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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-FIFTH
SESSION

HOUSE FILE No. 1935

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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 waters; modifying provisions for wetland conservation; requiring
1.3 rulemaking; appropriating money; amending Minnesota Statutes 2006, sections
1.4 103G.222, subdivisions 1, 3; 103G.2241, subdivisions 1, 2, 3, 6, 9; 103G.2242,
1.5 subdivisions 2, 2a, 9, 12, 15; 103G.2243, subdivision 2; repealing Minnesota
1.6 Statutes 2006, section 103G.2241, subdivision 8.

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

1.8 Section 1. Minnesota Statutes 2006, section 103G.222, subdivision 1, is amended to
1.9 read:

1.10 Subdivision 1. **Requirements.** (a) Wetlands must not be drained or filled, wholly
1.11 or partially, unless replaced by restoring or creating wetland areas of at least equal
1.12 public value under a replacement plan approved as provided in section 103G.2242, a
1.13 replacement plan under a local governmental unit's comprehensive wetland protection
1.14 and management plan approved by the board under section 103G.2243, or, if a permit to
1.15 mine is required under section 93.481, under a mining reclamation plan approved by the
1.16 commissioner under the permit to mine. Mining reclamation plans shall apply the same
1.17 principles and standards for replacing wetlands by restoration or creation of wetland areas
1.18 that are applicable to mitigation plans approved as provided in section 103G.2242. Public
1.19 value must be determined in accordance with section 103B.3355 or a comprehensive
1.20 wetland protection and management plan established under section 103G.2243. Sections
1.21 103G.221 to 103G.2372 also apply to excavation in permanently and semipermanently
1.22 flooded areas of types 3, 4, and 5 wetlands.

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

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

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

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

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

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

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

2.12 For a project involving the draining or filling of wetlands in an amount not exceeding
2.13 10,000 square feet more than the applicable amount in section 103G.2241, subdivision 9,
2.14 paragraph (a), the local government unit may make an on-site sequencing determination
2.15 without a written alternatives analysis from the applicant.

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

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

2.27 (e) Restoration and replacement of wetlands must be accomplished in accordance
2.28 with the ecology of the landscape area affected.

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

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

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

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

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

3.15 ~~(j)~~ (k) This section and sections 103G.223 to 103G.2242, 103G.2364, and
3.16 103G.2365 apply to the state and its departments and agencies.

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

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

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

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

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

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

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

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

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

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

4.35 ~~(o)~~ (p) One hundred citizens who reside within the jurisdiction of the local
4.36 government unit may request the local government unit to reclassify a county or watershed

5.1 on the basis of its percentage of presettlement wetlands remaining. In support of their
 5.2 petition, the citizens shall provide satisfactory documentation to the local government unit.
 5.3 The local government unit shall consider the petition and forward the request to the board
 5.4 under paragraph ~~(n)~~ (o) or provide a reason why the petition is denied.

5.5 Sec. 2. Minnesota Statutes 2006, section 103G.222, subdivision 3, is amended to read:

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

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

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

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

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

5.15 (5) for project specific replacement, in an adjacent watershed ~~or county~~ to the
 5.16 affected wetland, or for replacement by wetland banking, in an adjacent wetland bank
 5.17 service area, except that impacts in a 50 to 80 percent area must be replaced in a 50 to
 5.18 80 percent area and impacts in a less than 50 percent area must be replaced in a less
 5.19 than 50 percent area; and

5.20 ~~(5) (6) statewide, only for wetlands affected in greater than 80 percent areas and for~~
 5.21 ~~public transportation projects, except that wetlands affected in less than 50 percent areas~~
 5.22 ~~must be replaced in less than 50 percent areas, and wetlands affected in the seven-county~~
 5.23 ~~metropolitan area must be replaced at a ratio of two to one in: (i) the affected county or,~~
 5.24 ~~(ii) in another of the seven metropolitan counties, or (iii) in one of the major watersheds~~
 5.25 ~~that are wholly or partially within the seven-county metropolitan area, but at least one to~~
 5.26 ~~one must be replaced within the seven-county metropolitan area.~~

5.27 (b) Notwithstanding paragraph (a), siting wetland replacement in greater than 80
 5.28 percent areas may follow the priority order under this paragraph: (1) by wetland banking
 5.29 after evaluating on-site replacement; (2) replaced in an adjacent wetland bank service area
 5.30 without an increase in the replacement ratio if wetland bank credits are not reasonably
 5.31 available in the same wetland bank service area as the affected wetland, as determined by
 5.32 the local government unit; and (3) statewide.

