

SENATE

STATE OF MINNESOTA

EIGHTY-EIGHTH SESSION

S.F. No. 2016

(SENATE AUTHORS: WIGER and Scalze)

DATE	D-PG	OFFICIAL STATUS
02/27/2014	5884	Introduction and first reading Referred to Environment and Energy
03/13/2014	6178a	Comm report: To pass as amended and re-refer to Judiciary
03/24/2014	6664	Comm report: To pass and re-referred to Finance

1.1 A bill for an act

1.2 relating to natural resources; modifying water appropriation provisions;

1.3 providing for administrative penalties for water appropriation violations;

1.4 amending Minnesota Statutes 2012, sections 103G.251; 103G.271, subdivisions

1.5 5, 6; 103G.281, subdivision 1, by adding a subdivision; 103G.301, subdivision 2;

1.6 proposing coding for new law in Minnesota Statutes, chapter 103G.

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

1.8 Section 1. Minnesota Statutes 2012, section 103G.251, is amended to read:

1.9 **103G.251 INVESTIGATION OF ACTIVITIES ~~WITHOUT PERMIT~~**

1.10 **AFFECTING WATERS OF THE STATE.**

1.11 Subdivision 1. **Investigations.** If the commissioner determines that an investigation

1.12 is in the public interest, the commissioner may investigate and monitor activities being

1.13 conducted with or without a permit that may affect waters of the state.

1.14 Subd. 2. **Findings and order.** (a) With or without a public hearing, the

1.15 commissioner may make findings and issue orders related to activities being conducted

1.16 without a permit that affect waters of the state as otherwise authorized under this chapter.

1.17 (b) A copy of the findings and order must be served on the person to whom the

1.18 order is issued.

1.19 (c) If the commissioner issues the findings and order without a hearing, the person to

1.20 whom the order is issued may file a demand for a hearing with the commissioner. The

1.21 demand for a hearing must be accompanied by the bond as provided in section 103G.311,

1.22 subdivision 6, and the hearing must be held in the same manner and with the same

1.23 requirements as a hearing held under section 103G.311, subdivision 5. The demand for

1.24 a hearing and bond must be filed by 30 days after the person is served with a copy of

1.25 the commissioner's order.

(d) The hearing must be conducted as a contested case hearing under chapter 14.

(e) If the person to whom the order is addressed does not demand a hearing or demands a hearing but fails to file the required bond:

(1) the commissioner's order becomes final at the end of 30 days after the person is served with the order; and

(2) the person may not appeal the order.

(f) An order of the commissioner may be recorded or filed by the commissioner in the office of the county recorder or registrar of titles, as appropriate, in the county where the real property is located as a deed restriction on the property that runs with the land and is binding on the owners, successors, and assigns until the conditions of the order are met or the order is rescinded.

Sec. 2. Minnesota Statutes 2012, section 103G.271, subdivision 5, is amended to read:

Subd. 5. **Prohibition on once-through water use permits.** (a) Except as provided in paragraph (c), the commissioner may not, ~~after December 31, 1990,~~ issue a water use permit to increase the volume of appropriation from a groundwater source for a once-through cooling system ~~using in excess of 5,000,000 gallons annually.~~

(b) Except as provided in paragraph (c), once-through system water use permits using in excess of 5,000,000 gallons annually; must be terminated by the commissioner ~~by the end of their design life but not later than December 31, 2010,~~ unless the discharge is into a public water basin within a nature preserve approved by the commissioner and established prior to January 1, 2001. Existing once-through systems must not be expanded and are required to convert to water efficient alternatives within the design life of existing equipment.

(c) Notwithstanding paragraphs (a) and (b), the commissioner, with the approval of the commissioners of health and the Pollution Control Agency, may issue once-through system water use permits on an annual basis for aquifer storage and recovery systems that return all once-through system water to the source aquifer. Water use permit processing fees in subdivision 6, paragraph (a), apply to all water withdrawals under this paragraph, including any reuse of water returned to the source aquifer.

