

Wetland Conservation Act Statutes – 2015

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{Note: This document is an unofficial compilation of Minnesota Statutes that were either created or amended by the Minnesota Wetland Conservation Act of 1991 (Laws of Minnesota 1991, Chapter 354) and subsequent legislation through 2015. Certain other wetland-related statutes are also included. For an official version of the statutes, consult the web site of the State of Minnesota Office of the Revisor of Statutes at: <https://www.revisor.mn.gov>}

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103A.201 REGULATORY POLICY.

Subdivision 1. **Policy.** To conserve and use water resources of the state in the best interests of its people, and to promote the public health, safety, and welfare, it is the policy of the state that:

(1) subject to existing rights, public waters are subject to the control of the state;

(2) the state, to the extent provided by law, shall control the appropriation and use of waters of the state; and

(3) the state shall control and supervise activity that changes or will change the course, current, or cross section of public waters, including the construction, reconstruction, repair, removal, abandonment, alteration, or the transfer of ownership of dams, reservoirs, control structures, and waterway obstructions in public waters.

Subd. 2. **Wetlands findings; public interest.** (a) Wetlands identified in the state under section 103G.005, subdivision 19, do not:

(1) grant the public additional or greater right of access to the wetlands;

(2) diminish the right of ownership or usage of the beds underlying the wetlands, except as otherwise provided by law;

(3) affect state law forbidding trespass on private lands; and

(4) require the commissioner to acquire access to the wetlands.

(b) The legislature finds that the wetlands of Minnesota provide public value by conserving surface waters, maintaining and improving water quality, preserving wildlife habitat, providing recreational opportunities, reducing runoff, providing for floodwater retention, reducing stream sedimentation, contributing to improved subsurface moisture, helping moderate climatic change, and enhancing the natural beauty of the landscape, and are important to comprehensive water management, and that it is in the public interest to:

(1) achieve no net loss in the quantity, quality, and biological diversity of Minnesota's existing wetlands;

(2) increase the quantity, quality, and biological diversity of Minnesota's wetlands by restoring or enhancing diminished or drained wetlands;

(3) avoid direct or indirect impacts from activities that destroy or diminish the quantity, quality, and biological diversity of wetlands; and

(4) replace wetland values where avoidance of activity is not feasible and prudent.

History: 1990 c 391 art 1 s 2; 1991 c 354 art 1 s 2

103A.202 WETLAND POLICY.

The legislature finds that it is in the public interest to preserve the wetlands of the state to conserve surface waters, maintain and improve water quality, preserve wildlife habitat, reduce runoff, provide for floodwater retention, reduce stream sedimentation, contribute to improved subsurface moisture, enhance the natural beauty of the landscape, and promote comprehensive and total water management planning.

History: 1990 c 391 art 1 s 3

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103B.101 BOARD OF WATER AND SOIL RESOURCES.

Subd. 10. **Committee for dispute resolution.** A committee of the board is established to hear and resolve disputes, appeals, and interventions under sections 103A.301 to 103A.341; 103B.101; 103B.231; 103B.345; 103D.535; 103D.537; and 103G.2242, subdivision 9. The committee is appointed by the board chair. The board shall adopt bylaws governing committee membership and duties.

Subd. 12. **Authority to issue penalty orders.** (a) The board may issue an order requiring violations to be corrected and administratively assessing monetary penalties of up to \$10,000 per violation for violations of this chapter and chapters 103C, 103D, 103E, 103F, and 103G, any rules adopted under those chapters, and any standards, limitations, or conditions established by the board.

(b) Administrative penalties issued under paragraph (a) may be appealed according to section 116.072, if the recipient of the penalty requests a hearing by notifying the commissioner in writing within 30 days after receipt of the order. For the purposes of this section, the terms "commissioner" and "agency" as used in section 116.072 mean the board. If a hearing is not requested within the 30-day period, the order becomes a final order not subject to further review.

(c) Administrative penalty orders issued under paragraph (a) may be enforced under section 116.072, subdivision 9. Penalty amounts must be remitted within 30 days of issuance of the order.

Subd. 17. **Wetland stakeholder coordination.** The board shall work with wetland stakeholders to foster mutual understanding and provide recommendations for improvements to the management of wetlands and related land and water resources, including recommendations for updating the Wetland Conservation Act, developing an in-lieu fee program as defined in section 103G.005, subdivision 10g, and related provisions. The board may convene informal working groups or work teams to provide information and education and to develop recommendations.

History: 1990 c 391 art 2 s 2; 1992 c 399 s 1; 1997 c 28 s 1-3; 1997 c 109 s 1; 2004 c 228 art 1 s 23; 1Sp2005 c 1 art 2 s 116; 2007 c 57 art 1 s 103; 2009 c 176 art 1 s 23,24; 2010 c 298 s 1; 1Sp2010 c 1 art 14 s 5; 1Sp2011 c 2 art 5 s 63; 2012 c 272 s 28-33; 1Sp2015 c 2 art 2 s 11; 1Sp2015 c 4 art 4 s 72,73

103B.103 EASEMENT STEWARDSHIP ACCOUNTS.

Subdivision 1. **Accounts established; sources.** (a) The water and soil conservation easement stewardship account and the mitigation easement stewardship account are created in the special revenue fund. The accounts consist of money credited to the accounts and interest and other earnings on money in the accounts. The State Board of Investment must manage the accounts to maximize long-term gain.

(b) Revenue from contributions and money appropriated for any purposes of the account as described in subdivision 2 must be deposited in the water and soil conservation easement stewardship account. Revenue from contributions, wetland banking fees designated for stewardship purposes by the board, easement stewardship payments authorized under subdivision 3, and money appropriated for any purposes of the account as described in subdivision 2 must be deposited in the mitigation easement stewardship account.

Subd. 2. **Appropriation; purposes of accounts.** Five percent of the balance on July 1 each year in the water and soil conservation easement stewardship account and five percent of the balance on July 1

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each year in the mitigation easement stewardship account are annually appropriated to the board and may be spent only to cover the costs of managing easements held by the board, including costs associated with monitoring, landowner contacts, records storage and management, processing landowner notices, requests for approval or amendments, enforcement, and legal services associated with easement management activities.

Subd. 3. Financial contributions. The board shall seek a financial contribution to the water and soil conservation easement stewardship account for each conservation easement acquired by the board. The board shall seek a financial contribution or assess an easement stewardship payment to the mitigation easement stewardship account for each wetland banking easement acquired by the board. Unless otherwise provided by law, the board shall determine the amount of the contribution or payment, which must be an amount calculated to earn sufficient money to meet the costs of managing the easement at a level that neither significantly overrecovers nor underrecovers the costs. In determining the amount of the financial contribution, the board shall consider:

(1) the estimated annual staff hours needed to manage the conservation easement, taking into consideration factors such as easement type, size, location, and complexity;

(2) the average hourly wages for the class or classes of state and local employees expected to manage the easement;

(3) the estimated annual travel expenses to manage the easement;

(4) the estimated annual miscellaneous costs to manage the easement, including supplies and equipment, information technology support, and aerial flyovers;

(5) the estimated annualized costs of legal services, including the cost to enforce the easement in the event of a violation; and

(6) the expected rate of return on investments in the account.

History: 1Sp2015 c 4 art 4 s 74

103B.3355 WETLAND FUNCTIONS FOR DETERMINING PUBLIC VALUES.

(a) The public values of wetlands must be determined based upon the functions of wetlands for:

(1) 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) floodwater and storm water 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) public recreation and education, including hunting and fishing areas, wildlife viewing areas, and nature areas;

(4) commercial uses, including wild rice and cranberry growing and harvesting and aquaculture;

(5) fish, wildlife, native plant habitats;

(6) low-flow augmentation;

(7) carbon sequestration; and

(8) other public uses.

