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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-FIFTH
SESSION

HOUSE FILE No. **1343**

February 26, 2007

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

1.1 A bill for an act
1.2 relating to the environment; modifying agency service requirements; modifying
1.3 wetland replacement requirements and exemptions; providing for civil
1.4 enforcement; appropriating money; amending Minnesota Statutes 2006, sections
1.5 15.99, subdivision 2; 103G.222, subdivision 1; 103G.2241, subdivisions 1, 3, 7,
1.6 9, 11; 103G.2243, subdivision 2; 103G.2372, by adding a subdivision; repealing
1.7 Minnesota Statutes 2006, section 103G.2241, subdivision 8.

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

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

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

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

1.22 (c) When a vote on a resolution or properly made motion to approve a request fails
1.23 for any reason, the failure shall constitute a denial of the request provided that those voting
1.24 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 103G.222, subdivision 1, is amended to read:

2.15 Subdivision 1. **Requirements.** (a) Wetlands must not be drained or filled, wholly
 2.16 or partially, unless replaced by restoring or creating wetland areas of at least equal
 2.17 public value under a replacement plan approved as provided in section 103G.2242, a
 2.18 replacement plan under a local governmental unit's comprehensive wetland protection
 2.19 and management plan approved by the board under section 103G.2243, or, if a permit to
 2.20 mine is required under section 93.481, under a mining reclamation plan approved by the
 2.21 commissioner under the permit to mine. Mining reclamation plans shall apply the same
 2.22 principles and standards for replacing wetlands by restoration or creation of wetland areas
 2.23 that are applicable to mitigation plans approved as provided in section 103G.2242. Public
 2.24 value must be determined in accordance with section 103B.3355 or a comprehensive
 2.25 wetland protection and management plan established under section 103G.2243. Sections
 2.26 103G.221 to 103G.2372 also apply to excavation in permanently and semipermanently
 2.27 flooded areas of types 3, 4, and 5 wetlands.

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

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

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

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

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

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

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

3.6 For a project involving the draining or filling of wetlands in an amount not exceeding
3.7 ~~10,000~~ 5,000 square feet more than the applicable amount in section 103G.2241,
3.8 subdivision 9, paragraph (a), the local government unit may make an on-site sequencing
3.9 determination without a written alternatives analysis from the applicant.

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

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

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

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

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

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

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

3.34 (j) The Technical Evaluation Panel established under section 103G.2242, subdivision
3.35 2, shall ensure that sufficient time has occurred for the wetland to develop wetland
3.36 characteristics of soils, vegetation, and hydrology before recommending that the wetland

4.1 be deposited in the statewide wetland bank. If the Technical Evaluation Panel has reason
4.2 to believe that the wetland characteristics may change substantially, the panel shall
4.3 postpone its recommendation until the wetland has stabilized.

4.4 ~~(j)~~ (k) This section and sections 103G.223 to 103G.2242, 103G.2364, and
4.5 103G.2365 apply to the state and its departments and agencies.

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

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

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

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

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

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

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

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

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

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

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

5.30 Sec. 3. Minnesota Statutes 2006, section 103G.2241, subdivision 1, is amended to read:

5.31 Subdivision 1. **Agricultural activities.** ~~(a)~~ A replacement plan for wetlands is
 5.32 not required for: normal farming activities in a type 1 or 2 wetland. "Normal farming
 5.33 activities" means harvesting, haying, pasturing, grazing, control of noxious or secondary
 5.34 weeds as defined by the commissioners of natural resources and agriculture, activities
 5.35 allowed under a federal conservation program or on land enrolled in a federal or state

6.1 conservation program, and planting or normal tilling of annually seeded crops that does
6.2 not result in draining or filling the wetland or changes in wetland hydrology. Normal
6.3 farming activities does not include draining a wetland through ditching, tiling, or deep
6.4 ripping; filling a wetland; or perimeter tiling of a wetland that alters the hydrology of the
6.5 wetland in any way. This exemption may not be used to tile or drain a wetland.

