

A bill for an act

relating to environment; modifying the Environmental Quality Board and eliminating and reassigning duties; amending Minnesota Statutes 2010, sections 17.114, subdivision 3; 18B.045; 18E.06; 103A.204; 103B.101, subdivision 9; 103B.151; 103B.315, subdivision 5; 103F.751; 103H.151, subdivision 4; 103H.175, subdivision 3; 115B.20, subdivision 6; 116C.24, subdivision 2; 116C.842, subdivisions 1a, 2a; 116C.91, subdivision 2; 116D.11, subdivisions 2, 3; 216C.052, subdivision 1; 216C.18, subdivision 2; proposing coding for new law in Minnesota Statutes, chapter 116D; repealing Minnesota Statutes 2010, sections 40A.122; 103A.403; 103A.43; 103F.614; 115A.32; 115A.33; 115A.34; 115A.35; 115A.36; 115A.37; 115A.38; 115A.39; 116C.02; 116C.03, subdivisions 1, 2, 2a, 3a, 4, 5, 6; 116C.04, subdivisions 1, 2, 3, 4, 7, 10, 11; 116C.06; 116C.08; 116C.71, subdivisions 1c, 2a; 116C.721; 116C.722; 116C.724, subdivisions 2, 3; 473H.15.

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

Section 1. Minnesota Statutes 2010, section 17.114, subdivision 3, is amended to read:

Subd. 3. **Duties.** (a) The commissioner shall:

(1) establish a clearinghouse and provide information, appropriate educational opportunities and other assistance to individuals, producers, and groups about sustainable agricultural techniques, practices, and opportunities;

(2) survey producers and support services and organizations to determine information and research needs in the area of sustainable agricultural practices;

(3) demonstrate the on-farm applicability of sustainable agriculture practices to conditions in this state;

(4) coordinate the efforts of state agencies regarding activities relating to sustainable agriculture;

(5) direct the programs of the department so as to work toward the sustainability of agriculture in this state;

H.F. No. 1360, as introduced - 87th Legislative Session (2011-2012) [11-2937]

(6) inform agencies of how state or federal programs could utilize and support sustainable agriculture practices;

(7) work closely with farmers, the University of Minnesota, and other appropriate organizations to identify opportunities and needs as well as assure coordination and avoid duplication of state agency efforts regarding research, teaching, and extension work relating to sustainable agriculture;

(8) work cooperatively with local governments and others to strengthen the connection between farmers who practice sustainable farming methods and urban, rural, and suburban consumers, including, but not limited to, promoting local farmers' markets and community-supported agriculture; and

(9) report to the ~~Environmental Quality Board for review and then to the~~ house of representatives and senate committees with jurisdiction over the environment, natural resources, and agriculture every even-numbered year.

(b) The report under paragraph (a), clause (9), must include:

(1) the presentation and analysis of findings regarding the current status and trends regarding the economic condition of producers; the status of soil and water resources utilized by production agriculture; the magnitude of off-farm inputs used; and the amount of nonrenewable resources used by Minnesota farmers;

(2) a description of current state or federal programs directed toward sustainable agriculture including significant results and experiences of those programs;

(3) a description of specific actions the Department of Agriculture is taking in the area of sustainable agriculture, including, but not limited to, specific actions to strengthen the connection between sustainable farmers and consumers under paragraph (a), clause (8);

(4) a description of current and future research needs at all levels in the area of sustainable agriculture; and

(5) suggestions for changes in existing programs or policies or enactment of new programs or policies that will affect farm profitability, maintain soil and water quality, reduce input costs, or lessen dependence upon nonrenewable resources.

Sec. 2. Minnesota Statutes 2010, section 18B.045, is amended to read:

18B.045 PESTICIDE MANAGEMENT PLAN.

Subdivision 1. **Development.** The commissioner shall develop a pesticide management plan for the prevention, evaluation, and mitigation of occurrences of pesticides or pesticide breakdown products in groundwaters and surface waters of the state. The pesticide management plan must include components promoting prevention, developing appropriate responses to the detection of pesticides or pesticide breakdown

H.F. No. 1360, as introduced - 87th Legislative Session (2011-2012) [11-2937]

products in groundwater and surface waters, and providing responses to reduce or eliminate continued pesticide movement to groundwater and surface water. By September 1 of each even-numbered year, the commissioner must submit a status report ~~on the plan to the Environmental Quality Board for review and then~~ to the house of representatives and senate committees with jurisdiction over the environment, natural resources, and agriculture.

Subd. 2. **Coordination.** The pesticide management plan shall be coordinated and developed with other state agency plans and with other state agencies ~~through the Environmental Quality Board~~. In addition, the University of Minnesota Extension Service, farm organizations, farmers, environmental organizations, and industry shall be involved in the pesticide management plan development.

Sec. 3. Minnesota Statutes 2010, section 18E.06, is amended to read:

18E.06 REPORT.

By December 1 of each year, the Agricultural Chemical Response Compensation Board and the commissioner shall submit to the house of representatives Committee on Ways and Means, the senate Committee on Finance, and the house of representatives and senate committees with jurisdiction over the environment, natural resources, and agriculture, ~~and the Environmental Quality Board~~ a report detailing the board's activities and reimbursements and the expenditures and activities associated with the commissioner's incident response program for which money from the account has been spent during the previous year.

Sec. 4. Minnesota Statutes 2010, section 103A.204, is amended to read:

103A.204 GROUNDWATER POLICY.

(a) The responsibility for the protection of groundwater in Minnesota is vested in a multiagency approach to management. The following is a list of agencies and the groundwater protection areas for which the agencies are primarily responsible; the list is not intended to restrict the areas of responsibility to only those specified:

(1) ~~Environmental Quality Board~~ Clean Water Council: coordination of state groundwater protection programs;

(2) Pollution Control Agency: water quality monitoring and reporting and the development of best management practices and regulatory mechanisms for protection of groundwater from nonagricultural chemical contaminants;

(3) Department of Agriculture: sustainable agriculture, integrated pest management, water quality monitoring, and the development of best management practices and

H.F. No. 1360, as introduced - 87th Legislative Session (2011-2012) [11-2937]

regulatory mechanisms for protection of groundwater from agricultural chemical contaminants;

(4) Board of Water and Soil Resources: reporting on groundwater education and outreach with local government officials, local water planning and management, and local cost share programs;

(5) Department of Natural Resources: water quantity monitoring and regulation, sensitivity mapping, and development of a plan for the use of integrated pest management and sustainable agriculture on state-owned lands; and

(6) Department of Health: regulation of wells and borings, and the development of health risk limits under section 103H.201.

