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HOUSE OF REPRESENTATIVES

NINETIETH SESSION

H. F. No. 3120

02/26/2018 Authored by Fabian, Heintzeman, Lueck and Ecklund  
The bill was read for the first time and referred to the Committee on Environment and Natural Resources Policy and Finance  
03/28/2018 Adoption of Report: Placed on the General Register as Amended  
Read for the Second Time

1.1 A bill for an act  
1.2 relating to environment; modifying environmental agency permitting, rulemaking,  
1.3 and fees; modifying certain compliance requirements; requiring planning for in-lieu  
1.4 fee program for wetland replacement; appropriating money; amending Minnesota  
1.5 Statutes 2016, sections 103B.101, subdivision 9; 103G.2242, subdivision 14;  
1.6 115.03, subdivision 5; 115.035; Minnesota Statutes 2017 Supplement, section  
1.7 116.07, subdivision 4d; proposing coding for new law in Minnesota Statutes,  
1.8 chapter 115.

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

1.10 Section 1. Minnesota Statutes 2016, section 103B.101, subdivision 9, is amended to read:

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

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

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

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

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

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

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

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

2.12 The board may accept grants, gifts, donations, or contributions in money, services,  
2.13 materials, or otherwise from the United States, a state agency, or other source to achieve  
2.14 an authorized or delegated purpose. The board may enter into a contract or agreement  
2.15 necessary or appropriate to accomplish the transfer. The board may conduct or participate  
2.16 in local, state, or federal programs or projects that have as one purpose or effect the  
2.17 preservation or enhancement of water and soil resources and may enter into and administer  
2.18 agreements with local governments or landowners or their designated agents as part of those  
2.19 programs or projects. The board may bill organizational units within the agency, and other  
2.20 agencies and governmental units, for the costs of providing program, capital investment  
2.21 project, technical, fiscal, and other supporting services. Receipts must be credited to accounts  
2.22 in the special revenue fund and are appropriated to the board to pay the costs for which the  
2.23 billings were made. The board may receive and expend money to acquire conservation  
2.24 easements, as defined in chapter 84C, on behalf of the state and federal government consistent  
2.25 with the Camp Ripley's Army Compatible Use Buffer Project.

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

2.28 Sec. 2. Minnesota Statutes 2016, section 103G.2242, subdivision 14, is amended to read:

2.29 Subd. 14. **Fees established.** (a) Fees must be assessed for managing wetland bank  
2.30 accounts and transactions as follows:

2.31 (1) account maintenance annual fee: one percent of the value of credits not to exceed  
2.32 \$500;

3.1 (2) account establishment, deposit, or transfer: 6.5 percent of the value of credits not to  
3.2 exceed \$1,000 per establishment, deposit, or transfer; and

3.3 (3) withdrawal fee: 6.5 percent of the value of credits withdrawn.

3.4 (b) The board ~~may~~ must establish fees ~~at or~~ based on costs to the agency below the  
3.5 amounts in paragraph (a) for single-user or other dedicated wetland banking accounts.

3.6 (c) Fees for single-user or other dedicated wetland banking accounts established pursuant  
3.7 to section 103G.005, subdivision 10i, clause (4), are limited to establishment of a wetland  
3.8 banking account and are assessed at the rate of 6.5 percent of the value of the credits not to  
3.9 exceed \$1,000.

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

3.13 (e) Withdrawals from the water and soil conservation easement stewardship account  
3.14 and from the mitigation easement stewardship account established in section 103B.103 must  
3.15 be appropriated to the board upon request for: (1) legal compliance costs; (2) imminent  
3.16 structural preservation needs occurring after construction certification; or (3) associated  
3.17 database and Web upgrades and repairs.

3.18 Sec. 3. Minnesota Statutes 2016, section 115.03, subdivision 5, is amended to read:

3.19 Subd. 5. **Agency authority; national pollutant discharge elimination system.** (a)  
3.20 Notwithstanding any other provisions prescribed in or pursuant to this chapter and, with  
3.21 respect to the pollution of waters of the state, in chapter 116, or otherwise, the agency shall  
3.22 have the authority to perform any and all acts minimally necessary including, but not limited  
3.23 to, the establishment and application of standards, procedures, rules, orders, variances,  
3.24 stipulation agreements, schedules of compliance, and permit conditions, consistent with  
3.25 and, therefore not less stringent than the provisions of the Federal Water Pollution Control  
3.26 Act, as amended, applicable to the participation by the state of Minnesota in the national  
3.27 pollutant discharge elimination system (NPDES); provided that this provision shall not be  
3.28 construed as a limitation on any powers or duties otherwise residing with the agency pursuant  
3.29 to any provision of law.

