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HOUSE FILE No. 577

FIRST COMMITTEE ENGROSSMENT

February 5, 2007

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The bill was read for the first time and referred to the Committee on Environment and Natural Resources

February 19, 2007

Committee Recommendation and Adoption of Report:

To Pass as Amended and re-referred to the Committee on Local Government and Metropolitan Affairs

March 8, 2007

Committee Recommendation and Adoption of Report:

To Pass and re-referred to the Committee on Finance

Referred by Chair to Watersheds, Wetlands and Buffers Subcommittee.

March 21, 2007

Returned to the Environment and Natural Resources Finance Division as Amended.

1.1 A bill for an act
 1.2 relating to natural resources; modifying requirements for ditch buffers; requiring
 1.3 annual drainage authority reports; modifying drainage repair and inspection
 1.4 requirements; modifying provisions for wetland conservation; providing for
 1.5 civil enforcement; modifying restrictions on access to created or restored
 1.6 wetlands; modifying definition of public official; improving oversight of local
 1.7 government water management; modifying authority of watershed district board
 1.8 of managers and soil and water conservation district board of supervisors;
 1.9 requiring rulemaking; appropriating money; amending Minnesota Statutes 2006,
 1.10 sections 10A.01, subdivision 35; 15.99, subdivision 3; 103B.101, by adding
 1.11 a subdivision; 103C.321, by adding a subdivision; 103D.325, by adding a
 1.12 subdivision; 103E.021, subdivisions 1, 2, 3, by adding a subdivision; 103E.315,
 1.13 subdivision 8; 103E.321, subdivision 1; 103E.701, by adding a subdivision;
 1.14 103E.705, subdivisions 1, 2, 3; 103E.728, subdivision 2; 103G.222, subdivisions
 1.15 1, 3; 103G.2241, subdivisions 1, 2, 3, 6, 9, 11; 103G.2242, subdivisions 2, 2a, 9,
 1.16 12, 15; 103G.2243, subdivision 2; 103G.235; proposing coding for new law in
 1.17 Minnesota Statutes, chapters 103B; 103E; repealing Minnesota Statutes 2006,
 1.18 section 103G.2241, subdivision 8.

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

1.20 Section 1. Minnesota Statutes 2006, section 10A.01, subdivision 35, is amended to
 1.21 read:

1.22 Subd. 35. **Public official.** "Public official" means any:

1.23 (1) member of the legislature;

1.24 (2) individual employed by the legislature as secretary of the senate, legislative
 1.25 auditor, chief clerk of the house, revisor of statutes, or researcher, legislative analyst, or
 1.26 attorney in the Office of Senate Counsel and Research or House Research;

1.27 (3) constitutional officer in the executive branch and the officer's chief administrative
 1.28 deputy;

1.29 (4) solicitor general or deputy, assistant, or special assistant attorney general;

- 2.1 (5) commissioner, deputy commissioner, or assistant commissioner of any state
2.2 department or agency as listed in section 15.01 or 15.06, or the state chief information
2.3 officer;
- 2.4 (6) member, chief administrative officer, or deputy chief administrative officer of a
2.5 state board or commission that has either the power to adopt, amend, or repeal rules under
2.6 chapter 14, or the power to adjudicate contested cases or appeals under chapter 14;
- 2.7 (7) individual employed in the executive branch who is authorized to adopt, amend,
2.8 or repeal rules under chapter 14 or adjudicate contested cases under chapter 14;
- 2.9 (8) executive director of the State Board of Investment;
- 2.10 (9) deputy of any official listed in clauses (7) and (8);
- 2.11 (10) judge of the Workers' Compensation Court of Appeals;
- 2.12 (11) administrative law judge or compensation judge in the State Office of
2.13 Administrative Hearings or referee in the Department of Employment and Economic
2.14 Development;
- 2.15 (12) member, regional administrator, division director, general counsel, or operations
2.16 manager of the Metropolitan Council;
- 2.17 (13) member or chief administrator of a metropolitan agency;
- 2.18 (14) director of the Division of Alcohol and Gambling Enforcement in the
2.19 Department of Public Safety;
- 2.20 (15) member or executive director of the Higher Education Facilities Authority;
- 2.21 (16) member of the board of directors or president of Minnesota Technology, Inc.;
- 2.22 (17) member of the board of directors or executive director of the Minnesota State
2.23 High School League;
- 2.24 (18) member of the Minnesota Ballpark Authority established in section 473.755; ~~or~~
- 2.25 (19) citizen member of the Legislative-Citizen Commission on Minnesota
2.26 Resources;
- 2.27 (20) manager of a watershed district or member of a watershed management
2.28 organization; or
- 2.29 (21) supervisor of a soil and water conservation district.

2.30 Sec. 2. Minnesota Statutes 2006, section 15.99, subdivision 3, is amended to read:

2.31 Subd. 3. **Application; extensions.** (a) The time limit in subdivision 2 begins upon
2.32 the agency's receipt of a written request containing all information required by law or by
2.33 a previously adopted rule, ordinance, or policy of the agency, including the applicable
2.34 application fee. If an agency receives a written request that does not contain all required

3.1 information, the 60-day limit starts over only if the agency sends written notice within 15
3.2 business days of receipt of the request telling the requester what information is missing.

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

3.9 (c) An agency response meets the 60-day time limit if the agency can document that
3.10 the response was sent within 60 days of receipt of the written request.

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

3.18 (e) If an application requires a wetland delineation, wetland replacement plan
3.19 approval, or certification or determination of exemption from wetland replacement under
3.20 section 103G.2241, the deadline in subdivision 2 for an application deemed complete
3.21 under this section is extended to 60 days after the completion of the required delineation or
3.22 verification of the delineation, replacement plan approval, or certification or determination
3.23 of exemption, whichever is later.

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

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

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

3.36 **EFFECTIVE DATE.** This section is effective the day following final enactment.

4.1 Sec. 3. Minnesota Statutes 2006, section 103B.101, is amended by adding a
4.2 subdivision to read:

4.3 Subd. 12. **Authority to issue penalty orders.** The board may issue an order
4.4 requiring violations to be corrected and administratively assessing monetary penalties for
4.5 violations of this chapter and chapters 103C, 103D, 103E, 103F, and 103G, any rules
4.6 adopted under those chapters, and any standards, limitations, or conditions established
4.7 by the board.

4.8 **EFFECTIVE DATE.** This section is effective the day following final enactment.

4.9 Sec. 4. **[103B.102] LOCAL WATER MANAGEMENT ACCOUNTABILITY**
4.10 **AND OVERSIGHT.**

4.11 Subdivision 1. **Findings; improving accountability and oversight.** The legislature
4.12 finds that a process is needed to monitor the performance and activities of local water
4.13 management entities. The process should be preemptive so that problems can be identified
4.14 early and systematically. Underperforming entities should be provided assistance and
4.15 direction for improving performance in a reasonable time frame.

