Minnesota Local Government Roads Wetland Replacement
Report to the Legislature and the Governor
For FY02-03 Budget Consideration

October 16, 2000 (minor edits and resent electronically 11-16-00)

Report Requirement

ML 2000, Chap. 492, Sec. 9, Subd. 5. "By October 15, 2000, the board of water and soil resources shall make a recommendation to the governor and the legislature on the inclusion of wetland replacement under Minnesota Statutes, section 103G.222, subdivision 1, paragraph (m), as a biennial budget item."

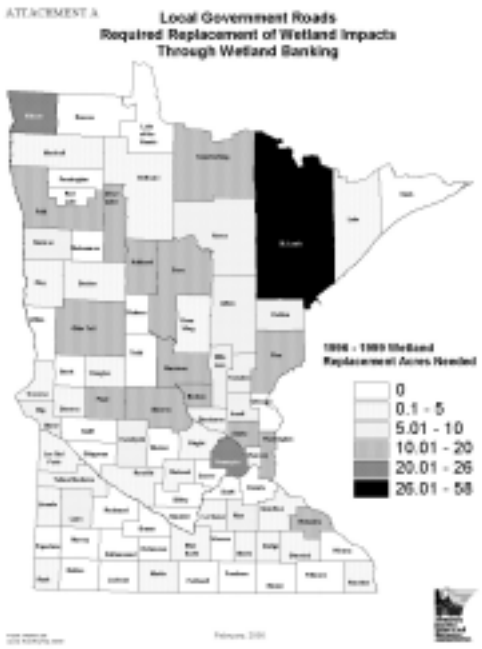
Program Summary

The Minnesota Local Government Roads Wetland Replacement program was established in law in 1996 to replace wetlands lost to local government public transportation projects as required under M.S. 103G.222, Subd. 1(l)[i]. This program supports the "no-net-loss" requirements of both state and federal regulations. It benefits: (a) local road authorities by assigning responsibility for replacing the inevitable loss of wetlands to the state; (b) environmental interests by establishing higher quality wetland replacement sites; and (c) state taxpayers by reducing the overall costs of constructing these replacement wetlands due to economies of scale realized through this collective process.

Program History and Outcomes

The 1996 and 2000 Legislatures amended the Wetland Conservation Act (WCA) after several years of controversy and regulatory inconsistency among local governments, business interests, environmental groups, and others. The local government roads wetland replacement program was a key outcome of these amendments as it transferred responsibility for replacing wetlands lost due to local government road construction from the local road authority to BWSR. This eliminates the need for local government transportation officials to undertake and finance environmental reclamation projects, and consolidates the necessary technical, financial and other implementation work. The result is higher quality, more cost-effective wetland replacement. See Figure 1 for distribution of local road projects wetland replacement needs.

Figure 1. Distribution of local road projects wetland replacement needs.



Benefits realized by the Local Government Roads Wetland Replacement program include:

1) Regulatory simplification and efficient and improved wetland mitigation are achieved by eliminating the need for each local road authority to maintain its own staff expertise and budget to mitigate impacts to wetlands from road projects.
2) Fragmented impacts from road projects are consolidated in targeted areas to provide habitat, water quality and other wetland functions away from traffic and highway runoff areas.
3) Water management goals such as improving water quality, flood control, greenway preservation and wildlife corridor enhancement can be better addressed collectively.
4) Site selection, ranking of project proposals and setting program strategies consistent with overall State and Federal wetland goals are achieved through an interagency committee process.

BWSR has adopted a 3-part strategy to achieve the wetland replacement required by law:

1) Develop projects with local or state partners through fee title or easement acquisition;
2) Purchase wetland credits from existing wetland banking accounts; and
3) Acquire easements in conjunction with existing conservation easement programs.