EFFECTIVE DATE. This section is effective January 1, 2015.

Sec. 3. Minnesota Statutes 2012, section 103G.271, subdivision 6, is amended to read:

Subd. 6. **Water use permit processing fee.** (a) Except as described in paragraphs (b) to ~~(f)~~ (g), a water use permit processing fee must be prescribed by the commissioner in accordance with the schedule of fees in this subdivision for each water use permit in force

at any time during the year. Fees collected under this paragraph are credited to the water management account in the natural resources fund. The schedule is as follows, with the stated fee in each clause applied to the total amount appropriated:

(1) \$140 for amounts not exceeding 50,000,000 gallons per year;

(2) \$3.50 per 1,000,000 gallons for amounts greater than 50,000,000 gallons but less than 100,000,000 gallons per year;

(3) \$4 per 1,000,000 gallons for amounts greater than 100,000,000 gallons but less than 150,000,000 gallons per year;

(4) \$4.50 per 1,000,000 gallons for amounts greater than 150,000,000 gallons but less than 200,000,000 gallons per year;

(5) \$5 per 1,000,000 gallons for amounts greater than 200,000,000 gallons but less than 250,000,000 gallons per year;

(6) \$5.50 per 1,000,000 gallons for amounts greater than 250,000,000 gallons but less than 300,000,000 gallons per year;

(7) \$6 per 1,000,000 gallons for amounts greater than 300,000,000 gallons but less than 350,000,000 gallons per year;

(8) \$6.50 per 1,000,000 gallons for amounts greater than 350,000,000 gallons but less than 400,000,000 gallons per year;

(9) \$7 per 1,000,000 gallons for amounts greater than 400,000,000 gallons but less than 450,000,000 gallons per year;

(10) \$7.50 per 1,000,000 gallons for amounts greater than 450,000,000 gallons but less than 500,000,000 gallons per year; and

(11) \$8 per 1,000,000 gallons for amounts greater than 500,000,000 gallons per year.

(b) For once-through cooling systems, a water use processing fee must be prescribed by the commissioner in accordance with the following schedule of fees for each water use permit in force at any time during the year:

(1) for nonprofit corporations and school districts, \$200 per 1,000,000 gallons; and

(2) for all other users, \$420 per 1,000,000 gallons.

(c) The fee is payable based on the amount of water appropriated during the year and, except as provided in paragraph (f), the minimum fee is \$100.

(d) For water use processing fees other than once-through cooling systems:

(1) the fee for a city of the first class may not exceed \$250,000 per year;

(2) the fee for other entities for any permitted use may not exceed:

(i) \$60,000 per year for an entity holding three or fewer permits;

(ii) \$90,000 per year for an entity holding four or five permits; or

(iii) \$300,000 per year for an entity holding more than five permits;

(3) the fee for agricultural irrigation may not exceed \$750 per year;

(4) the fee for a municipality that furnishes electric service and cogenerates steam for home heating may not exceed \$10,000 for its permit for water use related to the cogeneration of electricity and steam; and

(5) no fee is required for a project involving the appropriation of surface water to prevent flood damage or to remove flood waters during a period of flooding, as determined by the commissioner.

(e) Failure to pay the fee is sufficient cause for revoking a permit. A penalty of \$150 per month or two percent per month, whichever is greater, calculated from the original due date must be imposed on the unpaid balance of fees remaining 30 days after the sending of a second notice of fees due. A fee may not be imposed on an agency, as defined in section 16B.01, subdivision 2, or federal governmental agency holding a water appropriation permit.

(f) The minimum water use processing fee for a permit issued for irrigation of agricultural land is \$20 for years in which:

(1) there is no appropriation of water under the permit; or

(2) the permit is suspended for more than seven consecutive days between May 1 and October 1.