4.16 Subd. 2. **Definitions.** For the purposes of this section, "local water management
4.17 entities" means watershed districts, soil and water conservation districts, metropolitan
4.18 water management organizations, and counties operating separately or jointly in their
4.19 role as local water management authorities under chapter 103B, 103C, 103D, or 103G
4.20 and chapter 114D.

4.21 Subd. 3. **Evaluation and report.** The Board of Water and Soil Resources shall
4.22 evaluate performance, financial, and activity information for each local water management
4.23 entity. The board shall evaluate the entities' progress in accomplishing their adopted
4.24 plans on a regular basis, but not less than once every five years. The board shall maintain
4.25 a summary of local water management entity performance on the board's Web site.
4.26 Beginning February 1, 2008, and annually thereafter, the board shall provide an analysis
4.27 of local water management entity performance to the chairs of the house and senate
4.28 committees having jurisdiction over environment and natural resources policy.

4.29 Subd. 4. **Corrective actions.** (a) In addition to other authorities, the Board of Water
4.30 and Soil Resources may, based on its evaluation in subdivision 3, reduce, withhold, or
4.31 redirect grants and other funding if the local water management entity has not corrected
4.32 deficiencies as prescribed in a notice from the board within one year from the date of
4.33 the notice.

4.34 (b) The board may defer a decision on a termination petition filed under section
4.35 103B.221, 103C.225, or 103D.271 for up to one year to conduct or update the evaluation

5.1 under subdivision 3 or to communicate the results of the evaluation to petitioners or to
5.2 local and state government agencies.

5.3 Sec. 5. Minnesota Statutes 2006, section 103C.321, is amended by adding a
5.4 subdivision to read:

5.5 Subd. 6. **Credit card use.** The supervisors may authorize the use of a credit card
5.6 by any soil and water conservation district officer or employee otherwise authorized
5.7 to make a purchase on behalf of the soil and water conservation district. If a soil and
5.8 water conservation district officer or employee makes a purchase by credit card that is not
5.9 approved by the supervisors, the officer or employee is personally liable for the amount of
5.10 the purchase. A purchase by credit card must otherwise comply with all statutes, rules,
5.11 or soil and water conservation district policy applicable to soil and water conservation
5.12 district purchases.

5.13 Sec. 6. Minnesota Statutes 2006, section 103D.325, is amended by adding a
5.14 subdivision to read:

5.15 Subd. 4. **Credit card use.** The managers may authorize the use of a credit card
5.16 by any watershed district officer or employee otherwise authorized to make a purchase
5.17 on behalf of the watershed district. If a watershed district officer or employee makes a
5.18 purchase by credit card that is not approved by the managers, the officer or employee is
5.19 personally liable for the amount of the purchase. A purchase by credit card must otherwise
5.20 comply with all statutes, rules, or watershed district policy applicable to watershed district
5.21 purchases.

5.22 Sec. 7. Minnesota Statutes 2006, section 103E.021, subdivision 1, is amended to read:

5.23 Subdivision 1. **Spoil banks must be spread and ~~grass planted~~ permanent**
5.24 **vegetation established.** In any proceeding to establish, construct, improve, or do any
5.25 work affecting a public drainage system under any law that appoints viewers to assess
5.26 benefits and damages, the authority having jurisdiction over the proceeding shall order
5.27 spoil banks to be spread consistent with the plan and function of the drainage system. The
5.28 authority shall order that permanent grass, other than a noxious weed, be planted on
5.29 ~~the banks~~ ditch side slopes and ~~on a strip~~ that a permanent strip of perennial vegetation
5.30 approved by the drainage authority be established on each side of the ditch. Preference
5.31 should be given to planting native species of a local ecotype. The approved perennial
5.32 vegetation shall not impede future maintenance of the ditch. The permanent strips of
5.33 perennial vegetation shall be 16-1/2 feet in width measured outward from the top edge

6.1 of the constructed channel resulting from the proceeding, or to the crown of the leveled
6.2 spoil bank, whichever is the greater, on each side of the top edge of the channel of the
6.3 ditch, except for an action by a drainage authority that results only in a redetermination of
6.4 benefits and damages, for which the required width shall be 16-1/2 feet. Drainage system
6.5 rights-of-way for the acreage and additional property required for the planting permanent
6.6 strips must be acquired by the authority having jurisdiction.

6.7 Sec. 8. Minnesota Statutes 2006, section 103E.021, subdivision 2, is amended to read:

6.8 Subd. 2. **Reseeding and harvesting grass perennial vegetation.** The board shall
6.9 develop a forestry practice docket for cost share money. The authority having jurisdiction
6.10 over the repair and maintenance of the drainage system shall supervise all necessary
6.11 reseeding. The permanent grass strips of perennial vegetation must be maintained in the
6.12 same manner as other drainage system repairs. Harvest of the grass vegetation from the
6.13 grass permanent strip in a manner not harmful to the grass vegetation or the drainage
6.14 system is the privilege of the fee owner or assigns. The county drainage inspector shall
6.15 establish rules for the fee owner and assigns to harvest the grass vegetation.

6.16 Sec. 9. Minnesota Statutes 2006, section 103E.021, subdivision 3, is amended to read:

6.17 Subd. 3. **Agricultural practices prohibited.** Agricultural practices, other than
6.18 those required for the maintenance of a permanent growth of grass perennial vegetation,
6.19 are not permitted on any portion of the property acquired for planting perennial vegetation.

6.20 Sec. 10. Minnesota Statutes 2006, section 103E.021, is amended by adding a
6.21 subdivision to read:

6.22 Subd. 6. **Incremental implementation of vegetated ditch buffer strips and side**
6.23 **inlet controls.** (a) Notwithstanding other provisions of this chapter requiring appointment
6.24 of viewers and redetermination of benefits and damages, a drainage authority may
6.25 implement permanent buffer strips of perennial vegetation approved by the drainage
6.26 authority or side inlet controls, or both, adjacent to a public drainage ditch, where
6.27 necessary to control erosion and sedimentation, improve water quality, or maintain the
6.28 efficiency of the drainage system. Preference should be given to planting native species of
6.29 a local ecotype. The approved perennial vegetation shall not impede future maintenance
6.30 of the ditch. The permanent strips of perennial vegetation shall be 16-1/2 feet in width
6.31 measured outward from the top edge of the existing constructed channel. Drainage system
6.32 rights-of-way for the acreage and additional property required for the permanent strips
6.33 must be acquired by the authority having jurisdiction.

7.1 (b) A project under this subdivision shall be implemented as a repair according to
 7.2 section 103E.705, except that the drainage authority may appoint an engineer to examine
 7.3 the drainage system and prepare an engineer's repair report for the project.

7.4 (c) Damages shall be determined by the drainage authority, or viewers, appointed by
 7.5 the drainage authority, according to section 103E.315, subdivision 8. A damages statement
 7.6 shall be prepared, including an explanation of how the damages were determined for each
 7.7 property affected by the project, and filed with the auditor or watershed district. Within 30
 7.8 days after the damages statement is filed, the auditor or watershed district shall prepare
 7.9 property owners' reports according to section 103E.323, subdivision 1, clauses (1), (2),
 7.10 (6), (7), and (8), and mail a copy of the property owner's report and damages statement to
 7.11 each owner of property affected by the proposed project.