(b) ~~The Environmental Quality Board~~ Clean Water Council shall prepare a report on policy issues related to its responsibilities listed in paragraph (a), and include these reports with ~~the assessments in section 103A.43 and the "Minnesota Water Plan" in~~ section 103B.151.

Sec. 5. Minnesota Statutes 2010, section 103B.101, subdivision 9, is amended to read:

Subd. 9. **Powers and duties.** In addition to the powers and duties prescribed elsewhere, the board shall:

(1) coordinate the water and soil resources planning activities of counties, soil and water conservation districts, watershed districts, watershed management organizations, and any other local units of government through its various authorities for approval of local plans, administration of state grants, and by other means as may be appropriate;

(2) facilitate communication and coordination among state agencies ~~in cooperation with the Environmental Quality Board,~~ and between state and local units of government, in order to make the expertise and resources of state agencies involved in water and soil resources management available to the local units of government to the greatest extent possible;

(3) coordinate state and local interests with respect to the study in southwestern Minnesota under United States Code, title 16, section 1009;

(4) develop information and education programs designed to increase awareness of local water and soil resources problems and awareness of opportunities for local government involvement in preventing or solving them;

(5) provide a forum for the discussion of local issues and opportunities relating to water and soil resources management;

(6) adopt an annual budget and work program that integrate the various functions and responsibilities assigned to it by law; and

(7) report to the governor and the legislature by October 15 of each even-numbered year with an assessment of board programs and recommendations for any program changes and board membership changes necessary to improve state and local efforts in water and soil resources management.

The board may accept grants, gifts, donations, or contributions in money, services, materials, or otherwise from the United States, a state agency, or other source to achieve an authorized purpose. The board may enter into a contract or agreement necessary or appropriate to accomplish the transfer. The board may receive and expend money to acquire conservation easements, as defined in chapter 84C, on behalf of the state and federal government consistent with the Camp Ripley's Army Compatible Use Buffer Project.

Any money received is hereby deposited in an account in a fund other than the general fund and appropriated and dedicated for the purpose for which it is granted.

Sec. 6. Minnesota Statutes 2010, section 103B.151, is amended to read:

103B.151 COORDINATION OF WATER RESOURCE PLANNING.

Subdivision 1. **Water planning.** The ~~Environmental Quality Board~~ Clean Water Council shall:

(1) coordinate public water resource management and regulation activities among the state agencies having jurisdiction in the area;

(2) coordinate comprehensive long-range water resources planning in furtherance of the Environmental Quality Board's "Minnesota Water Plan," published in January 1991, by ~~September 15, 2000, and each ten-year interval afterwards~~ incorporating long-range planning in the council's implementation plan required under section 114D.30, subdivision 5;

(3) coordinate water planning activities of local, regional, and federal bodies with state water planning and integrate these plans with state strategies;

(4) coordinate development of state water policy recommendations and priorities, and a recommended program for funding identified needs, including priorities for implementing the state water resources monitoring plan;

(5) administer federal water resources planning with multiagency interests;

(6) ensure that groundwater quality monitoring and related data is provided and integrated into the Minnesota land management information system according to published data compatibility guidelines. Costs of integrating the data in accordance with data compatibility standards must be borne by the agency generating the data;

(7) coordinate the development and evaluation of water information and education materials and resources; and

(8) coordinate the dissemination of water information and education through existing delivery systems.

Subd. 2. **Governor's representative.** The ~~Environmental Quality Board~~ Clean Water Council chair shall represent the governor on interstate water resources organizations.

Sec. 7. Minnesota Statutes 2010, section 103B.315, subdivision 5, is amended to read:

Subd. 5. **State review.** (a) After conducting the public hearing but before final adoption, the county board must submit its local water management plan, all written comments received on the plan, a record of the public hearing under subdivision 4, and a summary of changes incorporated as a result of the review process to the board for review. The board shall complete the review within 90 days after receiving a local water management plan and supporting documents. The board shall consult with the Departments of Agriculture, Health, and Natural Resources; the Pollution Control Agency; ~~the Environmental Quality Board~~; and other appropriate state agencies during the review.

(b) The board may disapprove a local water management plan if the board determines the plan is not consistent with state law. If a plan is disapproved, the board shall provide a written statement of its reasons for disapproval. A disapproved local water management plan must be revised by the county board and resubmitted for approval by the board within 120 days after receiving notice of disapproval of the local water management plan, unless the board extends the period for good cause.

(c) If the local government unit disagrees with the board's decision to disapprove the plan, it may, within 60 days, initiate mediation through the board's informal dispute resolution process as established pursuant to section 103B.345, subdivision 1. A local government unit may appeal disapproval to the Court of Appeals. A decision of the board on appeal is subject to judicial review under sections 14.63 to 14.69.

Sec. 8. Minnesota Statutes 2010, section 103F.751, is amended to read:

103F.751 NONPOINT SOURCE POLLUTION CONTROL PLAN AND PROGRAM EVALUATION.

To coordinate the programs and activities used to control nonpoint sources of pollution to achieve the state's water quality goals, the agency shall:

(1) develop a state plan for the control of nonpoint source water pollution to meet the requirements of the federal Clean Water Act;

H.F. No. 1360, as introduced - 87th Legislative Session (2011-2012) [11-2937]

(2) work through the ~~Environmental Quality Board~~ Clean Water Council to coordinate the activities and programs of federal, state, and local agencies involved in nonpoint source pollution control and, as appropriate, develop agreements with federal and state agencies to accomplish the purposes and objectives of the state nonpoint source pollution control plan; and

(3) evaluate the effectiveness of programs in achieving water quality goals and recommend to the legislature, under section 3.195, subdivision 1, any necessary amendments to sections 103F.701 to 103F.761.

