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State of Minnesota HOUSE OF REPRESENTATIVES

EIGHTY-FIFTH SESSION

HOUSE FILE No. 1024

February 15, 2007

Authored by Wagenius; Peterson, A.; Tschumper; Bly; Davnie and others

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

A bill for an act

1.1 relating to natural resources; modifying agency service requirements; modifying
1.2 drainage repair and abandonment requirements; modifying wetlands replacement
1.3 requirements and exemptions; providing for civil enforcement; appropriating
1.4 money; amending Minnesota Statutes 2006, sections 15.99, subdivision 2;
1.5 103E.005, by adding subdivisions; 103E.015, subdivision 1; 103E.705, by
1.6 adding a subdivision; 103E.715, subdivisions 1, 2; 103E.811, subdivision 5;
1.7 103G.222, subdivision 1; 103G.2241, subdivisions 1, 2, 3, 7, 9, 11; 103G.2243,
1.8 subdivision 2; 103G.2372, by adding a subdivision; repealing Minnesota Statutes
1.9 2006, sections 103E.701, subdivisions 1, 2; 103G.2241, subdivision 8.

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

1.12 Section 1. Minnesota Statutes 2006, section 15.99, subdivision 2, is amended to read:

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

1.21 (b) The deadline under paragraph (a) does not apply for any zoning decision that
1.22 involves or may require a delineation or determination of wetlands, wetland mitigation or
1.23 replacement plan approval or certification, or determination of exemption from wetland
1.24 replacement under section 103G.2241.

1.25 (c) When a vote on a resolution or properly made motion to approve a request fails
1.26 for any reason, the failure shall constitute a denial of the request provided that those voting
1.27 against the motion state on the record the reasons why they oppose the request. A denial

2.1 of a request because of a failure to approve a resolution or motion does not preclude an  
 2.2 immediate submission of a same or similar request.

2.3 ~~(c)~~ (d) Except as provided in paragraph ~~(b)~~ (c), if when an agency, other than a  
 2.4 multimember governing body, grants or denies the request, it must state in writing the  
 2.5 reasons ~~for the denial~~ at the time that it grants or denies the request. If a multimember  
 2.6 governing body denies a request, it must state the reasons ~~for denial~~ on the record and  
 2.7 provide the applicant in writing a statement of the reasons for the denial if the applicant  
 2.8 was not present at the time the multimember governing body denies the request. If the  
 2.9 written statement is not adopted at the same time as the denial, it must be adopted at the  
 2.10 next meeting following the denial of the request but before the expiration of the time  
 2.11 allowed for making a decision under this section. The written statement must be consistent  
 2.12 with the reasons stated in the record at the time of the denial. The written statement must  
 2.13 be provided to the applicant upon adoption.

2.14 Sec. 2. Minnesota Statutes 2006, section 103E.005, is amended by adding a subdivision  
 2.15 to read:

2.16 Subd. 15a. **Maintenance.** "Maintenance" means minimal work in an established  
 2.17 drainage system, such as removal of downed trees; removal of brush or other woody  
 2.18 vegetation; removal of beaver dams or similar blockage; replacement of culverts of equal  
 2.19 or lesser size and capacity at the same elevation; emergency actions, such as to correct  
 2.20 slumping or other damage after flooding or snowmelt; or cleanout to original profile, but  
 2.21 only in noncontiguous segments of less than 50 feet in nonconsecutive years.

2.22 Sec. 3. Minnesota Statutes 2006, section 103E.005, is amended by adding a subdivision  
 2.23 to read:

2.24 Subd. 27a. **Repair.** "Repair" means all activities or work in an established drainage  
 2.25 system that is not maintenance and that restores, but does not improve, all or part of a  
 2.26 drainage system as nearly as practicable to the same condition as originally constructed  
 2.27 and subsequently improved prior to the repair.

