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State of Minnesota  
HOUSE OF REPRESENTATIVES

EIGHTY-NINTH SESSION

H. F. No. **1394**

03/02/2015 Authored by Fabian, Albright, Miller, Hancock, Green and others

The bill was read for the first time and referred to the Committee on Environment and Natural Resources Policy and Finance

1.1 A bill for an act  
1.2 relating to environment; modifying the duties of the Minnesota Pollution Control  
1.3 Agency Citizens' Board; amending Minnesota Statutes 2014, sections 116.02;  
1.4 116.03, subdivision 1; repealing Minnesota Statutes 2014, section 116.02,  
1.5 subdivisions 7, 8, 10.

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

1.7 Section 1. Minnesota Statutes 2014, section 116.02, is amended to read:

1.8 **116.02 POLLUTION CONTROL AGENCY, CREATION AND POWERS.**

1.9 Subdivision 1. **Creation.** A pollution control agency, designated as the Minnesota  
1.10 Pollution Control Agency, is and the Minnesota Pollution Control Agency Citizens' Board  
1.11 are hereby created. The ~~agency~~ Minnesota Pollution Control Agency Citizens' Board shall  
1.12 consist of the commissioner and eight members appointed by the governor, by and with the  
1.13 advice and consent of the senate. One of such members shall be a person knowledgeable  
1.14 in the field of agriculture and one shall be representative of organized labor.

1.15 Subd. 2. **Terms, compensation, removal, vacancies.** The membership terms,  
1.16 compensation, removal of members, and filling of vacancies on the ~~agency~~ Minnesota  
1.17 Pollution Control Agency Citizens' Board shall be as provided in section 15.0575.

1.18 Subd. 3. **Membership.** The membership of the Minnesota Pollution Control Agency  
1.19 Citizens' Board shall be broadly representative of the skills and experience necessary to  
1.20 effectuate the policy of sections 116.01 to 116.075, except that no member other than the  
1.21 commissioner shall be an officer or employee of the state or federal government. Only two  
1.22 members at one time may be officials or employees of a municipality or any governmental  
1.23 subdivision, but neither may be a member ex officio or otherwise on the management  
1.24 board of a municipal sanitary sewage disposal system.

2.1 Subd. 4. **Chair.** The commissioner shall serve as chair of the agency Minnesota  
 2.2 Pollution Control Agency Citizens' Board. The agency Minnesota Pollution Control  
 2.3 Agency Citizens' Board shall elect such other officers as it deems necessary.

2.4 Subd. 5. **Agency is successor to commission.** The Pollution Control Agency is  
 2.5 the successor of the Water Pollution Control Commission, and all powers and duties  
 2.6 now vested in or imposed upon said commission by chapter 115, or any act amendatory  
 2.7 thereof or supplementary thereto, are hereby transferred to, imposed upon, and vested  
 2.8 in the Minnesota Pollution Control Agency, except as to those matters pending before  
 2.9 the commission in which hearings have been held and evidence has been adduced. The  
 2.10 Water Pollution Commission shall complete its action in such pending matters not later  
 2.11 than six months from May 26, 1967. The Water Pollution Control Commission, as  
 2.12 heretofore constituted, is hereby abolished, (a) effective upon completion of its action in  
 2.13 the pending cases, as hereinbefore provided for; or (b) six months from May 26, 1967,  
 2.14 whichever is the earlier.

2.15 Subd. 6. ~~Required decisions~~ **Duties of the board.** The agency Minnesota Pollution  
 2.16 Control Agency Citizens' Board shall ~~make final decisions on the following matters:~~

2.17 ~~(1) a petition for the preparation of an environmental assessment worksheet, if the~~  
 2.18 ~~project proposer or a person commenting on the proposal requests that the decision be~~  
 2.19 ~~made by the agency and the agency requests that it make the decision under subdivision 8;~~

2.20 ~~(2) the need for an environmental impact statement following preparation of an~~  
 2.21 ~~environmental assessment worksheet under applicable rules, if:~~

2.22 ~~(i) the agency has received a request for an environmental impact statement;~~

2.23 ~~(ii) the project proposer or a person commenting on the proposal requests that the~~  
 2.24 ~~declaration be made by the agency and the agency requests that it make the decision~~  
 2.25 ~~under subdivision 8; or~~