Sec. 9. Minnesota Statutes 2010, section 103H.151, subdivision 4, is amended to read:

Subd. 4. **Evaluation.** The commissioners of agriculture and the Pollution Control Agency shall, through field audits and other appropriate means, monitor the use and effectiveness of best management practices developed and promoted under this section. The information collected must be submitted to the ~~Environmental Quality Board, which must include the information in the report required in section 103A.43, paragraph (d)~~ Clean Water Council.

Sec. 10. Minnesota Statutes 2010, section 103H.175, subdivision 3, is amended to read:

Subd. 3. **Report.** In each even-numbered year, the Pollution Control Agency, in cooperation with other agencies participating in the monitoring of water resources, shall provide a draft report on the status of groundwater monitoring to ~~the Environmental Quality Board for review and then to~~ the house of representatives and senate committees with jurisdiction over the environment, natural resources, and agriculture as part of the report in section 103A.204.

Sec. 11. Minnesota Statutes 2010, section 115B.20, subdivision 6, is amended to read:

Subd. 6. **Report to legislature.** Each year, the commissioner of agriculture and the agency shall submit to the senate Finance Committee, the house of representatives Ways and Means Committee, the Environment and Natural Resources Committees of the senate and house of representatives, the Finance Division of the senate Committee on Environment and Natural Resources, and the house of representatives Committee on Environment and Natural Resources Finance, ~~and the Environmental Quality Board~~ a report detailing the activities for which money has been spent pursuant to this section during the previous fiscal year.

Sec. 12. Minnesota Statutes 2010, section 116C.24, subdivision 2, is amended to read:

H.F. No. 1360, as introduced - 87th Legislative Session (2011-2012) [11-2937]

Subd. 2. **Board.** "Board" means the Minnesota Environmental Quality Board convened under section 116D.035.

Sec. 13. Minnesota Statutes 2010, section 116C.842, subdivision 1a, is amended to read:

Subd. 1a. **Facility Siting Policy Development Committee.** Following Minnesota's designation as a host state by the Interstate Commission, and within 60 days after a compact facility located in the host state immediately preceding Minnesota begins operation, the governor shall, in consultation with the commissioner, establish and appoint the membership of a Facility Siting Policy Development Committee. The committee shall study the issues relevant to developing a facility and make recommendations concerning appropriate facility siting criteria and development requirements. The committee shall number no more than 12 voting members, at least eight of whom shall be individuals with expertise in a range of scientific disciplines relevant to site development. The committee shall include at least one representative each from local government and generators of low-level radioactive waste, and two representatives from public interest groups. In addition, ~~the Environmental Quality Board~~, the Minnesota Geological Survey, the Departments of Natural Resources, Transportation, and Health, and the agency shall have nonvoting membership on the committee and shall provide information and technical assistance to the committee as needed. The committee shall report its findings and recommendations to the governor and the legislature no later than one year following the establishment of the committee.

Sec. 14. Minnesota Statutes 2010, section 116C.842, subdivision 2a, is amended to read:

Subd. 2a. **Administration.** ~~The Environmental Quality Board~~ Pollution Control Agency shall provide administrative assistance to the committee.

Sec. 15. Minnesota Statutes 2010, section 116C.91, subdivision 2, is amended to read:

Subd. 2. **Board.** "Board" means the Environmental Quality Board convened under section 116D.035.

Sec. 16. [116D.035] ENVIRONMENTAL QUALITY BOARD.

Subdivision 1. **Definition.** For the purposes of this chapter "board" means the Environmental Quality Board convened under subdivision 2.

9.1 Subd. 2. **Creation; rules.** The Environmental Quality Board shall convene itself
9.2 as necessary to carry out the duties of the board required under subdivision 4. The
9.3 membership of the board is as follows:

- 9.4 (1) the commissioner of administration;
- 9.5 (2) the commissioner of commerce;
- 9.6 (3) the commissioner of the Pollution Control Agency;
- 9.7 (4) the commissioner of natural resources;
- 9.8 (5) the commissioner of agriculture;
- 9.9 (6) the commissioner of health;
- 9.10 (7) the commissioner of employment and economic development;
- 9.11 (8) the commissioner of transportation;
- 9.12 (9) the chair of the Board of Water and Soil Resources; and
- 9.13 (10) a representative of the governor's office designated by the governor.

9.14 Subd. 3. **Chair.** The representative of the governor's office shall serve as chair of
9.15 the board.

9.16 Subd. 4. **Duties.** The Environmental Quality Board shall carry out the duties of the
9.17 board specified under this chapter, sections 116C.22 to 116C.34, and sections 116C.91 to
9.18 116C.97.

9.19 Subd. 5. **Support.** Consultant and administrative support services for board
9.20 activities and implementation and administration of the rules adopted by the board under
9.21 this chapter shall be provided by the Pollution Control Agency.

9.22 Sec. 17. Minnesota Statutes 2010, section 116D.11, subdivision 2, is amended to read:

9.23 Subd. 2. **Primary responsibility.** The ~~Environmental Quality Board~~ commissioner
9.24 of the Pollution Control Agency shall have the primary responsibility for preparing the
9.25 energy and environmental strategy report of the state, as required by section 116D.10.
9.26 The ~~board~~ commissioner shall assemble all preliminary reports prepared pursuant to
9.27 subdivision 1 under a timetable established by the board and shall use the preliminary
9.28 reports in the preparation of the draft energy and environmental strategy report of the
9.29 state. Each department or agency designated by the governor to prepare a preliminary
9.30 strategy report shall submit a copy of the preliminary strategy report to the governor and
9.31 to the ~~board~~ commissioner at the same time.

9.32 Sec. 18. Minnesota Statutes 2010, section 116D.11, subdivision 3, is amended to read:

9.33 Subd. 3. **Report to governor.** On or before October 1 of each odd-numbered year,
9.34 the ~~Environmental Quality Board~~ commissioner of the Pollution Control Agency shall

H.F. No. 1360, as introduced - 87th Legislative Session (2011-2012) [11-2937]

transmit to the governor a draft of the written report on the energy and environmental strategy of the state. The governor may change the report and may request additional information or data from any department or agency of the state responsible for issues listed in section 116D.10, clause (1). Any such requested additional information or data shall be prepared and submitted promptly to the governor.