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(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 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](#).

(e) The Board of Water and Soil Resources, in consultation with the commissioners of natural resources and agriculture and local government units, must identify areas of the state where preservation, enhancement, restoration, and establishment of wetlands would have high public value. The board, in consultation with the commissioners, must identify high priority areas for wetland replacement using available information relating to the factors listed in paragraph (a), the historic loss and abundance of wetlands, current applicable state and local government water management and natural resource plans, and studies using a watershed approach to identify current and future watershed needs. The board shall notify local units of government with water planning authority of these high priority areas. Designation of high priority areas is exempt from the rulemaking requirements of chapter 14, and section [14.386](#) does not apply. Designation of high priority areas is not effective until 30 days after publication in the State Register.

(f) Local units of government, as part of a state-approved comprehensive local water management plan as defined in section [103B.3363, subdivision 3](#), a state-approved comprehensive watershed management plan as defined in section [103B.3363, subdivision 3a](#), or a state-approved local comprehensive wetland protection and management plan under section [103G.2243](#), may identify priority areas for wetland replacement and provide them for consideration under paragraph (e).

History: [1991 c 354 art 2 s 4](#); [1996 c 462 s 3](#); [2009 c 176 art 1 s 25](#); [1Sp2015 c 4 art 4 s 75](#)

103F.612 WETLAND PRESERVATION AREAS.

Subdivision 1. **Definition.** For purposes of sections [103F.612](#) to [103F.616](#), "wetland" has the meaning given in section [103G.005, subdivision 19](#).

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 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 shall be executed and acknowledged in the manner required by law to execute and acknowledge a deed and must contain at least the following information and other information the Board of Water and Soil Resources requires:

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(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 statement by 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 providing 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.

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 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.

Subd. 4. Recording. Within five days of the date of application, the county shall forward the application to the county recorder for recording or to the registrar of titles for filing if the land is registered. The county recorder shall record the application containing the restrictive covenant and return it to the applicant. If the land is registered, the registrar of titles shall memorialize the application containing the restrictive covenant upon the certificate of title. The recorder or registrar of titles shall notify the county that the application has been recorded or memorialized.

Subd. 5. Commencement of wetland preservation area. The wetland is a wetland preservation area commencing 30 days from the date the county notifies the landowner of acceptance of the application under subdivision 3.

Subd. 6. Fee. The county may require an application fee to defray administrative costs of the program.

Subd. 7. Maps. The county shall maintain wetland preservation area maps illustrating land covenanted as wetland preservation areas.

Subd. 8. Authority of watershed management organization. A watershed management organization with an approved watershed management plan under section [103B.231](#) has the same authority as a county to receive and act on applications under sections [103F.612](#) to [103F.616](#).

History: [1991 c 354 art 4 s 1](#); [1996 c 462 s 5-9](#); [1999 c 11 art 1 s 4,5](#); [2001 c 146 s 4](#); [1Sp2015 c 4 art 4 s 80](#)

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103F.613 DURATION OF WETLAND PRESERVATION AREA.

Subdivision 1. **General.** A wetland preservation area continues in existence until the owner initiates expiration as provided in this section. The date of expiration must be at least eight years from the date of notice under this section.

Subd. 2. **Termination by owner.** The owner may initiate expiration of a wetland preservation area by notifying the county on a form prepared by the Board of Water and Soil Resources and made available in each county. The notice must describe the property involved and must state the date of expiration. The notice may be rescinded by the owner during the first two years following notice.

Subd. 3. **Notice and recording; termination.** When the county receives notice under subdivision 2, the county shall forward the original notice to the county recorder for recording or to the registrar of titles for filing if the land is registered and shall notify the regional development commission, where applicable, the Board of Water and Soil Resources, and the county soil and water conservation district of the date of expiration. The benefits and limitations of the wetland preservation area and the restrictive covenant filed with the application cease on the date of expiration. If the land is registered, the registrar of titles shall cancel the memorial of the application containing the restrictive covenant upon the certificate of title on the effective date of the expiration.

Subd. 4. **Early expiration.** A wetland preservation area may be terminated earlier than as provided in this section only in the event of a public emergency upon petition from the owner or county to the governor. The determination of a public emergency must be made by the governor through executive order under section 4.035 and chapter 12. The executive order must identify the wetland preservation area, the reasons requiring the action, and the date of expiration.

History: 1991 c 354 art 4 s 2; 1999 c 11 art 1 s 6

103F.614 EMINENT DOMAIN ACTIONS.

Subdivision 1. **Applicability.** An agency of the state, a public benefit corporation, a local government, or any other entity with the power of eminent domain under chapter 117, except a public utility as defined in section 216B.02, a municipal electric or gas utility, a municipal power agency, a cooperative electric association organized under chapter 308A, or a pipeline operating under the authority of the Natural Gas Act, United States Code, title 15, sections 717 to 717z, shall follow the procedures in this section before:

(1) acquiring land or an easement in land with a total area over ten acres within a wetland preservation area; or

(2) advancing a grant, loan, interest subsidy, or other funds for the construction of dwellings, commercial or industrial facilities, or water or sewer facilities that could be used to serve structures in areas that are not for agricultural use, that require an acquisition of land or an easement in a wetland preservation area.

Subd. 2. **Notice of intent.** At least 60 days before an action described in subdivision 1, notice of intent must be filed with the Environmental Quality Board containing information and in the manner and form required by the Environmental Quality Board. The notice of intent must contain a report justifying the proposed action, including an evaluation of alternatives that would not affect land within a wetland preservation area.

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Subd. 3. **Review and order.** The Environmental Quality Board, in consultation with affected local governments, shall review the proposed action to determine its effect on the preservation and enhancement of wetlands and the relationship to local and regional comprehensive plans. If the Environmental Quality Board finds that the proposed action might have an unreasonable effect on a wetland preservation area, the Environmental Quality Board shall issue an order within the 60-day period under subdivision 2 for the party to refrain from the proposed action for an additional 60 days.

Subd. 4. **Public hearing.** During the additional 60 days, the Environmental Quality Board shall hold a public hearing concerning the proposed action at a place within the affected wetland preservation area or easily accessible to the wetland preservation area. Notice of the hearing must be published in a newspaper having a general circulation within the area. Individual written notice must be given to the local governments with jurisdiction over the wetland preservation area, the agency, corporation or government proposing to take the action, the owner of land in the wetland preservation area, and any public agency having the power of review or approval of the action.

Subd. 5. **Joint review.** The review process required in this section may be conducted jointly with any other environmental impact review by the Environmental Quality Board.

Subd. 6. **Suspension of action.** The Environmental Quality Board may suspend an eminent domain action for up to one year if it determines that the action is contrary to wetland preservation and that there are feasible and prudent alternatives that may have a less negative impact on the wetland preservation area.

Subd. 7. **Termination of wetland preservation area.** The benefits and limitations of a wetland preservation area, including the restrictive covenant for the portion of the wetland preservation area taken, end on the date title and possession of the property is obtained.

Subd. 8. **Action by attorney general.** The Environmental Quality Board may request the attorney general to bring an action to enjoin an agency, corporation, or government from violating this section.

Subd. 9. **Exception.** This section does not apply to an emergency project that is immediately necessary for the protection of life and property.

History: 1991 c 354 art 4 s 3

103F.615 LIMITATION ON CERTAIN PUBLIC PROJECTS.