2.26 ~~(iii) the commissioner is recommending preparation of an environmental impact~~  
 2.27 ~~statement;~~

2.28 ~~(3) the scope and adequacy of environmental impact statements;~~

2.29 ~~(4) issuance, reissuance, modification, or revocation of a permit if:~~

2.30 ~~(i) a variance is sought in the permit application or a contested case hearing request~~  
 2.31 ~~is pending; or~~

2.32 ~~(ii) the permit applicant, the permittee, or a person commenting on the permit action~~  
 2.33 ~~requests that the decision be made by the agency and the agency requests that it make~~  
 2.34 ~~the decision under subdivision 8;~~

3.1 ~~(5) (1) make final decisions on adoption or amendment of agency rules for which a~~  
 3.2 ~~public hearing is required under section 14.25 or for which the commissioner decides to~~  
 3.3 ~~proceed directly to a public hearing under section 14.14, subdivision 1;~~

3.4 ~~(6) approval or denial of an application for a variance from an agency rule if:~~

3.5 ~~(i) granting the variance request would change an air, soil, or water quality standard;~~

3.6 ~~(ii) the commissioner has determined that granting the variance would have a~~  
 3.7 ~~significant environmental impact; or~~

3.8 ~~(iii) the applicant or a person commenting on the variance request requests that the~~  
 3.9 ~~decision be made by the agency and the agency requests that it make the decision under~~

3.10 ~~subdivision 8 (2) provide advice to the commissioner upon request of the commissioner;~~

3.11 ~~and~~

3.12 ~~(7) whether to reopen, rescind, or reverse a decision of the agency (3) conduct public~~  
 3.13 ~~meetings and prepare comments as provided under subdivision 11.~~

3.14 ~~Subd. 7. **Additional decisions.** The commissioner may request that the agency~~  
 3.15 ~~make additional decisions or provide advice to the commissioner.~~

3.16 ~~Subd. 8. **Other actions.** Any other action not specifically within the authority of the~~  
 3.17 ~~commissioner shall be made by the agency if:~~

3.18 ~~(1) prior to the commissioner's final decision on the action, one or more members~~  
 3.19 ~~of the agency notify the commissioner of their request that the decision be made by the~~  
 3.20 ~~agency; or~~

3.21 ~~(2) any person submits a petition to the commissioner requesting that the decision be~~  
 3.22 ~~made by the agency and the commissioner grants the petition.~~

3.23 ~~If the commissioner denies a petition submitted under clause (2), the commissioner~~  
 3.24 ~~shall advise the agency and the petitioner of the reasons for the denial.~~

3.25 ~~Subd. 9. **Informing public.** The commissioner shall inform interested persons as~~  
 3.26 ~~appropriate in public notices and other public documents of their right to request the~~  
 3.27 ~~agency Minnesota Pollution Control Agency Citizens' Board to make decisions in hold~~  
 3.28 ~~public information hearings on specific matters as provided in subdivision 6 and the~~  
 3.29 ~~right of agency members to request that decisions be made by the agency as provided in~~  
 3.30 ~~subdivision 8 11. The commissioner shall also regularly inform the agency Minnesota~~  
 3.31 ~~Pollution Control Agency Citizens' Board of activities that have broad policy implications~~  
 3.32 ~~or potential environmental significance and of activities in which the public has exhibited~~  
 3.33 ~~substantial interest.~~

3.34 ~~Subd. 10. **Changing decisions.** (a) The agency must not reopen, rescind, or reverse~~  
 3.35 ~~a decision of the agency except upon:~~

3.36 ~~(1) the affirmative vote of two-thirds of the agency; or~~

4.1 ~~(2) a finding that there was an irregularity in a hearing related to the decision, an~~  
 4.2 ~~error of law, or a newly discovered material issue of fact.~~

4.3 ~~(b) The requirements in paragraph (a) are minimum requirements and do not limit~~  
 4.4 ~~the agency's authority under sections 14.06 and 116.07, subdivision 3, to adopt rules:~~

4.5 ~~(1) applying the requirement in paragraph (a), clause (1) or (2), to certain decisions~~  
 4.6 ~~of the agency; or~~