(g) The commissioner may waive the water use permit processing fee for installations that use storm water runoff from impervious surfaces. The commissioner shall consider the following criteria in determining whether to waive the fee: (1) the extent to which the proposed use directly offsets the use of groundwater; (2) the extent to which the proposed use does not adversely impact surface waters; (3) the extent to which the proposed use is consistent with other local watershed and water management plans or permits; and (4) the extent to which the proposed use implements measures to minimize the volume of water used.

~~(g)~~ (h) A surcharge of \$30 per million gallons in addition to the fee prescribed in paragraph (a) shall be applied to the volume of water used in each of the months of June, July, and August that exceeds the volume of water used in January for municipal water use, irrigation of golf courses, and landscape irrigation. The surcharge for municipalities with more than one permit shall be determined based on the total appropriations from all permits that supply a common distribution system.

Sec. 4. Minnesota Statutes 2012, section 103G.281, subdivision 1, is amended to read:

Subdivision 1. **Measuring and records required.** (a) The state, a political subdivision of the state, a person, partnership, public or private corporation, or association

may not appropriate or use waters of the state without measuring and keeping a record of the quantity of water used or appropriated as provided in section 103G.271 or 103G.275.

(b) The records required under this section must be available for inspection at reasonable times by the commissioner and must be preserved and available for seven years.

Sec. 5. Minnesota Statutes 2012, section 103G.281, is amended by adding a subdivision to read:

Subd. 4. **Penalties for noncompliant reporting.** (a) The commissioner may assess penalties for noncompliant reporting of water use information as provided in this section. The penalty is \$300 or two percent of the annual water use permit processing fee, whichever is greater.

(b) A permit holder, who is categorized for water allocation priority purposes under section 103G.261, paragraph (a), clauses (2) to (6), with three or more noncompliant reporting incidents under this subdivision within a five-year period shall have the applicable water appropriation permit terminated. After 365 days from the date of termination, the applicant may apply for reinstatement of the permit, subject to the permit application fee. Termination under this subdivision is exempt from section 103G.271, subdivision 3.

Sec. 6. **[103G.299] ADMINISTRATIVE PENALTIES.**

Subdivision 1. **Authority to issue penalty orders.** The commissioner may issue an order requiring violations to be corrected and administratively assessing monetary penalties for violations of sections 103G.255 to 103G.298, any rules adopted under those sections, and any standards, limitations, or conditions established in a department permit for water appropriation. The order must be issued as provided in this section and in accordance with the plan prepared under subdivision 12.

Subd. 2. **Amount of penalty; considerations.** (a) The commissioner may issue orders assessing administrative penalties based on potential for harm and deviation from compliance. For a violation that presents: (1) a minor potential for harm and deviation from compliance, the penalty will be no more than \$1,000; (2) a moderate potential for harm and deviation from compliance, the penalty will be no more than \$10,000; and (3) a severe potential for harm and deviation from compliance, the penalty will be no more than \$20,000.

(b) In determining the amount of a penalty the commissioner may consider:

(1) the gravity of the violation, including potential for, or real, damage to the public interest or natural resources of the state;

(2) the history of past violations;

6.1 (3) the number of violations;

6.2 (4) the economic benefit gained by the person by allowing or committing the
6.3 violation based on data from local or state bureaus or educational institutions; and

6.4 (5) other factors as justice may require, if the commissioner specifically identifies
6.5 the additional factors in the commissioner's order.

6.6 (c) For a violation after an initial violation, including a continuation of the initial
6.7 violation, the commissioner must, in determining the amount of a penalty, consider the
6.8 factors in paragraph (b) and the:

6.9 (1) similarity of the most recent previous violation and the violation to be penalized;

6.10 (2) time elapsed since the last violation;

6.11 (3) number of previous violations; and

6.12 (4) response of the person to the most recent previous violation identified.