3.30 (b) An activity that conveys or connects waters of the state without subjecting the  
3.31 transferred water to intervening industrial, municipal, or commercial use does not require  
3.32 a national pollutant discharge elimination system permit. This exemption does not apply to  
3.33 pollutants introduced by the activity itself to the water being transferred.

4.1 Sec. 4. Minnesota Statutes 2016, section 115.035, is amended to read:

4.2 **115.035 EXTERNAL PEER REVIEW OF WATER QUALITY STANDARDS.**

4.3 ~~(a) When the commissioner convenes an external peer review panel during the~~  
4.4 ~~promulgation or amendment of water quality standards, the commissioner must provide~~  
4.5 ~~notice and take public comment on the charge questions for the external peer review panel~~  
4.6 ~~and must allow written and oral public comment as part of the external peer review panel~~  
4.7 ~~process. Every new or revised numeric water quality standard must be supported by a~~  
4.8 ~~technical support document that provides the scientific basis for the proposed standard and~~  
4.9 ~~that has undergone external, scientific peer review. Numeric water quality standards in~~  
4.10 ~~which the agency is adopting, without change, a United States Environmental Protection~~  
4.11 ~~Agency criterion that has been through peer review are not subject to this paragraph.~~  
4.12 Documentation of the external peer review panel, including the name or names of the peer  
4.13 reviewer or reviewers, must be included in the statement of need and reasonableness for  
4.14 the water quality standard. ~~If the commissioner does not convene an external peer review~~  
4.15 ~~panel during the promulgation or amendment of water quality standards, the commissioner~~  
4.16 ~~must state the reason an external peer review panel will not be convened in the statement~~  
4.17 ~~of need and reasonableness.~~

4.18 (b) Every technical support document developed by the agency must be released in draft  
4.19 form for public comment before peer review and before finalizing the technical support  
4.20 document.

4.21 (c) The commissioner must provide public notice and information about the external  
4.22 peer review through the request for comments published at the beginning of the rulemaking  
4.23 process for the numeric water quality standard, and:

4.24 (1) the request for comments must identify the draft technical support document and  
4.25 where the document can be found;

4.26 (2) the request for comments must include a proposed charge for the external peer review  
4.27 and request comments on the charge;

4.28 (3) all comments received during the public comment period must be made available to  
4.29 the external peer reviewers; and

4.30 (4) if the agency is not soliciting external peer review because the agency is adopting a  
4.31 United States Environmental Protection Agency criterion without change, that must be  
4.32 noted in the request for comments.

5.1 (d) The purpose of the external peer review is to evaluate whether the technical support  
5.2 document and proposed standard are based on sound scientific knowledge, methods, and  
5.3 practices. The external peer review must be conducted according to the guidance in the  
5.4 most recent edition of the United States Environmental Protection Agency's Peer Review  
5.5 Handbook. Peer reviewers must not have participated in developing the scientific basis of  
5.6 the standard.

5.7 (e) The type of review and the number of peer reviewers depends on the nature of the  
5.8 science underlying the standard. When the agency is developing significant new science or  
5.9 science that expands significantly beyond current documented scientific practices or  
5.10 principles, a panel review must be used.

5.11 (f) In response to the findings of the external peer review, the draft technical support  
5.12 document must be revised as appropriate. The findings of the external peer review must be  
5.13 documented and attached to the final technical support document, which must be an exhibit  
5.14 as part of the statement of need and reasonableness in the rulemaking to adopt the new or  
5.15 revised numeric water quality standard. The final technical support document must note  
5.16 changes made in response to the external peer review.

5.17 ~~(b)~~ (g) By December 15 each year, the commissioner shall post on the agency's Web  
5.18 site a report identifying the water quality standards development work in progress or  
5.19 completed in the past year, the lead agency scientist for each development effort, and  
5.20 opportunities for public input.

