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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. 2447

03/13/2019 Authored by Mekeland, Heinrich, Lucero, Robbins, Grossell and others
The bill was read for the first time and referred to the Committee on Environment and Natural Resources Policy

1.1 A bill for an act
1.2 relating to natural resources; modifying wetland replacement ratios; amending
1.3 Minnesota Statutes 2018, sections 103G.222, subdivision 1; 103G.2242, subdivision
1.4 12; 103G.2243, subdivision 2.

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

1.6 Section 1. Minnesota Statutes 2018, section 103G.222, subdivision 1, is amended to read:

1.7 Subdivision 1. Requirements. (a) Wetlands must not be drained or filled, wholly or
1.8 partially, unless replaced by actions that provide at least equal public value under a
1.9 replacement plan approved as provided in section 103G.2242, a replacement plan under a
1.10 local governmental unit's comprehensive wetland protection and management plan approved
1.11 by the board under section 103G.2243, or, if a permit to mine is required under section
1.12 93.481, under a mining reclamation plan approved by the commissioner under the permit
1.13 to mine. Project-specific wetland-replacement plans submitted as part of a project for which
1.14 a permit to mine is required and approved by the commissioner on or after July 1, 1991,
1.15 may include surplus wetland credits to be allocated by the commissioner to offset future
1.16 mining-related wetland impacts under any permits to mine held by the permittee, the operator,
1.17 the permittee's or operator's parent, an affiliated subsidiary, or an assignee pursuant to an
1.18 assignment under section 93.481, subdivision 5. For project-specific wetland replacement
1.19 completed prior to wetland impacts authorized or conducted under a permit to mine within
1.20 the Great Lakes and Rainy River watershed basins, those basins shall be considered a single
1.21 watershed for purposes of determining wetland-replacement ratios. Mining reclamation
1.22 plans shall apply the same principles and standards for replacing wetlands that are applicable
1.23 to mitigation plans approved as provided in section 103G.2242. The commissioner must
1.24 provide notice of an application for wetland replacement under a permit to mine to the

2.1 county in which the impact is proposed and the county in which a mitigation site is proposed.
2.2 Public value must be determined in accordance with section 103B.3355 or a comprehensive
2.3 wetland protection and management plan established under section 103G.2243. Sections
2.4 103G.221 to 103G.2372 also apply to excavation in permanently and semipermanently
2.5 flooded areas of types 3, 4, and 5 wetlands.

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

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

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

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

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

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

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

2.19 For a project involving the draining or filling of wetlands in an amount not exceeding
2.20 10,000 square feet more than the applicable amount in section 103G.2241, subdivision 9,
2.21 paragraph (a), the local government unit may make an on-site sequencing determination
2.22 without a written alternatives analysis from the applicant.

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

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

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

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

3.9 ~~(g) For a wetland or public waters wetland located on agricultural land or in a greater~~
3.10 ~~than 80 percent area,~~

3.11 (f) Replacement must be in the ratio of one acre of replaced wetland for each acre of
3.12 drained or filled wetland.

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

3.15 ~~(i)~~ (h) Except in a greater than 80 percent area, only wetlands that have been restored
3.16 from previously drained or filled wetlands, wetlands created by excavation in nonwetlands,
3.17 wetlands created by dikes or dams along public or private drainage ditches, or wetlands
3.18 created by dikes or dams associated with the restoration of previously drained or filled
3.19 wetlands may be used for wetland replacement according to rules adopted under section
3.20 103G.2242, subdivision 1. Modification or conversion of nondegraded naturally occurring
3.21 wetlands from one type to another are not eligible for wetland replacement.

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

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

3.30 ~~(l)~~ (k) For projects involving draining or filling of wetlands associated with a new public
3.31 transportation project, and for projects expanded solely for additional traffic capacity, public
3.32 transportation authorities may purchase credits from the board at the cost to the board to
3.33 establish credits. Proceeds from the sale of credits provided under this paragraph are

4.1 appropriated to the board for the purposes of this paragraph. For the purposes of this
4.2 paragraph, "transportation project" does not include an airport project.

