

2015 WETLAND CONSERVATION ACT

STATUTE CHANGES

Summary of Key Statute Changes and Related Legislation with Explanations

This summary includes excerpts from Laws of MN 2015, Chapter 4, Article 4. It includes only the relevant Wetland Conservation Act (WCA) statutory subdivisions and paragraphs that contain changes, listed by the corresponding section numbers from the Chapter 4 session law. See the Office of the Revisor of Statutes website for complete statutes and session law: <https://www.revisor.leg.state.mn.us/laws/current/>. Underlined text indicates new language, ~~strikeout~~ indicates repealed language. This summary was prepared by the Minnesota Board of Water and Soil Resources (BWSR).

Sec. 73. Minnesota Statutes 2014, section 103B.101, is amended by adding a subdivision to read:

Subd. 16. **Wetland stakeholder coordination.** The board shall work with wetland stakeholders to foster mutual understanding and provide recommendations for improvements to the management of wetlands and related land and water resources, including recommendations for updating the Wetland Conservation Act, developing an in-lieu fee program as defined in section 103G.005, subdivision 10g, and related provisions. The board may convene informal working groups or work teams to provide information and education and to develop recommendations.

Effect of Change: BWSR will continue to engage stakeholders in policy development and program direction. However, BWSR's long-term intent is to develop a formal stakeholder work-group, similar to the current Drainage Work Group.

Effective Date: Establishment of the formal standing work-group will be determined during or after the upcoming WCA rulemaking process, in which stakeholders will also be involved.

Sec. 74. **[103B.103] EASEMENT STEWARDSHIP ACCOUNTS.**

Subdivision 1. **Accounts established; sources.**

(a) The water and soil conservation easement stewardship account and the mitigation easement stewardship account are created in the special revenue fund. The accounts consist of money credited to the accounts and interest and other earnings on money in the accounts. The State Board of Investment must manage the accounts to maximize long-term gain.

(b) Revenue from contributions and money appropriated for any purposes of the account as described in subdivision 2 must be deposited in the water and soil conservation easement stewardship account. Revenue from contributions, wetland banking fees designated for stewardship purposes by the board, easement

stewardship payments authorized under subdivision 3, and money appropriated for any purposes of the account as described in subdivision 2 must be deposited in the mitigation easement stewardship account.

Subd. 2. **Appropriation; purposes of accounts.** Five percent of the balance on July 1 each year in the water and soil conservation easement stewardship account and five percent of the balance on July 1 each year in the mitigation easement stewardship account are annually appropriated to the board and may be spent only to cover the costs of managing easements held by the board, including costs associated with monitoring, landowner contacts, records storage and management, processing landowner notices, requests for approval or amendments, enforcement, and legal services associated with easement management activities.

Subd. 3. **Financial contributions.** The board shall seek a financial contribution to the water and soil conservation easement stewardship account for each conservation easement acquired by the board. The board shall seek a financial contribution or assess an easement stewardship payment to the mitigation easement stewardship account for each wetland banking easement acquired by the board. Unless otherwise provided by law, the board shall determine the amount of the contribution or payment, which must be an amount calculated to earn sufficient money to meet the costs of managing the easement at a level that neither significantly overrecovers nor underrecovers the costs. In determining the amount of the financial contribution, the board shall consider:

- (1) the estimated annual staff hours needed to manage the conservation easement, taking into consideration factors such as easement type, size, location, and complexity;
- (2) the average hourly wages for the class or classes of state and local employees expected to manage the easement;
- (3) the estimated annual travel expenses to manage the easement;
- (4) the estimated annual miscellaneous costs to manage the easement, including supplies and equipment, information technology support, and aerial flyovers;
- (5) the estimated annualized costs of legal services, including the cost to enforce the easement in the event of a violation; and
- (6) the expected rate of return on investments in the account.

Effect of Change: This language establishes two stewardship accounts – a conservation easement account (for Reinvest in Minnesota Reserve easements) and a mitigation easement account. The interest-bearing investment accounts will provide a source of revenue to cover the costs of monitoring and managing State-held easements over time. For wetland mitigation, this authorized fee will help ensure that the full costs of wetland impacts and associated mitigation accrue to those profiting from the mitigation and/or using the credits (rather than future users or taxpayers). The amount of the mitigation easement stewardship fee will be established by BWSR.