6.13 Subd. 3. **Contents of order.** An order assessing an administrative penalty under
6.14 this section must include:

6.15 (1) a concise statement of the facts alleged to constitute a violation;

6.16 (2) a reference to the section of the statute, rule, order, or term or condition of
6.17 a permit that has been violated;

6.18 (3) a statement of the amount of the administrative penalty to be imposed and the
6.19 factors upon which the penalty is based; and

6.20 (4) a statement of the person's right to review of the order.

6.21 Subd. 4. **Corrective order.** (a) The commissioner may issue an order assessing a
6.22 penalty and requiring the violations cited in the order to be corrected within a time period
6.23 specified by the commissioner.

6.24 (b) The person to whom the order was issued must provide information to the
6.25 commissioner before the 31st day after the order was received demonstrating that the
6.26 violation has been corrected or that appropriate steps toward correcting the violation
6.27 have been taken.

6.28 (c) The commissioner must determine whether the violation has been corrected and
6.29 notify the person subject to the order of the commissioner's determination.

6.30 Subd. 5. **Penalty.** (a) Unless the person requests review of the order under
6.31 subdivision 6 or 7 before the penalty is due, the penalty in the order is due and payable:

6.32 (1) on the 31st day after the order was received, if the person subject to the order
6.33 fails to provide information to the commissioner showing that the violation has been
6.34 corrected or that appropriate steps have been taken toward correcting the violation; or

6.35 (2) on the 20th day after the person receives the commissioner's determination under
6.36 subdivision 4, paragraph (c), if the person subject to the order has provided information

7.1 to the commissioner that the commissioner determines is not sufficient to show that the
7.2 violation has been corrected or that appropriate steps have been taken toward correcting
7.3 the violation.

7.4 (b) The penalty is due by 31 days after the order was received, unless review of the
7.5 order under subdivision 6 or 7 has been sought.

7.6 (c) Interest at the rate established in section 549.09 begins to accrue on penalties
7.7 under this subdivision on the 31st day after the order with the penalty was received.

7.8 Subd. 6. **Expedited administrative hearing.** (a) Within 30 days after receiving
7.9 an order or within 20 days after receiving notice that the commissioner has determined
7.10 that a violation has not been corrected or appropriate steps have not been taken, the
7.11 person subject to an order under this section may request an expedited hearing, using
7.12 the procedures under Minnesota Rules, parts 1400.8510 to 1400.8612, to review the
7.13 commissioner's determination. The hearing request must specifically state the reasons
7.14 for seeking review of the order. The person to whom the order is directed and the
7.15 commissioner are the parties to the expedited hearing. The commissioner must notify the
7.16 person to whom the order is directed of the time and place of the hearing at least 20 days
7.17 before the hearing. The expedited hearing must be held within 30 days after a request for
7.18 hearing has been filed with the commissioner unless the parties agree to a later date.

7.19 (b) All written arguments must be submitted within ten days following the close of
7.20 the hearing. The hearing must be conducted under Minnesota Rules, parts 1400.8510 to
7.21 1400.8612, as modified by this subdivision.

7.22 (c) The administrative law judge must issue a report making recommendations about
7.23 the commissioner's action to the commissioner within 30 days following the close of the
7.24 record. The administrative law judge may not recommend a change in the amount of the
7.25 proposed penalty unless the administrative law judge determines that, based on the factors
7.26 in subdivision 2, the amount of the penalty is unreasonable.

7.27 (d) If the administrative law judge makes a finding that the hearing was requested
7.28 solely for purposes of delay or that the hearing request was frivolous, the commissioner
7.29 may add to the amount of the penalty the costs charged to the department by the Office of
7.30 Administrative Hearings for the hearing.

7.31 (e) If a hearing has been held, the commissioner may not issue a final order until at
7.32 least five days after receipt of the report of the administrative law judge. The person to
7.33 whom an order is issued may, within those five days, comment to the commissioner on the
7.34 recommendations, and the commissioner must consider the comments. The final order
7.35 may be appealed in the manner provided in sections 14.63 to 14.69.