Subdivision 1. **Projects and assessments prohibited; exception.** Notwithstanding any other law, construction projects for public sanitary sewer systems, public water systems, and new public drainage systems are prohibited in wetland preservation areas. New connections between land or buildings in a wetland preservation area and public projects are prohibited. Land in a wetland preservation area may not be assessed for public projects built in the vicinity of the wetland preservation area.

Subd. 2. **Exception; owner option.** Subdivision 1 does not apply to public projects if the owner of the wetland preservation area elects to use and benefit from a public project.

History: 1991 c 354 art 4 s 4

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103F.616 SOIL CONSERVATION PRACTICES.

An owner of a wetland preservation area shall manage the area and surrounding upland areas with sound soil conservation practices that prevent excessive soil loss according to the model ordinance adopted by the Board of Water and Soil Resources. The model ordinance and soil loss provisions under sections [103F.401](#) to [103F.455](#) relating to soil loss apply to all upland areas within a wetland preservation area and to surrounding upland areas. A sound soil conservation practice prevents excessive soil loss or reduces soil loss to the most practicable extent.

History: [1991 c 354 art 4 s 5](#)

103G.005 DEFINITIONS.

Subdivision 1. **Applicability.** The definitions in this section apply to this chapter.

Subd. 2. **Abandon.** "Abandon" means to give up the use and maintenance of structures or improvements to realty and to surrender them to deterioration. Abandon does not refer to intent to surrender or relinquish title to or a possessory interest in the real property where the structures or improvements are located.

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.

Subd. 3. **Altered natural watercourse.** "Altered natural watercourse" means a former natural watercourse that has been affected by artificial changes to straighten, deepen, narrow, or widen the original channel.

Subd. 4. **Appropriating.** "Appropriating" means withdrawal, removal, or transfer of water from its source regardless of how the water is used.

Subd. 5. **Artificial watercourse.** "Artificial watercourse" means a watercourse artificially constructed by human beings where a natural watercourse was not previously located.

Subd. 6. **Basin of origin.** "Basin of origin" means the drainage basin of the Great Lakes, the Red River of the North, the Mississippi River, or the Missouri River.

Subd. 6a. **Board.** "Board" means the Board of Water and Soil Resources.

Subd. 7. **Commissioner.** "Commissioner" means the commissioner of natural resources.

Subd. 8. **Consumptive use.** "Consumptive use" means water that is withdrawn from its source for immediate further use in the area of the source and is not directly returned to the source.

Subd. 9. **Director.** "Director" means the director of the Division of Ecological and Water Resources of the Department of Natural Resources.

Subd. 9a. **Division.** "Division" means the Division of Ecological and Water Resources of the Department of Natural Resources.

Subd. 9b. **Electronic transmission.** "Electronic transmission" means the transfer of data or information through an electronic data interchange system consisting of, but not limited to, computer modems and computer networks. Electronic transmission specifically means electronic mail, unless other means of electronic transmission are mutually agreed to by the sender and recipient.

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Subd. 10. MS 2010 [Renumbered subd 9a]

Subd. 10a. MS 1994 [Renumbered subd 10e]

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.

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:

- (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.

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.

Subd. 10d. [Renumbered subd 10h]

Subd 10e. [Renumbered subd 10i]

Subd. 10f. MS 2011 Supp [Renumbered subd 9b]

Subd. 10g. **In-lieu fee program.** "In-lieu fee program" means a program in which wetland replacement requirements of section [103G.222](#) are satisfied through payment of money to the board or a board-approved sponsor to develop replacement credits according to section [103G.2242, subdivision 12](#).

Subd. 10h. **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."

Subd. 10i. **Local government unit.** "Local government unit" means:

- (1) outside of the seven-county metropolitan area, a city council, county board of commissioners, or a soil and water conservation district or their delegate;
- (2) in the seven-county metropolitan area, a city council, a town board under section [368.01](#), a watershed management organization under section [103B.211](#), or a soil and water conservation district or their delegate;
- (3) on state land, the agency with administrative responsibility for the land; and
- (4) for wetland banking projects established solely for replacing wetland impacts under a permit to mine under section [93.481](#), the commissioner of natural resources.

Subd. 11. **Meandered lake.** "Meandered lake" means a body of water except streams located within the meander lines shown on plats made by the United States General Land Office.

Subd. 11a. [Renumbered subd 15e]

Subd. 12. **Municipality.** "Municipality" means a home rule charter or statutory city.

Subd. 13. **Natural watercourse.** "Natural watercourse" means a natural channel that has definable beds and banks capable of conducting confined runoff from adjacent land.

Subd. 13a. **Once-through system.** "Once-through system" means a space heating, ventilating, air conditioning (HVAC), or refrigeration system used for any type of temperature or humidity control

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application, utilizing groundwater, that circulates through the system and is then discharged without reusing it for a higher priority purpose.

Subd. 14. Ordinary high water level. "Ordinary high water level" means the boundary of water basins, watercourses, public waters, and public waters wetlands, and:

(1) the ordinary high water level is an elevation delineating the highest water level that has been maintained for a sufficient period of time to leave evidence upon the landscape, commonly the point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial;

(2) for watercourses, the ordinary high water level is the elevation of the top of the bank of the channel; and

(3) for reservoirs and flowages, the ordinary high water level is the operating elevation of the normal summer pool.

Subd. 14a. MS 1994 [Renumbered subd 14b]

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 in six of the last ten years prior to January 1, 1991.

Subd. 14b. Political subdivision. "Political subdivision" means a county, city, town, school district, or other local government jurisdiction to which the state provides state aids or on which the state imposes state mandates.

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.

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.

Subd. 15. Public waters. (a) "Public waters" means:

(1) water basins assigned a shoreland management classification by the commissioner under sections [103F.201](#) to [103F.221](#);

(2) waters of the state that have been finally determined to be public waters or navigable waters by a court of competent jurisdiction;

(3) meandered lakes, excluding lakes that have been legally drained;

(4) water basins previously designated by the commissioner for management for a specific purpose such as trout lakes and game lakes pursuant to applicable laws;

(5) water basins designated as scientific and natural areas under section [84.033](#);

(6) water basins located within and totally surrounded by publicly owned lands;

(7) water basins where the state of Minnesota or the federal government holds title to any of the beds or shores, unless the owner declares that the water is not necessary for the purposes of the public ownership;

(8) water basins where there is a publicly owned and controlled access that is intended to provide for public access to the water basin;

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- (9) natural and altered watercourses with a total drainage area greater than two square miles;
- (10) natural and altered watercourses designated by the commissioner as trout streams; and
- (11) public waters wetlands, unless the statute expressly states otherwise.

(b) Public waters are not determined exclusively by the proprietorship of the underlying, overlying, or surrounding land or by whether it is a body or stream of water that was navigable in fact or susceptible of being used as a highway for commerce at the time this state was admitted to the union.

Subd. 15a. Public waters wetlands. "Public waters wetlands" means all types 3, 4, and 5 wetlands, as defined in United States Fish and Wildlife Service Circular No. 39 (1971 edition), not included within the definition of public waters, that are ten or more acres in size in unincorporated areas or 2-1/2 or more acres in incorporated areas.

Subd. 15b. MS 2010 [Renumbered subd 15f]

Subd. 15c. MS 2010 [Renumbered subd 15g]

Subd. 15d. MS 2010 [Renumbered subd 15h]

Subd. 15e. Shallow lake. "Shallow lake" means a body of water, excluding a stream, that is greater than or equal to 50 acres in size and less than or equal to 15 feet in maximum depth.

Subd. 15f. 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 water basin 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 water basin 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](#).

Subd. 15g. Silviculture. "Silviculture" means the management of forest trees.