5.33 (c) Notwithstanding paragraph (a), siting wetland replacement in the seven-county
 5.34 metropolitan area must follow the priority order under this paragraph: (1) in the affected
 5.35 county; (2) in another of the seven metropolitan counties; or (3) in one of the major

6.1 watersheds that are wholly or partially within the seven-county metropolitan area, but at
 6.2 least one to one must be replaced within the seven-county metropolitan area.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7.18 ~~(5)~~ (3) aquaculture activities including pond excavation and construction and
 7.19 maintenance of associated access roads and dikes authorized under, and conducted in
 7.20 accordance with, a permit issued by the United States Army Corps of Engineers under
 7.21 section 404 of the federal Clean Water Act, United States Code, title 33, section 1344, but
 7.22 not including construction or expansion of buildings; or

7.23 ~~(6)~~ (4) wild rice production activities, including necessary diking and other activities
 7.24 authorized under a permit issued by the United States Army Corps of Engineers under
 7.25 section 404 of the federal Clean Water Act, United States Code, title 33, section 1344; ;

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

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

7.30 ~~(i) annually enrolled in the federal Agriculture Improvement and Reform Act of~~
 7.31 ~~1996 and is subject to United States Code, title 16, sections 3821 to 3823, in effect on~~
 7.32 ~~January 1, 2000; or~~

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

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

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

8.10 Sec. 4. Minnesota Statutes 2006, section 103G.2241, subdivision 2, is amended to read:

8.11 Subd. 2. **Drainage.** (a) For the purposes of this subdivision, "public drainage
 8.12 system" means a drainage system as defined in section 103E.005, subdivision 12, and any
 8.13 ditch or tile lawfully connected to the drainage system. If wetlands drained under this
 8.14 subdivision are converted to uses prohibited under paragraph (b), clause (2), during the
 8.15 ten-year period following drainage, the wetlands must be replaced according to section
 8.16 103G.222.

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

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

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

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

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

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

8.28 (i) platted lots;

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

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

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

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

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

9.7 ~~(e) A replacement plan is not required for draining or filling of wetlands resulting~~
 9.8 ~~from activities conducted as part of a public drainage system improvement project that~~
 9.9 ~~received final approval from the drainage authority before July 1, 1991, and after July 1,~~
 9.10 ~~1986, if:~~

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

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

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

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

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

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

9.28 Sec. 5. Minnesota Statutes 2006, section 103G.2241, subdivision 3, is amended to read:

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

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

9.32 ~~(2) activities authorized under, and conducted in accordance with, an applicable~~
 9.33 ~~general permit issued by the United States Army Corps of Engineers under section 404~~
 9.34 ~~of the federal Clean Water Act, United States Code, title 33, section 1344, except the~~
 9.35 ~~nationwide permit in Code of Federal Regulations, title 33, section 330.5, paragraph (a);~~

10.1 ~~clauses (14), limited to when a new road crosses a wetland, and (26), as in effect on~~
 10.2 ~~January 1, 1991; or~~

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

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

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

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

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

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

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

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

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

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

10.27 ~~(6) repair and updating of existing individual sewage treatment systems as necessary~~
 10.28 ~~to comply with local, state, and federal regulations:~~

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

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

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

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

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

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

11.13 Sec. 7. Minnesota Statutes 2006, section 103G.2241, subdivision 9, is amended to read:

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

11.17 (1) 10,000 square feet of type 1, 2, 6, or 7 wetland, excluding white cedar and
 11.18 tamarack wetlands, outside of the shoreland wetland protection zone in a greater than
 11.19 80 percent area;

11.20 (2) ~~5,000~~ 2,500 square feet of type 1, 2, 6, or 7 wetland, excluding white cedar
 11.21 and tamarack wetlands, outside of the shoreland wetland protection zone in a 50 to 80
 11.22 percent area;

11.23 (3) ~~2,000~~ 1,000 square feet of type 1, 2, or 6 wetland, outside of the shoreland
 11.24 wetland protection zone in a less than 50 percent area;

11.25 (4) 400 square feet of wetland types not listed in clauses (1) to (3) outside of
 11.26 shoreland wetland protection zones in all counties; ~~or~~

11.27 (5) 400 square feet of ~~type 1, 2, 3, 4, 5, 6, 7, or 8~~ wetland, in beyond the building
 11.28 setback zone, as defined in the local shoreland management ordinance, but within the
 11.29 shoreland wetland protection zone, except that. In a greater than 80 percent area, the
 11.30 local government unit may increase the de minimis amount up to 1,000 square feet ~~in the~~
 11.31 ~~shoreland protection zone in areas beyond the building setback~~ if the wetland is isolated
 11.32 and is determined to have no direct surficial connection to the public water. To the extent
 11.33 that a local shoreland management ordinance is more restrictive than this provision, the
 11.34 local shoreland ordinance applies; or

11.35 (6) up to 40 square feet of wetland, regardless of type or location.

