

**Subject** Board of Water and Soil Resources

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## Overview

This bill contains a number of policy provisions impacting the Board of Water and Soil Resources (BWSR) and its programs, including modifications to provisions governing soil and water conservation districts (SWCDs), watershed districts, the Reinvest in Minnesota (RIM) Reserve program, and the Wetland Conservation Act.

## Summary

Section	Description
1	<b>Powers and duties.</b> Allows BWSR to shift funding for technical, financial, or administrative assistance to leverage federal or other nonstate money or to address high-priority needs, and allows grants and payments returned to BWSR to be regranted and extends the availability of those funds by two years.
2	<b>Drainage stakeholder coordination.</b> Adds recommendations for updates to the Minnesota Public Drainage Manual to the list of recommendations BWSR must work with drainage stakeholders on. Provides a definition of the manual for purposes of the requirement.
3	<b>Soil and water conservation policy.</b> Adds soil health to the list of practices that are encouraged under the state's soil and water conservation policy.
4	<b>Changing location of principal office.</b> Removes a requirement that BWSR approve changes to SWCD office locations.
5	<b>Surveys, investigations, and research.</b> Removes a requirement that a SWCD conduct surveys, investigations, or research in cooperation with a state or federal agency.

<b>Section</b>	<b>Description</b>
6	<p><b>Demonstration projects.</b></p> <p>Removes reference to a soil and water conservation policy being repealed in the bill that was used for purposes of a statute pertaining to SWCD demonstration projects and replaces it with a reference to a similar soil and water conservation policy amended in section 3.</p>
7	<p><b>Implementing practices.</b></p> <p>Removes reference to the soil and water conservation policy being repealed in this bill and certain practices to allow an SWCD to implement practices to achieve any statutory purpose of the SWCD. Allows a SWCD to implement practices on any publicly owned or administered lands in cooperation with the owner/administrator.</p>
8	<p><b>Implementing soil and water conservation policy.</b></p> <p>Removes reference to the soil and water conservation policy being repealed in this bill for purposes of SWCD agreements to allow agreements to implement any statutory responsibilities of the SWCD.</p>
9	<p><b>Acquiring and maintaining property.</b></p> <p>Allows a SWCD to receive income from properties it acquires to fulfill all statutory responsibilities (not just those under chapter 103C or soil erosion provisions as is currently allowed).</p>
10	<p><b>Using machinery and supplies.</b></p> <p>Expands a SWCD's ability to make machinery and supplies available to land occupiers by allowing this for practices to implement all SWCD statutory authorities (not just those listed under the soil and water conservation policy as is currently allowed).</p>
11	<p><b>Constructing improvements.</b></p> <p>Allows a SWCD to construct and operate structures to perform any authorized operation (not just those under chapter 103C or soil erosion provisions as is currently allowed).</p>
12	<p><b>Comprehensive plan.</b></p> <p>Modifies provisions related to SWCD comprehensive plans, including allowing the plans to include other practices, projects, programs, and systems to fulfill statutory responsibilities; removing certain plan requirements; requiring a public hearing; and requiring approval of the plan by BWSR before adopting the plan.</p>
13	<p><b>Assuming other conservation projects.</b></p> <p>Allows a SWCD to take over and administer certain projects undertaken by any public agency (under current law this is allowed only for federal and state agencies).</p>

<b>Section</b>	<b>Description</b>
14	<b>Authority to sue and contract.</b> Expands a SWCD's use of certain authorities for purposes of all their statutory authorities.
15	<b>Compensation for work or projects.</b> Allows a SWCD to assist landowners with operation and maintenance and require compensation for those benefits.
16	<b>Agreements for state or federal assistance.</b> Allows a SWCD to apply for state funding similar to its authority to apply for federal funding and allows for the acquisition of land without the restriction that there is no cost to the federal government.
17	<b>Budget.</b> Technical.
18	<b>Water and soil resource management.</b> Allows a SWCD to initiate, construct, operate, and maintain water and soil resource management practices, projects, programs, and systems within its boundaries and coordinate contributions from state, federal, Tribal, or local governments and private entities for similar purposes.
19	<b>Loans.</b> Allows a SWCD to obtain loans.
20	<b>Engineer.</b> Modifies the definition of "engineer" for purposes of chapter 103D (Watershed Districts) to include other qualified professionals.
21	<b>Specific purposes.</b> Modifies the purposes for which a watershed district may be established.
22	<b>Filing establishment petitions.</b> Removes a requirement that a watershed district petition be filed with both the commissioner of natural resources and a Department of Natural Resources (DNR) division director to avoid duplication.
23	<b>Petition signatures.</b> Modifies signature thresholds for watershed district boundary petitions to be at least 50 resident owners or 50 percent of the resident owners, whichever is less, within the area to be added or removed by the boundary change.