Subd. 15h. 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.

Subd. 16. Water basin. "Water basin" means an enclosed natural depression with definable banks, capable of containing water, that may be partly filled with waters of the state and is discernible on aerial photographs.

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Subd. 17. **Waters of the state.** "Waters of the state" means surface or underground waters, except surface waters that are not confined but are spread and diffused over the land. Waters of the state includes boundary and inland waters.

Subd. 17a. **Watershed.** "Watershed" means the 81 major watershed units delineated by the map, "State of Minnesota Watershed Boundaries - 1979."

Subd. 17b. **Wetland type.** "Wetland type" means a wetland type classified according to Wetlands of the United States, United States 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 inches of surface. Vegetation includes grasses, sedges, rushes, and various broad-leafed 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

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sedges. In the north, leatherleaf, Labrador-tea, cranberries, carex, and cottongrass are often present. Scattered, often stunted, black spruce and tamarack may occur.

Subd. 18. MS 1994 [Renumbered subd 15a]

Subd. 19. **Wetlands.** (a) "Wetlands" means lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. For purposes of this definition, wetlands must have the following three attributes:

(1) have a predominance of hydric soils;

(2) are inundated or saturated by surface or ground water at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and

(3) under normal circumstances support a prevalence of such vegetation.

(b) For the purposes of regulation under this chapter, the term wetlands does not include public waters wetlands as defined in subdivision 15a.

History: 1990 c 391 art 7 s 2; 1990 c 597 s 62; 1991 c 354 art 6 s 1-6; art 10 s 4; 1994 c 643 s 49; 1995 c 218 s 3; 1996 c 462 s 10-22,43; 1997 c 2 s 8; 2000 c 382 s 1,2; 2003 c 128 art 1 s 111; 2011 c 107 s 63,64; 2012 c 277 art 1 s 79; 2014 c 248 s 11,12; 1Sp2015 c 4 art 4 s 81,148

103G.127 PERMIT PROGRAM UNDER SECTION 404 OF 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 be more restrictive than the program under section 404, or state law, if it is more restrictive than the federal program.

History: 1991 c 354 art 9 s 1; 1996 c 462 s 23 (See also 103G.2375)

103G.141 PENALTIES.

Subdivision. 1. **Misdemeanors.** *Not part of the WCA*

Subd. 2. **Violation of section 404 permits.** (a) Whenever the commissioner finds that a person is in violation of a condition or limitation set forth in a permit issued under the rules adopted by the commissioner under section 103G.127, the commissioner shall issue an order requiring the person to comply with the condition or limitation, or the commissioner shall bring a civil action in accordance with paragraph (b).

(b) The commissioner may commence a civil action for appropriate relief in district court, including a permanent or temporary injunction, for a violation for which the commissioner is authorized to issue a compliance order under paragraph (a). The court may restrain the violation and require compliance.

(c) A person who violates a condition or limitation in a permit issued by the commissioner under section 103G.127, and a person who violates an order issued by the commissioner under paragraph (a), is subject to a civil penalty not to exceed \$25,000 per day for each violation. In determining the amount

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of a civil penalty the court shall consider the seriousness of the violation or violations, the economic benefit, if any, resulting from the violation, any history of violations, any good faith efforts to comply with the applicable requirements, the economic impact of the penalty on the violator, and other matters justice may require.

History: 1990 c 391 art 7 s 11; 1991 c 354 art 9 s 2

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

Subdivision 1. **Conditions for employees and agents to drain or fill wetlands.** An agent or employee of another may not drain or fill a wetland, wholly or partially, unless the agent or employee has:

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

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

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

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

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

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

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

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

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

History: 2000 c 382 s 4; 2011 c 107 s 65

103G.222 REPLACEMENT OF WETLANDS.

Subdivision 1. **Requirements.** (a) Wetlands must not be drained or filled, wholly or partially, unless replaced by actions that provide at least equal public value under a replacement plan approved as provided in section 103G.2242, a replacement plan under a local governmental unit's comprehensive wetland protection and management plan approved by the board under section 103G.2243, or, if a permit to mine is required under section 93.481, under a mining reclamation plan approved by the commissioner under the permit to mine. For project-specific wetland replacement completed prior to wetland impacts authorized or conducted under a permit to mine within the Great Lakes and Rainy River watershed basins, those basins shall be considered a single watershed for purposes of determining wetland replacement ratios. Mining reclamation plans shall apply the same principles and standards for replacing wetlands that are applicable to mitigation plans approved as provided in section 103G.2242.

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Public value must be determined in accordance with section [103B.3355](#) or a comprehensive wetland protection and management plan established under section [103G.2243](#). Sections [103G.221](#) to [103G.2372](#) also apply to excavation in permanently and semipermanently flooded areas of types 3, 4, and 5 wetlands.

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

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

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

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

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

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

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

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

(c) If a wetland is located in a cultivated field, then replacement must be accomplished through restoration only without regard to the priority order in paragraph (b), provided that the altered wetland is not converted to a nonagricultural use for at least ten years.

(d) If a wetland is replaced under paragraph (c), or drained under section [103G.2241, subdivision 2](#), paragraph (b) or (e), the local government unit may require a deed restriction that prohibits nonagricultural use for at least ten years. The local government unit may require the deed restriction if it determines the wetland area drained is at risk of conversion to a nonagricultural use within ten years based on the zoning classification, proximity to a municipality or full service road, or other criteria as determined by the local government unit.

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

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

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

(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.

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(i) Except in a greater than 80 percent area, only wetlands that have been restored from previously drained or filled wetlands, wetlands created by excavation in nonwetlands, wetlands created by dikes or dams along public or private drainage ditches, or wetlands created by dikes or dams associated with the restoration of previously drained or filled wetlands may be used for wetland replacement according to 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 wetland replacement.

(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, and for projects expanded solely for additional traffic capacity, public transportation authorities may purchase credits from the board at the cost to the board to establish credits. Proceeds from the sale of credits provided under this paragraph are appropriated to the board for the purposes of this paragraph. For the purposes of this paragraph, "transportation project" does not include an airport project.

(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;

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

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

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

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

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

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

(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 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. Restoration project priorities. The board shall give priority to restoration projects that:

(1) will encourage land use that leads to more compact development or redevelopment;

(2) will encourage public or private infrastructure investments which connect ecosystems and communities, attract private sector investment in commercial or residential properties adjacent to the public improvement; or

(3) are located in critical rural and urban watersheds.

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

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

(2) in the same watershed as the impacted wetland;

(3) in the same county or wetland bank service area as the impacted wetland; and

(4) in another wetland bank service area.

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(b) Notwithstanding paragraph (a), wetland banking credits approved according to a complete wetland banking application submitted to a local government unit by April 1, 1996, may be used to replace wetland impacts resulting from public transportation projects statewide.

(c) Notwithstanding paragraph (a), clauses (1) and (2), the priority order for replacement by wetland banking begins at paragraph (a), clause (3), according to rules adopted under section 103G.2242, subdivision 1.

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

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

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

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

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

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

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

(g) The board must establish wetland replacement ratios and wetland bank service area priorities to implement the siting and targeting of wetland replacement and encourage the use of high priority areas for wetland replacement.

History: 1991 c 354 art 6 s 8; 1993 c 175 s 2; 1994 c 627 s 3; 1996 c 462 s 24; 2000 c 382 s 5; 2003 c 128 art 1 s 112,113; 2004 c 255 s 44; 2007 c 57 art 1 s 120,121; 2008 c 179 s 33; 2011 c 107 s 66,67; 2012 c 272 s 41; 1Sp2015 c 4 art 4 s 82,83

103G.223 CALCAREOUS FENS.

