

Aitkin County Board of Commissioners
Request for County Board Action/Agenda Item Cover Sheet



To: Chairperson, Aitkin County Board of Commissioners Date: 2-29-12

Via: Patrick Wussow, County Administrator

From: Patrick Wussow, County Administrator

Title of Item:

Support for Legislation to Modify Wetland Replacement Requirements

Requested Meeting Date: 3-6-12 Estimated Presentation Time: Consent

Presenter: _____

Type of Action Requested (check all that apply)

- For info only, no action requested
- Approve under Consent Agenda
- For discussion only with possible future action
- Adopt Ordinance Revision
- Let/Award Bid or Quote (attach copy of basic bid/quote specs or summary of complex specs, each bid/quote received & bid/quote comparison)
- Approve/adopt proposal by motion
- Approve/adopt proposal by resolution (attach draft resolution)
- Authorize filling vacant staff position
- Request to schedule public hearing or sale
- Other (please list) _____
- Request by member of the public to be heard
- Item should be addressed in closed session under MN Statute _____

Fiscal Impact (check all that apply)

- Is this item in the current approved budget? Yes _____ No _____ (attach explanation)
- What type of expenditure is this? Operating Capital Other (attach explanation)
- Revenue line account # that funds this item is: _____
- Expenditure line account # for this item is: _____

Staffing Impact (Any yes answer requires a review by Human Resources Manager before going to the board)

- Duties of a department employee(s) may be materially affected. Yes No
- Applicable job description(s) may require revision. Yes No
- Item may impact a bargaining unit agreement or county work policy. Yes No
- Item may change the department's authorized staffing level. Yes No



Supporting Attachment(s)

- Memorandum Summary of Item
- Copy of applicable county policy and/or ordinance (excerpts acceptable)
- Copy of applicable state/federal statute/regulation (excerpts acceptable)
- Copy of applicable contract and/or agreement
- Original bid spec or quote request (excluding complex construction projects)
- Bids/quotes received (excluding complex construction projects, provide comparison worksheet)
- Bid/quote comparison worksheet
- Draft County Board resolution
- Plat approval check-list and supporting documents
- Copy of previous minutes related to this issue
- Other supporting document(s) (please list) _____

Provide eleven (11) copies of supporting documentation NO LATER THAN Wednesday at Noon to make the Board's agenda for the following Tuesday. Items WILL NOT be placed on the Board agenda unless complete documentation is provided for mailing in the Board packets. (see reverse side for details)

AITKIN COUNTY ADMINISTRATION

Aitkin County Courthouse
217 Second Street N.W. Room 130
Aitkin, MN 56431
218-927-7276
Fax: 218-927-7374

To: Aitkin County Board Members

From: Patrick Wussow, County Administrator

Date: March 1, 2012

Subject: Adopt Wetland Resolution from Arrow Head Counties Association

This is the resolution the County Board discussed at their February 28th meeting, it relates to proposed changes to the Wetland Conservation Act.

CERTIFIED COPY OF RESOLUTION OF COUNTY BOARD OF AITKIN COUNTY, MINNESOTA

ADOPTED March 6, 2012

By Commissioner: xx

030612-0xx

Support for Legislation to Modify Wetland Replacement Requirements

WHEREAS, State Representative Anzelc has authored legislation modifying wetland replacement requirements in counties with 80% or more of their pre-settlement wetland remaining, officially known as House File No. 2105, and

WHEREAS, Aitkin County has in excess of 80% of their pre-settlement wetlands remaining, and

WHEREAS, current state law regulating replacement of wetlands affected by building activities creates undue hardship for economic development activities in Aitkin County, and

WHEREAS, modification of wetland replacement requirements in Aitkin County would enhance local economic development, and

WHEREAS, the provisions of HF 2105 are in full compliance with statutory requirements that Minnesota retain an overall no net loss of wetlands policy.

NOW, THEREFORE, BE IT RESOLVED, that Aitkin County supports House File No. 2105, modifying wetland replacement requirements, as proposed by State Representative Anzelc.