Sec. 19. Minnesota Statutes 2010, section 216C.052, subdivision 1, is amended to read:

Subdivision 1. **Responsibilities.** (a) There is established the position of reliability administrator in the Department of Commerce. The administrator shall act as a source of independent expertise and a technical advisor to the commissioner, the commission and the public on issues related to the reliability of the electric system. In conducting its work, the administrator shall provide assistance to the commissioner in administering and implementing the department's duties under sections 216B.1612, 216B.1691, 216B.2422, 216B.2425, and 216B.243; chapters 216E, 216F, and 216G; and rules associated with those provisions and shall also:

(1) model and monitor the use and operation of the energy infrastructure in the state, including generation facilities, transmission lines, natural gas pipelines, and other energy infrastructure;

(2) develop and present to the commission and parties technical analyses of proposed infrastructure projects, and provide technical advice to the commission;

(3) present independent, factual, expert, and technical information on infrastructure proposals and reliability issues at public meetings hosted by the task force, ~~the Environmental Quality Board~~, the department, or the commission.

(b) Upon request and subject to resource constraints, the administrator shall provide technical assistance regarding matters unrelated to applications for infrastructure improvements to the task force, the department, or the commission.

(c) The administrator may not advocate for any particular outcome in a commission proceeding, but may give technical advice to the commission as to the impact on the reliability of the energy system of a particular project or projects.

Sec. 20. Minnesota Statutes 2010, section 216C.18, subdivision 2, is amended to read:

Subd. 2. **Draft report; public meeting.** Prior to the preparation of a final report, the commissioner shall issue a draft report to ~~the Environmental Quality Board~~ and any person, upon request, and shall hold a public meeting. Notice of the public meeting shall be provided to each regional development commission.

11.1 Sec. 21. **REVISOR'S INSTRUCTION.**

11.2 The revisor of statutes shall change the term "Environmental Quality Board," or
11.3 "board" when referring thereto, to "commissioner of natural resources," or "commissioner"
11.4 wherever it appears in Minnesota Statutes, sections 116G.01 to 116G.14, and section
11.5 116G.151.

11.6 Sec. 22. **REPEALER.**

11.7 Minnesota Statutes 2010, sections 40A.122; 103A.403; 103A.43; 103F.614;
11.8 115A.32; 115A.33; 115A.34; 115A.35; 115A.36; 115A.37; 115A.38; 115A.39; 116C.02;
11.9 116C.03, subdivisions 1, 2, 2a, 3a, 4, 5, and 6; 116C.04, subdivisions 1, 2, 3, 4, 7, 10, and
11.10 11; 116C.06; 116C.08; 116C.71, subdivisions 1c and 2a; 116C.721; 116C.722; 116C.724,
11.11 subdivisions 2 and 3; and 473H.15, are repealed.

40A.122 EMINENT DOMAIN ACTIONS.

Subdivision 1. **Applicability.** An agency of the state, a public benefit corporation, a local government, or any other entity with the power of eminent domain under chapter 117, except a public utility as defined in section 216B.02, a municipal electric or gas utility, a municipal power agency, a cooperative electric association organized under chapter 308A, or a pipeline operating under the authority of the Natural Gas Act, United States Code, title 15, sections 717 to 717z, shall follow the procedures in this section before:

(1) acquiring land or an easement in land with a total area over ten acres within an agricultural preserve; or

(2) advancing a grant, loan, interest subsidy, or other funds for the construction of dwellings, commercial or industrial facilities, or water or sewer facilities that could be used to serve structures in areas that are not for agricultural use, that require an acquisition of land or an easement in an exclusive agricultural zone.

Subd. 2. **Notice of intent.** At least 60 days before an action described in subdivision 1, notice of intent must be filed with the Environmental Quality Board containing information and in the manner and form required by the Environmental Quality Board. The notice of intent must contain a report justifying the proposed action, including an evaluation of alternatives that would not affect land within an agricultural preserve.

Subd. 3. **Review and order.** The Environmental Quality Board, in consultation with affected local governments, shall review the proposed action to determine its effect on the preservation and enhancement of agriculture and agricultural uses within the zone and the relationship to local and regional comprehensive plans. If the Environmental Quality Board finds that the proposed action might have an unreasonable effect on a zone, the Environmental Quality Board shall issue an order within the 60-day period under subdivision 2 for the party to refrain from the proposed action for an additional 60 days.

Subd. 4. **Public hearing.** During the additional 60 days, the Environmental Quality Board shall hold a public hearing concerning the proposed action at a place within the affected zone or easily accessible to the zone. Notice of the hearing must be published in a newspaper having a general circulation within the area of the zone. Individual written notice must be given to the local governments with jurisdiction over the zone, the agency, corporation or government proposing to take the action, the owner of land in the zone, and any public agency having the power of review or approval of the action.

Subd. 5. **Joint review.** The review process required in this section may be conducted jointly with any other environmental impact review by the Environmental Quality Board.

Subd. 6. **Suspension of action.** The Environmental Quality Board may suspend an eminent domain action for up to one year if it determines that the action is contrary to the purposes of this chapter and that there are feasible and prudent alternatives that may have a less negative impact on a zone.

Subd. 7. **Termination of zone.** Designation as an agricultural preserve and all benefits and limitations under this chapter, including the restrictive covenant for the portion of the zone taken, ends on the date the final certificate is filed with the administrator of district court under section 117.205.

Subd. 8. **Action by attorney general.** The Environmental Quality Board may request the attorney general to bring an action to enjoin an agency, corporation or government from violating this section.

Subd. 9. **Exception.** This section does not apply to an emergency project that is immediately necessary for the protection of life and property.

103A.403 STATEWIDE NITRATE DATA.

The Environmental Quality Board shall ensure that all available data regarding the presence of nitrates in groundwater in the state that meet state standards recommended under Laws 1992, chapter 544, section 13, are integrated into the Minnesota Geospatial Information Office's statewide nitrate database according to published data compatibility guidelines. Costs of integrating the data in accordance with data compatibility standards must be borne by the agency generating the data or, if the data are not generated by an entity that receives or received state appropriations for monitoring or information management, by the Environmental Quality Board.

103A.43 WATER ASSESSMENTS AND REPORTS.

APPENDIX

Repealed Minnesota Statutes: 11-2937

(a) The Environmental Quality Board shall consolidate the assessments required in paragraphs (b) and (c) with the policy report in section 103A.204 and submit a single report to the house of representatives and senate committees with jurisdiction over the environment, natural resources, and agriculture and the Legislative-Citizen Commission on Minnesota Resources by September 15, 2010, and every five years thereafter.