4.3 ~~(m)~~ (1) A replacement plan for wetlands is not required for individual projects that result
4.4 in the filling or draining of wetlands for the repair, rehabilitation, reconstruction, or
4.5 replacement of a currently serviceable existing state, city, county, or town public road
4.6 necessary, as determined by the public transportation authority, to meet state or federal
4.7 design or safety standards or requirements, excluding new roads or roads expanded solely
4.8 for additional traffic capacity lanes. This paragraph only applies to authorities for public
4.9 transportation projects that:

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

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

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

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

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

4.32 Public transportation authorities at their discretion may deviate from federal and state
4.33 design standards on existing road projects when practical and reasonable to avoid wetland
4.34 filling or draining, provided that public safety is not unreasonably compromised. The local

5.1 road authority and its officers and employees are exempt from liability for any tort claim
 5.2 for injury to persons or property arising from travel on the highway and related to the
 5.3 deviation from the design standards for construction or reconstruction under this paragraph.
 5.4 This paragraph does not preclude an action for damages arising from negligence in
 5.5 construction or maintenance on a highway.

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

5.10 ~~(n)~~ (n) A local government unit may request the board to reclassify a county or watershed
 5.11 on the basis of its percentage of presettlement wetlands remaining. After receipt of
 5.12 satisfactory documentation from the local government, the board shall change the
 5.13 classification of a county or watershed. If requested by the local government unit, the board
 5.14 must assist in developing the documentation. Within 30 days of its action to approve a
 5.15 change of wetland classifications, the board shall publish a notice of the change in the
 5.16 Environmental Quality Board Monitor.

5.17 ~~(o)~~ (o) One hundred citizens who reside within the jurisdiction of the local government
 5.18 unit may request the local government unit to reclassify a county or watershed on the basis
 5.19 of its percentage of presettlement wetlands remaining. In support of their petition, the citizens
 5.20 shall provide satisfactory documentation to the local government unit. The local government
 5.21 unit shall consider the petition and forward the request to the board under paragraph ~~(n)~~ (n)
 5.22 or provide a reason why the petition is denied.

5.23 Sec. 2. Minnesota Statutes 2018, section 103G.2242, subdivision 12, is amended to read:

5.24 Subd. 12. **Replacement credits.** (a) No public or private wetland restoration,
 5.25 enhancement, or construction may be allowed for replacement unless specifically designated
 5.26 for replacement and paid for by the individual or organization performing the wetland
 5.27 restoration, enhancement, or construction.

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

5.30 (c) Notwithstanding section 103G.222, subdivision 1, paragraph ~~(h)~~ (h), the following
 5.31 actions, and others established in rule, that are consistent with criteria in rules adopted by
 5.32 the board in conjunction with the commissioners of natural resources and agriculture, are

6.1 eligible for replacement credit as determined by the local government unit or the board,
6.2 including enrollment in a statewide wetlands bank:

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

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

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

6.9 (4) water quality treatment ponds constructed to pretreat storm water runoff prior to
6.10 discharge to wetlands, public waters, or other water bodies, provided that the water quality
6.11 treatment ponds must be associated with an ongoing or proposed project that will impact a
6.12 wetland and replacement credit for the treatment ponds is based on the replacement of
6.13 wetland functions and on an approved storm water management plan for the local
6.14 government; and

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

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

6.20 Sec. 3. Minnesota Statutes 2018, section 103G.2243, subdivision 2, is amended to read:

6.21 Subd. 2. **Plan contents.** A comprehensive wetland protection and management plan
6.22 may:

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

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

6.25 (ii) an assessment of the wetland functions listed in section 103B.3355, using a
6.26 methodology chosen by the Technical Evaluation Panel from one of the methodologies
6.27 established or approved by the board under that section; and

6.28 (iii) the resulting public values;

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

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

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

7.8 (ii) ~~in a less than 50 percent area, a minimum acreage requirement of two acres of~~
7.9 ~~replaced wetland for each acre of drained or filled wetland requiring replacement is met~~
7.10 ~~within the area subject to the plan, except that replacement for the amount above a 1:1 ratio~~
7.11 ~~can be accomplished as described in section 103G.2242, subdivision 12; and~~

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