7.12 (d) After a damages statement is filed, the drainage authority shall set a time, by
 7.13 order, not more than 30 days after the date of the order, for a hearing on the project. At
 7.14 least ten days before the hearing, the auditor or watershed district shall give notice by mail
 7.15 of the time and location of the hearing to the owners of property and political subdivisions
 7.16 likely to be affected by the project.

7.17 (e) The drainage authority shall make findings and order the repairs to be made if
 7.18 the drainage authority determines from the evidence presented at the hearing and by the
 7.19 viewers and engineer, if appointed, that the repairs are necessary for the drainage system
 7.20 and the costs of the repairs are within the limitations of section 103E.705.

7.21 **Sec. 11. [103E.067] DITCH BUFFER STRIP ANNUAL REPORTING.**

7.22 The drainage authority shall annually submit a report to the Board of Water and Soil
 7.23 Resources for the calendar year including:

7.24 (1) the number and types of actions for which viewers were appointed;

7.25 (2) the number of miles of buffer strips established according to section 103E.021;

7.26 (3) the number of drainage system inspections conducted; and

7.27 (4) the number of violations of section 103E.021 identified and enforcement actions
 7.28 taken.

7.29 **Sec. 12. Minnesota Statutes 2006, section 103E.315, subdivision 8, is amended to read:**

7.30 **Subd. 8. Extent of damages.** Damages to be paid may include:

7.31 (1) the fair market value of the property required for the channel of an open ditch
 7.32 and the permanent ~~grass~~ strip of perennial vegetation under section 103E.021;

7.33 (2) the diminished value of a farm due to severing a field by an open ditch;

7.34 (3) loss of crop production during drainage project construction; ~~and~~

- 8.1 (4) the diminished productivity or land value from increased overflow; and
8.2 (5) costs to restore a perennial vegetative cover or structural practice existing
8.3 under a federal or state conservation program adjacent to the permanent drainage system
8.4 right-of-way and damaged by the drainage project.

8.5 Sec. 13. Minnesota Statutes 2006, section 103E.321, subdivision 1, is amended to read:

8.6 Subdivision 1. **Requirements.** The viewers' report must show, in tabular form,
8.7 for each lot, 40-acre tract, and fraction of a lot or tract under separate ownership that
8.8 is benefited or damaged:

8.9 (1) a description of the lot or tract, under separate ownership, that is benefited or
8.10 damaged;

8.11 (2) the names of the owners as they appear on the current tax records of the county
8.12 and their addresses;

8.13 (3) the number of acres in each tract or lot;

8.14 (4) the number and value of acres added to a tract or lot by the proposed drainage of
8.15 public waters;

8.16 (5) the damage, if any, to riparian rights;

8.17 (6) the damages paid for the permanent ~~grass~~ strip of perennial vegetation under
8.18 section 103E.021;

8.19 (7) the total number and value of acres added to a tract or lot by the proposed
8.20 drainage of public waters, wetlands, and other areas not currently being cultivated;

8.21 (8) the number of acres and amount of benefits being assessed for drainage of areas
8.22 which before the drainage benefits could be realized would require a public waters work
8.23 permit to work in public waters under section 103G.245 to excavate or fill a navigable
8.24 water body under United States Code, title 33, section 403, or a permit to discharge into
8.25 waters of the United States under United States Code, title 33, section 1344;

8.26 (9) the number of acres and amount of benefits being assessed for drainage of areas
8.27 that would be considered conversion of a wetland under United States Code, title 16,
8.28 section 3821, if the area was placed in agricultural production;

8.29 (10) the amount of right-of-way acreage required; and

8.30 (11) the amount that each tract or lot will be benefited or damaged.

8.31 Sec. 14. Minnesota Statutes 2006, section 103E.701, is amended by adding a
8.32 subdivision to read:

8.33 Subd. 7. **Restoration; disturbance or destruction by repair.** If a drainage system
8.34 repair disturbs or destroys a perennial vegetative cover or structural practice existing

9.1 under a federal or state conservation program adjacent to the permanent drainage system
9.2 right-of-way, the practice must be restored according to the applicable practice plan or
9.3 as determined by the drainage authority, if a practice plan is not available. Restoration
9.4 costs shall be paid by the drainage system.

9.5 Sec. 15. Minnesota Statutes 2006, section 103E.705, subdivision 1, is amended to read:

9.6 Subdivision 1. **Inspection.** After the construction of a drainage system has been
9.7 completed, the drainage authority shall maintain the drainage system that is located in its
9.8 jurisdiction, including ~~grass~~ the permanent strips of perennial vegetation under section
9.9 103E.021, and provide the repairs necessary to make the drainage system efficient. The
9.10 drainage authority shall have the drainage system inspected on a regular basis by an
9.11 inspection committee of the drainage authority or a drainage inspector appointed by the
9.12 drainage authority. Open drainage ditches shall be inspected at a minimum of every five
9.13 years when no violation of section 103E.021 is found and annually when a violation of
9.14 section 103E.021 is found, until one year after the violation is corrected.

9.15 Sec. 16. Minnesota Statutes 2006, section 103E.705, subdivision 2, is amended to read:

9.16 Subd. 2. **~~Grass~~ Permanent strip of perennial vegetation inspection and**
9.17 **compliance notice.** (a) The drainage authority having jurisdiction over a drainage system
9.18 must inspect the drainage system for violations of section 103E.021. If an inspection
9.19 committee of the drainage authority or a drainage inspector determines that permanent
9.20 ~~grass~~ strips of perennial vegetation are not being maintained in compliance with section
9.21 103E.021, a compliance notice must be sent to the property owner.

9.22 (b) The notice must state:

9.23 (1) the date the ditch was inspected;

9.24 (2) the persons making the inspection;

9.25 (3) that spoil banks are to be spread in a manner consistent with the plan and function
9.26 of the drainage system and that the drainage system has acquired a ~~grass~~ permanent strip
9.27 ~~16-1/2 feet in width or to the crown of the spoil bank, whichever is greater~~ of perennial
9.28 vegetation, according to section 103E.021;

9.29 (4) the violations of section 103E.021;

9.30 (5) the measures that must be taken by the property owner to comply with section
9.31 103E.021 and the date when the property must be in compliance; and

9.32 (6) that if the property owner does not comply by the date specified, the drainage
9.33 authority will perform the work necessary to bring the area into compliance with section
9.34 103E.021 and charge the cost of the work to the property owner.

10.1 (c) If a property owner does not bring an area into compliance with section 103E.021
10.2 as provided in the compliance notice, the inspection committee or drainage inspector
10.3 must notify the drainage authority.

10.4 (d) This subdivision applies to property acquired under section 103E.021.