(b) The Pollution Control Agency and the Department of Agriculture shall provide a biennial assessment and analysis of water quality, groundwater degradation trends, and efforts to reduce, prevent, minimize, and eliminate degradation of water. The assessment and analysis must include an analysis of relevant monitoring data.

(c) The Department of Natural Resources shall provide an assessment and analysis of the quantity of surface and ground water in the state and the availability of water to meet the state's needs.

103F.614 EMINENT DOMAIN ACTIONS.

Subdivision 1. **Applicability.** An agency of the state, a public benefit corporation, a local government, or any other entity with the power of eminent domain under chapter 117, except a public utility as defined in section 216B.02, a municipal electric or gas utility, a municipal power agency, a cooperative electric association organized under chapter 308A, or a pipeline operating under the authority of the Natural Gas Act, United States Code, title 15, sections 717 to 717z, shall follow the procedures in this section before:

(1) acquiring land or an easement in land with a total area over ten acres within a wetland preservation area; or

(2) advancing a grant, loan, interest subsidy, or other funds for the construction of dwellings, commercial or industrial facilities, or water or sewer facilities that could be used to serve structures in areas that are not for agricultural use, that require an acquisition of land or an easement in a wetland preservation area.

Subd. 2. **Notice of intent.** At least 60 days before an action described in subdivision 1, notice of intent must be filed with the Environmental Quality Board containing information and in the manner and form required by the Environmental Quality Board. The notice of intent must contain a report justifying the proposed action, including an evaluation of alternatives that would not affect land within a wetland preservation area.

Subd. 3. **Review and order.** The Environmental Quality Board, in consultation with affected local governments, shall review the proposed action to determine its effect on the preservation and enhancement of wetlands and the relationship to local and regional comprehensive plans. If the Environmental Quality Board finds that the proposed action might have an unreasonable effect on a wetland preservation area, the Environmental Quality Board shall issue an order within the 60-day period under subdivision 2 for the party to refrain from the proposed action for an additional 60 days.

Subd. 4. **Public hearing.** During the additional 60 days, the Environmental Quality Board shall hold a public hearing concerning the proposed action at a place within the affected wetland preservation area or easily accessible to the wetland preservation area. Notice of the hearing must be published in a newspaper having a general circulation within the area. Individual written notice must be given to the local governments with jurisdiction over the wetland preservation area, the agency, corporation or government proposing to take the action, the owner of land in the wetland preservation area, and any public agency having the power of review or approval of the action.

Subd. 5. **Joint review.** The review process required in this section may be conducted jointly with any other environmental impact review by the Environmental Quality Board.

Subd. 6. **Suspension of action.** The Environmental Quality Board may suspend an eminent domain action for up to one year if it determines that the action is contrary to wetland preservation and that there are feasible and prudent alternatives that may have a less negative impact on the wetland preservation area.

Subd. 7. **Termination of wetland preservation area.** The benefits and limitations of a wetland preservation area, including the restrictive covenant for the portion of the wetland preservation area taken, end on the date title and possession of the property is obtained.

Subd. 8. **Action by attorney general.** The Environmental Quality Board may request the attorney general to bring an action to enjoin an agency, corporation, or government from violating this section.

APPENDIX

Repealed Minnesota Statutes: 11-2937

Subd. 9. **Exception.** This section does not apply to an emergency project that is immediately necessary for the protection of life and property.

115A.32 RULES.

The board shall promulgate rules pursuant to chapter 14 to govern its activities under sections 115A.32 to 115A.39. For the purposes of sections 115A.32 to 115A.39, "board" means the Environmental Quality Board established in section 116C.03. In all of its activities and deliberations under sections 115A.32 to 115A.39, the board shall consult with the commissioner of the Pollution Control Agency.

115A.33 ELIGIBILITY; REQUEST FOR REVIEW.

The following persons shall be eligible to request supplementary review by the board pursuant to sections 115A.32 to 115A.39: (a) a generator of sewage sludge within the state who has been issued permits by the agency for a facility to dispose of sewage sludge or solid waste resulting from sewage treatment; (b) a political subdivision which has been issued permits by the agency, or a political subdivision acting on behalf of a person who has been issued permits by the agency, for a solid waste facility which is no larger than 250 acres, not including any proposed buffer area, and located outside the metropolitan area; (c) a generator of hazardous waste within the state who has been issued permits by the agency for a hazardous waste facility to be owned and operated by the generator, on property owned by the generator, and to be used by the generator for managing the hazardous wastes produced by the generator only; (d) a person who has been issued permits by the agency for a commercial hazardous waste processing facility at a site included in the board's inventory of preferred sites for such facilities adopted pursuant to Minnesota Statutes 1996, section 115A.09; (e) a person who has been issued permits by the agency for a disposal facility for the nonhazardous sludge, ash, or other solid waste generated by a permitted hazardous waste processing facility operated by the person. The board may require completion of a plan conforming to the requirements of section 115A.46, before granting review under clause (b). A request for supplementary review shall show that the required permits for the facility have been issued by the agency and that a political subdivision has refused to approve the establishment or operation of the facility.

115A.34 APPOINTMENT OF TEMPORARY BOARD MEMBERS.

Within 45 days of the submission of a request determined by the board to satisfy the requirements for review under sections 115A.32 to 115A.39, temporary members shall be added to the board for the purpose of the supplementary review. Three members shall be selected by the governing body of the city or town in which the chair of the board determines the facility would be principally located, and three members shall be selected by the governing body of the county in which the chair of the board determines the proposed facility would be principally located. If the proposed facility is located in unorganized territory, all six members shall be selected by the governing board of the county. Temporary members shall be residents of the county in which the proposed facility would be located and shall be selected to represent broadly the local interests that would be directly affected by the proposed facility. At least one member appointed by the city or town shall live within one mile of the proposed facility, and at least one member appointed by the county shall be a resident of a city or town in which the proposed facility would be located. If the appointing authority fails to appoint temporary members in the period allowed, the governor shall appoint the temporary members to represent the local interests in accordance with this section. Temporary members shall serve for terms lasting until the board has taken final action on the facility.

115A.35 REVIEW PROCEDURE.