<b>Section</b>	<b>Description</b>
24	<b>Hearing.</b> Requires BWSR to mail a notice of a hearing for a watershed district boundary change at least ten days prior to the hearing.
25	<b>Withdrawing territory.</b> Allows the majority of watershed district managers to file a petition to withdraw territory from a watershed district. Requires BWSR to mail a notice of a hearing for a watershed district boundary change to each affected watershed district at least ten days prior to the hearing and to file a certified copy of the findings and order of withdrawal with the secretary of state, the auditor of each affected county, the commissioner of natural resources, and the watershed district.
26	<b>Petition.</b> Allows the majority of watershed district managers to file a petition to enlarge an existing watershed district. Requires BWSR to mail a notice of a hearing for a watershed district enlargement to each affected watershed district at least ten days prior to the hearing.
27	<b>Board order.</b> Requires BWSR to file a certified copy of the findings and order of watershed district enlargement with the auditor of each affected county, the director of the Division of Ecological and Water Resources of the DNR, and the watershed district (in addition to the secretary of state which is required under current law).
28	<b>Termination hearing order.</b> Allows a watershed termination hearing to be at the nearest publicly accessible facility outside the watershed district if a publicly accessible facility is not available within the district. Requires BWSR to have each watershed district manager personally served with a copy of the termination order.
29	<b>More than one affected county.</b> Requires BWSR to consider a county's portion of the land area and net tax capacity of the watershed district when distributing managers when there is more than one affected county.
30	<b>Redistribution.</b> Allows BWSR to redistribute watershed district managers' terms when redistributing or increasing the number of managers.

<b>Section</b>	<b>Description</b>
31	<b>Petition signatures.</b> Requires a petition to increase the number of watershed district managers made by the managers of the district to be adopted by resolution approved by a majority of the managers.
32	<b>Hearing.</b> Requires BWSR to file a certified copy of the findings and order to increase the number of watershed district managers with the secretary of state, auditor of each affected county, the director of the Division of Ecological and Water Resources of the DNR, and the watershed district and specifies what must be in the order.
33	<b>Record of appointed managers.</b> Allows the administrator of a watershed district to receive records of appointment.
34	<b>First meeting of managers.</b> Increases the number of days watershed district managers have to hold the first meeting of watershed district from ten to 30 days.
35	<b>Meetings.</b> Removes a requirement that a watershed district secretary mail a notice of a meeting to each of its members at least eight days before the meeting and states that meetings are subject to the open meeting law (chapter 13D).
36	<b>Unavailable public facilities.</b> Allows publicly accessible facilities to be used for watershed district meetings (not only public facilities as required under current law) and states that the principal place of business for a watershed district is the location of the district's office or, if they do not have an office, the location of its regular meetings.
37	<b>Members.</b> States that if practicable, watershed district advisory board members should include a representative of each federally recognized Tribal government within the watershed district.
38	<b>Acquiring or disposing of property.</b> Allows a watershed district to dispose of property when it no longer serves a purpose of the watershed district.
39	<b>Requirement.</b> Clarifies rulemaking authority of watershed district managers.