10.5 Sec. 17. Minnesota Statutes 2006, section 103E.705, subdivision 3, is amended to read:

10.6 Subd. 3. **Drainage inspection report.** For each drainage system that the board
10.7 designates and requires the drainage inspector to examine, the drainage inspector shall
10.8 make a drainage inspection report in writing to the board after examining a drainage
10.9 system, designating portions that need repair or maintenance of ~~grass~~ the permanent
10.10 strips of perennial vegetation and the location and nature of the repair or maintenance.
10.11 The board shall consider the drainage inspection report at its next meeting and may repair
10.12 all or any part of the drainage system as provided under this chapter. The ~~grass~~ permanent
10.13 strips of perennial vegetation must be maintained in compliance with section 103E.021.

10.14 Sec. 18. Minnesota Statutes 2006, section 103E.728, subdivision 2, is amended to read:

10.15 Subd. 2. **Additional assessment for agricultural practices on ~~grass~~ permanent**
10.16 **strip of perennial vegetation.** (a) The drainage authority may, after notice and hearing,
10.17 charge an additional assessment on property that has agricultural practices on or otherwise
10.18 violates provisions related to the permanent ~~grass~~ strip of perennial vegetation acquired
10.19 under section 103E.021.

10.20 (b) The drainage authority may determine the cost of the repair per mile of open
10.21 ditch on the ditch system. Property that is in violation of the ~~grass~~ requirement shall be
10.22 assessed a cost of 20 percent of the repair cost per open ditch mile multiplied by the length
10.23 of open ditch in miles on the property in violation.

10.24 (c) After the amount of the additional assessment is determined and applied to the
10.25 repair cost, the balance of the repair cost may be apportioned pro rata as provided in
10.26 subdivision 1.

10.27 Sec. 19. Minnesota Statutes 2006, section 103G.222, subdivision 1, is amended to read:

10.28 Subdivision 1. **Requirements.** (a) Wetlands must not be drained or filled, wholly
10.29 or partially, unless replaced by restoring or creating wetland areas of at least equal
10.30 public value under a replacement plan approved as provided in section 103G.2242, a
10.31 replacement plan under a local governmental unit's comprehensive wetland protection
10.32 and management plan approved by the board under section 103G.2243, or, if a permit to
10.33 mine is required under section 93.481, under a mining reclamation plan approved by the

11.1 commissioner under the permit to mine. Mining reclamation plans shall apply the same
11.2 principles and standards for replacing wetlands by restoration or creation of wetland areas
11.3 that are applicable to mitigation plans approved as provided in section 103G.2242. Public
11.4 value must be determined in accordance with section 103B.3355 or a comprehensive
11.5 wetland protection and management plan established under section 103G.2243. Sections
11.6 103G.221 to 103G.2372 also apply to excavation in permanently and semipermanently
11.7 flooded areas of types 3, 4, and 5 wetlands.

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

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

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

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

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

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

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

11.21 For a project involving the draining or filling of wetlands in an amount not exceeding
11.22 10,000 square feet more than the applicable amount in section 103G.2241, subdivision 9,
11.23 paragraph (a), the local government unit may make an on-site sequencing determination
11.24 without a written alternatives analysis from the applicant.

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

11.29 (d) If a wetland is drained under section 103G.2241, subdivision 2, the local
11.30 government unit may require a deed restriction that prohibits nonagricultural use for at
11.31 least ten years unless the drained wetland is replaced as provided under this section. The
11.32 local government unit may require the deed restriction if it determines the wetland area
11.33 drained is at risk of conversion to a nonagricultural use within ten years based on the
11.34 zoning classification, proximity to a municipality or full service road, or other criteria as
11.35 determined by the local government unit.

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

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

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

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

12.14 ~~(h)~~ (i) Except in a greater than 80 percent area, only wetlands that have been
12.15 restored from previously drained or filled wetlands, wetlands created by excavation in
12.16 nonwetlands, wetlands created by dikes or dams along public or private drainage ditches,
12.17 or wetlands created by dikes or dams associated with the restoration of previously drained
12.18 or filled wetlands may be used in a statewide banking program established in rules adopted
12.19 under section 103G.2242, subdivision 1. Modification or conversion of nondegraded
12.20 naturally occurring wetlands from one type to another are not eligible for enrollment in a
12.21 statewide wetlands bank.

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

12.28 ~~(j)~~ (k) This section and sections 103G.223 to 103G.2242, 103G.2364, and
12.29 103G.2365 apply to the state and its departments and agencies.

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

12.35 ~~(l)~~ (m) A replacement plan for wetlands is not required for individual projects that
12.36 result in the filling or draining of wetlands for the repair, rehabilitation, reconstruction,

13.1 or replacement of a currently serviceable existing state, city, county, or town public road
13.2 necessary, as determined by the public transportation authority, to meet state or federal
13.3 design or safety standards or requirements, excluding new roads or roads expanded solely
13.4 for additional traffic capacity lanes. This paragraph only applies to authorities for public
13.5 transportation projects that:

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

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

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

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

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

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

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

14.5 ~~(n)~~ (o) A local government unit may request the board to reclassify a county or
 14.6 watershed on the basis of its percentage of presettlement wetlands remaining. After
 14.7 receipt of satisfactory documentation from the local government, the board shall change
 14.8 the classification of a county or watershed. If requested by the local government unit,
 14.9 the board must assist in developing the documentation. Within 30 days of its action to
 14.10 approve a change of wetland classifications, the board shall publish a notice of the change
 14.11 in the Environmental Quality Board Monitor.

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

14.18 **EFFECTIVE DATE.** This section is effective the day following final enactment.

14.19 Sec. 20. Minnesota Statutes 2006, section 103G.222, subdivision 3, is amended to read:

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

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

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

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

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

14.29 (5) for project specific replacement, in an adjacent watershed ~~or county~~ to the
 14.30 affected wetland, or for replacement by wetland banking, in an adjacent wetland bank
 14.31 service area, except that impacts in a 50 to 80 percent area must be replaced in a 50 to
 14.32 80 percent area and impacts in a less than 50 percent area must be replaced in a less
 14.33 than 50 percent area; and

14.34 ~~(5) (6) statewide, only for wetlands affected in greater than 80 percent areas and for~~
 14.35 public transportation projects, except that wetlands affected in less than 50 percent areas

15.1 must be replaced in less than 50 percent areas, and wetlands affected in the seven-county
15.2 metropolitan area must be replaced at a ratio of two to one in: (i) the affected county or,
15.3 (ii) in another of the seven metropolitan counties, or (iii) in one of the major watersheds
15.4 that are wholly or partially within the seven-county metropolitan area, but at least one to
15.5 one must be replaced within the seven-county metropolitan area.

15.6 (b) Notwithstanding paragraph (a), siting wetland replacement in greater than 80
15.7 percent areas may follow the priority order under this paragraph: (1) by wetland banking
15.8 after evaluating on-site replacement and replacement within the watershed; (2) replaced
15.9 in an adjacent wetland bank service area if wetland bank credits are not reasonably
15.10 available in the same wetland bank service area as the affected wetland, as determined
15.11 by the local government unit or by a comprehensive inventory approved by the board;
15.12 and (3) statewide.