5.21 **Sec. 5. [115.455] EFFLUENT LIMITATION COMPLIANCE.**

5.22 To the extent allowable under federal law, for a municipality that constructs a publicly  
5.23 owned treatment works facility or for an industrial national pollutant discharge elimination  
5.24 system and state disposal system permit holder that constructs a treatment works facility to  
5.25 comply with a new or modified effluent limitation, compliance with any new or modified  
5.26 effluent limitation adopted after construction begins that would require additional capital  
5.27 investment is required no sooner than 16 years after the date the facility begins operating.

5.28 **EFFECTIVE DATE.** This section is effective the day following final enactment.

5.29 **Sec. 6.** Minnesota Statutes 2017 Supplement, section 116.07, subdivision 4d, is amended  
5.30 to read:

5.31 **Subd. 4d. Permit fees.** (a) The agency may collect permit fees in amounts not greater  
5.32 than those necessary to cover the reasonable costs of developing, reviewing, and acting

6.1 upon applications for agency permits and implementing and enforcing the conditions of the  
6.2 permits pursuant to agency rules. Permit fees shall not include the costs of litigation. The  
6.3 fee schedule must reflect reasonable and routine direct and indirect costs associated with  
6.4 permitting, implementation, and enforcement. The agency may impose an additional  
6.5 enforcement fee to be collected for a period of up to two years to cover the reasonable costs  
6.6 of implementing and enforcing the conditions of a permit under the rules of the agency.

6.7 Water fees under this paragraph are subject to legislative approval under section 16A.1283.  
6.8 Any money collected under this paragraph shall be deposited in the environmental fund.

6.9 (b) Notwithstanding paragraph (a), the agency shall collect an annual fee from the owner  
6.10 or operator of all stationary sources, emission facilities, emissions units, air contaminant  
6.11 treatment facilities, treatment facilities, potential air contaminant storage facilities, or storage  
6.12 facilities subject to a notification, permit, or license requirement under this chapter,  
6.13 subchapters I and V of the federal Clean Air Act, United States Code, title 42, section 7401  
6.14 et seq., or rules adopted thereunder. The annual fee shall be used to pay for all direct and  
6.15 indirect reasonable costs, including legal costs, required to develop and administer the  
6.16 notification, permit, or license program requirements of this chapter, subchapters I and V  
6.17 of the federal Clean Air Act, United States Code, title 42, section 7401 et seq., or rules  
6.18 adopted thereunder. Those costs include the reasonable costs of reviewing and acting upon  
6.19 an application for a permit; implementing and enforcing statutes, rules, and the terms and  
6.20 conditions of a permit; emissions, ambient, and deposition monitoring; preparing generally  
6.21 applicable regulations; responding to federal guidance; modeling, analyses, and  
6.22 demonstrations; preparing inventories and tracking emissions; and providing information  
6.23 to the public about these activities.

6.24 (c) The agency shall set fees that:

6.25 (1) will result in the collection, in the aggregate, from the sources listed in paragraph  
6.26 (b), of an amount not less than \$25 per ton of each volatile organic compound; pollutant  
6.27 regulated under United States Code, title 42, section 7411 or 7412 (section 111 or 112 of  
6.28 the federal Clean Air Act); and each pollutant, except carbon monoxide, for which a national  
6.29 primary ambient air quality standard has been promulgated;

6.30 (2) may result in the collection, in the aggregate, from the sources listed in paragraph  
6.31 (b), of an amount not less than \$25 per ton of each pollutant not listed in clause (1) that is  
6.32 regulated under this chapter or air quality rules adopted under this chapter; and

7.1 (3) shall collect, in the aggregate, from the sources listed in paragraph (b), the amount  
7.2 needed to match grant funds received by the state under United States Code, title 42, section  
7.3 7405 (section 105 of the federal Clean Air Act).

7.4 The agency must not include in the calculation of the aggregate amount to be collected  
7.5 under clauses (1) and (2) any amount in excess of 4,000 tons per year of each air pollutant  
7.6 from a source. The increase in air permit fees to match federal grant funds shall be a surcharge  
7.7 on existing fees. The commissioner may not collect the surcharge after the grant funds  
7.8 become unavailable. In addition, the commissioner shall use nonfee funds to the extent  
7.9 practical to match the grant funds so that the fee surcharge is minimized.

