted, demonstration of impact minimization, and any changes or addenda, to the board's bank administrator, the technical evaluation panel, the commissioner, and members of the public requesting a copy:

(a) at least 30 days before construction;

(b) at an annual meeting of the parties required to receive notice, convened to review projects to be commenced during the upcoming year; or

(c) within 30 days of commencing minor and emergency maintenance work impacting less than 10,000 square feet.

Public road authorities that do not follow the process required in this item for a project must submit a complete replacement plan application to the local government unit and provide for replacement of impacts associated with the project according to this chapter.

E. For impacts associated with a new public road project, or a public road project expanded solely for additional traffic capacity, the public transportation authority may purchase credits from the board at the cost to the board to establish credits. Purchase of credits under this item is allowed only when the board has determined that sufficient credits are available for sale.

F. The technical evaluation panel must review minimization and delineation decisions made by the public road authority and provide recommendations regarding on-site replacement if requested to do so by the local government unit, a contiguous landowner, or a member of the technical evaluation panel.

G. Those required to receive notice of public road projects may appeal minimization, delineation, and on-site replacement decisions made by the public road authority to the board according to part 8420.0905.

H. Changes to impacts proposed by local road authorities in item D must be reported to the board within six months from the date of the change being finalized.

I. Except for state public transportation projects, for which the state Department of Transportation is responsible, and public road authority projects that do not meet the requirements of item D, the board must replace public road project impacts, including impacts to public waters if authorized by the commissioner or a delegated authority, that result from local government projects on existing roads.

J. Public road authorities, at their discretion, may deviate from federal and state design standards on existing road projects when practical and reasonable to avoid impacts, 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 item. This item does not preclude an action for damages arising from negligence in construction or maintenance on a highway.

Statutory Authority: *MS s 14.06; 14.386; 103B.101; 103B.3355; 103G.2242*

History: *18 SR 274; 22 SR 1877; 25 SR 152; 27 SR 135; L 2004 c 228 art 1 s 71; 32 SR 281; 34 SR 145*

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