The board shall meet to commence the supplementary review within 90 days of the submission of a request determined by the board to satisfy the requirements for review under this section. At the meeting commencing the review, the chair shall recommend and the board establish a scope and procedure, in accordance with the rules of the board, for review and final decision on the proposed facility. The procedure shall require the board to make a final decision on the proposed facility within 90 days following the commencement of review. The procedure shall require the board to hold, at the call of the chair, at least one public hearing in the county within which the proposed facility would be located. A majority of permanent members of the board shall be present at the hearing. The hearing shall be conducted for the board by the state

APPENDIX

Repealed Minnesota Statutes: 11-2937

Office of Administrative Hearings in a manner determined by the administrative law judge to be consistent with the expeditious completion of the proceedings as required by sections 115A.32 to 115A.39. The hearing shall not be deemed a contested case under chapter 14. Notice of the hearing shall be published in a newspaper or newspapers of general circulation in the area for two successive weeks ending at least 15 days before the date of the meeting. The notice shall describe the proposed facility, its location, the permits, and the board's scope and procedure for review. The notice shall identify a location or locations within the city or town and county where the permit applications, the agency permits, and the board's scope and procedure for review are available for review and where copies may be obtained.

115A.36 SCOPE AND CONTENT OF REVIEW.

In its review and final decision on the proposed facility, the board shall consider at least the following matters:

(a) the risk and effect of the proposed facility on local residents, units of government, and the local public health, safety, and welfare, including such dangers as an accidental release of wastes during transportation to the facility, water, air, and land pollution, and fire or explosion where appropriate, and the degree to which the risk or effect may be alleviated;

(b) the consistency of the proposed facility with, and its effect on, existing and planned local land use and development; local laws, ordinances, and permits; and local public facilities and services;

(c) the adverse effects of the facility on agriculture and natural resources and opportunities to mitigate or eliminate the adverse effects by additional stipulations, conditions, and requirements respecting the proposed facility at the proposed site;

(d) the need for the proposed facility, especially its contribution to abating solid and hazardous waste disposal, the availability of alternative sites, and opportunities to mitigate or eliminate need by additional and alternative waste management strategies or actions of a significantly different nature;

(e) whether, in the case of solid waste resource recovery facilities, the applicant has considered the feasible and prudent waste processing alternatives for accomplishing the purposes of the proposed project and has compared and evaluated the costs of the alternatives, including capital and operating costs, and the effects of the alternatives on the cost to generators.

115A.37 FINAL DECISION OF BOARD.

Subdivision 1. **Approval or disapproval.** In its final decision on the proposed facility, the board may either approve or disapprove the proposed facility at the proposed site. The board's approval shall embody all terms, conditions, and requirements of the permitting agencies, provided that the board may: (a) finally resolve any conflicts between state agencies regarding permit terms, conditions, and requirements, and (b) require more stringent permit terms, conditions, and requirements respecting the design, construction, operation, inspection, monitoring, and maintenance of the proposed facility at the proposed site. The board's resolution of conflicts under clause (a) shall be in favor of the more stringent terms, conditions, and requirements.

Subd. 2. **Decision paramount.** The decision of the board to approve a facility shall be final and shall supersede and preempt requirements of state agencies and political subdivisions and the requirements of sections 473H.02 to 473H.17; except that the facility shall be subject to those terms, conditions, and requirements of permitting agencies embodied in the board's approval and any requirements imposed pursuant to subdivision 3. The permitting agencies shall issue or amend the permits for the facility within 60 days following and in accordance with the final decision of the board, and all permits shall conform to the terms, conditions, and requirements of the board's decision. No charter provision, ordinance, rule, permit, or other requirement of any state agency or political subdivision shall prevent or restrict the establishment, operation, expansion, continuance, or closure of the facility in accordance with the final decision of the board and permits issued pursuant thereto.

Subd. 3. **Local requirements.** A political subdivision may impose reasonable requirements respecting the construction, inspection, operation, monitoring, and maintenance of a facility. Any such requirements shall be subject to review by the agency to determine their reasonableness and consistency with the establishment and use of a facility in accordance with the final decision of the board and permits issued pursuant thereto. The agency may approve,

APPENDIX

Repealed Minnesota Statutes: 11-2937

disapprove, suspend, modify, or reverse any such requirements. The decision of the agency shall be final.

115A.38 RECONCILIATION PROCEDURES.

Subdivision 1. **Reports to legislative commission.** At least 30 days before making a final decision under section 115A.37 in a review brought pursuant to section 115A.33, clause (d), the chair of the board may report to the legislative commission describing permit conditions or requirements being considered which are not within the existing authority of the agency or the board or which would require legislation or public financial assistance. In any such report the chair of the board may request intervention in the review pursuant to subdivisions 2 and 3.

Subd. 2. **Preintervention assessment.** If the legislative commission determines that intervention might be warranted under the terms of subdivision 1, the commission may suspend the review process for up to 60 days to allow a preintervention assessment. The preintervention assessment shall be conducted by an independent, impartial, and qualified public intervenor appointed by the commission with the advice and consent of the parties to the dispute. The intervenor shall report to the commission. The report shall include:

(a) an assessment of whether the dispute is ripe for mediation and whether the parties are willing to mediate;

(b) an assessment of whether, within the terms of subdivision 1, substantive issues exist which cannot be resolved effectively through normal administrative and judicial procedures;

(c) a preliminary definition of the facts and issues in dispute and actions and decisions being considered;

(d) a description of the diverse parties having a legitimate and direct interest in the outcome of the dispute.

Subd. 3. **Suspension of review process; intervention proceeding.** Following the report of the intervenor, the legislative commission may suspend the review process for an additional period not to exceed 90 days for an intervention proceeding. The intervenor shall be in charge of the intervention proceeding and may call for such participation and establish such procedures as the intervenor deems necessary and appropriate to facilitate agreement. The intervenor shall keep the chair of the legislative commission informed on the progress of the intervention proceeding, particularly with respect to agreements or proposed agreements which may require action or decisions not within the authority of the agency or board, legislative action, or public financial assistance. The intervenor shall make recommendations to the commission respecting any such agreements or proposed agreements. The commission may make recommendations to the intervenor respecting any such agreement or proposed agreement. If the commission approves of an agreement, or a decision based upon an agreement, which requires action or decisions not within the authority of the agency or board, legislative action, or public financial assistance, the commission shall cause the matter and recommendations to be submitted to the legislature for consideration.