4.7 ~~(2) establishing additional or more stringent requirements for reopening, resealing,~~  
 4.8 ~~or reversing decisions of the agency.~~

4.9 Subd. 11. **Petition for public hearing.** (a) A person may request that the Minnesota  
 4.10 Pollution Control Agency Citizens' Board hold a public hearing by filing a petition that  
 4.11 contains the signatures and mailing addresses of at least 25 individuals who reside or own  
 4.12 property in the state on the following agency matters:

4.13 (1) a petition for the preparation of an environmental assessment worksheet;

4.14 (2) the need for an environmental impact statement following completion of an  
 4.15 environmental assessment worksheet;

4.16 (3) the scope and adequacy of an environmental impact statement;

4.17 (4) issuance, reissuance, modification, or revocation of a permit if a variance is  
 4.18 sought in the permit application or a contested case hearing request is pending; and

4.19 (5) approval or denial of an application for a variance from an agency rule if:

4.20 (i) granting the variance request would change an air, soil, or water quality standard;

4.21 or

4.22 (ii) the commissioner has determined that granting the variance would have a  
 4.23 significant environmental impact.

4.24 (b) A petition filed under this subdivision must be submitted within 30 days of the  
 4.25 agency providing public notice of the matter. The petition may include a request to hold  
 4.26 the hearing in the geographical area affected.

4.27 (c) The Minnesota Pollution Control Agency Citizens' Board shall hold a public  
 4.28 hearing within 30 days of receiving a petition under this subdivision. The public hearing  
 4.29 must be held in the geographical area requested in the petition or, if no request was made,  
 4.30 a location selected by the commissioner that is generally convenient to persons expected  
 4.31 to attend the meeting. The commissioner shall prepare a notice of the public hearing and  
 4.32 publish the notice in a newspaper of general circulation in the geographical area or areas  
 4.33 affected and notify local governments and other interested parties as determined by the  
 4.34 commissioner. Following the hearing, the board shall compile and submit comments  
 4.35 received during the hearing to the commissioner for review.

5.1 Sec. 2. Minnesota Statutes 2014, section 116.03, subdivision 1, is amended to read:

5.2 Subdivision 1. **Office.** (a) The Office of Commissioner of the Pollution Control  
5.3 Agency is created and is under the supervision and control of the commissioner, who is  
5.4 appointed by the governor under the provisions of section 15.06.

5.5 (b) The commissioner may appoint a deputy commissioner and assistant  
5.6 commissioners who shall be in the unclassified service.

5.7 (c) The commissioner shall make all decisions on behalf of the agency ~~that are~~  
5.8 ~~not required to be made by the agency~~ except for rulemaking decisions made by the  
5.9 Minnesota Pollution Control Agency under section 116.02.

5.10 Sec. 3. **REPEALER.**

5.11 Minnesota Statutes 2014, section 116.02, subdivisions 7, 8, and 10, are repealed.

**116.02 POLLUTION CONTROL AGENCY, CREATION AND POWERS.**

Subd. 7. **Additional decisions.** The commissioner may request that the agency make additional decisions or provide advice to the commissioner.

Subd. 8. **Other actions.** Any other action not specifically within the authority of the commissioner shall be made by the agency if:

- (1) prior to the commissioner's final decision on the action, one or more members of the agency notify the commissioner of their request that the decision be made by the agency; or
- (2) any person submits a petition to the commissioner requesting that the decision be made by the agency and the commissioner grants the petition.

If the commissioner denies a petition submitted under clause (2), the commissioner shall advise the agency and the petitioner of the reasons for the denial.

Subd. 10. **Changing decisions.** (a) The agency must not reopen, rescind, or reverse a decision of the agency except upon:

- (1) the affirmative vote of two-thirds of the agency; or
- (2) a finding that there was an irregularity in a hearing related to the decision, an error of law, or a newly discovered material issue of fact.

(b) The requirements in paragraph (a) are minimum requirements and do not limit the agency's authority under sections 14.06 and 116.07, subdivision 3, to adopt rules:

- (1) applying the requirement in paragraph (a), clause (1) or (2), to certain decisions of the agency; or
- (2) establishing additional or more stringent requirements for reopening, rescinding, or reversing decisions of the agency.