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

15.18 (d) The exception in paragraph (a), clause ~~(5)~~ (6), does not apply to replacement
15.19 completed using wetland banking credits established by a person who submitted a
15.20 complete wetland banking application to a local government unit by April 1, 1996.

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

15.24 ~~(d)~~ (f) For the purposes of this section, "reasonable, practicable, and environmentally
15.25 beneficial replacement opportunities" are defined as opportunities that:

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

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

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

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

15.34 ~~(e)~~ (g) Regulatory agencies, local government units, and other entities involved in
15.35 wetland restoration shall collaborate to identify potential replacement opportunities within
15.36 their jurisdictional areas.

16.1 **EFFECTIVE DATE.** This section is effective the day following final enactment.

16.2 Sec. 21. Minnesota Statutes 2006, section 103G.2241, subdivision 1, is amended to
16.3 read:

16.4 Subdivision 1. **Agricultural activities.** ~~(a)~~ A replacement plan for wetlands is
16.5 not required for:

16.6 ~~(1) activities in a wetland that was planted with annually seeded crops, was in a crop~~
16.7 ~~rotation seeding of pasture grass or legumes, or was required to be set aside to receive~~
16.8 ~~price support or other payments under United States Code, title 7, sections 1421 to 1469,~~
16.9 ~~in six of the last ten years prior to January 1, 1991;~~

16.10 ~~(2) activities in a wetland that is or has been enrolled in the federal conservation~~
16.11 ~~reserve program under United States Code, title 16, section 3831, that:~~

16.12 ~~(i) was planted with annually seeded crops, was in a crop rotation seeding, or was~~
16.13 ~~required to be set aside to receive price support or payment under United States Code,~~
16.14 ~~title 7, sections 1421 to 1469, in six of the last ten years prior to being enrolled in the~~
16.15 ~~program; and~~

16.16 ~~(ii) has not been restored with assistance from a public or private wetland restoration~~
16.17 ~~program;~~

16.18 ~~(3) activities in a wetland that has received a commenced drainage determination~~
16.19 ~~provided for by the federal Food Security Act of 1985, that was made to the county~~
16.20 ~~Agricultural Stabilization and Conservation Service office prior to September 19, 1988,~~
16.21 ~~and a ruling and any subsequent appeals or reviews have determined that drainage of the~~
16.22 ~~wetland had been commenced prior to December 23, 1985;~~

16.23 ~~(4) activities in a type 1 wetland on agricultural land, except for bottomland~~
16.24 ~~hardwood type 1 wetlands, and activities in a type 2 or type 6 wetland that is less than two~~
16.25 ~~acres in size and located on agricultural land;~~

16.26 (1) activities in a wetland conducted as part of normal farming practices. For
16.27 purposes of this clause, "normal farming practices" means farming, silvicultural, grazing,
16.28 and ranching activities such as plowing, seeding, cultivating, and harvesting for the
16.29 production of feed, food, fuel, fiber, and forest products, but does not include activities
16.30 that result in the draining or filling of wetlands in whole or part;

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

16.33 ~~(5)~~ (3) aquaculture activities including pond excavation and construction and
16.34 maintenance of associated access roads and dikes authorized under, and conducted in
16.35 accordance with, a permit issued by the United States Army Corps of Engineers under

17.1 section 404 of the federal Clean Water Act, United States Code, title 33, section 1344, but
17.2 not including construction or expansion of buildings; or

17.3 ~~(6) (4) wild rice production activities, including necessary diking and other activities~~
17.4 ~~authorized under a permit issued by the United States Army Corps of Engineers under~~
17.5 ~~section 404 of the federal Clean Water Act, United States Code, title 33, section 1344;.~~

17.6 ~~(7) normal agricultural practices to control noxious or secondary weeds as defined~~
17.7 ~~by rule of the commissioner of agriculture, in accordance with applicable requirements~~
17.8 ~~under state and federal law, including established best management practices; and~~

17.9 ~~(8) agricultural activities in a wetland that is on agricultural land:~~

17.10 ~~(i) annually enrolled in the federal Agriculture Improvement and Reform Act of~~
17.11 ~~1996 and is subject to United States Code, title 16, sections 3821 to 3823, in effect on~~
17.12 ~~January 1, 2000; or~~

17.13 ~~(ii) subject to subsequent federal farm program restrictions that meet minimum~~
17.14 ~~state standards under this chapter and sections 103A.202 and 103B.3355 and that have~~
17.15 ~~been approved by the Board of Water and Soil Resources, the commissioners of natural~~
17.16 ~~resources and agriculture, and the Pollution Control Agency.~~

17.17 ~~(b) Land enrolled in a federal farm program under paragraph (a), clause (8), is~~
17.18 ~~eligible for easement participation for those acres not already compensated under a federal~~
17.19 ~~program:~~

17.20 ~~(c) The exemption under paragraph (a), clause (4), may be expanded to additional~~
17.21 ~~acreage, including types 1, 2, and 6 wetlands that are part of a larger wetland system, when~~
17.22 ~~the additional acreage is part of a conservation plan approved by the local soil and water~~
17.23 ~~conservation district, the additional draining or filling is necessary for efficient operation~~
17.24 ~~of the farm, the hydrology of the larger wetland system is not adversely affected, and~~
17.25 ~~wetlands other than types 1, 2, and 6 are not drained or filled.~~

17.26 **EFFECTIVE DATE.** This section is effective the day following final enactment.

17.27 Sec. 22. Minnesota Statutes 2006, section 103G.2241, subdivision 2, is amended to
17.28 read:

17.29 Subd. 2. **Drainage.** (a) For the purposes of this subdivision, "public drainage
17.30 system" means a drainage system as defined in section 103E.005, subdivision 12, and any
17.31 ditch or tile lawfully connected to the drainage system. If wetlands drained under this
17.32 subdivision are converted to uses prohibited under paragraph (b), clause (2), during the
17.33 ten-year period following drainage, the wetlands must be replaced according to section
17.34 103G.222.

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

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

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

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

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

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

18.12 (i) platted lots;

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

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

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

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

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

18.24 ~~(e) A replacement plan is not required for draining or filling of wetlands resulting~~
18.25 ~~from activities conducted as part of a public drainage system improvement project that~~
18.26 ~~received final approval from the drainage authority before July 1, 1991, and after July 1,~~
18.27 ~~1986, if:~~

18.28 ~~(1) the approval remains valid;~~

18.29 ~~(2) the project remains active; and~~

18.30 ~~(3) no additional drainage will occur beyond that originally approved.~~

18.31 (e) A replacement plan is not required for draining agricultural land that: (1) was
18.32 planted with annually seeded crops before June 10, except for crops that are normally
18.33 planted after that date, in eight out of the ten most recent years prior to the impact; (2)
18.34 was in a crop rotation seeding of pasture grass or legumes in eight out of the ten most
18.35 recent years prior to the impact; or (3) was enrolled in a state or federal land conservation
18.36 program and met the requirements of clause (1) or (2) before enrollment.