Effective Date: Subdivisions 1 and 2 of this section are effective the day following final enactment. Subdivision 3 of this section is effective for conservation easements acquired with money appropriated on or after July 1, 2015, and for acquisitions of conservation easements by gift or as a condition of approval for wetland mitigation as provided in Minnesota Rules, chapter 8420, that are initiated on or after July 1, 2015. Wetland mitigation easement fees will be set by BWSR.

Sec. 75. Minnesota Statutes 2014, section 103B.3355, is amended to read:

103B.3355 WETLAND FUNCTIONS FOR DETERMINING PUBLIC VALUES.

(e) The Board of Water and Soil Resources, in consultation with the commissioners of natural resources and agriculture and local government units, ~~may~~ must identify ~~regions~~ areas of the state where preservation, enhancement, restoration, and establishment of wetlands would have high public value. The board, in consultation with the commissioners, ~~may~~ must identify high priority ~~wetland regions~~ areas for wetland replacement using available information relating to the factors listed in paragraph (a), the historic loss and abundance of wetlands, current applicable state and local government water management and natural resource plans, and studies using a watershed approach to identify current and future watershed needs. The board shall notify local units of government with water planning authority of these high priority ~~regions~~ areas. Designation of high priority areas is exempt from the rulemaking requirements of chapter 14, and section 14.386 does not apply. Designation of high priority areas is not effective until 30 days after publication in the State Register.

(f) Local units of government, as part of a state-approved comprehensive local water management plan as defined in section 103B.3363, subdivision 3, a state-approved comprehensive watershed management plan as defined in section 103B.3363, subdivision 3a, or a state-approved local comprehensive wetland protection and management plan under section 103G.2243, may identify priority areas for wetland re-placement and provide them for consideration under paragraph (e).

Effect of Change: Paragraph (e) eliminates the optional BWSR identification of high priority wetland *regions*, replacing it with clear direction for BWSR to designate “high priority *areas*” for wetland replacement. This modification affects the process and eligibility requirements associated with designating wetland preservation areas (see Minn. Stat. §103F.612, Subd. 2 below). The intent of this change is to improve the targeting and public value outcomes of wetland mitigation. BWSR will utilize available information regarding wetland functions, the historic loss and abundance of wetlands, and current state and local plans and studies (e.g. the Minnesota Prairie Conservation Plan) to identify high priority areas. BWSR will also engage local governments, state and federal agencies, and other stakeholders in designating these areas.

Paragraph (f) provides the opportunity for local governments to establish priority areas for wetland replacement in local water plans, which can be submitted to BWSR for statewide consideration.

Effective Date: The new language is effective August 1, 2015, although no deadline is specified for high priority area designation. However, BWSR is required to report on proposals to implement several policy initiatives, including high priority areas, to the legislature by March 15, 2016 (see Section 133, Wetland Conservation Act Report, below).

Sec. 80. Minnesota Statutes 2014, section 103F.612, subdivision 2, is amended to read:

Subd. 2. Application.

(a) A wetland owner may apply to the county where a wetland is located for designation of a wetland preservation area in a high priority wetland area ~~identified in a comprehensive local water plan, as defined in section 103B.3363, subdivision 3, and located within a high priority wetland region~~ designated by the Board of Water and Soil Resources, if the county chooses to accept wetland preservation area applications. The application must be made on forms provided by the board. If a wetland is located in more than one county, the application must be submitted to the county where the majority of the wetland is located.

Effect of Change: Consistent with Minn. Stat. §103B.3355 (above), high priority areas are now identified by BWSR rather than in a local plan (although local governments can nominate areas for designation by BWSR). This affects eligibility for wetland preservation area (WPA) designation, however, these effects are likely to be insignificant as the WPA program was used very little and the property tax reimbursement was eliminated by the State several years ago. The change will not affect previously designated WPAs, but will affect eligibility of future WPA designations if any county should choose to accept them.

Effective Date: August 1, 2015. Corresponding changes will also be made to the WCA Rule.

Sec. 81. Minnesota Statutes 2014, section 103G.005, is amended by adding a subdivision to read:

Subd. 10g. **In-lieu fee program.** "In-lieu fee program" means a program in which wetland replacement requirements of section 103G.222 are satisfied through payment of money to the board or a board-approved sponsor to develop replacement credits according to section 103G.2242, subdivision 12.

Effect of Change: This language establishes a statutory definition of an in-lieu fee (ILF) program.