<b>Section</b>	<b>Description</b>
40	<p><b>Bond; financial assurance.</b></p> <p>Allows a watershed district to require other forms of financial assurance from permit applicants instead of a bond.</p>
41	<p><b>Requirement.</b></p> <p>Requires a watershed district to submit its annual audit report to BWSR and the state auditor's office within 180 days of the watershed district's fiscal year.</p>
42	<p><b>Removal of managers.</b></p> <p>Allows a watershed district manager to be removed after a hearing before the appointing authority by a majority vote of the appointing authority for violation of the district's code of ethics, malfeasance, nonfeasance, or misfeasance.</p>
43	<p><b>Watershed management plan.</b></p> <p>States that a watershed district's authority to adopt and maintain a watershed management plan is retained if participating in comprehensive watershed management planning for metropolitan watersheds under chapter 103B and removes various roles for the Metropolitan Council. Changes the timing for hearings on proposed watershed management plans. Makes the watershed district in charge of submitting its draft plan, comments, and other records to BWSR for final review. States that BWSR may not prescribe a plan, but may disapprove of all or a portion of the plan. Requires review of the plan to be within 90 days and allows a watershed district to seek reconsideration of BWSR's decision. Provides a process for adopting the plan and amendments.</p>
44	<p><b>Requirements.</b></p> <p>Places responsibility for revising the watershed management plan solely on the watershed district by removing the responsibility from BWSR.</p>
45	<p><b>Appeals from managers' orders.</b></p> <p>Allows the administrator of a watershed district to give notice of an order authorizing a project that has been appealed.</p>
46	<p><b>Project initiation.</b></p> <p>Allows a watershed district project to be initiated by resolution of the majority of managers (instead of unanimously). Requires all projects, not just those paid for by assessment, to be initiated either by petition, resolution of the managers, or as otherwise prescribed by law.</p>

<b>Section</b>	<b>Description</b>
47	<b>Requirements.</b> Allows a watershed district project petition to request that the managers adopt a resolution allowing sources of funding other than assessments to be used.
48	<b>Determination.</b> Recodifies language pertaining to making a watershed district project determination that is being removed in section 50.
49	<b>Projects initiated by managers.</b> Provides a process for the majority of watershed district managers to initiate a project. Allows the projects to be funded from one or more sources of funding. States that the projects are subject to certain statutory procedures for appointing appraisers and determining benefits.
50	<b>State and federal projects.</b> Allows an engineer to omit certain items from the engineer's report (rather than require it).
51	<b>Hearing after unfavorable engineer's report.</b> Specifies that certain hearing requirements when there is an unfavorable engineer's report apply when the project has been initiated by petition.
52	<b>Notice for final hearing; timing.</b> Allows watershed district managers to decide at any time not to proceed with a final hearing on a project initiated by the managers.
53	<b>Appointment.</b> Clarifies that only projects proposed to be funded by assessments of benefitted land are subject to the requirements for appraisers to be appointed.
54	<b>Establishment.</b> Technical.
55	<b>Procedure.</b> Updates references to statutes to accommodate the repeal of one section and add a cross reference to another.
56	<b>Appraisers' report; examination.</b> Modifies watershed district manager determinations of benefits and damages to instruct the determinations to be for each property assessed.

<b>Section</b>	<b>Description</b>
57	<b>Establishing project.</b> Modifies watershed district manager findings to require project benefits exceed costs for each property assessed.
58	<b>Filing managers' order establishing project.</b> Allows an order establishing a watershed district project and authorizing construction to be filed with the watershed district administrator.
59	<b>Awarding contract.</b> Removes a requirement that watershed district project contracts be signed by the president, secretary, and contractor (the contract must be approved by managers as required under current law), and specifies bond requirements.
60	<b>County funding.</b> Removes language applicable under a section being repealed later on in the bill.
61	<b>Sunset.</b> Extends the sunset of the alternative option for apportioning drainage repair costs from July 31, 2024, to July 31, 2029.
62	<b>Definitions.</b> Modifies the definition of "with jurisdiction" for purposes of riparian protection requirements ("buffer law") to require a county or watershed district to implement its rules/ordinances/official controls in order to have jurisdiction and specify that the jurisdiction determination is revocable.
63	<b>Agricultural crop production.</b> Defines "agricultural crop production" for purposes of the RIM Reserve program (a similar definition in Minnesota Rules is being repealed in the bill).
64	<b>Agricultural land.</b> Defines "agricultural land" for purposes of the RIM Reserve program (a definition for it in Minnesota Rules is being repealed in the bill).
65	<b>Approved practice.</b> Defines "approved practice" for purposes of the RIM Reserve program (a definition for it in Minnesota Rules is being repealed in the bill).
66	<b>Conservation easement program.</b> Defines "conservation easement program" for purposes of the RIM Reserve program (a definition for it in Minnesota Rules is being repealed in the bill).