Commissioner xx moved the adoption of the resolution and it was declared adopted upon the following vote

FIVE MEMBERS PRESENT All Members Voting Yes

STATE OF MINNESOTA)
County of Aitkin) ss.
Office of County Auditor,)

I, Kirk Peysar, Auditor, of the County of Aitkin, do hereby certify that I have compared the foregoing with the original resolution filed in my office on the 6th day of March A.D., 2012, and that the same is a true and correct copy of the whole thereof.

WITNESS MY HAND AND SEAL OF OFFICE at Aitkin, Minnesota, this 6th day of March A.D., 2012

KIRK PEYSAR, County Auditor

BY _____, Deputy



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None [<] [>] None

HF2105 Status in **House** for Legislative Session 87

Bill Name: **HF2105**

Companion: SF1986

Revisor Number: 12-4847

[Bill Text](#)

[Companion Text](#)

[Companion Status](#)

[Senate Search](#)

House Authors

[Anzelc](#); [Dill](#)

Short Description

Wetland replacement requirements modified.

Long Description

[Further Committee Actions](#)

[House Research Summary](#)

HOUSE Actions

[SENATE Actions](#)

[Top](#)

Date	Action	Description / Committee	Text	Page	Roll Call
02/08/2012	Introduction and first reading, referred to	Environment, Energy and Natural Resources Policy and Finance	Intro	5471	

SENATE Actions

[HOUSE Actions](#)

[Top](#)

None.

Please direct all comments concerning issues or legislation to your [House Member](#) or [State Senator](#).

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[General questions or comments.](#)

last updated: 01/05/2012



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KEY: ~~stricken~~ = removed, old language. underscored = added, new language.

[Authors and Status](#)

[List versions](#)



H.F. No. 2105, as introduced - 87th Legislative Session (2011-2012) Posted on Feb 08, 2012

- 1.1 A bill for an act
- 1.2 relating to waters; modifying wetland replacement requirements; amending
- 1.3 Minnesota Statutes 2010, section 103G.2241, subdivisions 9, 11, by adding
- 1.4 a subdivision; Minnesota Statutes 2011 Supplement, section 103G.222,
- 1.5 subdivision 1.
- 1.6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
- 1.7 Section 1. Minnesota Statutes 2011 Supplement, section 103G.222, subdivision 1,
- 1.8 is amended to read:
- 1.9 Subdivision 1. **Requirements.** (a) Wetlands must not be drained or filled, wholly or
- 1.10 partially, unless replaced by restoring or creating wetland areas of at least equal public
- 1.11 value under a replacement plan approved as provided in section 103G.2242, a replacement
- 1.12 plan under a local governmental unit's comprehensive wetland protection and management
- 1.13 plan approved by the board under section 103G.2243, or, if a permit to mine is required
- 1.14 under section 93.481, under a mining reclamation plan approved by the commissioner
- 1.15 under the permit to mine. For project-specific wetland replacement completed prior to
- 1.16 wetland impacts authorized or conducted under a permit to mine within the Great Lakes
- 1.17 and Rainy River watershed basins, those basins shall be considered a single watershed
- 1.18 for purposes of determining wetland replacement ratios. Mining reclamation plans shall
- 1.19 apply the same principles and standards for replacing wetlands by restoration or creation
- 1.20 of wetland areas that are applicable to mitigation plans approved as provided in section
- 1.21 103G.2242. Public value must be determined in accordance with section 103B.3355 or
- 1.22 a comprehensive wetland protection and management plan established under section
- 1.23 103G.2243. Sections 103G.221 to 103G.2372 also apply to excavation in permanently
- 1.24 and semipermanently flooded areas of types 3, 4, and 5 wetlands.
- 2.1 (b) Replacement must be guided by the following principles in descending order
- 2.2 of priority:
- 2.3 (1) avoiding the direct or indirect impact of the activity that may destroy or diminish
- 2.4 the wetland;
- 2.5 (2) minimizing the impact by limiting the degree or magnitude of the wetland
- 2.6 activity and its implementation;
- 2.7 (3) rectifying the impact by repairing, rehabilitating, or restoring the affected
- 2.8 wetland environment;
- 2.9 (4) reducing or eliminating the impact over time by preservation and maintenance
- 2.10 operations during the life of the activity;
- 2.11 (5) compensating for the impact by restoring a wetland; and
- 2.12 (6) compensating for the impact by replacing or providing substitute wetland
- 2.13 resources or environments.
- 2.14 For a project involving the draining or filling of wetlands in an amount not exceeding
- 2.15 10,000 square feet more than the applicable amount in section 103G.2241, subdivision 9,
- 2.16 paragraph (a), the local government unit may make an on-site sequencing determination
- 2.17 without a written alternatives analysis from the applicant.