2.28 Sec. 4. Minnesota Statutes 2006, section 103E.015, subdivision 1, is amended to read:

2.29 Subdivision 1. **Environmental and land use criteria.** Before establishing a  
 2.30 drainage project, or before repairing a drainage system that has not been repaired for 25  
 2.31 years or more, the drainage authority must consider:

2.32 (1) private and public benefits and costs of the proposed drainage project;

3.1 (2) the present and anticipated agricultural land acreage availability and use in  
3.2 the drainage project or system;

3.3 (3) the present and anticipated land use within the drainage project or system;

3.4 (4) flooding characteristics of property in the drainage project or system and  
3.5 downstream for 5-, 10-, 25-, and 50-year flood events;

3.6 (5) the waters to be drained and alternative measures to conserve, allocate, and use  
3.7 the waters including storage and retention of drainage waters;

3.8 (6) the effect on water quality of constructing the proposed drainage project;

3.9 (7) fish and wildlife resources affected by the proposed drainage project;

3.10 (8) shallow groundwater availability, distribution, and use in the drainage project  
3.11 or system; and

3.12 (9) the overall environmental impact of all the above criteria.

3.13 Sec. 5. Minnesota Statutes 2006, section 103E.705, is amended by adding a subdivision  
3.14 to read:

3.15 Subd. 1a. **Repairs affecting public waters.** Before a repair is ordered, the drainage  
3.16 authority must notify the commissioner and the public if the repair may affect public  
3.17 waters. If the commissioner disagrees with the repair depth, the public shall be so  
3.18 notified and the engineer, a representative appointed by the director, and a soil and water  
3.19 conservation district technician must jointly determine the repair depth using soil borings,  
3.20 field surveys, and other available data or appropriate methods. Costs for determining the  
3.21 repair depth beyond the initial meeting must be shared equally by the drainage system and  
3.22 the commissioner. The determined repair depth must be recommended to the drainage  
3.23 authority. The drainage authority may accept the joint recommendation and proceed with  
3.24 repair. Repair may proceed only in accordance with the joint recommendation.

3.25 Sec. 6. Minnesota Statutes 2006, section 103E.715, subdivision 1, is amended to read:

3.26 Subdivision 1. **Repair petition.** An individual or an entity, including the drainage  
3.27 authority, interested in or affected by a drainage system ~~may~~ must file a petition to repair  
3.28 the drainage system. The petition must state that the drainage system needs repair and  
3.29 shall describe and analyze application of the Wetland Conservation Act of 1991, Laws  
3.30 1991, chapter 354, or other applicable provisions of chapter 103G, including analysis of  
3.31 any exemption from such provisions. The public must receive notice of the petition for  
3.32 repair and must have at least 30 days to comment. The auditor shall present the petition  
3.33 to the board at its next meeting or, for a joint county drainage system, to the drainage  
3.34 authority within ten days after the petition is filed.

4.1 Sec. 7. Minnesota Statutes 2006, section 103E.715, subdivision 2, is amended to read:

4.2 Subd. 2. **Engineer's repair report.** If the drainage authority determines that the  
 4.3 drainage system needs repair, the drainage authority shall appoint an engineer to examine  
 4.4 the drainage system and make a repair report. The report must show the necessary repairs,  
 4.5 the estimated cost of the repairs, ~~and~~ all details, plans, and specifications necessary to  
 4.6 prepare and award a contract for the repairs, and all wetlands or public waters potentially  
 4.7 affected by the repairs, including descriptions of size, type, and location of all such  
 4.8 wetlands or public waters. The drainage authority may give notice and order a hearing on  
 4.9 the petition before appointing the engineer.

4.10 Sec. 8. Minnesota Statutes 2006, section 103E.811, subdivision 5, is amended to read:

4.11 Subd. 5. **Abandonment hearing.** (a) At the hearing, the drainage authority or  
 4.12 court shall examine the petition and determine whether it is sufficient and shall hear  
 4.13 all interested parties.

4.14 (b) ~~If a property owner assessed benefits for the drainage system appears and makes~~  
 4.15 ~~a written objection to the abandonment of the drainage system.~~ In any abandonment  
 4.16 proceeding, if 26 percent of the property owners assessed benefits for the drainage system,  
 4.17 or the owners of not less than 26 percent of the property assessed, appear and make a  
 4.18 written objection to the abandonment of the drainage system, the drainage authority or  
 4.19 court shall appoint three disinterested persons as viewers to examine the property and  
 4.20 report to the drainage authority or court. The hearing must be adjourned to make the  
 4.21 examination and report and a date must be set to reconvene not more than 180 days  
 4.22 later. The viewers, if appointed, shall proceed to examine the property of the objecting  
 4.23 owners or owner and report as soon as possible to the drainage authority or court with  
 4.24 the description and situation of the property and whether the drainage system drains  
 4.25 or otherwise affects the property.