Calcareous fens, as identified by the commissioner by written order published in the State Register, may not be filled, drained, or otherwise degraded, wholly or partially, by any activity, unless the commissioner, under an approved management plan, decides some alteration is necessary. Identifications made by the commissioner are not subject to the rulemaking provisions of chapter 14 and section 14.386 does not apply.

History: 1991 c 354 art 6 s 9; 2004 c 221 s 43

103G.2241 EXEMPTIONS.

Subdivision 1. **Agricultural activities.** 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

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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 type 1 wetland on agricultural pasture land that remains in the same use, 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 pasture land that remains in the same use;

(3) activities in a wetland conducted as part of normal farming practices. For purposes of this clause, "normal farming practices" means farming, silvicultural, grazing, and ranching activities such as plowing, seeding, cultivating, and harvesting for the production of feed, food, and fiber products, but does not include activities that result in the draining of wetlands;

(4) soil and water conservation practices approved by the soil and water conservation district, after review by the Technical Evaluation Panel;

(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;

(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; or

(7) agricultural activities on agricultural land that is subject to the swampbuster provisions of the federal farm program restrictions consistent with a memorandum of understanding and related agreements between the board and the United States Department of Agriculture, Natural Resources Conservation Service.

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

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(iii) any development with more than one residential unit per 40 acres, except for parcels subject to local zoning standards that allow for family members to establish an additional residence on the same 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.

(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 agricultural land that: (1) was planted with annually seeded crops before July 5, except for crops that are normally planted after that date, in eight out of the ten most recent years prior to the impact; (2) was in a crop rotation seeding of pasture grass, cover crop, or legumes, or was fallow for a crop production purpose, in eight out of the ten most recent years prior to the impact; or (3) was enrolled in a state or federal land conservation program and met the requirements of clause (1) or (2) before enrollment.

(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 activities authorized under the federal Clean Water Act, section 404, or the Rivers and Harbors Act, section 10, regulations that meet minimum state standards under this chapter and sections [103A.202](#) and [103B.3355](#) and that have been approved by the Board of Water and Soil Resources, the commissioners of natural resources and agriculture, and the Pollution Control Agency.

Subd. 4. Wetland restoration. A replacement plan for wetlands is not required for:

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

(2) activities in a wetland restored or created by a landowner without any assistance or financing from public agencies or private entities other than the landowner and the wetland has not been used for wetland replacement or deposited in the state wetland bank.

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;

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(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) A replacement plan for wetlands is not required for:

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

(i) the direct and indirect impacts of the proposed project 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 operation, routine maintenance, or emergency repair of existing utilities and public work structures, including pipelines, provided the activities do not result in additional wetland intrusion or additional draining or filling of a wetland either wholly or partially; or

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

(b) For maintenance, repair, and replacement, the local government unit may issue a seasonal or annual exemption certification or the utility may proceed without local government unit certification if the utility is carrying out the work according to approved best management practices. Work of an emergency nature may proceed as necessary and any drain or fill activities shall be addressed with the local government unit after the emergency work has been completed.

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. Repealed, [2007 c 57 art 1 s 170](#)]

Subd. 9. De minimis (a) Except as provided in paragraphs (d), (e), (f), (g), (h), and (i), a replacement plan for wetlands is not required for draining or filling the following amounts of wetlands as part of a project outside of the shoreland wetland protection zone:

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

(2) 5,000 square feet of type 1, 2, 6, or 7 wetland, excluding white cedar and tamarack wetlands, in a 50 to 80 percent area, except within the 11-county metropolitan area;

(3) 2,000 square feet of type 1, 2, 6, or 7 wetland, excluding white cedar and tamarack wetlands, in a less than 50 percent area, except within the 11-county metropolitan area; or

(4) 100 square feet of type 3, 4, 5, or 8 wetland or white cedar and tamarack wetland.

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(b) Except as provided in paragraphs (e), (f), (g), (h), and (i), a replacement plan for wetlands is not required for draining or filling the following amounts of wetlands as part of a project within the shoreland wetland protection zone beyond the shoreland building setback zone:

- (1) 400 square feet of type 1, 2, 6, or 7 wetland; or
- (2) 100 square feet of type 3, 4, 5, or 8 wetland or white cedar and tamarack wetland.

In a greater than 80 percent area, the de minimis amount allowed under clause (1) may be increased up to 1,000 square feet if the wetland is isolated and is determined to have no direct surficial connection to the public water or if permanent water runoff retention or infiltration measures are established in proximity as approved by the shoreland management authority.

(c) Except as provided in paragraphs (e), (f), (g), (h), and (i), a replacement plan for wetlands is not required for draining or filling up to 20 square feet of wetland as part of a project within the shoreland building setback zone, as defined in the local shoreland management ordinance. The amount in this paragraph may be increased to 100 square feet if permanent water runoff retention or infiltration measures are established in proximity as approved by the shoreland management authority.

(d) Except as provided in paragraphs (b), (c), (e), (f), (g), (h), and (i), a replacement plan is not required for draining or filling amounts of wetlands as part of a project:

(1) 2,500 square feet of type 1, 2, 6, or 7 wetland, excluding white cedar and tamarack wetlands, outside of the shoreland wetland protection zone in a 50 to 80 percent area within the 11-county metropolitan area; or

(2) 1,000 square feet of type 1, 2, or 6 wetland, outside of the shoreland wetland protection zone in a less than 50 percent area within the 11-county metropolitan area.

For purposes of this subdivision, the 11-county metropolitan area consists of the counties of Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Sherburne, Washington, and Wright.

(e) The amounts listed in paragraphs (a), (b), and (c) may not be combined on a project.

(f) 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), (b), or (c), if the landowner owns the entire wetland;
- (2) five percent of the landowner's portion of the wetland; or
- (3) 400 square feet.

(g) This exemption may not be combined with another exemption in this section on a project.

(h) Property may not be divided to increase the amounts listed in paragraph (a).

(i) If a local ordinance or similar local control is more restrictive than this subdivision, the local standard applies.

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;

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

(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.

(d) The board shall develop rules that address the application and implementation of exemptions and that provide for estimates and reporting of exempt wetland impacts, including those in section [103G.2241, subdivisions 2, 6, and 9](#).

History: [1991 c 354 art 6 s 10](#); [1993 c 175 s 3](#); [1993 c 226 s 20](#); [1994 c 627 s 4](#); [1996 c 462 s 25](#); [2000 c 382 s 6-8](#); [2007 c 57 art 1 s 122-127](#); [2007 c 131 art 1 s 55](#); [2009 c 109 s 14](#); [2012 c 272 s 42,43](#)

103G.2242 WETLAND VALUE REPLACEMENT PLANS.

Subdivision 1. Rules. (a) The board, in consultation with the commissioner, shall adopt rules governing the approval of wetland value replacement plans under this section and public waters work permits affecting public waters wetlands under section [103G.245](#). These rules must address the criteria, procedure, timing, and location of acceptable replacement of wetland values and may address the state establishment and administration of a wetland banking program for public and private projects, including provisions for an in-lieu fee program; 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. Any in-lieu fee program established by the board must conform with Code of Federal Regulations, title 33, section 332.8, as amended.

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

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Subd. 2. Evaluation. (a) 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, a technical professional with expertise in water resources management appointed by the local government unit, and a technical professional employee of the Department of Natural Resources for projects affecting public waters or wetlands adjacent to public waters. The panel shall use the "United States Army Corps of Engineers Wetland Delineation Manual" (January 1987), including updates, supplementary guidance, and replacements, if any, "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 and recommendations on other technical matters to the local government unit that must approve a replacement plan, sequencing, exemption determination, no-loss determination, or wetland boundary or type determination 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 or determination.