Effective Date: The statutory definition is effective August 1, 2015. It will also be incorporated into WCA Rule, but any ILF program will not become effective until approved by the U.S. Army Corps of Engineers.

Sec. 82. Minnesota Statutes 2014, section 103G.222, subdivision 1, is amended to read:

Subdivision 1. Requirements.

(a) Wetlands must not be drained or filled, wholly or partially, unless replaced by ~~restoring or creating wetland areas of~~ actions that provide at least equal public value under a replacement plan approved as provided in section 103G.2242, a replacement plan under a local governmental unit's comprehensive wetland protection and management plan approved by the board under section 103G.2243, or, if a permit to mine is required under section 93.481, under a mining reclamation plan approved by the commissioner under the permit to mine. For project-specific wetland replacement completed prior to wetland impacts authorized or conducted under a permit to mine within the Great Lakes and Rainy River watershed basins, those basins shall be considered a single watershed for purposes of determining wetland replacement ratios. Mining reclamation plans shall apply the same principles and standards for replacing wetlands ~~by restoration or creation of~~

~~wetland areas~~ that are applicable to mitigation plans approved as provided in section 103G.2242. Public value must be determined in accordance with section 103B.3355 or a comprehensive wetland protection and management plan established under section 103G.2243. Sections 103G.221 to 103G.2372 also apply to excavation in permanently and semipermanently flooded areas of types 3, 4, and 5 wetlands.

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

Effect of Change: The changes in Paragraph (a) are consistent with changes to Minn. Stat. §103G.2242, Subd. 12 (below). They clarify the ability to establish actions eligible for wetland replacement credit that may not consist of the restoration or creation of wetlands. The changes to Paragraph (i) clarify that the stated restrictions apply to all wetland mitigation, not just banking.

Effective Date: The statute language is effective August 1, 2015, but will have little implication until new actions eligible for credit are developed in WCA Rule.

Sec. 83. Minnesota Statutes 2014, section 103G.222, subdivision 3, is amended to read:

Subd. 3. **Wetland replacement siting.**

(a) Impacted wetlands in a 50 to 80 percent area must be replaced in a 50 to 80 percent area or in a less than 50 percent area. Impacted wetlands in a less than 50 percent area must be replaced in a less than 50 percent area. All wetland replacement must follow this priority order:

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

(2) in the same watershed as the impacted wetland;

(3) in the same county or wetland bank service area as the impacted wetland; and

(4) in another wetland bank service area; ~~and~~

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

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

(b) Notwithstanding paragraph (a), wetland banking credits approved according to a complete wetland banking application submitted to a local government unit by April 1, 1996, may be used to replace wetland impacts resulting from public transportation projects statewide.

(c) Notwithstanding paragraph (a), clauses (1) and (2), the priority order for replacement by wetland banking begins at paragraph (a), clause (3), according to rules adopted under section 103G.2242, subdivision 1.

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

~~(d)~~ (e) For the purposes of this section, "reasonable, practicable, and environmentally beneficial re-placement opportunities" are defined as opportunities that:

- (1) take advantage of naturally occurring hydrogeomorphological conditions and require minimal landscape alteration;
- (2) have a high likelihood of becoming a functional wetland that will continue in perpetuity;
- (3) do not adversely affect other habitat types or ecological communities that are important in maintaining the overall biological diversity of the area; and
- (4) are available and capable of being done after taking into consideration cost, existing technology, and logistics consistent with overall project purposes.

~~(e) Applicants and local government units shall rely on board-approved comprehensive inventories of replacement opportunities and watershed conditions, including the Northeast Minnesota Wetland Mitigation Inventory and Assessment (January 2010), in determining whether reasonable, practicable, and environmentally beneficial replacement opportunities are available.~~

(g) The board must establish wetland replacement ratios and wetland bank service area priorities to implement the siting and targeting of wetland replacement and encourage the use of high priority areas for wetland replacement.

Effect of Change: Paragraph (a), Clause 5 was deleted to eliminate the separate wetland replacement siting criteria for public transportation projects that was in conflict with the watershed approach of the federal mitigation rule. Transportation siting is now consistent with other projects.

Paragraph (b) was re-written to maintain the exception despite deletion of Paragraph (a), Clause 5.

Paragraph (c) generally allows wetland replacement through banking anywhere in the bank service area (BSA) according to the WCA rule. This paragraph will help promote wetland banking by establishing a clear and defined market for banked credits, while improving efficiencies for bank owners, local governments, and applicants.