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

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

(e) Restoration and replacement of wetlands must be accomplished in accordance with the ecology of the landscape area affected and ponds that are created primarily to fulfill storm water management, and water quality treatment requirements may not be used to satisfy replacement requirements under this chapter unless the design includes pretreatment of runoff and the pond is functioning as a wetland.

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

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

(h) For wetland or public waters wetland in areas with 20 percent or less of the presettlement wetland acreage intact, the board shall, by rule, establish a replacement ratio sufficient to replace each acre of drained or filled wetland and to offset the losses of wetland and public waters wetland resulting from the exemption under section 103G.2241, subdivision 10a.

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

~~(i)~~ (j) 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 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.

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

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

~~(l)~~ (m) For projects involving draining or filling of wetlands associated with a new public transportation project, and for projects expanded solely for additional traffic capacity, public transportation authorities may purchase credits from the board at the cost to the board to establish credits. Proceeds from the sale of credits provided under this paragraph are appropriated to the board for the purposes of this paragraph. For the purposes of this paragraph, "transportation project" does not include an airport project.

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~~(m)~~ (n) A replacement plan for wetlands is not required for individual projects that

- 2.21 result in the filling or draining of wetlands for the repair, rehabilitation, reconstruction,
 2.23 or replacement of a currently serviceable existing state, city, county, or town public road
 2.24 necessary, as determined by the public transportation authority, to meet state or federal
 2.25 design or safety standards or requirements, excluding new roads or roads expanded solely
 2.26 for additional traffic capacity lanes. This paragraph only applies to authorities for public
 2.27 transportation projects that:
- 2.28 (1) minimize the amount of wetland filling or draining associated with the project
 2.29 and consider mitigating important site-specific wetland functions on site;
- 2.30 (2) except as provided in clause (3), submit project-specific reports to the board, the
 2.31 Technical Evaluation Panel, the commissioner of natural resources, and members of the
 2.32 public requesting a copy at least 30 days prior to construction that indicate the location,
 2.33 amount, and type of wetlands to be filled or drained by the project or, alternatively,
 2.34 convene an annual meeting of the parties required to receive notice to review projects to
 2.35 be commenced during the upcoming year; and
- 2.36 (3) for minor and emergency maintenance work impacting less than 10,000 square
 3.1 feet, submit project-specific reports, within 30 days of commencing the activity, to the
 3.2 board that indicate the location, amount, and type of wetlands that have been filled
 3.3 or drained.
- 3.4 Those required to receive notice of public transportation projects may appeal
 3.5 minimization, delineation, and on-site mitigation decisions made by the public
 3.6 transportation authority to the board according to the provisions of section 103G.2242,
 3.7 subdivision 9 . The Technical Evaluation Panel shall review minimization and delineation
 3.8 decisions made by the public transportation authority and provide recommendations
 3.9 regarding on-site mitigation if requested to do so by the local government unit, a
 3.10 contiguous landowner, or a member of the Technical Evaluation Panel.
- 3.11 Except for state public transportation projects, for which the state Department of
 3.12 Transportation is responsible, the board must replace the wetlands, and wetland areas of
 3.13 public waters if authorized by the commissioner or a delegated authority, drained or filled
 3.14 by public transportation projects on existing roads.
- 3.15 Public transportation authorities at their discretion may deviate from federal and
 3.16 state design standards on existing road projects when practical and reasonable to avoid
 3.17 wetland filling or draining, provided that public safety is not unreasonably compromised.
 3.18 The local road authority and its officers and employees are exempt from liability for
 3.19 any tort claim for injury to persons or property arising from travel on the highway and
 3.20 related to the deviation from the design standards for construction or reconstruction under
 3.21 this paragraph. This paragraph does not preclude an action for damages arising from
 3.22 negligence in construction or maintenance on a highway.
- 3.23 ~~(n)~~ (o) If a landowner seeks approval of a replacement plan after the proposed
 3.24 project has already affected the wetland, the local government unit may require the
 3.25 landowner to replace the affected wetland at a ratio not to exceed twice the replacement
 3.26 ratio otherwise required.
- 3.27 ~~(e)~~ (p) A local government unit may request the board to reclassify a county or
 3.28 watershed on the basis of its percentage of presettlement wetlands remaining. After
 3.29 receipt of satisfactory documentation from the local government, the board shall change
 3.30 the classification of a county or watershed. If requested by the local government unit,
 3.31 the board must assist in developing the documentation. Within 30 days of its action to
 3.32 approve a change of wetland classifications, the board shall publish a notice of the change
 3.33 in the Environmental Quality Board Monitor.
- ~~(p)~~ (q) One hundred citizens who reside within the jurisdiction of the local
 government unit may request the local government unit to reclassify a county or watershed
 on the basis of its percentage of presettlement wetlands remaining. In support of their
 petition, the citizens shall provide satisfactory documentation to the local government unit.