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

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

19.9 **EFFECTIVE DATE.** This section is effective the day following final enactment.

19.10 Sec. 23. Minnesota Statutes 2006, section 103G.2241, subdivision 3, is amended to
 19.11 read:

19.12 Subd. 3. **Federal approvals.** A replacement plan for wetlands is not required for:

19.13 ~~(1) activities exempted from federal regulation under United States Code, title 33,~~
 19.14 ~~section 1344(f), as in effect on January 1, 1991;~~

19.15 ~~(2) activities authorized under, and conducted in accordance with, an applicable~~
 19.16 ~~general permit issued by the United States Army Corps of Engineers under section 404~~
 19.17 ~~of the federal Clean Water Act, United States Code, title 33, section 1344, except the~~
 19.18 ~~nationwide permit in Code of Federal Regulations, title 33, section 330.5, paragraph (a),~~
 19.19 ~~clauses (14), limited to when a new road crosses a wetland, and (26), as in effect on~~
 19.20 ~~January 1, 1991; or~~

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

19.26 **EFFECTIVE DATE.** This section is effective the day following final enactment.

19.27 Sec. 24. Minnesota Statutes 2006, section 103G.2241, subdivision 6, is amended to
 19.28 read:

19.29 Subd. 6. **Utilities; public works.** (a) A replacement plan for wetlands is not
 19.30 required for:

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

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

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

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

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

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

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

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

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

20.19 (i) the direct and indirect impacts of the proposed project have been avoided and
20.20 minimized to the extent possible; and

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

20.23 (2) activities associated with operation, routine maintenance, or emergency repair of
20.24 existing utilities and public work structures, including pipelines, provided the activities
20.25 do not result in additional wetland intrusion or additional draining or filling of a wetland
20.26 either wholly or partially; or

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

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

20.35 **EFFECTIVE DATE.** This section is effective the day following final enactment.

21.1 Sec. 25. Minnesota Statutes 2006, section 103G.2241, subdivision 9, is amended to
21.2 read:

21.3 Subd. 9. **De minimis.** (a) Except as provided in paragraphs (b) and (c), a
21.4 replacement plan for wetlands is not required for draining or filling the following amounts
21.5 of wetlands as part of a project:

21.6 (1) 10,000 square feet of type 1, 2, 6, or 7 wetland, excluding white cedar and
21.7 tamarack wetlands, outside of the shoreland wetland protection zone in a greater than
21.8 80 percent area;

21.9 (2) ~~5,000~~ 2,500 square feet of type 1, 2, 6, or 7 wetland, excluding white cedar
21.10 and tamarack wetlands, outside of the shoreland wetland protection zone in a 50 to 80
21.11 percent area;

21.12 (3) ~~2,000~~ 1,000 square feet of type 1, 2, or 6 wetland, outside of the shoreland
21.13 wetland protection zone in a less than 50 percent area;

21.14 (4) ~~400~~ 100 square feet of wetland types not listed in clauses (1) to (3) outside of
21.15 the building setback zone of the shoreland wetland protection zones in all counties; or

21.16 (5) 400 square feet of ~~type 1, 2, 3, 4, 5, 6, 7, or 8~~ wetland types listed in clauses (1)
21.17 to (3), in beyond the building setback zone, as defined in the local shoreland management
21.18 ordinance, but within the shoreland wetland protection zone, except that. In a greater
21.19 than 80 percent area, the local government unit may increase the de minimis amount
21.20 up to 1,000 square feet ~~in the shoreland protection zone in areas beyond the building~~
21.21 ~~setback~~ if the wetland is isolated and is determined to have no direct surficial connection
21.22 to the public water. To the extent that a local shoreland management ordinance is more
21.23 restrictive than this provision, the local shoreland ordinance applies; or

21.24 (6) up to 20 square feet of wetland, regardless of type or location.

21.25 (b) The amounts listed in paragraph (a), clauses (1) to ~~(5)~~ (6), may not be combined
21.26 on a project.

21.27 (c) This exemption no longer applies to a landowner's portion of a wetland when
21.28 the cumulative area drained or filled of the landowner's portion since January 1, 1992, is
21.29 the greatest of:

21.30 (1) the applicable area listed in paragraph (a), if the landowner owns the entire
21.31 wetland;

21.32 (2) five percent of the landowner's portion of the wetland; or

21.33 (3) 400 square feet.

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

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

22.1 **EFFECTIVE DATE.** This section is effective the day following final enactment.

22.2 Sec. 26. Minnesota Statutes 2006, section 103G.2241, subdivision 11, is amended to
22.3 read:

22.4 Subd. 11. **Exemption conditions.** (a) A person conducting an activity in a wetland
22.5 under an exemption in subdivisions 1 to 10 shall ensure that:

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

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

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

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

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

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

22.20 **EFFECTIVE DATE.** This section is effective the day following final enactment.

22.21 Sec. 27. Minnesota Statutes 2006, section 103G.2242, subdivision 2, is amended to
22.22 read:

22.23 Subd. 2. **Evaluation.** (a) Questions concerning the public value, location, size,
22.24 or type of a wetland shall be submitted to and determined by a Technical Evaluation
22.25 Panel after an on-site inspection. The Technical Evaluation Panel shall be composed of
22.26 a technical professional employee of the board, a technical professional employee of
22.27 the local soil and water conservation district or districts, a technical professional with
22.28 expertise in water resources management appointed by the local government unit, and
22.29 a technical professional employee of the Department of Natural Resources for projects
22.30 affecting public waters or wetlands adjacent to public waters. The panel shall use the
22.31 "United States Army Corps of Engineers Wetland Delineation Manual" (January 1987),
22.32 including updates, supplementary guidance, and replacements, if any, "Wetlands of
22.33 the United States" (United States Fish and Wildlife Service Circular 39, 1971 edition),
22.34 and "Classification of Wetlands and Deepwater Habitats of the United States" (1979

23.1 edition). The panel shall provide the wetland determination and recommendations on
23.2 other technical matters to the local government unit that must approve a replacement
23.3 plan, wetland banking plan, exemption determination, no-loss determination, or wetland
23.4 boundary or type determination and may recommend approval or denial of the plan. The
23.5 authority must consider and include the decision of the Technical Evaluation Panel in their
23.6 approval or denial of a plan or determination.

23.7 (b) Persons conducting wetland or public waters boundary delineations or type
23.8 determinations are exempt from the requirements of chapter 326. ~~By January 15, 2001,~~
23.9 ~~the board, in consultation with the Minnesota Association of Professional Soil Scientists,~~
23.10 ~~the University of Minnesota, and the Wetland Delineators' Association, shall submit a plan~~
23.11 ~~for a professional wetland delineator certification program to the legislature. The board~~
23.12 may develop a professional wetland delineator certification program.

23.13 **EFFECTIVE DATE.** This section is effective the day following final enactment.