8.1 (f) If a hearing has been held and a final order issued by the commissioner, the
8.2 penalty must be paid by 30 days after the date the final order is received unless review of
8.3 the final order is requested under sections 14.63 to 14.69. If review is not requested or the
8.4 order is reviewed and upheld, the amount due is the penalty, together with interest accruing
8.5 from 31 days after the original order was received at the rate established in section 549.09.

8.6 Subd. 7. **Mediation.** In addition to review under subdivision 6, the commissioner
8.7 may enter into mediation concerning an order issued under this section if the commissioner
8.8 and the person to whom the order is issued both agree to mediation.

8.9 Subd. 8. **Penalties due and payable.** The commissioner may enforce penalties that
8.10 are due and payable under this section in any manner provided by law for the collection
8.11 of debts.

8.12 Subd. 9. **Revocation and suspension of permit.** If a person fails to pay a penalty
8.13 owed under this section, the commissioner has grounds to revoke a permit or to refuse
8.14 to amend a permit or issue a new permit.

8.15 Subd. 10. **Cumulative remedy.** The authority of the commissioner to issue a
8.16 corrective order assessing penalties is in addition to other remedies available under statutory
8.17 or common law, except that the state may not seek civil penalties under any other provision
8.18 of law for the violations covered by the administrative penalty order. The payment of a
8.19 penalty does not preclude the use of other enforcement provisions, under which penalties
8.20 are not assessed, in connection with the violation for which the penalty was assessed.

8.21 Subd. 11. **Deposit of fees.** Fees collected under this section must be credited to the
8.22 water management account in the natural resources fund.

8.23 Subd. 12. **Plan for use of administrative penalties.** The commissioner must
8.24 prepare a plan for using the administrative penalty authority in this section. The plan must
8.25 include explanations for how the commissioner will determine whether violations are
8.26 minor, moderate, or severe. The commissioner must provide a 30-day period for public
8.27 comment on the plan. The plan must be finalized within six months after the effective
8.28 date of this section.

8.29 Sec. 7. Minnesota Statutes 2012, section 103G.301, subdivision 2, is amended to read:

8.30 **Subd. 2. Permit application and notification fees.** (a) A fee to defray the costs
8.31 of receiving, recording, and processing must be paid for a permit application authorized
8.32 under this chapter, except for a general permit application, for each request to amend or
8.33 transfer an existing permit, and for a notification to request authorization to conduct a
8.34 project under a general permit. Fees established under this subdivision, unless specified in
8.35 paragraph (c), shall be compliant with section 16A.1285.

(b) Proposed projects that require water in excess of 100 million gallons per year must be assessed fees to recover the costs incurred to evaluate the project and the costs incurred for environmental review. Fees collected under this paragraph must be credited to an account in the natural resources fund and are appropriated to the commissioner.

(c) The fee to apply for a permit to appropriate water, in addition to any fee under paragraph (b), and for a permit to construct or repair a dam that is subject to dam safety inspection is \$150. The application fee for a permit to work in public waters or to divert waters for mining must be at least \$150, but not more than \$1,000. The fee for a notification to request authorization to conduct a project under a general permit is \$100.

(d) A penalty of \$300 shall be assessed for each calendar year, up to a maximum of seven years, in which an unauthorized appropriation of water occurred. A penalty may not be imposed on an agency, as defined in section 16B.01, subdivision 2, or federal governmental agency holding a water appropriation permit. This penalty is in addition to any other fee or penalty assessed.

Sec. 8. **WATER REUSE REPORT; ENVIRONMENTAL QUALITY BOARD.**

By January 15, 2016, the Environmental Quality Board shall report on water reuse to the chairs and ranking minority members of the senate and house of representatives committees with jurisdiction over environment and natural resources policy. The report shall identify barriers to reuse, jurisdictional conflicts, analysis of statutes and rules, and the development of recommendations to support water reuse and aquifer recharge.