The local government unit shall consider the petition and forward the request to the board under paragraph ~~(e)~~ (p) or provide a reason why the petition is denied.

Sec. 2. Minnesota Statutes 2010, section 103G.2241, subdivision 9, is amended to read:

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

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

(2) 5,000 square feet of type 1, 2, 6, or 7 wetland, excluding white cedar and tamarack wetlands, outside of the shoreland wetland protection zone in a 50 to 80 percent area, except within the 11-county metropolitan area;

~~(3)~~ (2) 2,000 square feet of type 1, 2, or 6 wetland, outside of the shoreland wetland protection zone in a less than 50 percent area, except within the 11-county metropolitan area;

~~(4)~~ (3) 100 square feet of wetland types not listed in clauses (1) ~~to (3)~~ and (2) outside of the building setback zone of the shoreland wetland protection zones in all counties;

~~(5)~~ (4) 400 square feet of wetland types listed in clauses (1) ~~to (3)~~ and (2), beyond the building setback zone, as defined in the local shoreland management ordinance, but within the shoreland wetland protection zone. ~~In a greater than 80 percent area, the local government unit may increase the de minimis amount up to 1,000 square feet if the wetland is isolated and is determined to have no direct surficial connection to the public water.~~ To the extent that a local shoreland management ordinance is more restrictive than this provision, the local shoreland ordinance applies;

~~(6)~~ (5) up to 20 square feet of wetland, regardless of type or location;

~~(7)~~ (6) 2,500 square feet of type 1, 2, 6, or 7 wetland, excluding white cedar and tamarack wetlands, outside of the shoreland wetland protection zone in a 50 to 80 percent area within the 11-county metropolitan area; or

~~(8)~~ (7) 1,000 square feet of type 1, 2, or 6 wetland, outside of the shoreland wetland protection zone in a less than 50 percent area within the 11-county metropolitan area.

For purposes of this paragraph, the 11-county metropolitan area consists of the counties of Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Sherburne, Washington, and Wright.

(b) The amounts listed in paragraph (a), clauses (1) to ~~(8)~~ (7), may not be combined on a project.

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

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

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

(3) 400 square feet.

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

(e) Property may not be divided to increase the amounts listed in paragraph (a).

Sec. 3. Minnesota Statutes 2010, section 103G.2241, is amended by adding a subdivision to read:

Subd. 10a. Greater than 80 percent areas. A replacement plan for wetlands is not required in greater than 80 percent areas.

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4.2 Sec. 4. Minnesota Statutes 2010, section 103G.2241, subdivision 11, is amended to
4.3 read:

4.4 Subd. 11. **Exemption conditions.** (a) A person conducting an activity in a wetland
4.5 under an exemption in subdivisions 1 to ~~4~~ 10a shall ensure that:

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

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

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

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

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

4.17 (d) The board shall develop rules that address the application and implementation
4.18 of exemptions and that provide for estimates and reporting of exempt wetland impacts,
4.19 including those in section 103G.2241, subdivisions 2, 6, and 9.

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4.21 Please direct all comments concerning issues or legislation
4.22 to your House Member or State Senator.

4.23 For Legislative Staff or for directions to the Capitol, visit the Contact Us page.

4.24

4.25 General questions or comments.

4.26

last updated: 02/06/2012

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