7.10 (d) To cover the reasonable costs described in paragraph (b), the agency shall provide  
7.11 in the rules promulgated under paragraph (c) for an increase in the fee collected in each  
7.12 year by the percentage, if any, by which the Consumer Price Index for the most recent  
7.13 calendar year ending before the beginning of the year the fee is collected exceeds the  
7.14 Consumer Price Index for the calendar year 1989. For purposes of this paragraph the  
7.15 Consumer Price Index for any calendar year is the average of the Consumer Price Index for  
7.16 all-urban consumers published by the United States Department of Labor, as of the close  
7.17 of the 12-month period ending on August 31 of each calendar year. The revision of the  
7.18 Consumer Price Index that is most consistent with the Consumer Price Index for calendar  
7.19 year 1989 shall be used.

7.20 (e) Any money collected under paragraphs (b) to (d) must be deposited in the  
7.21 environmental fund and must be used solely for the activities listed in paragraph (b).

7.22 (f) Permit applicants who wish to construct, reconstruct, or modify a project may offer  
7.23 to reimburse the agency for the costs of staff time or consultant services needed to expedite  
7.24 the preapplication process and permit development process through the final decision on  
7.25 the permit, including the analysis of environmental review documents. The reimbursement  
7.26 shall be in addition to permit application fees imposed by law. When the agency determines  
7.27 that it needs additional resources to develop the permit application in an expedited manner,  
7.28 and that expediting the development is consistent with permitting program priorities, the  
7.29 agency may accept the reimbursement. The commissioner must give the applicant an estimate  
7.30 of costs to be incurred by the commissioner. The estimate must include a brief description  
7.31 of the tasks to be performed, a schedule for completing the tasks, and the estimated cost for  
7.32 each task. The applicant and the commissioner must enter into a written agreement detailing  
7.33 the estimated costs for the expedited permit decision-making process to be incurred by the  
7.34 agency. The agreement must also identify staff anticipated to be assigned to the project.  
7.35 The commissioner must not issue a permit until the applicant has paid all fees in full. The

8.1 commissioner must refund any unobligated balance of fees paid. Reimbursements accepted  
8.2 by the agency are appropriated to the agency for the purpose of developing the permit or  
8.3 analyzing environmental review documents. Reimbursement by a permit applicant shall  
8.4 precede and not be contingent upon issuance of a permit; shall not affect the agency's decision  
8.5 on whether to issue or deny a permit, what conditions are included in a permit, or the  
8.6 application of state and federal statutes and rules governing permit determinations; and shall  
8.7 not affect final decisions regarding environmental review.

8.8 (g) The fees under this subdivision are exempt from section 16A.1285.

8.9 **Sec. 7. WETLAND REPLACEMENT; FRAMEWORKS FOR IN-LIEU FEE**  
8.10 **PROGRAM.**

8.11 The Board of Water and Soil Resources, in cooperation with the United States Army  
8.12 Corps of Engineers, must complete the planning frameworks and other program application  
8.13 requirements necessary for federal approval of an in-lieu fee program, as authorized under  
8.14 Minnesota Statutes, section 103G.2242, in the Red River Basin and the greater than 80  
8.15 percent area. The planning frameworks must contain a prioritization strategy for selecting  
8.16 and implementing mitigation activities based on a watershed approach that includes  
8.17 consideration of historic resource loss within watersheds and the extent to which mitigation  
8.18 can address priority watershed needs. The board must consider the recommendations of the  
8.19 report "Siting of Wetland Mitigation in Northeast Minnesota," dated March 7, 2014, and  
8.20 implementation of Minnesota Statutes, section 103B.3355, paragraphs (e) and (f), in  
8.21 developing the proposed planning frameworks for applicable watersheds. The board must  
8.22 complete the work and pursue approval of the in-lieu fee program in these areas consistent  
8.23 with the applicable requirements, stakeholder and agency review processes, and approval  
8.24 time frames in Code of Federal Regulations, title 33, section 332. The board must submit  
8.25 the planning frameworks to the chairs and ranking minority members of the house of  
8.26 representatives and the senate committees and divisions with jurisdiction over environment  
8.27 and natural resources upon receiving federal approval.