Financial History

From the beginning, consensus has not been reached on whether this program should be funded from transportation sources, environmental sources or some combination of the two and thus it has always been funded with capital budget sources (see Table 1). Most recently, this program was funded for one year from the capital (bonding) budget by the 2000 legislature via a $2.3 million capital appropriation with $400 thousand supplement allocated for annual implementation costs. This amount was similar to previous appropriations and adequate for one year of projects covering the state's obligations at least through calendar year 1999. Prior experience shows that approximately 220 acres of wetlands need replacement each year, at an annual cost of $2.75 million. The number of acres impacted depends most directly on the money available to local governments for road construction. The cost of establishing the wetlands varies widely, from a low of $2 thousand/acre in rural Minnesota, up to $100 thousand/acre for some urban renewal projects in the metro area. The BWSR projects that to meet its statutory obligations for the next two years will require $5.5 million.

Table 1. Appropriation History

Legislative Action	Appropriation
2000 *Bonding* *ML 2000, Chap. 492, Sec. 9, Subd. 5*	$ 2,300,000
1998 *Capital Budget General Fund* *ML 1998, Chap. 404, Sec. 10, Subd. 3*	$ 2,750,000
1996 *Bonding* *ML 1996, Chap. 463, Sec. 11, Subd. 4*	$3,000,000

Environmental Funding Sources

Environmental/natural resource restoration projects are funded using a variety of sources (e.g., the general fund, dedicated funds, capital funds and a variety of federal, state, local and private sources). See Table 3 for a breakdown of recent biennial appropriations.

Table 2: Direct Appropriations to Environment, Natural Resources, and Agriculture Agencies for 2000-2001Biennium, by Fund[ii]

Fund	$ Thousands	%
General	$421,587	60
Petro Tank Release	6,976	1
State Government	89	-
Special Revenue	723	-
Environmental	43,928	6
Solid Waste	14,382	6
Natural Resources	52,238	7
Game and Fish	121,934	18
Future Resources	14,840	2
Environmental Trust	25,460	4
Great Lakes Protection	200	-
	$702,357	**100%**

Transportation Funding Sources

The state of Minnesota has approximately 130,000 miles of local streets and highways (See Table 1). This reflects Minnesota's entire roadway system.

Table 3. Approximate Mileage by System[iii]

Trunk Highway (MnDOT)	11,930 *(8.9%)*
County State Aid	30,320 *(22.5%)*
County Road (local)	15,040 *(11.2%)*
City State Aid	2,690 *(2.0%)*
City (local streets)	15,310 *(11.4%)*
Township Roads	59,290 *(44.1%)*
Total	**134,580 miles**

In 1998, approximately $2.8 billion in revenue was raised and available for Minnesota's roadway system. These revenues come from state highway user tax funds (motor fuel tax and motor vehicle registration), local property taxes, bonds and notes, and Minnesota's General Fund.