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67	<p><b>Conservation plan.</b></p> <p>Defines “conservation plan” for purposes of the RIM Reserve program (a definition for it in Minnesota Rules is being repealed in the bill).</p>
68	<p><b>Food plot.</b></p> <p>Defines “food plot” for purposes of the RIM Reserve program (a definition for it in Minnesota Rules is being repealed in the bill).</p>
69	<p><b>Land with crop history.</b></p> <p>Defines “land with crop history” for purposes of the RIM Reserve program (a definition for it in Minnesota Rules is being repealed in the bill).</p>
70	<p><b>Pasture.</b></p> <p>Defines “pasture” for purposes of the RIM Reserve program (a definition for it in Minnesota Rules is being repealed in the bill).</p>
71	<p><b>Perennial cover.</b></p> <p>Defines “perennial cover” for purposes of the RIM Reserve program (a definition for it in Minnesota Rules is being repealed in the bill).</p>
72	<p><b>Reinvest in Minnesota reserve program.</b></p> <p>Makes a number of modifications to the RIM Reserve program, including: adding land in a floodplain or that is in an environmentally sensitive area to the list of lands eligible for the program; removing the requirement that land be at least five acres in size and have been in agricultural crop production at least two of the last five years; requiring easements to prohibit mining; removing a requirement that other land with native vegetation owned or leased as part of the same farm operation will not be converted to crop production or pasture; removing a provision allowing BWSR to use nonstate funds to exceed payment limits under the program; and modifying easement enforcement options to allow the use of an administration penalty order (APO) with forgivable penalties.</p> <p>Codifies certain requirements of landowners and other provisions that are currently in Minnesota Rules being repealed in this bill.</p>
73	<p><b>Conservation practices.</b></p> <p>Codifies RIM Reserve program rules with some modifications pertaining to approved conservation practices and augmenting money available to pay for the practices from other sources.</p>

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74	<p><b>Soil and water conservation district responsibilities.</b></p> <p>Codifies various RIM Reserve program rules being repealed in this bill.</p>
75	<p><b>Altering conservation easements.</b></p> <p>Allows BWSR to adopt policies and procedures to implement provisions allowing for the alteration, release, or termination of conservation easements. Requires a landowner to compensate BWSR for the damages/loss of benefits resulting from the alteration, release, or termination. Existing rules governing alterations, releases, and terminations are repealed in this bill.</p>
76	<p><b>Project.</b></p> <p>Modifies the definition of “project” for purposes of chapter 103G (Waters of the State) to prohibit a project from being split into components/phases for the purpose of gaining an exemption (under current law the split is prohibited only if gaining an exemption is the sole purpose for the split).</p>
77	<p><b>Wetland type.</b></p> <p>Modifies the definition of wetland type for purposes of chapter 103G to eliminate the existing types in statute and replace it with reference to the classifications under the United States Army Corps of Engineer’s <i>A Hydrogeomorphic Classification for Wetlands</i> (1993) and any supplementary guidance, or replacements as determined by BWSR. NOTE: This change is being recommended by BWSR as the hydrogeomorphic (HGM) classification system is a more updated classification system.</p>
78	<p><b>Wetlands.</b></p> <p>Modifies the definition of wetlands for purposes of chapter 103G, to add deepwater aquatic habitats defined in the <i>Corps of Engineers Wetlands Delineation Manual</i> by the United States Army Corps of Engineers (1987). NOTE: This and some of the other changes being made to the Wetland Conservation Act in this bill are being recommended by BWSR in response to a recent United States Supreme Court decision (<i>Sackett v. Environmental Protection Agency</i>) to ensure wetlands in Minnesota maintain a similar level of protection as they had prior to the decision.</p>
79	<p><b>Requirements.</b></p> <p>Removes references to wetland types and requirements being removed under the bill and clarifies that the state is responsible for wetland replacement for projects occurring on state roads.</p>
80	<p><b>Agricultural activities.</b></p> <p>Modifies wetland replacement plan exemptions for certain activities by removing obsolete language and exemptions based on wetland types. Establishes new</p>