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

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

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

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

12.9 (3) 400 square feet.

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

12.12 Sec. 8. Minnesota Statutes 2006, section 103G.2242, subdivision 2, is amended to read:

12.13 Subd. 2. **Evaluation.** (a) Questions concerning the public value, location, size,
 12.14 or type of a wetland shall be submitted to and determined by a Technical Evaluation
 12.15 Panel after an on-site inspection. The Technical Evaluation Panel shall be composed of
 12.16 a technical professional employee of the board, a technical professional employee of
 12.17 the local soil and water conservation district or districts, a technical professional with
 12.18 expertise in water resources management appointed by the local government unit, and
 12.19 a technical professional employee of the Department of Natural Resources for projects
 12.20 affecting public waters or wetlands adjacent to public waters. The panel shall use the
 12.21 "United States Army Corps of Engineers Wetland Delineation Manual" (January 1987),
 12.22 including updates, supplementary guidance, and replacements, if any, "Wetlands of
 12.23 the United States" (United States Fish and Wildlife Service Circular 39, 1971 edition),
 12.24 and "Classification of Wetlands and Deepwater Habitats of the United States" (1979
 12.25 edition). The panel shall provide the wetland determination and recommendations on
 12.26 other technical matters to the local government unit that must approve a replacement
 12.27 plan, wetland banking plan, exemption determination, no-loss determination, or wetland
 12.28 boundary or type determination and may recommend approval or denial of the plan. The
 12.29 authority must consider and include the decision of the Technical Evaluation Panel in their
 12.30 approval or denial of a plan or determination.

12.31 (b) Persons conducting wetland or public waters boundary delineations or type
 12.32 determinations are exempt from the requirements of chapter 326. ~~By January 15, 2001,~~
 12.33 ~~the board, in consultation with the Minnesota Association of Professional Soil Scientists,~~
 12.34 ~~the University of Minnesota, and the Wetland Delineators' Association, shall submit a plan~~

13.1 ~~for a professional wetland delineator certification program to the legislature. The board~~
 13.2 may develop a professional wetland delineator certification program.

13.3 Sec. 9. Minnesota Statutes 2006, section 103G.2242, subdivision 2a, is amended to
 13.4 read:

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

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

13.17 (c) The local government unit decision must be made in compliance with section
 13.18 15.99. Within ten calendar days of the decision, the local government unit decision must
 13.19 be mailed to the landowner, members of the Technical Evaluation Panel, the watershed
 13.20 district or watershed management organization, if one exists, and individual members of
 13.21 the public who request a copy.

13.22 (d) Appeals of decisions made by designated local government staff must be made
 13.23 to the local government unit. Notwithstanding any law to the contrary, a ruling on an
 13.24 appeal must be made by the local government unit within 30 days from the date of the
 13.25 filing of the appeal.

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

13.29 Sec. 10. Minnesota Statutes 2006, section 103G.2242, subdivision 9, is amended to
 13.30 read:

13.31 Subd. 9. **Appeal.** (a) Appeal of a replacement plan, exemption, wetland banking,
 13.32 wetland boundary or type determination, ~~or no-loss decision,~~ or restoration order may
 13.33 be obtained by mailing a petition and payment of a filing fee ~~of \$200~~, which shall be
 13.34 retained by the board to defray administrative costs, to the board within 30 days after the

14.1 postmarked date of the mailing specified in subdivision 7. If appeal is not sought within
 14.2 30 days, the decision becomes final. ~~The local government unit may require the petitioner~~
 14.3 ~~to post a letter of credit, cashier's check, or cash in an amount not to exceed \$500.~~ If the
 14.4 petition for hearing is accepted, the amount posted must be returned to the petitioner.

14.5 Appeal may be made by:

14.6 (1) the wetland owner;

14.7 (2) any of those to whom notice is required to be mailed under subdivision 7; or

14.8 (3) 100 residents of the county in which a majority of the wetland is located.

14.9 (b) Within 30 days after receiving a petition, the board shall decide whether to

14.10 grant the petition and hear the appeal. The board shall grant the petition unless the board
 14.11 finds that:

14.12 (1) the appeal is meritless, trivial, or brought solely for the purposes of delay;

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

14.14 (3) expanded technical review is needed;

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

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

14.18 (c) In determining whether to grant the appeal, the board shall also consider the

14.19 size of the wetland, other factors in controversy, any patterns of similar acts by the local

14.20 government unit or petitioner, and the consequences of the delay resulting from the appeal.