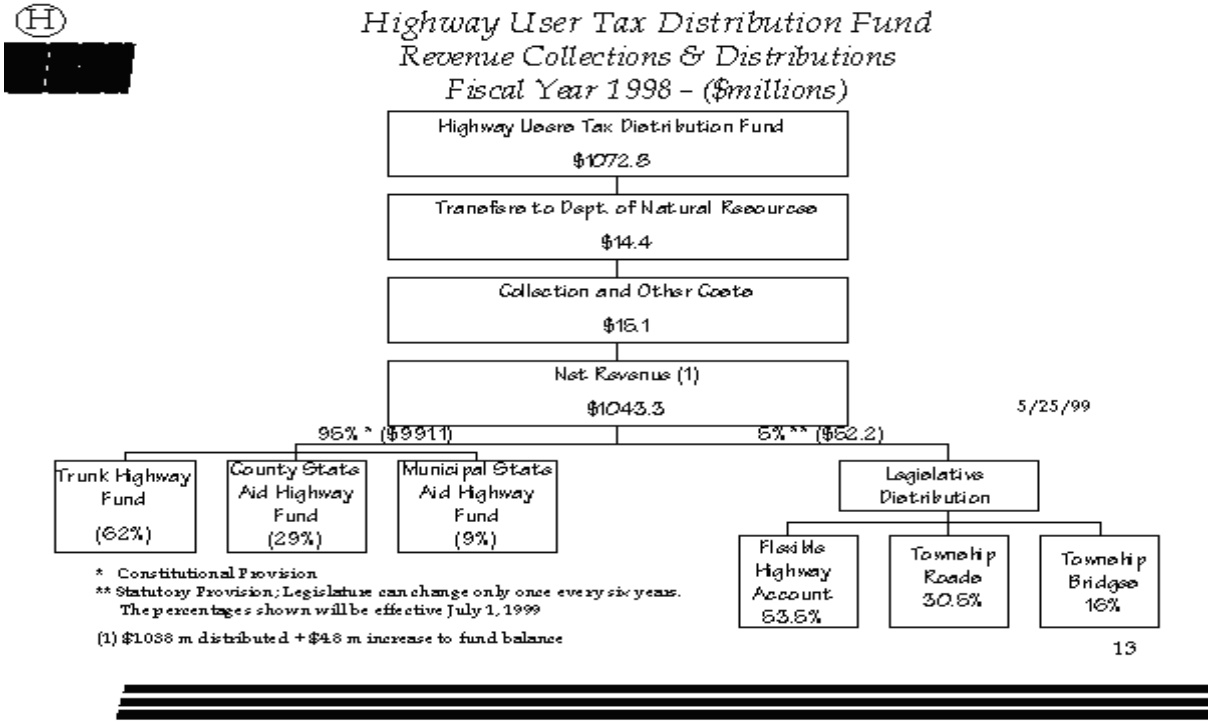
Of the $2.8 billion available for all Minnesota roadways, Mn/DOT is responsible for the oversight of about $1.5 billion in annual funding for highways. These state highway revenues are used for the construction and maintenance of about 12,000 miles of state trunk highways. Mn/DOT also distributes state funds and provides technical assistance for more than 33,000 miles of county state-aid and municipal state-aid highways and streets (see Table 2).

Table 4. Approximate Highway User Tax Distribution for 1999 * (does not include any local or non-state aid funds)[iv]

Trunk Highway	$647 million *(61.0%)*
County State Aid Highway *	$303 million *(28.6%)*
Municipal State Aid*	$94 million *(8.9%)*
Township Road Account*	$17 million *(1.6%)*
Total	**$1.1 billion**

State highway revenues are derived from various sources. A majority of the funding is provided through the Highway User Tax Distribution Fund that is comprised of motor fuel and motor vehicle registration taxes. The fund was established through a 1956 constitutional amendment and 1957 legislation, and is dedicated exclusively to "highway purposes" by the Minnesota Constitution[v]. Five percent of the funding can be modified once every six years by the Legislature and was last modified in 1999. Thus, the next opportunity to make this modification does not occur until 2005. Figure 2 illustrates the dedicated funding sources for Minnesota's roads and highways.

Figure 2. Highway User Tax Distribution Fund – 1998 Distribution



Program Rationale and Consequences

Local governments (counties, cities and townships) believe strongly this state mandate should be a base element in BWSR's budget. The Legislature also recognized the ongoing state obligation this program fulfills and thus included the requirement for this report in the appropriation language last year. There is stakeholder consensus on the benefits of the program and the need to permanently fund this state obligation. Without a continued state commitment to this funding, local governments face paying for this work out of their transportation budgets, which will:

1) Reduce or delay completion of local government road projects;
2) Increase local property tax levies;
3) Require a reversal of recent statute changes and undo a fragile stakeholder consensus that resulted in recent wetland regulatory reforms (*ML 2000, Chap. 382);* and
4) Negate an agreement with the U.S. Army Corps of Engineers (COE) that allows this program to meet federal regulatory requirements meaning local road authorities will again have to seek individual federal permits and be responsible for wetland replacement.