4.26 (c) When the hearing is reconvened, the drainage authority or court shall consider  
 4.27 the viewers' report and all evidence offered, and:

4.28 (1) if the drainage authority determines that the drainage system serves any useful  
 4.29 purpose to ~~any property~~ at least 26 percent of the property owners assessed or the general  
 4.30 public, the petition for abandonment must be denied; or

4.31 (2) if the drainage authority determines that the drainage system does not serve any  
 4.32 useful purpose to ~~any affected property~~ at least 26 percent of the property owners assessed  
 4.33 and is not of public benefit and utility, the drainage authority or court shall make findings  
 4.34 and shall, by order, abandon the drainage system.

5.1 Sec. 9. Minnesota Statutes 2006, section 103G.222, subdivision 1, is amended to read:

5.2 Subdivision 1. **Requirements.** (a) Wetlands must not be drained or filled, wholly  
5.3 or partially, unless replaced by restoring or creating wetland areas of at least equal  
5.4 public value under a replacement plan approved as provided in section 103G.2242, a  
5.5 replacement plan under a local governmental unit's comprehensive wetland protection  
5.6 and management plan approved by the board under section 103G.2243, or, if a permit to  
5.7 mine is required under section 93.481, under a mining reclamation plan approved by the  
5.8 commissioner under the permit to mine. Mining reclamation plans shall apply the same  
5.9 principles and standards for replacing wetlands by restoration or creation of wetland areas  
5.10 that are applicable to mitigation plans approved as provided in section 103G.2242. Public  
5.11 value must be determined in accordance with section 103B.3355 or a comprehensive  
5.12 wetland protection and management plan established under section 103G.2243. Sections  
5.13 103G.221 to 103G.2372 also apply to excavation in permanently and semipermanently  
5.14 flooded areas of types 3, 4, and 5 wetlands.

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

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

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

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

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

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

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

5.28 For a project involving the draining or filling of wetlands in an amount not exceeding  
5.29 ~~10,000~~ 5,000 square feet more than the applicable amount in section 103G.2241,  
5.30 subdivision 9, paragraph (a), the local government unit may make an on-site sequencing  
5.31 determination without a written alternatives analysis from the applicant.

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

6.1 (d) Restoration and replacement of wetlands must be accomplished in accordance  
6.2 with the ecology of the landscape area affected.

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

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

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

6.11 (h) Except in a greater than 80 percent area, only wetlands that have been restored  
6.12 from previously drained or filled wetlands, wetlands created by excavation in nonwetlands,  
6.13 wetlands created by dikes or dams along public or private drainage ditches, or wetlands  
6.14 created by dikes or dams associated with the restoration of previously drained or filled  
6.15 wetlands may be used in a statewide banking program established in rules adopted under  
6.16 section 103G.2242, subdivision 1. Modification or conversion of nondegraded naturally  
6.17 occurring wetlands from one type to another are not eligible for enrollment in a statewide  
6.18 wetlands bank.

6.19 (i) Ponds that are created for stormwater management requirements may not be used  
6.20 to satisfy replacement requirements under this chapter.

6.21 (j) The Technical Evaluation Panel established under section 103G.2242, subdivision  
6.22 2, shall ensure that sufficient time has occurred for the wetland to develop wetland  
6.23 characteristics of soils, vegetation, and hydrology before recommending that the wetland  
6.24 be deposited in the statewide wetland bank. If the Technical Evaluation Panel has reason  
6.25 to believe that the wetland characteristics may change substantially, the panel shall  
6.26 postpone its recommendation until the wetland has stabilized.

6.27 ~~(k)~~ (k) This section and sections 103G.223 to 103G.2242, 103G.2364, and  
6.28 103G.2365 apply to the state and its departments and agencies.