Paragraph (e) was deleted to remove ineffective language that will be out-of-date when new actions eligible for credit are established in the northeast.

Paragraph (g) directs BWSR to improve the siting and targeting of wetland replacement, including the use of high priority areas, through replacement ratios and BSA priorities.

Effective Date: August 1, 2015, except for the criteria for paragraphs (c) and (g), which will not become effective until established in the WCA Rules.

Sec. 84. Minnesota Statutes 2014, section 103G.2242, subdivision 1, is amended to read:

Subdivision 1. **Rules.**

(a) The board, in consultation with the commissioner, shall adopt rules governing the approval of wetland value replacement plans under this section and public waters work permits affecting public waters wetlands under section 103G.245. These rules must address the criteria, procedure, timing, and location of acceptable replacement of wetland values; and may address the state establishment and administration of a wetland banking program for public and private projects, ~~which may include~~ including provisions ~~allowing monetary payment to the wetland banking program for alteration of wetlands on agricultural land~~ for an in-lieu fee program; the administrative, monitoring, and enforcement procedures to be used; and a procedure for the review and appeal of decisions under this section. In the case of peatlands, the replacement plan rules must consider the impact on carbon ~~balance described in the report required by Laws 1990, chapter 587, and include the planting of trees or shrubs.~~ Any in-lieu fee program established by the board must conform with Code of Federal Regulations, title 33, section 332.8, as amended.

Effect of Change: These changes clarify that the wetland banking program established in the WCA Rules can include an in-lieu fee (ILF) program, and require that an ILF program be approved by the U.S. Army Corps of Engineers. Language regarding an outdated report on carbon balance was also deleted.

Effective Date: The rulemaking authority and ILF requirement are effective August 1, 2015, but the ILF criteria will be established in the WCA Rules and any ILF program will not take effect until the appropriate federal approval is obtained.

Sec. 85. Minnesota Statutes 2014, section 103G.2242, subdivision 2, is amended to read:

Subd. 2. **Evaluation.**

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

(c) The board must establish an interagency team to assist in identifying and evaluating potential wetland replacement sites. The team must consist of members of the Technical Evaluation Panel and representatives from the Department of Natural Resources; the Pollution Control Agency; the United States Army Corps of Engineers, St. Paul district; and other organizations as determined by the board.

Effect of Change: In Paragraph (a), the deletion of “wetland banking plan” provides BWSR with flexibility to modify the wetland banking plan approval process established in WCA Rules. This change allows for the submittal of Technical Evaluation Panel (TEP) findings and recommendations to BWSR for final approval, without changing the role of the TEP in Rule. The change is consistent with Minn. Stat. §103G.2242, Subd. 4 (below). “Sequencing” is added because it is another category of WCA approval that was not previously accounted for in this section.

Paragraph (c) directs BWSR to establish an expanded TEP that focuses on the early review and scoping of potential wetland replacement sites. This language implements the recommendation for a “rapid response team” that is included in the interagency report “Siting of Wetland Mitigation in Northeast Minnesota.” See the report at:

http://www.bwsr.state.mn.us/wetlands/wca/NE_MN_mitigation/siting_NE_MN_mitigation.html

Effective Date: Any modification to the wetland banking process would not occur until changed in WCA Rule. The “rapid response team” (expanded TEP) can be established as needed for a particular project at any time. The team’s structure and purpose will also be established in policy or Rule.

Sec. 86. Minnesota Statutes 2014, section 103G.2242, subdivision 3, is amended to read:

Subd. 3. **Replacement completion.**

(a) Replacement of wetland values must be completed prior to or concurrent with the actual draining or filling of a wetland, unless:

(1) an irrevocable bank letter of credit or other security financial assurance acceptable to the local government unit or the board is given to the local government unit or the board to guarantee the successful completion of the replacement; or

(2) the replacement is approved under an in-lieu fee program according to rules adopted under sub-division 1. In the case of an in-lieu fee program established by a board-approved sponsor, the board may require that a financial assurance in an amount and method acceptable to the board be given to the board to ensure the approved sponsor fulfills the sponsor's obligation to complete the required wetland replacement.