23.14 Sec. 28. Minnesota Statutes 2006, section 103G.2242, subdivision 2a, is amended to
23.15 read:

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

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

23.28 (c) The local government unit decision must be made in compliance with section
23.29 15.99. Within ten calendar days of the decision, the local government unit decision must
23.30 be mailed to the landowner, members of the Technical Evaluation Panel, the watershed
23.31 district or watershed management organization, if one exists, and individual members of
23.32 the public who request a copy.

23.33 (d) Appeals of decisions made by designated local government staff must be made
23.34 to the local government unit. Notwithstanding any law to the contrary, a ruling on an

24.1 appeal must be made by the local government unit within 30 days from the date of the
 24.2 filing of the appeal.

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

24.6 **EFFECTIVE DATE.** This section is effective the day following final enactment.

24.7 Sec. 29. Minnesota Statutes 2006, section 103G.2242, subdivision 9, is amended to
 24.8 read:

24.9 Subd. 9. **Appeal.** (a) Appeal of a replacement plan, exemption, wetland banking,
 24.10 wetland boundary or type determination, ~~or no-loss decision, or restoration order~~ may
 24.11 be obtained by mailing a petition and payment of a filing fee ~~of \$200~~, which shall be
 24.12 retained by the board to defray administrative costs, to the board within 30 days after the
 24.13 postmarked date of the mailing specified in subdivision 7. If appeal is not sought within
 24.14 30 days, the decision becomes final. ~~The local government unit may require the petitioner~~
 24.15 ~~to post a letter of credit, cashier's check, or cash in an amount not to exceed \$500.~~ If the
 24.16 petition for hearing is accepted, the amount posted must be returned to the petitioner.

24.17 Appeal may be made by:

- 24.18 (1) the wetland owner;
 24.19 (2) any of those to whom notice is required to be mailed under subdivision 7; or
 24.20 (3) 100 residents of the county in which a majority of the wetland is located.

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

- 24.24 (1) the appeal is meritless, trivial, or brought solely for the purposes of delay;
 24.25 (2) the petitioner has not exhausted all local administrative remedies;
 24.26 (3) expanded technical review is needed;
 24.27 (4) the local government unit's record is not adequate; or
 24.28 (5) the petitioner has not posted a letter of credit, cashier's check, or cash if required
 24.29 by the local government unit.

24.30 (c) In determining whether to grant the appeal, the board shall also consider the
 24.31 size of the wetland, other factors in controversy, any patterns of similar acts by the local
 24.32 government unit or petitioner, and the consequences of the delay resulting from the appeal.

24.33 (d) All appeals must be heard by the committee for dispute resolution of the board,
 24.34 and a decision made within 60 days of filing the local government unit's record and the
 24.35 written briefs submitted for the appeal. The decision must be served by mail on the parties

25.1 to the appeal, and is not subject to the provisions of chapter 14. A decision whether to
25.2 grant a petition for appeal and a decision on the merits of an appeal must be considered the
25.3 decision of an agency in a contested case for purposes of judicial review under sections
25.4 14.63 to 14.69.

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

25.9 **EFFECTIVE DATE.** This section is effective the day following final enactment.

25.10 Sec. 30. Minnesota Statutes 2006, section 103G.2242, subdivision 12, is amended to
25.11 read:

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

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

25.19 (c) Notwithstanding section 103G.222, subdivision 1, paragraph ~~(h)~~ (i), the
25.20 following actions, and others established in rule, that are consistent with criteria in rules
25.21 adopted by the board in conjunction with the commissioners of natural resources and
25.22 agriculture, are eligible for replacement credit as determined by the local government unit,
25.23 including enrollment in a statewide wetlands bank:

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

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

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

25.32 (4) water quality treatment ponds constructed to pretreat storm water runoff prior
25.33 to discharge to wetlands, public waters, or other water bodies, provided that the water
25.34 quality treatment ponds must be associated with an ongoing or proposed project that
25.35 will impact a wetland and replacement credit for the treatment ponds is based on the

26.1 replacement of wetland functions and on an approved stormwater management plan for
 26.2 the local government.

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

26.6 **EFFECTIVE DATE.** This section is effective the day following final enactment.

26.7 Sec. 31. Minnesota Statutes 2006, section 103G.2242, subdivision 15, is amended to
 26.8 read:

26.9 Subd. 15. **Fees paid to board.** All fees established in ~~subdivision~~ subdivisions 9
 26.10 and 14 must be paid to the Board of Water and Soil Resources ~~and credited to the general~~
 26.11 ~~fund~~ to be used for the purpose of administration of the wetland bank and to process
 26.12 appeals under section 103G.2242, subdivision 9.

26.13 **EFFECTIVE DATE.** This section is effective the day following final enactment.

26.14 Sec. 32. Minnesota Statutes 2006, section 103G.2243, subdivision 2, is amended to
 26.15 read:

26.16 Subd. 2. **Plan contents.** A comprehensive wetland protection and management
 26.17 plan may:

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

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

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

26.23 (iii) the resulting public values;

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

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

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

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

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

27.8 ~~(5) in a greater than 80 percent area, based on the classification and criteria set forth~~
 27.9 ~~in the plan, expand the application of the exemptions in section 103G.2241, subdivision~~
 27.10 ~~1, paragraph (a), clause (4), to also include nonagricultural land, provided there is no~~
 27.11 ~~net loss of wetland values.~~

27.12 **EFFECTIVE DATE.** This section is effective the day following final enactment.

27.13 Sec. 33. Minnesota Statutes 2006, section 103G.235, is amended to read:

27.14 **103G.235 RESTRICTIONS ON ACCESS TO PUBLIC WATERS WETLANDS.**

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

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

27.22 Sec. 34. **APPROPRIATIONS; CORRECTIVE ACTIONS.**

27.23 **Subdivision 1. Block grants.** \$4,102,000 in fiscal year 2008 and \$4,102,000 in
 27.24 fiscal year 2009 are appropriated to the Board of Water and Soil Resources for natural
 27.25 resources block grants to local governments. The board may reduce the amount of the
 27.26 natural resources block grant to a county by an amount equal to any reduction in the
 27.27 county's general services allocation to a soil and water conservation district from the
 27.28 county's previous year allocation when the board determines that the reduction was
 27.29 disproportionate. Grants must be matched with a combination of local cash or in-kind
 27.30 contributions. The base grant portion related to water planning must be matched by an
 27.31 amount that would be raised by a levy under Minnesota Statutes, section 103B.3369.

27.32 **Subd. 2. General purpose grants.** \$3,566,000 in fiscal year 2008 and \$3,566,000
 27.33 in fiscal year 2009 are appropriated to the Board of Water and Soil Resources

28.1 for grants requested by soil and water conservation districts for general purposes,
28.2 nonpoint engineering, and implementation of the reinvest in Minnesota conservation
28.3 reserve program. Upon approval of the board, expenditures may be made from these
28.4 appropriations for supplies and services benefiting soil and water conservation districts.
28.5 Any district requesting a grant under this subdivision shall create and maintain a Web
28.6 page that publishes at a minimum, its annual plan, annual report, annual audit, and annual
28.7 budget, including membership dues and meeting notices and minutes.