(b) Persons conducting wetland or public waters boundary delineations or type determinations are exempt from the requirements of chapter 326. The board may develop a professional wetland delineator certification program.

(c) The board must establish an interagency team to assist in identifying and evaluating potential wetland replacement sites. The team must consist of members of the Technical Evaluation Panel and representatives from the Department of Natural Resources; the Pollution Control Agency; the United States Army Corps of Engineers, St. Paul district; and other organizations as determined by the board.

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

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

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

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

Subd. 3. Replacement completion. (a) Replacement of wetland values must be completed prior to or concurrent with the actual draining or filling of a wetland, unless:

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(1) an irrevocable bank letter of credit or other financial assurance acceptable to the local government unit or the board is given to the local government unit or the board to guarantee the successful completion of the replacement; or

(2) the replacement is approved under an in-lieu fee program according to rules adopted under subdivision 1. In the case of an in-lieu fee program established by a board-approved sponsor, the board may require that a financial assurance in an amount and method acceptable to the board be given to the board to ensure the approved sponsor fulfills the sponsor's obligation to complete the required wetland replacement.

(b) The board may acquire land in fee title, purchase or accept easements, enter into agreements, and purchase existing wetland replacement credits to facilitate the wetland banking program. The board may establish in-lieu fee payment amounts and hold money in an account in the special revenue fund, which is appropriated to the board to be used solely for establishing replacement wetlands and administering the wetland banking program.

(c) The board shall coordinate the establishment and operation of a wetland bank with the United States Army Corps of Engineers, the Natural Resources Conservation Service of the United States Department of Agriculture, and the commissioners of natural resources, agriculture, and the Pollution Control Agency.

Subd. 4. Decision. Upon receiving and considering all required data, the local government unit reviewing replacement plan applications, sequencing applications, and exemption or no-loss determination requests must act on all replacement plan applications, sequencing applications, and exemption or no-loss determination requests in compliance with section [15.99](#).

Subd. 5. Processing fee. The local government unit and soil and water conservation district may charge processing fees in amounts not greater than are necessary to cover the reasonable costs of implementing the rules adopted under subdivision 1 and for technical and administrative assistance to landowners in processing other applications for projects affecting wetlands.

Subd. 6. Notice of application. (a) Application for approval of a replacement plan under this section must be reviewed by the local government according to section [15.99, subdivision 3](#), paragraph (a). Copies of the complete application must be mailed or sent by electronic transmission to the members of the Technical Evaluation Panel, the managers of the watershed district if one exists, and the commissioner of 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) 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.

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

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Subd. 8. Public comment period. Except for activities impacting less than 10,000 square feet of wetland, before approval or denial of a replacement plan under this section, comments may be made by the public to the local government unit for a period of 15 days or more, as determined by the local government unit.

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

(1) the wetland owner;

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

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

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

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

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

(3) expanded technical review is needed;

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

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

(c) In determining whether to grant the appeal, the board, executive director, or dispute resolution committee 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.

(d) If an appeal is granted, the appeal must be heard by the committee for dispute resolution of the board, and a decision must be made by the board within 60 days of filing the local government unit's record and the written briefs submitted for the appeal and the hearing. The decision must be served by mail or by electronic transmission to the parties to the appeal, and is not subject to the provisions of chapter 14. 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](#).

(e) Notwithstanding section [16A.1283](#), the board shall establish a fee schedule to defray the administrative costs of appeals made to the board under this subdivision. Fees established under this authority shall not exceed \$1,000. Establishment of the fee is not subject to the rulemaking process of chapter 14 and section [14.386](#) does not apply.

Subd. 9a. Appeals of restoration or replacement orders. A landowner or other responsible party may appeal the terms and conditions of a restoration or replacement order within 30 days of receipt of written notice of the order. The time frame for the appeal may be extended beyond 30 days by mutual

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agreement, in writing, between the landowner or responsible party, the local government unit, and the enforcement authority. If the written request is not submitted within 30 days, the order is final. The board's executive director must review the request and supporting evidence and render a decision within 60 days of receipt of a petition. A decision on 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](#).

Subd. 10. Local requirements. The rules adopted under subdivision 1 shall allow for local government units to use their own notice and public comment procedures so long as the requirements of this section are satisfied.

Subd. 11. [Expired.]

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.

(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, and others established in rule, that are consistent with criteria in rules adopted by the board in conjunction with the commissioners of natural resources and agriculture, are eligible for replacement credit as determined by the local government unit or the board, including enrollment in a statewide wetlands bank:

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

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

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

(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 impact a wetland and replacement credit for the treatment ponds is based on the replacement of wetland functions and on an approved storm water management plan for the local government; and

(5) in a greater than 80 percent area, restoration and protection of streams and riparian buffers that are important to the functions and sustainability of aquatic resources.

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

Subd. 13. [Repealed, [1996 c 462 s 44](#)]

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

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

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

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

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

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

(d) The board may assess a fee to pay the costs associated with establishing conservation easements, or other long-term protection mechanisms prescribed in the rules adopted under subdivision 1, on property used for wetland replacement.

Subd. 15. Fees paid to board. All fees established in subdivisions 9 and 14 must be paid to the Board of Water and Soil Resources and are annually appropriated to the board for the purpose of administration of the wetland bank and to process appeals under section 103G.2242, subdivision 9.

History: 1991 c 354 art 6 s 11; 1993 c 175 s 4,5; 1994 c 627 s 5-9; 1996 c 462 s 26-32; 1998 c 312 s 4; 2000 c 382 s 9-14; 2001 c 7 s 25; 2001 c 146 s 6,7; 2003 c 128 art 1 s 114,115; 2007 c 57 art 1 s 128-132; 2007 c 131 art 1 s 56; 2011 c 107 s 68-73; 2012 c 272 s 44; 1Sp2015 c 4 art 4 s 84-89,148

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, the commissioner of agriculture, 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;

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(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 within the area subject to the plan, except that replacement for the amount above a 1:1 ratio can be accomplished as described in section 103G.2242, subdivision 12; and

(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.

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.

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(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 section.

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.

(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](#).

History: [1996 c 462 s 33](#); [1997 c 2 s 9](#); [1998 c 312 s 5](#); [2001 c 7 s 26](#); [2007 c 57 art 1 s 133](#)

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.

History: [1996 c 462 s 34](#)

103G.2251 STATE CONSERVATION EASEMENTS; WETLAND BANK CREDIT.

In greater than 80 percent areas, preservation of wetlands, riparian buffers, and watershed areas essential to maintaining important functions and sustainability of aquatic resources in the watershed that are protected by a permanent conservation easement as defined under section [84C.01](#) and held by the board may be eligible for wetland replacement or mitigation credits, according to rules adopted by the board. To be eligible for credit under this section, a conservation easement must be established after May 24, 2008, and approved by the board. Wetland areas on private lands preserved under this section are not eligible for replacement or mitigation credit if the area has been protected using public conservation funds.

History: [2008 c 357 s 26](#); [2008 c 368 art 1 s 14](#); [2011 c 107 s 74](#); [1Sp2015 c 4 art 4 s 90](#)

103G.235 RESTRICTIONS ON ACCESS TO WETLANDS.

Subdivision 1. Wetlands adjacent to roads. To protect the public health or safety, local units of government may by ordinance restrict public access to public waters wetlands from municipality, county, or township roads that abut public waters wetlands.

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Subd. 2. **Privately restored or created wetlands.** When a landowner creates a new wetland or restores a formerly existing wetland on private land that is adjacent to public land or a public road right-of-way, there is no public access to the created or restored wetland if posted by the landowner.