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

6.34 ~~(m)~~ (m) A replacement plan for wetlands is not required for individual projects that  
6.35 result in the filling or draining of wetlands for the repair, rehabilitation, reconstruction,  
6.36 or replacement of a currently serviceable existing state, city, county, or town public road

7.1 necessary, as determined by the public transportation authority, to meet state or federal  
7.2 design or safety standards or requirements, excluding new roads or roads expanded solely  
7.3 for additional traffic capacity lanes. This paragraph only applies to authorities for public  
7.4 transportation projects that:

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

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

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

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

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

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

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

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

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

8.18 Sec. 10. Minnesota Statutes 2006, section 103G.2241, subdivision 1, is amended to  
 8.19 read:

8.20 Subdivision 1. **Agricultural activities.** ~~(a)~~ A replacement plan for wetlands is  
 8.21 not required for: normal farming activities in a type 1 or 2 wetland. "Normal farming  
 8.22 activities" means harvesting, haying, pasturing, grazing, control of noxious or secondary  
 8.23 weeds as defined by the commissioners of natural resources and agriculture, activities  
 8.24 allowed under a federal conservation program or on land enrolled in a federal or state  
 8.25 conservation program, and planting or normal tilling of annually seeded crops that does  
 8.26 not result in draining or filling the wetland or changes in wetland hydrology. Normal  
 8.27 farming activities does not include draining a wetland through ditching, tiling, or deep  
 8.28 ripping; filling a wetland; or perimeter tiling of a wetland that alters the hydrology of the  
 8.29 wetland in any way. This exemption may not be used to tile or drain a wetland.

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

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

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

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

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

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

9.15 ~~(5) aquaculture activities including pond excavation and construction and~~  
9.16 ~~maintenance of associated access roads and dikes authorized under, and conducted in~~  
9.17 ~~accordance with, a permit issued by the United States Army Corps of Engineers under~~  
9.18 ~~section 404 of the federal Clean Water Act, United States Code, title 33, section 1344,~~  
9.19 ~~but not including construction or expansion of buildings;~~

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

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

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

9.27 ~~(i) annually enrolled in the federal Agriculture Improvement and Reform Act of~~  
9.28 ~~1996 and is subject to United States Code, title 16, sections 3821 to 3823, in effect on~~  
9.29 ~~January 1, 2000; or~~

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

9.34 ~~(b) Land enrolled in a federal farm program under paragraph (a), clause (8), is~~  
9.35 ~~eligible for easement participation for those acres not already compensated under a federal~~  
9.36 ~~program.~~

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

10.7 Sec. 11. Minnesota Statutes 2006, section 103G.2241, subdivision 2, is amended to  
 10.8 read:

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

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

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

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

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

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

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

10.23 (i) platted lots;

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

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

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

10.29 (c) A replacement plan is not required for draining or filling of wetlands, except for  
 10.30 draining types 3, 4, ~~and 5, 6, 7, and 8~~ wetlands that have been in existence for more than  
 10.31 ~~25~~ 20 years, resulting from maintenance and repair of existing public drainage systems,  
 10.32 but only if a repair petition is filed and approved according to section 103E.715.

10.33 (d) A replacement plan is not required for draining or filling of wetlands, except for  
 10.34 draining wetlands that have been in existence for more than ~~25~~ 20 years, resulting from  
 10.35 maintenance and repair of existing drainage systems other than public drainage systems.

11.1 (e) ~~A replacement plan is not required for draining or filling of wetlands resulting~~  
 11.2 ~~from activities conducted as part of a public drainage system improvement project that~~  
 11.3 ~~received final approval from the drainage authority before July 1, 1991, and after July 1,~~  
 11.4 ~~1986, if:~~

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

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

11.7 (3) ~~no additional drainage will occur beyond that originally approved. The~~  
 11.8 ~~exemptions under this subdivision may not be used for perimeter tiling of any wetland of~~  
 11.9 ~~any type on or after July 1, 2007. Perimeter tiling means surrounding 20 percent or more~~  
 11.10 ~~of a wetland with tiling or other drainage or surrounding any part of a wetland with tiling~~  
 11.11 ~~if that tiling, regardless of percentage, alters the hydrology of the wetland.~~