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

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

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

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

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

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

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

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

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

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

7.2 ~~(i) annually enrolled in the federal Agriculture Improvement and Reform Act of~~
 7.3 ~~1996 and is subject to United States Code, title 16, sections 3821 to 3823, in effect on~~
 7.4 ~~January 1, 2000; or~~

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

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

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

7.18 Sec. 4. Minnesota Statutes 2006, section 103G.2241, subdivision 3, is amended to read:

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

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

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

7.28 ~~(3) activities authorized under the federal Clean Water Act, section 404, or the~~
 7.29 ~~Rivers and Harbors Act, section 10, regulations that meet minimum state standards~~
 7.30 ~~under this chapter and sections 103A.202 and 103B.3355 and that have been approved~~
 7.31 ~~by the Board of Water and Soil Resources, the commissioners of natural resources and~~
 7.32 ~~agriculture, and the Pollution Control Agency. required under this chapter may, at the~~
 7.33 ~~option of the local government unit, be deemed satisfied by any approved replacement~~
 7.34 ~~plan or activity individually permitted by the United States Army Corps of Engineers~~

8.1 under United States Code, title 33, section 1344, or section 10 of the federal Rivers and
 8.2 Harbors Act, United States Code, title 33, section 401, et seq.

8.3 Sec. 5. Minnesota Statutes 2006, section 103G.2241, subdivision 7, is amended to read:

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

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

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

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

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

8.23 Sec. 6. Minnesota Statutes 2006, section 103G.2241, subdivision 9, is amended to read:

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

8.27 (1) ~~10,000~~ 5,000 square feet of type 1, 2, 6, or 7 wetland, excluding white cedar
 8.28 and tamarack wetlands, outside of the shoreland wetland protection zone in a greater
 8.29 than 80 percent area;

8.30 (2) ~~5,000~~ 2,000 square feet of type 1, 2, 6, or 7 wetland, excluding white cedar
 8.31 and tamarack wetlands, outside of the shoreland wetland protection zone in a 50 to 80
 8.32 percent area;

8.33 (3) ~~2,000~~ 250 square feet of type 1, 2, or 6 wetland, outside of the shoreland wetland
 8.34 protection zone in a less than 50 percent area; or

9.1 (4) ~~400~~ 100 square feet of wetland types not listed in clauses (1) to (3) outside of
9.2 shoreland wetland protection zones in all counties; ~~or,~~

9.3 ~~(5) 400 square feet of type 1, 2, 3, 4, 5, 6, 7, or 8 wetland, in the shoreland wetland~~
9.4 ~~protection zone, except that in a greater than 80 percent area, the local government unit~~
9.5 ~~may increase the de minimis amount up to 1,000 square feet in the shoreland protection~~
9.6 ~~zone in areas beyond the building setback if the wetland is isolated and is determined to~~
9.7 ~~have no direct surficial connection to the public water. To the extent that a local shoreland~~
9.8 ~~management ordinance is more restrictive than this provision, the local shoreland~~
9.9 ~~ordinance applies.~~

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

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

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

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

9.18 (3) 400 square feet.

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

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

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

9.27 Sec. 7. Minnesota Statutes 2006, section 103G.2241, subdivision 11, is amended to
9.28 read:

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

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

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

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

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

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

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

10.24 Sec. 8. Minnesota Statutes 2006, section 103G.2243, subdivision 2, is amended to read:

10.25 Subd. 2. **Plan contents.** A comprehensive wetland protection and management
 10.26 plan may:

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

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

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

10.32 (iii) the resulting public values;

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

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

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

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

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

11.15 (5) in a greater than 80 percent area, based on the classification and criteria set forth
 11.16 in the plan, expand the application of the exemptions in section 103G.2241, subdivision
 11.17 1, ~~paragraph (a), clause (4)~~, to also include nonagricultural land, provided there is no
 11.18 net loss of wetland values.

11.19 Sec. 9. Minnesota Statutes 2006, section 103G.2372, is amended by adding a
 11.20 subdivision to read:

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

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

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

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

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

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

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

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

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

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

12.15 **Sec. 10. APPROPRIATION.**

12.16 \$1,000,000 is appropriated in fiscal year 2008 from the general fund to the
12.17 commissioner of natural resources for wetlands enforcement and monitoring.

12.18 **Sec. 11. REPEALER.**

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