History: 1990 c 391 art 7 s 20; 1991 c 354 art 6 s 14; 2007 c 57 art 1 s 134

103G.237 COMPENSATION FOR LOSS OF PRIVATE USE.

Subdivision 1. **General.** A person whose replacement plan is not approved must be compensated as provided in this section. The person may drain or fill the wetland without an approved replacement plan if the person:

- (1) is eligible for compensation under subdivision 2;
- (2) applies for compensation in accordance with subdivision 3; and
- (3) does not receive the compensation required in subdivision 4 within 90 days after the application for compensation is received by the board.

Subd. 2. **Eligibility.** A person is eligible for compensation if:

- (1) the person applies for replacement plan approval under section 103G.2242;
- (2) the replacement plan is not approved or the plan conditions make the proposed use unworkable or not feasible;
- (3) the person appeals the disapproval of the plan;
- (4) the proposed use would otherwise be allowed under federal, state, and local laws, rules, ordinances, and other legal requirements;
- (5) the person has suffered or will suffer damages;
- (6) disallowing the proposed use will enhance the public value of the wetland; and
- (7) the person applies to the board for compensation

Subd. 3. **Application.** An application for compensation must be made on forms prescribed by the board and include:

- (1) the location and public value of the wetland where the use was proposed;
- (2) a description and reason for the proposed wetland use; and
- (3) the objection to the replacement plan, if any.

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:
 - (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
 - (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

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(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](#).

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 this section or section [103G.222](#), [103G.2241](#), [103G.2242](#), [103G.2243](#), 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 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.

History: [1991 c 354 art 6 s 17](#); [1994 c 627 s 10](#); [1996 c 462 s 35, 36](#)

103G.2372 ENFORCEMENT.

Subdivision 1. Commissioner of natural resources. (a) The commissioner of natural resources, conservation officers, and peace officers shall enforce laws preserving and protecting groundwater quantity, wetlands, and public waters. The commissioner of natural resources, a conservation officer, or a peace officer may issue a cease and desist order to stop any illegal activity adversely affecting groundwater quantity, a wetland, or public waters.

(b) In the order, or by separate order, the commissioner, conservation officer, or peace officer may require restoration or replacement of the wetland or public waters, as determined by the local soil and water conservation district for wetlands and the commissioner of natural resources for public waters. Restoration or replacement orders may be recorded or filed in the office of the county recorder or registrar of titles, as appropriate, in the county where the real property is located by the commissioner of natural resources, conservation officers, or peace officers as a deed restriction on the property that runs with the land and is binding on the owners, successors, and assigns until the conditions of the order are met or the order is rescinded. Notwithstanding section [386.77](#), the agency shall pay the applicable filing fee for any document filed under this section.

Subd. 2. Misdemeanor. A violation of an order issued under subdivision 1 is a misdemeanor and must be prosecuted by the county attorney where the wetland or public waters are located or the illegal activity occurred.

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Subd. 3. **Restitution.** The court may, as part of sentencing, require a person convicted under subdivision 2 to restore or replace the wetland or public waters, as determined by the local soil and water conservation district for wetlands and the commissioner of natural resources for public waters.

History: 1991 c 354 art 6 s 18; 2000 c 382 s 15; 2001 c 146 s 8; 2005 c 138 s 2

103G.2374 ELECTRONIC TRANSMISSION.

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

History: 2011 c 107 s 75

103G.2375 ASSUMPTION OF SECTION 404 OF FEDERAL CLEAN WATER ACT.

Notwithstanding any other law to the contrary, the Board of Water and Soil Resources, in consultation with the commissioners of natural resources, agriculture, and the Pollution Control Agency, may adopt or amend rules establishing a 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, in whole or part, the permitting and wetland banking programs under section 404 of the federal Clean Water Act, United States Code, title 33, section 1344. The rules may not be more restrictive than the program under section 404 or state law.

History: 2012 c 272 s 45 (See also 103G.127)

103G.245 WORK IN PUBLIC WATERS.

Subd. 5. **Delegation of permit authority to local units of government.** (a) The commissioner may delegate public waters work permit authority to the appropriate county or municipality or to watershed districts or watershed management organizations that have elected to assert local authority over protected waters. The public waters work permit authority must be delegated under guidelines of the commissioner and the delegation must be done by agreement with the involved county, municipality, watershed district, or water management organization and in compliance with section 103G.315.

(b) For projects affecting public waters wetlands and for wetland areas of public waters affected by a public transportation project as determined by the commissioner, the commissioner may waive the requirement for a public waters work permit if the local government unit makes a replacement, no-loss, or exemption determination in compliance with sections 103A.201, 103B.3355, and 103G.222 to 103G.2372, and rules adopted pursuant to these same sections.

(c) For projects affecting both public waters and wetlands, the local government unit may, by written agreement with the commissioner, waive the requirement for a replacement plan, no-loss, or exemption determination if a public waters work permit is required and the commissioner includes the provisions of sections 103A.201, 103B.3355, and 103G.222 to 103G.2372, and rules adopted pursuant to these same sections in the public waters work permit.

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History: 1990 c 391 art 7 s 22; 1995 c 218 s 8,9; 1996 c 443 s 1,2; 1997 c 247 s 1; 2000 c 382 s 17; 2001 c 146 s 9; 2003 c 2 art 1 s 14; 2005 c 138 s 3; 2006 c 180 s 1; 2012 c 272 s 46,47; 2014 c 289 s 54; 1Sp2015 c 4 art 4 s 91

272.02 EXEMPT PROPERTY.

Subdivision 1. [Repealed, 2014 c 308 art 9 s 94].

Subd. 11. **Wetlands.** Wetlands are exempt. For purposes of this subdivision, "wetlands" means: (i) land described in section 103G.005, subdivision 15a; (ii) land which is mostly under water, produces little if any income, and has no use except for wildlife or water conservation purposes, provided it is preserved in its natural condition and drainage of it would be legal, feasible, and economically practical for the production of livestock, dairy animals, poultry, fruit, vegetables, forage and grains, except wild rice; or (iii) land in a wetland preservation area under sections 103F.612 to 103F.616. "Wetlands" under clauses (i) and (ii) include adjacent land which is not suitable for agricultural purposes due to the presence of the wetlands, but do not include woody swamps containing shrubs or trees, wet meadows, meandered water, streams, rivers, and floodplains or river bottoms. Exemption of wetlands from taxation pursuant to this section shall not grant the public any additional or greater right of access to the wetlands or diminish any right of ownership to the wetlands.

History: 1991 c 354 art 4 s 6; 1996 c 462 s 43

273.11 VALUATION OF PROPERTY.

Subd. 11. **Valuation of restored or preserved wetland.** Wetlands restored by the federal, state, or local government, or by a nonprofit organization, or preserved under the terms of a temporary or perpetual easement by the federal or state government, must be valued by assessors at their wetland value. "Wetland value" in this subdivision means the market value of wetlands in any potential use in which the wetland character is not permanently altered. Wetland value shall not reflect potential uses of the wetland that would violate the terms of any existing conservation easement, or any onetime payment received by the wetland owner under the terms of a state or federal conservation easement. Wetland value shall reflect any potential income consistent with a property's wetland character, including but not limited to lease payments for hunting or other recreational uses. The commissioner of revenue shall issue a bulletin advising assessors of the provisions of this section by October 1, 1991.

For purposes of this subdivision, "wetlands" means lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. For purposes of this definition, wetlands must have the following three attributes:

- (1) have a predominance of hydric soils;
- (2) are inundated or saturated by surface or ground water at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and
- (3) under normal circumstances support a prevalence of such vegetation.