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

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

11.20 Sec. 12. Minnesota Statutes 2006, section 103G.2241, subdivision 3, is amended to  
 11.21 read:

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

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

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

11.31 (3) ~~activities authorized under the federal Clean Water Act, section 404, or the~~  
 11.32 ~~Rivers and Harbors Act, section 10, regulations that meet minimum state standards~~  
 11.33 ~~under this chapter and sections 103A.202 and 103B.3355 and that have been approved~~  
 11.34 ~~by the Board of Water and Soil Resources, the commissioners of natural resources and~~  
 11.35 ~~agriculture, and the Pollution Control Agency. required under this chapter may, at the~~

12.1 option of the local government unit, be deemed satisfied by any approved replacement  
 12.2 plan or activity individually permitted by the United States Army Corps of Engineers  
 12.3 under United States Code, title 33, section 1344, or section 10 of the federal Rivers and  
 12.4 Harbors Act, United States Code, title 33, section 401, et seq.

12.5 Sec. 13. Minnesota Statutes 2006, section 103G.2241, subdivision 7, is amended to  
 12.6 read:

12.7 Subd. 7. **Forestry.** (a) A replacement plan for wetlands is not required for:

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

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

12.18 (b) A replacement plan is required for any impacts to wetlands exempt under  
 12.19 paragraph (a) if the crossing or forest road is used for any activity other than forestry  
 12.20 at any time after application of the exemption in paragraph (a). The replacement plan  
 12.21 required under this paragraph is required of the owner at the time of the changed use or  
 12.22 activity that is other than forestry.

12.23 (c) Users of an exemption under paragraph (a) shall file a deed declaration, on a form  
 12.24 developed by the Board of Water and Soil Resources, indicating use of the exemption and  
 12.25 the limitations imposed under paragraph (b).

12.26 Sec. 14. Minnesota Statutes 2006, section 103G.2241, subdivision 9, is amended to  
 12.27 read:

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

12.31 (1) ~~10,000~~ 5,000 square feet of type 1, 2, 6, or 7 wetland, excluding white cedar  
 12.32 and tamarack wetlands, outside of the shoreland wetland protection zone in a greater  
 12.33 than 80 percent area;

13.1 (2) ~~5,000~~ 2,000 square feet of type 1, 2, 6, or 7 wetland, excluding white cedar  
 13.2 and tamarack wetlands, outside of the shoreland wetland protection zone in a 50 to 80  
 13.3 percent area;

13.4 (3) ~~2,000~~ 250 square feet of type 1, 2, or 6 wetland, outside of the shoreland wetland  
 13.5 protection zone in a less than 50 percent area; or

13.6 (4) ~~400~~ 100 square feet of wetland types not listed in clauses (1) to (3) outside of  
 13.7 shoreland wetland protection zones in all counties; ~~or~~.

13.8 ~~(5) 400 square feet of type 1, 2, 3, 4, 5, 6, 7, or 8 wetland, in the shoreland wetland~~  
 13.9 ~~protection zone, except that in a greater than 80 percent area, the local government unit~~  
 13.10 ~~may increase the de minimis amount up to 1,000 square feet in the shoreland protection~~  
 13.11 ~~zone in areas beyond the building setback if the wetland is isolated and is determined to~~  
 13.12 ~~have no direct surficial connection to the public water. To the extent that a local shoreland~~  
 13.13 ~~management ordinance is more restrictive than this provision, the local shoreland~~  
 13.14 ~~ordinance applies.~~

13.15 (b) The amounts listed in paragraph (a), clauses (1) to (5), may not be combined on  
 13.16 a project.

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

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

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

13.23 (3) 400 square feet.

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

13.26 (e) Property may not be divided to increase amounts listed in paragraph (a). If a  
 13.27 wetland basin has been the subject of a de minimis exemption on or after January 1, 2006,  
 13.28 no additional de minimis exemptions may be exercised on that wetland basin. Thereafter,  
 13.29 the wetland basin is fully subject to the replacement requirements of this chapter.

13.30 (f) Beginning July 1, 2007, de minimis exemptions are capped at a total of two  
 13.31 percent of remaining type 1, 2, 6, or 7 wetland acres on a county basis.