The board may establish, sponsor, or administer a wetland banking program, which may include provisions allowing monetary payment to the wetland bank for impacts to wetlands on agricultural land, for impacts that occur in greater than 80 percent areas, and for public road projects. (b) The board may acquire land in fee title, purchase or accept easements, enter into agreements, and purchase existing wetland replacement credits to

facilitate the wetland banking program. The board may establish in-lieu fee payment amounts and hold money in an account in the special revenue fund, which is appropriated to the board to be used solely for establishing replacement wetlands and administering the wetland banking program.

(c) The board shall coordinate the establishment and operation of a wetland bank with the United States Army Corps of Engineers, the Natural Resources Conservation Service of the United States Department of Agriculture, and the commissioners of natural resources, agriculture, and the Pollution Control Agency.

Effect of Change: This subdivision was somewhat reorganized to improve clarity. The change in Paragraph (a), Clause (1) is merely for consistency in language with federal policy.

Paragraph (a), Clause (2) allows wetland replacement to occur after the impact has been completed when use of the in-lieu fee (ILF) program has been approved in accordance with criteria established in the WCA Rules. It also gives BWSR clear authority to require an ILF program sponsor to provide a programmatic financial assurance, if in-fact a non-BWSR sponsor is allowed. The deleted sentence was redundant as the authority to establish the banking program is provided elsewhere in statute.

Paragraph (b) provides BWSR with specific authorities to implement the banking program.

Effective Date: The additional language will have no effect until established in WCA Rule, except that BWSR could use the authority contained in the first sentence of Paragraph (b) for implementation of projects within the Local Government Roads Wetland Replacement Program.

Sec. 87. Minnesota Statutes 2014, section 103G.2242, subdivision 4, is amended to read:

Subd. 4. **Decision.** Upon receiving and considering all required data, the local government unit reviewing replacement plan applications, ~~banking plan~~ sequencing applications, and exemption or no-loss determination requests must act on all replacement plan applications, ~~banking plan~~ sequencing applications, and exemption or no-loss determination requests in compliance with section 15.99.

Effect of Change: The deletion of “banking plan” provides BWSR with flexibility to modify the wetland banking plan approval process established in WCA Rules to accommodate final approval by BWSR. This change is consistent with the above change in Minn. Stat. §103G.2242, Subd. 2, Paragraph (a). “Sequencing” is added because it is another category of WCA approval that was not previously listed in this section.

Effective Date: Any modification to the wetland banking process would not occur until changed in WCA Rule.

Sec. 88. Minnesota Statutes 2014, section 103G.2242, subdivision 12, is amended to read:

Subd. 12. **Replacement credits.**

(a) No public or private wetland restoration, enhancement, or construction may be allowed for replacement unless specifically designated for replacement and paid for by the individual or organization performing the wetland restoration, enhancement, or construction, ~~and is completed prior to any draining or filling of the wetland.~~

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

- (1) reestablishment of permanent native, noninvasive vegetative cover on a wetland on agricultural land that was planted with annually seeded crops, was in a crop rotation seeding of pasture grasses or legumes, or was in a land retirement program during the past ten years;
- (2) buffer areas of permanent native, noninvasive vegetative cover established or preserved on upland adjacent to replacement wetlands;
- (3) wetlands restored for conservation purposes under terminated easements or contracts; ~~and~~
- (4) water quality treatment ponds constructed to pretreat storm water runoff prior to discharge to wetlands, public waters, or other water bodies, provided that the water quality treatment ponds must be associated with an ongoing or proposed project that will impact a wetland and replacement credit for the treatment ponds is based on the replacement of wetland functions and on an approved storm water management plan for the local government; and
- (5) in a greater than 80 percent area, restoration and protection of streams and riparian buffers that are important to the functions and sustainability of aquatic resources.

Effect of Change: The deletion in Paragraph (a) allows for implementation of an in-lieu fee program, in which wetland replacement may be completed after the wetland impacts occur.

The addition of “or the board” in Paragraph (c) provides BWSR with the authority to determine wetland replacement crediting in accordance with the process established in the WCA Rules. This change is consistent with the above changes to Subd. 2, Paragraph (a) and Subd. 4 of this section of statute.

Paragraph (c), Clause 5 adds new actions eligible for wetland replacement credit in northeastern MN, the criteria for which will be established in WCA Rule.

Effective Date: The changes in this subdivision will become effective when incorporated into the WCA Rules along with related implementation criteria.