History: 1991 c 354 art 10 s 7

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275.295 Wetlands exemption; replacement of revenue

[Repealed, [1Sp2011 c 7 art 6 s 27](#)]

History: 1991 c 354 art 4 s 7; 1993 c 375 art 3 s 27; 1997 c 31 art 3 s 10; 1Sp2011 c 7 art 6 s 27

(The following statute is not part of the Wetland Conservation Act but is included for reference.)

15.99 TIME DEADLINE FOR AGENCY ACTION.

Subdivision 1. **Definitions.** (a) For purposes of this section, the following terms shall have the meanings given.

(b) "Agency" means a department, agency, board, commission, or other group in the executive branch of state government; a statutory or home rule charter city, county, town, or school district; any metropolitan agency or regional entity; and any other political subdivision of the state.

(c) "Request" means a written application related to zoning, septic systems, watershed district review, soil and water conservation district review, or the expansion of the metropolitan urban service area, for a permit, license, or other governmental approval of an action. A request must be submitted in writing to the agency on an application form provided by the agency, if one exists. The agency may reject as incomplete a request not on a form of the agency if the request does not include information required by the agency. A request not on a form of the agency must clearly identify on the first page the specific permit, license, or other governmental approval being sought. No request shall be deemed made if not in compliance with this paragraph.

(d) "Applicant" means a person submitting a request under this section. An applicant may designate a person to act on the applicant's behalf regarding a request under this section and any action taken by or notice given to the applicant's designee related to the request shall be deemed taken by or given to the applicant.

Subd. 2. **Deadline for response.** (a) Except as otherwise provided in this section, section [462.358](#), [subdivision 3b](#), or [473.175](#), or chapter 505, and notwithstanding any other law to the contrary, an agency must approve or deny within 60 days a written request relating to zoning, septic systems, watershed district review, soil and water conservation district review, or expansion of the metropolitan urban service area for a permit, license, or other governmental approval of an action. Failure of an agency to deny a request within 60 days is approval of the request. If an agency denies the request, it must state in writing the reasons for the denial at the time that it denies the request.

(b) When a vote on a resolution or properly made motion to approve a request fails for any reason, the failure shall constitute a denial of the request provided that those voting against the motion state on the record the reasons why they oppose the request. A denial of a request because of a failure to approve a resolution or motion does not preclude an immediate submission of a same or similar request.

(c) Except as provided in paragraph (b), if an agency, other than a multimember governing body, denies the request, it must state in writing the reasons for the denial at the time that it denies the request. If a multimember governing body denies a request, it must state the reasons for denial on the record and provide the applicant in writing a statement of the reasons for the denial. If the written statement is not adopted at the same time as the denial, it must be adopted at the next meeting

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following the denial of the request but before the expiration of the time allowed for making a decision under this section. The written statement must be consistent with the reasons stated in the record at the time of the denial. The written statement must be provided to the applicant upon adoption.

Subd. 3. Application; extensions. (a) The time limit in subdivision 2 begins upon the agency's receipt of a written request containing all information required by law or by a previously adopted rule, ordinance, or policy of the agency, including the applicable application fee. If an agency receives a written request that does not contain all required information, the 60-day limit starts over only if the agency sends written notice within 15 business days of receipt of the request telling the requester what information is missing.

(b) If a request relating to zoning, septic systems, watershed district review, soil and water conservation district review, or expansion of the metropolitan urban service area requires the approval of more than one state agency in the executive branch, the 60-day period in subdivision 2 begins to run for all executive branch agencies on the day a request containing all required information is received by one state agency. The agency receiving the request must forward copies to other state agencies whose approval is required.

(c) An agency response, including an approval with conditions, meets the 60-day time limit if the agency can document that the response was sent within 60 days of receipt of the written request. Failure to satisfy the conditions, if any, may be a basis to revoke or rescind the approval by the agency and will not give rise to a claim that the 60-day limit was not met.

(d) The time limit in subdivision 2 is extended if a state statute, federal law, or court order requires a process to occur before the agency acts on the request, and the time periods prescribed in the state statute, federal law, or court order make it impossible to act on the request within 60 days. In cases described in this paragraph, the deadline is extended to 60 days after completion of the last process required in the applicable statute, law, or order. Final approval of an agency receiving a request is not considered a process for purposes of this paragraph.

(e) The time limit in subdivision 2 is extended if: (1) a request submitted to a state agency requires prior approval of a federal agency; or (2) an application submitted to a city, county, town, school district, metropolitan or regional entity, or other political subdivision requires prior approval of a state or federal agency. In cases described in this paragraph, the deadline for agency action is extended to 60 days after the required prior approval is granted.

(f) An agency may extend the time limit in subdivision 2 before the end of the initial 60-day period by providing written notice of the extension to the applicant. The notification must state the reasons for the extension and its anticipated length, which may not exceed 60 days unless approved by the applicant.

(g) An applicant may by written notice to the agency request an extension of the time limit under this section.

History: 1995 c 248 art 18 s 1; 1996 c 283 s 1; 2003 c 41 s 1; 2006 c 226 s 1; 2007 c 57 art 1 s 11; 2007 c 113 s 1

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Laws 2015, Ch. 4, Art. 4, Sect. 133. WETLAND CONSERVATION ACT REPORT.

By March 15, 2016, the Board of Water and Soil Resources, in cooperation with the Department of Natural Resources, shall report to the committees with jurisdiction over environment and natural resources on the proposals to implement high priority areas for wetland replacement and in-lieu fees for replacement and modify wetland replacement siting and actions eligible for credit. In developing the report, the board and department shall consult with stakeholders and agencies.

Laws 2015, Ch. 4, Art. 4, Sect.137. FEDERAL CLEAN WATER ACT SECTION 404 PERMIT PROGRAM FEASIBILITY STUDY.

(a) The Board of Water and Soil Resources and the commissioner of natural resources shall study the feasibility of the state assuming administration of the section 404 permit program of the federal Clean Water Act. The United States Army Corps of Engineers, St. Paul District; and the United States Environmental Protection Agency shall be consulted with during the development of the study. The study shall identify:

- (1) the federal requirements for state assumption of the 404 program;
 - (2) the potential extent of assumption, including those waters that would remain under the jurisdiction of the United States Army Corps of Engineers due to the prohibition of 404 assumption in certain waters as defined in section 404(g)(1) of the federal Clean Water Act;
 - (3) differences in waters regulated under Minnesota laws compared to waters of the United States, including complications and potential solutions to address the current uncertainties relating to determining waters of the United States;
 - (4) measures to ensure the protection of aquatic resources consistent with the Clean Water Act, Wetland Conservation Act, and the public waters program administered by the Department of Natural Resources;
 - (5) changes to existing state law, including changes to current implementation structure and processes, that would need to occur to allow for state assumption of the 404 program;
 - (6) new agency responsibilities for implementing federal requirements and procedures that would become the obligation of the state under assumption, including the staff and resources needed for implementation;
 - (7) the estimated costs and savings that would accrue to affected units of government;
 - (8) the effect on application review and approval processes and time frames;
 - (9) alternatives to assumption that would also achieve the goals of regulatory simplification, efficiency, and reduced permitting times;
 - (10) options for financing any additional costs of implementation; and
 - (11) other information as determined by the board and commissioner.
- (b) The board and commissioner shall involve stakeholders in the development of the plan of study consistent with Minnesota Statutes, section 103B.101, subdivision 16.

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(c) By January 15, 2017, the board and commissioner must report the study to the legislative policy and finance committees and divisions with jurisdiction over environment and natural resources.