<b>Section</b>	<b>Description</b>
	exemptions for wetland impacts on land designated as prior converted cropland by the United States Department of Agriculture, Natural Resources Conservation Service (NRCS).
81	<b>Drainage.</b> Modifies wetland replacement plan exemptions for public drainage system maintenance and repairs by removing exemptions based on wetland types and making them subject to the same exemptions available to other drainage system maintenance and repair projects.
82	<b>Utilities; public works.</b> Modifies wetland replacement plan exemptions for utilities work by adding realignments to the exemption and requiring certain activities to be authorized under a federal permit from the United States Army Corps of Engineers. Removes a provision allowing local governments to issue seasonal or annual exemption certificates for maintenance, repair, and replacement.
83	<b>De minimis.</b> Modifies de minimis amounts (the amount of wetlands that may be impacted without requiring a wetland replacement plan) by removing references to wetland types. Changes the unit of measure to acres (from square feet) for some exemptions resulting in higher de minimis amounts in greater than 80 percent and less than 50 percent areas, and lower amounts in 50 to 80 percent areas. Establishes 100 square feet de minimis amount for all wetlands for certain projects in a shoreland wetland protection zone. Removes certain exemptions applicable in the 11-county metropolitan area. Establishes new requirements applicable to permanent and semipermanent flooded areas. States that when the total area of impacts to wetlands as part of the project exceeds the applicable de minimis amount that a replacement plan is required.
84	<b>Rules.</b> Requires certain wetland rules adopted by BWSR to protect or mitigate impacts to the public values of watercourses and not public waters.
85	<b>Evaluation.</b> Requires the Technical Evaluation Panel to use <i>A Hydrogeomorphic Classification for Wetlands</i> , United States Army Corps, and an updated version of the <i>Classification of Wetlands and Deepwater Habitats</i> of the United State Fish and Wildlife Services.

Section	Description
86	<p><b>Wetland boundary or type determination.</b></p> <p>Requires BWSR to establish, by rule, timelines for project review and comment for wetland banking projects notwithstanding a 60-day decision requirement in statute.</p>
87	<p><b>Replacement completion.</b></p> <p>Allows BWSR to establish, sponsor, or administer a wetland banking program that includes monetary payments.</p>
88	<p><b>Revisor instruction.</b></p> <p>Requires the revisor of statutes to: (1) renumber certain subdivisions to accommodate new definitions in the RIM Reserve program statutes; and (2) replace references to Minn. Stat. § 103A.206 (soil and water conservation policy being repealed in the next section) with § 103C.005 (soil and water conservation policy).</p>
89	<p><b>Repealer.</b></p> <p>Repeals the following statutes: §§ 103A.206 (soil and water conservation policy); § 103D.315, subd. 4 (requiring watershed district managers to adopt a seal for the watershed); § 103D.405, subds. 2-6 and § 103D.411 (provisions pertaining to amendments and revisions by watershed districts to their watershed management plans); § 103D.601 (provisions pertaining to the process for watershed districts to initiate a project); § 103D.605, subds. 1- 5 and § 103D.611 (procedures for watershed districts to follow when undertaking certain projects); § 103F.511, subd. 8b (definition of “reinvest in Minnesota reserve program”); and § 103F.950 (beaver damage control grant program).</p> <p>Repeals the following rules: parts 8400.3000; 8400.3030; 8400.3110; 8400.3210; 8400.3260; 8400.3300; 8400.3400; 8400.3460; 8400.3600; 8400.3610; 8400.3630; 8400.3700; 8400.3730; 8400.3800; 8400.3830; and 8400.3930 (conservation easement/RIM Reserve program rules).</p>



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