Sec. 89. Minnesota Statutes 2014, section 103G.2242, subdivision 14, is amended to read:

Subd. 14. **Fees established.**

(d) The board may assess a fee to pay the costs associated with establishing conservation easements, or other long-term protection mechanisms prescribed in the rules adopted under subdivision 1, on property used for wetland replacement.

Effect of Change: BWSR now has the authority to recoup costs associated with establishing easements or other long-term protection mechanisms on land used for wetland replacement.

Effective Date: The fee authority is effective August 1, 2015, but assessment of the fee will not occur until the amount is established via BWSR policy.

Sec. 90. Minnesota Statutes 2014, section 103G.2251, is amended to read:

103G.2251 STATE CONSERVATION EASEMENTS; WETLAND BANK CREDIT.

In greater than 80 percent areas, preservation of wetlands, riparian buffers, and watershed areas essential to maintaining important functions and sustainability of aquatic resources in the watershed that are protected by a permanent conservation easement as defined under section 84C.01 and held by the board may be eligible for wetland replacement or mitigation credits, according to rules adopted by the board. To be eligible for credit under this section, a conservation easement must be established after May 24, 2008, and approved by the board. Wetland areas on private lands preserved under this section are not eligible for replacement or mitigation credit if the area has been protected using public conservation funds.

Effect of Change: The new language allows for the allocation of wetland replacement credit for the preservation of additional natural resources in greater than 80% areas. These options are consistent with the new actions eligible for credit in Minn. Stat. §103G.2242, Subd. 12, Paragraph (c), Clause 5.

Effective Date: These new options for preservation credit will become effective when incorporated into the WCA Rules along with related implementation criteria.

Sec. 133. **WETLAND CONSERVATION ACT REPORT.**

By March 15, 2016, the Board of Water and Soil Resources, in cooperation with the Department of Natural Resources, shall report to the committees with jurisdiction over environment and natural resources on the proposals to implement high priority areas for wetland replacement and in-lieu fees for replacement and modify wetland replacement siting and actions eligible for credit. In developing the report, the board and department shall consult with stakeholders and agencies.

Effect of Legislation: This legislation does not affect any current statute, but directs BWSR to report to the legislature regarding the development of specified new WCA policies. The report may contain additional legislative recommendations if identified as necessary for effective implementation.

Sec. 137. **FEDERAL CLEAN WATER ACT SECTION 404 PERMIT PROGRAM FEASIBILITY STUDY.**

(a) The Board of Water and Soil Resources and the commissioner of natural resources shall study the feasibility of the state assuming administration of the section 404 permit program of the federal Clean Water Act. The United States Army Corps of Engineers, St. Paul District; and the United States Environmental Protection Agency shall be consulted with during the development of the study. The study shall identify:

- (1) the federal requirements for state assumption of the 404 program;
- (2) the potential extent of assumption, including those waters that would remain under the jurisdiction of the United States Army Corps of Engineers due to the prohibition of 404 assumption in certain waters as defined in section 404(g)(1) of the federal Clean Water Act;
- (3) differences in waters regulated under Minnesota laws compared to waters of the United States, including complications and potential solutions to address the current uncertainties relating to determining waters of the United States;
- (4) measures to ensure the protection of aquatic resources consistent with the Clean Water Act, Wetland Conservation Act, and the public waters program administered by the Department of Natural Resources;
- (5) changes to existing state law, including changes to current implementation structure and processes, that would need to occur to allow for state assumption of the 404 program;
- (6) new agency responsibilities for implementing federal requirements and procedures that would become the obligation of the state under assumption, including the staff and resources needed for implementation;
- (7) the estimated costs and savings that would accrue to affected units of government;
- (8) the effect on application review and approval processes and time frames;
- (9) alternatives to assumption that would also achieve the goals of regulatory simplification, efficiency, and reduced permitting times;
- (10) options for financing any additional costs of implementation; and
- (11) other information as determined by the board and commissioner.

(b) The board and commissioner shall involve stakeholders in the development of the plan of study consistent with Minnesota Statutes, section 103B.101, subdivision 16.

(c) By January 15, 2017, the board and commissioner must report the study to the legislative policy and finance committees and divisions with jurisdiction over environment and natural resources.

Effect of Legislation: This legislation does not affect any current statute, but directs BWSR and DNR to study the feasibility of State assumption of the Clean Water Act Section 404 permitting program, currently administered by the U.S. Army Corps of Engineers.

Questions regarding the statute changes included in this summary can be directed to the following staff of the Minnesota Board of Water and Soil Resources:

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