Last year the BWSR developed several options for potentially reducing the state's fiscal obligation. None of these options were viewed as acceptable by the consortium of stakeholders who developed the consensus proposal which lead to the statutory changes. The options were:

1. A. Reduce replacement ratio to 1:1 statewide = 30% cost reduction.

B. Reduce replacement ratio to 1.5:1 from 2:1 in metro, <50% areas, and 50-80% areas = 15% cost reduction.

2. Delete requirement to fund urban-renewal projects = 10% cost reduction.

3. Allow half of metro area filled wetlnds to be replaced in non-metro areas = 18% cost reduction.

4. Combinations:
   Combine #1A with #2 = 40% cost reduction.
   Combine #1B with #2 = 25% cost reduction.
   Combine #2 with #3 = 28% cost reduction.

Given the disinterest in pursing non-consensus policy changes, the BWSR believes both state and local government interests are best served by continued and permanent funding for this program in an amount based on the documented need of $2.75 million per year ($5.5 million for the FY02-03 biennium).

Recommendation

A recommendation for shared state funding of this mandated program is outlined in Table 4, which balances a shared responsibility between existing transportation sources (in proportion to existing current state contributions) and the general fund for the portion that would otherwise have to come from local property tax revenues. The decision on whether this program should be funded from transportation sources, the general fund, some combination of the two, or other sources must be decided through the legislative process.

Table 5. Shared State Funding Proposal

Local Road Authorities	Local Road Funding*		Estimated Annual Replacement Wetland Acres **	Proposed Annual Funding ($ thousands)	
	State %	Local %		Transportation State-Aid Fund	General Fund
Township***	< 10	> 90	106.3	0	1,328
City	15	85	32.3	61	343
County	67	33	81.4	682	336
TOTALS			220	$743	$2,007

* Based on state-aid funding proportions in Table 4, excluding Trunk Highways.
** Based on 1996-1999 reports, number of road miles, and average annual costs to replace wetlands statewide ($2.75 million) as mandated by M.S. 103G.222, Subd. 1(e).
*** Township road authorities receive approximately $17 million per year for 59,290 miles of roads. These funds are dispersed, based on population and road miles, to townships having local levies for road projects[vi]. These estimates are based on an estimated cost per mile for road work equal to half of that for county roads.

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Endnotes:

[i] ***M.S. 103G.222, Subd. 1(l) -- as amended by MN Laws 2000, Chapter 382.***

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

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

(2) except as provided in clause (3), submit ~~annual~~ project-specific reports ~~by January 15~~ to the board, the technical evaluation panel, the commissioner of natural resources, and members of the public requesting a copy at least 30 days prior to construction that indicate the location, amount, and type of wetlands ~~that have been filled or drained during the previous year and a projection of the location, amount, and type of wetlands~~ to be filled or drained by the project or, alternatively, convene an annual meeting of the parties required to receive notice to review projects to be commenced during the upcoming year; and

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

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

Except for state public transportation projects, for which the state department of transportation is responsible, the board must replace the wetlands, and wetland areas of public waters if authorized by the commissioner or a delegated authority, drained or filled by public transportation projects on existing roads ~~in critical rural and urban watersheds~~.

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

[ii] FISCAL ISSUE BRIEF Environment, Natural Resources and Agriculture Budget 2000-2001, page 1, *Senate Office of Fiscal Policy Analysis, February 2000.* http://www.senate.leg.state.mn.us/departments/FiscalAnalysis/reports.htm

[iii] Mn/DOT Office of State Aid for Local Transportation, Mike Pinsonneault, December 1999.

[iv] Mn/DOT Office of State Aid for Local Transportation, Mike Pinsonneault, December 1999.

[v] Mn/DOT Financial and Management Analysis Section, "Moving Minnesota from 2000 to 2020", pg. 92, http://www.oim.dot.state.mn.us/PDPA/Plan.html.

[vi] Personal communication, Mn/DOT Office of State Aid for Local Transportation, Mike Pinsonneault, November 2000.