

SENATE
STATE OF MINNESOTA
NINETY-THIRD SESSION

S.F. No. 68

(SENATE AUTHORS: MCEWEN and Dibble)

DATE	D-PG	OFFICIAL STATUS
01/09/2023	110	Introduction and first reading
		Referred to Environment, Climate, and Legacy
03/01/2023	1204	Author added Dibble
		See HF2310

1.1 A bill for an act

1.2 relating to waters; requiring reporting of fish kills and development of protocol

1.3 for state response; appropriating money; proposing coding for new law in Minnesota

1.4 Statutes, chapter 103G.

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

1.6 Section 1. **[103G.216] REPORTING FISH KILLS IN PUBLIC WATERS.**

1.7 Subdivision 1. **Definition.** For the purposes of this section and section 103G.2165, "fish

1.8 kill" means an incident resulting in the death of 100 or more fish within an area one-half

1.9 square mile or less in public waters.

1.10 Subd. 2. **Reporting requirement.** A person who observes a fish kill in public waters

1.11 must report the location of the fish kill to the Office of Emergency Response in the

1.12 Department of Public Safety within four hours of first observing the fish kill. The Office

1.13 of Emergency Response must alert the Departments of Natural Resources and Health and

1.14 the Pollution Control Agency of the location of the fish kill within one hour of being notified

1.15 of the fish kill.

1.16 Sec. 2. **[103G.2165] DEVELOPMENT OF FISH KILL RESPONSE PROTOCOL.**

1.17 Subdivision 1. **Development of protocol.** By October 1, 2023, the commissioner of

1.18 health, in consultation with the commissioners of the Pollution Control Agency, natural

1.19 resources, and agriculture and the head of the University of Minnesota's Department of

1.20 Fisheries, Wildlife, and Conservation Biology, must develop a protocol consisting of steps

1.21 that state agencies responding to a report of a fish kill under section 103G.216 must take to

2.1 ascertain on the basis of sound scientific evidence the factors contributing to the fish kill.

2.2 The protocol must address:

2.3 (1) the number and species of fish and other aquatic creatures sampled from the body
2.4 of water in which the fish kill occurred;

2.5 (2) the locations from which samples described in clause (1) should be taken;

2.6 (3) the number and location of water samples taken from the body of water in which the
2.7 fish kill occurred;

2.8 (4) the number and location of soil samples taken to ascertain whether contaminants
2.9 traveled overland to reach the body of water in which the fish kill occurred;

2.10 (5) sampling other materials located near the area of the fish kill, including but not
2.11 limited to vegetation and manure, that may indicate the presence of contaminants that may
2.12 have contributed to the fish kill;

2.13 (6) developing a comprehensive list of contaminants, including degradation products,
2.14 for which the materials sampled in clauses (3) to (5) should be tested;

2.15 (7) the appropriate concentration limits to be used in testing samples for the presence
2.16 of contaminants, allowing for the possibility that the fish kill may have resulted from the
2.17 interaction of two or more contaminants present at concentrations below the level associated
2.18 with toxic effects resulting from exposure to each individual chemical;

2.19 (8) proper handling, storage, and treatment necessary to preserve the integrity of the
2.20 samples described in this subdivision to maximize the information the samples can yield
2.21 regarding the cause of the fish kill;

2.22 (9) the organs and other parts of the fish and other aquatic creatures that should be
2.23 analyzed to maximize the information the samples can yield regarding the cause of the fish
2.24 kill;

2.25 (10) the need to take the samples described in this subdivision as soon as possible after
2.26 the fish kill occurs; and

2.27 (11) any other factors the parties deem relevant in determining the cause of the fish kill.

2.28 Subd. 2. **Review of protocol.** (a) The commissioner of health must submit the protocol
2.29 developed under subdivision 1 to an administrative law judge for review upon its completion.

2.30 The parties that developed the protocol must also separately submit comments to the
2.31 administrative law judge addressing the reasonableness of the protocol, the level and certainty

3.1 of the scientific support underlying the elements of the protocol, and any portions of the
3.2 protocol with which the parties disagree or would prefer to see modified.

3.3 (b) The administrative law judge must review the protocol and the accompanying
3.4 comments and must determine whether the protocol adequately provides a scientifically
3.5 sound basis for ascertaining the cause of a fish kill. Within 90 days of receiving the protocol
3.6 for review, the administrative law judge must issue a report stating findings of fact,
3.7 conclusions, and recommendations. The administrative law judge may reject all or portions
3.8 of the protocol and must submit the reasons for the rejection in writing to the parties who
3.9 developed the protocol. Within 45 days of receiving the administrative law judge's rejection
3.10 of all or part of the protocol, the parties must submit a revised protocol to the administrative
3.11 law judge for review and approval.

3.12 Subd. 3. **Implementation.** Once the protocol has been approved by an administrative
3.13 law judge, state agencies must follow the protocol when responding to a fish kill.

3.14 Subd. 4. **Updating protocol.** The parties named in subdivision 1 must review and update
3.15 the protocol every five years. The updated protocol must be reviewed and approved by an
3.16 administrative law judge according to the procedures in this section.

3.17 Sec. 3. **APPROPRIATION.**

3.18 \$..... in fiscal year 2024 is appropriated from the general fund to the Board of Regents
3.19 of the University of Minnesota for the Department of Fisheries, Wildlife, and Conservation
3.20 Biology to develop a protocol for the state response to fish kills according to Minnesota
3.21 Statutes, section 103G.2165.