115A.39 JUDICIAL REVIEW.

Judicial review with respect to conduct or decisions in supplementary reviews brought pursuant to section 115A.33, clause (c) or (d), shall be as provided in section 115A.30.

116C.02 DEFINITIONS.

Subdivision 1. **Applicability.** For the purposes of sections 116C.01 to 116C.08, the following terms have the meaning given them.

Subd. 2. **Board.** "Board" means the Minnesota Environmental Quality Board.

116C.03 CREATION OF ENVIRONMENTAL QUALITY BOARD; MEMBERSHIP; CHAIR; STAFF.

Subdivision 1. **Creation.** An environmental quality board, designated as the Minnesota Environmental Quality Board, is hereby created.

Subd. 2. **Membership.** The members of the board are the director of the Office of Strategic and Long-Range Planning, the commissioner of commerce, the commissioner of the Pollution Control Agency, the commissioner of natural resources, the commissioner of agriculture, the commissioner of health, the commissioner of employment and economic development, the commissioner of transportation, the chair of the Board of Water and Soil Resources, and a representative of the governor's office designated by the governor. The governor shall appoint five

APPENDIX

Repealed Minnesota Statutes: 11-2937

members from the general public to the board, subject to the advice and consent of the senate. At least two of the five public members must have knowledge of and be conversant in water management issues in the state. Notwithstanding the provisions of section 15.06, subdivision 6, members of the board may not delegate their powers and responsibilities as board members to any other person.

Subd. 2a. **Public members.** The membership terms, compensation, removal, and filling of vacancies of public members of the board shall be as provided in section 15.0575.

Subd. 3a. **Chair.** The representative of the governor's office shall serve as chair of the board.

Subd. 4. **Support.** Staff and consultant support for board activities shall be provided by the Office of Strategic and Long-Range Planning. This support shall be provided based upon an annual budget and work program developed by the board and certified to the commissioner by the chair of the board. The board shall have the authority to request and require staff support from all other agencies of state government as needed for the execution of the responsibilities of the board.

Subd. 5. **Administration.** The board shall contract with the Office of Strategic and Long-Range Planning for administrative services necessary to the board's activities. The services shall include personnel, budget, payroll and contract administration.

Subd. 6. **Annual budget and work program.** The board shall adopt an annual budget and work program.

116C.04 POWERS AND DUTIES.

Subdivision 1. **Scope; votes.** The powers and duties of the Minnesota Environmental Quality Board shall be as provided in this section and as otherwise provided by law or executive order. Actions of the board shall be taken only at an open meeting upon a majority vote of all the permanent members of the board.

Subd. 2. **Jurisdiction.** (a) The board shall determine which environmental problems of interdepartmental concern to state government shall be considered by the board. The board shall initiate interdepartmental investigations into those matters that it determines are in need of study. Topics for investigation may include but need not be limited to future population and settlement patterns, air and water resources and quality, solid waste management, transportation and utility corridors, economically productive open space, energy policy and need, growth and development, and land use planning.

(b) The board shall review programs of state agencies that significantly affect the environment and coordinate those it determines are interdepartmental in nature, and insure agency compliance with state environmental policy.

(c) The board may review environmental rules and criteria for granting and denying permits by state agencies and may resolve conflicts involving state agencies with regard to programs, rules, permits and procedures significantly affecting the environment, provided that such resolution of conflicts is consistent with state environmental policy.

(d) State agencies shall submit to the board all proposed legislation of major significance relating to the environment and the board shall submit a report to the governor and the legislature with comments on such major environmental proposals of state agencies.

Subd. 3. **Cooperation.** The board shall cooperate with regional development commissions in appropriate matters of environmental concern.

Subd. 4. **Task forces.** The board may establish interdepartmental or citizen task forces or subcommittees to study particular problems.

Subd. 7. **Annual congress.** At its discretion, the board shall convene an annual Environmental Quality Board congress including, but not limited to, representatives of state, federal and regional agencies, citizen organizations, associations, industries, colleges and universities, and private enterprises who are active in or have a major impact on environmental quality. The purpose of the congress shall be to receive reports and exchange information on progress and activities related to environmental improvement.

Subd. 10. **Stipulation agreements.** The board may enter into and enforce stipulation agreements made to enforce statutes and rules administered by the board.

Subd. 11. **Coordination.** The Environmental Quality Board shall coordinate the implementation of an interagency compliance with existing state and federal lead regulations and report to the legislature by January 31, 1992, on the changes in programs needed to comply.

116C.06 HEARINGS.

APPENDIX

Repealed Minnesota Statutes: 11-2937

Subdivision 1. **Process.** The board shall hold public hearings on matters that it determines to be of major environmental impact. The board shall prescribe by rule in conformity to the provisions of chapter 14, the procedures for the conduct of all hearings and review procedures.

Subd. 2. **Delegation to hearings officer.** The board may delegate its authority to conduct a hearing to a hearings officer. The hearings officer shall have the same power as the board to compel the attendance of witnesses to examine them under oath, to require the production of books, papers, and other evidence, and to issue subpoenas and cause the same to be served and executed in any part of the state. The hearings officer shall be knowledgeable in matters of law and the environment.

If a hearings officer conducts a hearing, the officer shall make findings of fact and submit them to the board. The transcript of testimony and exhibits shall constitute the exclusive record upon which such findings are made. The findings shall be available for public inspection.

Subd. 3. **Recommendations.** After receipt of the findings of fact of the hearings officer, the board shall make recommendations to the governor and legislature as to administrative and legislative actions to be considered in regard to the matter.

116C.08 FEDERAL FUNDS; DONATIONS.

The board may apply for, receive, and disburse federal funds made available to the state by federal law or rules promulgated thereunder for any purpose related to the powers and duties of the board. The board shall comply with any and all requirements of such federal law or such rules and regulations promulgated thereunder in order to apply for, receive, and disburse such funds. The board is authorized to accept any donations or grants from any public or private concern. All such moneys received by the board shall be deposited in the state treasury and are hereby appropriated to it for the purpose for which they are received. None of such moneys in the state treasury shall cancel.

116C.71 DEFINITIONS.