14.21 (d) All appeals must be heard by the committee for dispute resolution of the board,

14.22 and a decision made within 60 days of filing the local government unit's record and the

14.23 written briefs submitted for the appeal. The decision must be served by mail on the parties

14.24 to the appeal, and is not subject to the provisions of chapter 14. A decision whether to

14.25 grant a petition for appeal and a decision on the merits of an appeal must be considered the

14.26 decision of an agency in a contested case for purposes of judicial review under sections

14.27 14.63 to 14.69.

14.28 (e) Notwithstanding section 16A.1283, the board shall establish a fee schedule to

14.29 defray the administrative costs of appeals made to the board under this subdivision. Fees

14.30 established under this authority shall not exceed \$1,000. Establishment of the fee is not

14.31 subject to the rulemaking process of chapter 14 and section 14.386 does not apply.

14.32 Sec. 11. Minnesota Statutes 2006, section 103G.2242, subdivision 12, is amended to
 14.33 read:

14.34 Subd. 12. **Replacement credits.** (a) No public or private wetland restoration,
 14.35 enhancement, or construction may be allowed for replacement unless specifically

15.1 designated for replacement and paid for by the individual or organization performing the
 15.2 wetland restoration, enhancement, or construction, and is completed prior to any draining
 15.3 or filling of the wetland.

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

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

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

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

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

15.19 (4) water quality treatment ponds constructed to pretreat storm water runoff prior
 15.20 to discharge to wetlands, public waters, or other water bodies, provided that the water
 15.21 quality treatment ponds must be associated with an ongoing or proposed project that
 15.22 will impact a wetland and replacement credit for the treatment ponds is based on the
 15.23 replacement of wetland functions and on an approved stormwater management plan for
 15.24 the local government.

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

15.28 Sec. 12. Minnesota Statutes 2006, section 103G.2242, subdivision 15, is amended to
 15.29 read:

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

16.1 Sec. 13. Minnesota Statutes 2006, section 103G.2243, subdivision 2, is amended to
 16.2 read:

16.3 Subd. 2. **Plan contents.** A comprehensive wetland protection and management
 16.4 plan may:

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

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

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

16.10 (iii) the resulting public values;

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

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

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

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

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

16.27 ~~(5) in a greater than 80 percent area, based on the classification and criteria set forth~~
 16.28 ~~in the plan, expand the application of the exemptions in section 103G.2241, subdivision~~
 16.29 ~~1, paragraph (a), clause (4), to also include nonagricultural land, provided there is no~~
 16.30 ~~net loss of wetland values.~~

16.31 Sec. 14. **RULEMAKING.**

16.32 Within 90 days of the effective date of this section, the Board of Water and Soil
 16.33 Resources shall adopt rules that amend Minnesota Rules, chapter 8420. These rules are
 16.34 exempt from the rulemaking provisions of Minnesota Statutes, chapter 14, except that
 16.35 Minnesota Statutes, section 14.386, applies and the proposed rules must be submitted

17.1 to the senate and house committees having jurisdiction over environment and natural
17.2 resources at least 30 days prior to being published in the State Register. The amended
17.3 rules are effective for two years from the date of publication in the State Register unless
17.4 they are superceded by permanent rules.

17.5 **Sec. 15. APPROPRIATIONS.**

17.6 (a) \$1,060,000 in fiscal year 2008 and \$1,060,000 in fiscal year 2009 are appropriated
17.7 from the general fund to the Board of Water and Soil Resources for the following purposes
17.8 to support implementation of the Wetland Conservation Act: \$500,000 each year is to
17.9 make grants to local units of governments to improve response to major wetland violations;
17.10 \$500,000 each year is for staffing to provide adequate state oversight and technical support
17.11 to local governments administering the Wetland Conservation Act; and \$60,000 each year
17.12 is for staff to monitor and enforce wetland replacement and wetland bank sites.

17.13 (b) \$60,000 in fiscal year 2008 is appropriated from the general fund to the Board of
17.14 Water and Soil Resources to develop a comprehensive state wetland restoration vision and
17.15 plan. This is a onetime appropriation. All of the money appropriated in this paragraph as
17.16 grants to local governments shall be administered through the Board of Water and Soil
17.17 Resources' local water resources protection and management program under Minnesota
17.18 Statutes, section 103B.3369.

17.19 **Sec. 16. REPEALER.**

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

17.21 **Sec. 17. EFFECTIVE DATE.**

17.22 Sections 1 to 16 are effective the day following final enactment.