13.32 Sec. 15. Minnesota Statutes 2006, section 103G.2241, subdivision 11, is amended to  
 13.33 read:

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

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

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

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

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

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

14.12 (d) Persons proposing to conduct an exempt activity must, prior to commencing the  
14.13 work, complete and provide to their local government a notice, on a form approved and  
14.14 supplied by the Board of Water and Soil Resources, that indicates, at a minimum, the  
14.15 exemption claimed, the location of the claimed exemption, the date or dates of work  
14.16 performed, identification of the individual giving notice, and an estimate of the wetland  
14.17 type and amount of acreage affected. The local government unit may charge a nominal  
14.18 fee for filing the notice, not to exceed \$25. The notice requirement does not apply to the  
14.19 exercise of the utilities and public works exemption. For persons claiming the farming  
14.20 exemption, the notice shall be filed once at the commencement of the subject activity and  
14.21 need not be filed again unless the activity or exemption claimed changes. For persons  
14.22 claiming the forestry exemption, the notice requirement applies only to the extent that  
14.23 reporting is not required elsewhere. Failure to file the required notice automatically  
14.24 renders any claimed exemption voidable. The local government shall retain the exemption  
14.25 notices for a minimum of ten years or such longer time as necessary to ensure compliance  
14.26 with the exemptions conditions in this chapter.

14.27 Sec. 16. Minnesota Statutes 2006, section 103G.2243, subdivision 2, is amended to  
14.28 read:

14.29 Subd. 2. **Plan contents.** A comprehensive wetland protection and management  
14.30 plan may:

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

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

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

15.1 (iii) the resulting public values;

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

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

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

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

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

15.18 (5) in a greater than 80 percent area, based on the classification and criteria set forth  
15.19 in the plan, expand the application of the exemptions in section 103G.2241, subdivision  
15.20 1, ~~paragraph (a), clause (4)~~; to also include nonagricultural land, provided there is no  
15.21 net loss of wetland values.

15.22 Sec. 17. Minnesota Statutes 2006, section 103G.2372, is amended by adding a  
15.23 subdivision to read:

15.24 Subd. 4. **Citizen enforcement.** (a) A citizen may commence a civil action in district  
15.25 court on the citizen's behalf:

15.26 (1) against any person, including any governmental entity or agency, who is alleged  
15.27 to be in violation of sections 103G.211 or 103G.221 to 103G.2243, or applicable orders  
15.28 and rules thereunder; or

15.29 (2) against the state or responsible local governmental entity when there is alleged a  
15.30 failure to perform any act or duty under sections 103G.211 or 103G.221 to 103G.2243, or  
15.31 applicable orders and rules thereunder, that is not discretionary.

15.32 The district court may enforce this chapter, enforce an order regarding the provisions of  
15.33 this chapter, or order the state or responsible local governmental entity to perform such act  
15.34 or duty, as the case may be, and may apply any appropriate civil penalties or injunctive  
15.35 relief.

16.1 (b) No action may be commenced under paragraph (a):

16.2 (1) prior to 60 days after the plaintiff has given notice of the alleged violation to  
16.3 the responsible local governmental entity, to the state, and to any alleged violator, if  
16.4 applicable; or

16.5 (2) if the responsible local governmental entity or the state has commenced and is  
16.6 diligently prosecuting a civil or criminal action in district court to require compliance.

16.7 (c) In any action commenced under this subdivision, the state and the responsible  
16.8 local governmental entity may intervene as of right.

16.9 (d) The court, in issuing a final order in an action brought under this subdivision,  
16.10 may award costs of litigation, including reasonable attorney and expert witness fees, to a  
16.11 prevailing or substantially prevailing party, whenever the court determines such award  
16.12 is appropriate.

16.13 (e) Nothing in this subdivision restricts any right that a person or class of persons  
16.14 may have under any statute or common law to seek enforcement of chapter 103G or  
16.15 to seek any other relief.

16.16 **Sec. 18. APPROPRIATION.**

16.17 \$..... is appropriated in fiscal year 2008 from the general fund to the commissioner  
16.18 of natural resources for wetlands enforcement and monitoring.

16.19 **Sec. 19. REPEALER.**

16.20 Minnesota Statutes 2006, sections 103E.701, subdivisions 1 and 2; and 103G.2241,  
16.21 subdivision 8, are repealed.