Subd. 1c. **Board.** "Board" means the Minnesota Environmental Quality Board.

Subd. 2a. **Chair.** "Chair" means the chair of the board.

116C.721 PUBLIC PARTICIPATION.

Subdivision 1. **Information meetings.** The board shall conduct public information meetings within an area designated in a draft area recommendation report, final area recommendation report, draft area characterization plan, or final area characterization plan. Information meetings shall be held within 30 days after the board receives each of the reports.

Subd. 2. **Notice.** The board shall notify the public of information meetings and the availability of the area recommendation reports and the area characterization plans. Copies of the reports shall be made available for public review and distribution at the board office, the Minnesota Geological Survey office, regional development commission offices in regions that include a part of the potentially impacted areas, county courthouses in counties that include a part of a potentially impacted area, and other appropriate places determined by the board to provide public accessibility.

Subd. 3. **Transmittal of public concerns.** The board shall transmit public concerns expressed at public information meetings to the department of energy.

116C.722 LEGAL AND TECHNICAL ASSISTANCE TO INDIAN TRIBES.

If an Indian tribal council that has jurisdiction over part of a potentially impacted area within the state requests legal or technical assistance, the board shall provide assistance.

116C.724 FIELD INVESTIGATIONS, TESTS, AND STUDIES.

Subd. 2. **Drilling.** A permit shall be obtained from the Environmental Quality Board, in accordance with chapter 14, for any geologic and hydrologic drilling related to disposal. Conditions of obtaining and retaining the permit must be specified by rule and must include:

(1) compliance with state drilling and drill hole restoration rules as an exploratory boring under chapter 103I;

(2) proof that access to the test site has been obtained by a negotiated agreement or other legal process;

APPENDIX

Repealed Minnesota Statutes: 11-2937

(3) payment by the permittee of a fee covering the costs of processing and monitoring drilling activities;

(4) unrestricted access by the commissioner of health, the commissioner of natural resources, the commissioner of the Pollution Control Agency, the director of the Minnesota Geological Survey, the agent of a board of health as authorized under section 145A.04, and their employees and agents to the drilling sites to inspect and monitor the drill holes, drilling operations, and abandoned sites, and to sample air and water that may be affected by drilling;

(5) submission of splits or portions of a core sample, requested by the commissioner of natural resources or director of the Minnesota Geological Survey, except that the commissioner or director may accept certified data on the sample in lieu of a sample if certain samples are required in their entirety by the permittee; and

(6) that a sample submitted may become property of the state.

Subd. 3. Other requirements. (a) A person who conducts geologic, hydrologic, or geophysical testing or studies shall provide unrestricted access to both raw and interpretive data to the chair and the director of the Minnesota Geological Survey or their designated representatives. The raw and interpretive data includes core samples, well logs, water samples and chemical analyses, survey charts and graphs, and predecisional reports. Studies and data shall be made available within 30 days of a formal request by the chair.

(b) A person proposing to investigate shall hold at least one public meeting before a required permit is issued, and during the investigation at least once every three months, during the investigation within the potentially impacted area. The meetings shall provide the public with current information on the progress of the investigation. The person investigating shall respond in writing to the Environmental Quality Board about concerns and issues raised at the public meetings.

(c) Before a person engages in negotiations regarding property interests in land or water, or permitting activities, the person shall notify the chair in writing. Copies of terms and agreements shall also be provided to the chair.

473H.15 EMINENT DOMAIN ACTIONS.

Subdivision 1. Follow procedures here. Any agency of the state, any public benefit corporation, any local, county or regional unit of government, or any other entity possessing powers of eminent domain under chapter 117, shall follow the procedures contained in this section before (1) acquiring any land or easement having a gross area over ten acres in size within agricultural preserves; or (2) advancing a grant, loan, interest subsidy or other funds for the construction of dwellings, commercial or industrial facilities, or water or sewer facilities that could be used to serve nonfarm structures within agricultural preserves.

Subd. 2. Notice of intent to EQB. At least 60 days prior to an action described in subdivision 1, notice of intent shall be filed with the Environmental Quality Board containing information and in the manner and form required by the Environmental Quality Board. The notice of intent shall contain a report justifying the proposed action, including an evaluation of alternatives which would not require acquisition within agricultural preserves.

Subd. 3. EQB review. The Environmental Quality Board, in consultation with affected units of government, shall review the proposed action to determine the effect of the action on the preservation and enhancement of agriculture and agricultural resources within the preserves and the relationship to local and regional comprehensive plans.

Subd. 4. EQB order. If the Environmental Quality Board finds that the proposed action might have an unreasonable effect on an agricultural preserve or preserves, the Environmental Quality Board shall issue an order within the 60-day period for the party to desist from such action for an additional 60-day period.

Subd. 5. Hearing. During the additional 60-day period, the Environmental Quality Board shall hold a public hearing concerning the proposed action at a place within the affected preserve or otherwise easily accessible to the preserve upon notice in a newspaper having a general circulation within the area of the preserves, and individual notice, in writing, to the municipalities whose territory encompasses the preserves, the agency, corporation or government proposing to take the action, and any public agency having the power of review of or approval of the action, in a manner conducive to the wide dissemination of the findings to the public.

Subd. 6. Joint review. The review process required in this section may be conducted jointly with any other environmental impact review conducted by the Environmental Quality Board.

APPENDIX

Repealed Minnesota Statutes: 11-2937

Subd. 7. **AG may sue to enjoin.** The Environmental Quality Board may request the attorney general to bring an action to enjoin any agency, corporation or government from violating the provisions of this section.

Subd. 8. **Does not apply to emergency.** This section shall not apply to an emergency project which is immediately necessary for the protection of life and property.

Subd. 9. **EQB suspension.** The Environmental Quality Board shall be empowered to suspend any eminent domain action for up to one year which it determines to be contrary to the purposes of sections 473H.02 to 473H.17 and for which it determines there are feasible and prudent alternatives which have less negative impact on the agricultural preserves.

Subd. 10. **When agricultural preserve ends.** The agricultural preserve designation and all benefits and limitations accruing through sections 473H.02 to 473H.17 for the preserve and the restrictive covenant for that portion of the preserve taken, shall cease on the date the final certificate is filed with the court administrator of district court in accordance with section 117.205.