28.8 Subd. 3. **Cost-share contracts.** \$3,285,000 in fiscal year 2008 and \$3,285,000 in
28.9 fiscal year 2009 are appropriated to the Board of Water and Soil Resources for grants
28.10 to soil and water conservation districts for cost-sharing contracts for erosion control
28.11 and water quality management. Of this amount, at least \$1,200,000 the first year and
28.12 \$1,200,000 the second year are for grants for cost-sharing contracts to establish and
28.13 maintain vegetation buffers of native prairie using seeds of a local eco-type. \$300,000
28.14 in fiscal year 2008 and \$300,000 in fiscal year 2009 are available to begin county
28.15 cooperative weed management programs on natural lands and lands enrolled under the
28.16 federal conservation reserve program and to restore native plants in selected invasive
28.17 species management sites by providing local native seeds and plants to landowners for
28.18 implementation. This appropriation is available until expended. If the appropriation in
28.19 either year is insufficient, the appropriation in the other year is available for it.

28.20 Subd. 4. **Red River basin plan.** \$100,000 in fiscal year 2008 and \$100,000 in
28.21 fiscal year 2009 are appropriated to the Board of Water and Soil Resources for a grant to
28.22 the Red River Basin Commission to develop a Red River basin plan and to coordinate
28.23 water management activities in the states and provinces bordering the Red River. The
28.24 unencumbered balance in the first year does not cancel but is available for the second year.

28.25 Subd. 5. **Clean water legacy grants.** (a) \$5,555,000 in fiscal year 2008 and
28.26 \$5,555,000 in fiscal year 2009 are appropriated to the Board of Water and Soil Resources
28.27 for implementation of the Clean Water Legacy Act as follows:

28.28 (1) \$1,500,000 each year is for targeted nonpoint restoration cost-share and incentive
28.29 payments, of which up to \$1,400,000 each year is available for grants. The grant funds are
28.30 available until expended;

28.31 (2) \$2,000,000 each year is for targeted nonpoint restoration and protection and
28.32 technical, compliance, and engineering assistance activities, of which up to \$1,700,000
28.33 each year is available for grants;

28.34 (3) \$200,000 each year is for reporting and evaluating applied soil and water
28.35 conservation practices;

29.1 (4) \$1,650,000 is for grants to implement county individual sewage treatment system
29.2 programs. After a county has complied with requirements to adopt ordinances pursuant
29.3 to Minnesota Statutes, section 115.55, subdivision 2, the county may request grants of
29.4 up to \$60,000 the first year and \$60,000 the second year to inventory properties with
29.5 individual sewage treatment systems that are an imminent threat to public health or safety
29.6 due to water discharges of untreated sewage, and require compliance under an applicable
29.7 ordinance. The grant amount shall be proportional to the number of properties expected
29.8 to be inventoried. Each county receiving an appropriation under this clause shall report
29.9 the number of inspections and the number determined to be an imminent threat to public
29.10 health or safety to the Pollution Control Agency by February 1 of each year;

29.11 (5) \$100,000 each year is to the Minnesota River Basin Joint Powers Board, also
29.12 known as the Minnesota River Board, for operating expenses to measure and report the
29.13 results of projects in the 12 major watersheds within the Minnesota River basin; and

29.14 (6) \$140,000 each year is for a grant to Area II, Minnesota River Basin Projects,
29.15 for floodplain management, including administration of programs. If the appropriation in
29.16 either year is insufficient, the appropriation in the other year is available for it.

29.17 (b) All of the money appropriated in this subdivision as grants to local governments
29.18 shall be administered through the Board of Water and Soil Resources' local water resources
29.19 protection and management program under Minnesota Statutes, section 103B.3369.

29.20 Subd. 6. **Wetland conservation implementation.** \$1,060,000 in fiscal year 2008
29.21 and \$1,060,000 in fiscal year 2009 are appropriated to the Board of Water and Soil
29.22 Resources and may be spent for the following purposes to support implementation of
29.23 the Wetland Conservation Act: \$500,000 each year is to make grants to local units of
29.24 government to improve response to major wetland violations; \$500,000 each year is for
29.25 staffing to provide adequate state oversight and technical support to local governments
29.26 administering the Wetland Conservation Act; \$60,000 each year is for staff to monitor
29.27 and enforce wetland replacement and wetland bank sites; and \$60,000 is for rulemaking
29.28 required under changes to the Wetland Conservation Act.

29.29 Subd. 7. **Drainage Work Group.** \$450,000 in fiscal year 2008 and \$800,000
29.30 in fiscal year 2009 are appropriated to the Board of Water and Soil Resources to
29.31 implement recommendations of the Drainage Work Group to enhance public drainage and
29.32 modernization as follows: \$150,000 the first year is to develop guidelines for drainage
29.33 records preservation and modernization; \$500,000 the second year is for cost-share
29.34 grants to local governments for public drainage records modernization; and \$300,000
29.35 each year is to provide assistance to local drainage management officials, to facilitate the

30.1 work of the Drainage Work Group, to staff a drainage assistance team, and to update the
30.2 Minnesota Public Drainage Manual. All of the money appropriated in this subdivision as
30.3 grants to local governments shall be administered through the Board of Water and Soil
30.4 Resources' local water resources protection and management program under Minnesota
30.5 Statutes, section 103B.3369.

30.6 Subd. 8. **Corrective actions.** In addition to other authorities, the Board of Water
30.7 and Soil Resources may reduce, withhold, or redirect grants and other funding if the local
30.8 water management entity has not corrected deficiencies as prescribed in a notice from the
30.9 board within one year from the date of the notice.

30.10 **Sec. 35. APPROPRIATION; LOCAL WATER MANAGEMENT OVERSIGHT.**

30.11 \$370,000 in fiscal year 2008 and \$381,000 in fiscal year 2009 are appropriated from
30.12 the general fund to the Board of Water and Soil Resources for evaluating and reporting on
30.13 performance, financial, and activity information of local water management entities.

30.14 **Sec. 36. RULEMAKING.**

30.15 Within 90 days of the effective date of this section, the Board of Water and Soil
30.16 Resources shall adopt rules that amend Minnesota Rules, chapter 8420. These rules are
30.17 exempt from the rulemaking provisions of Minnesota Statutes, chapter 14, except that
30.18 Minnesota Statutes, section 14.386, applies and the proposed rules must be submitted
30.19 to the senate and house committees having jurisdiction over environment and natural
30.20 resources at least 30 days prior to being published in the State Register. The amended
30.21 rules are effective for two years from the date of publication in the State Register unless
30.22 they are superceded by permanent rules.

30.23 **EFFECTIVE DATE.** This section is effective the day following final enactment.

30.24 **Sec. 37. REPEALER.**

30.25 Minnesota Statutes 2006, section 103G.2241, subdivision 8, is repealed.

30.26 **EFFECTIVE DATE.** This section is effective the day following final enactment.