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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-THIRD SESSION

H. F. No. 1873

02/16/2023 Authored by Kozlowski; Hansen, R.; Curran and Freiberg
The bill was read for the first time and referred to the Committee on Environment and Natural Resources Finance and Policy

1.1 A bill for an act
1.2 relating to natural resources; modifying enforcement authority for appropriating
1.3 water; amending Minnesota Statutes 2022, section 103G.299, subdivisions 1, 2,
1.4 5, 10; proposing coding for new law in Minnesota Statutes, chapter 103G.

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

1.6 Section 1. [103G.134] ORDERS AND INVESTIGATIONS.

1.7 (a) The commissioner has the following powers and duties when acting pursuant to the
1.8 enforcement provisions of this chapter:

1.9 (1) to adopt, issue, reissue, modify, deny, revoke, enter into, or enforce reasonable orders,
1.10 schedules of compliance, and stipulation agreements;

1.11 (2) to issue notices of violation;

1.12 (3) to require a person holding a permit issued under this chapter or otherwise impacting
1.13 the public waters of the state without a permit issued under this chapter to:

1.14 (i) make reports;

1.15 (ii) install, use, and maintain monitoring equipment or methods;

1.16 (iii) perform tests according to methods, at locations, at intervals, and in a manner as
1.17 the commissioner prescribes; and

1.18 (iv) provide other information as the commissioner may reasonably require; and

1.19 (4) to conduct investigations; issue notices, public and otherwise; and order hearings as
1.20 the commissioner deems necessary or advisable to discharge duties under this chapter,

2.1 including but not limited to issuing permits and authorizing an employee or agent appointed
 2.2 by the commissioner to conduct the investigations and other authorities cited in this section.

2.3 Sec. 2. **[103G.146] DUTY OF CANDOR.**

2.4 (a) A person must not knowingly:

2.5 (1) make a false statement of fact or fail to correct a false statement of material fact
 2.6 regarding any matter pertaining to this chapter;

2.7 (2) fail to disclose information that the person knows is necessary for the commissioner
 2.8 to make an informed decision under this chapter; or

2.9 (3) offer information that the person knows to be false.

2.10 (b) If a person has offered material information to the commissioner and the person
 2.11 comes to know the information is false, the person must take reasonable remedial measures
 2.12 to provide the accurate information.

2.13 Sec. 3. Minnesota Statutes 2022, section 103G.299, subdivision 1, is amended to read:

2.14 Subdivision 1. **Authority to issue administrative penalty orders.** (a) As provided in
 2.15 paragraph (b), the commissioner may issue an order requiring violations to be corrected
 2.16 and administratively assessing monetary penalties for violations of sections 103G.271 and
 2.17 103G.275, and any rules adopted under those sections.

2.18 (b) An order under this section may be issued to a person for water appropriation activities
 2.19 without a required permit or for violating the terms of a required permit.

2.20 (c) The order must be issued as provided in this section and in accordance with the plan
 2.21 prepared under subdivision 12.

2.22 Sec. 4. Minnesota Statutes 2022, section 103G.299, subdivision 2, is amended to read:

2.23 Subd. 2. **Amount of penalty; considerations.** (a) The commissioner may issue orders
 2.24 assessing administrative penalties ~~based on potential for harm and deviation from compliance.~~
 2.25 ~~For a violation that presents:~~ up to \$40,000.

2.26 ~~(1) a minor potential for harm and deviation from compliance, the penalty will be no~~
 2.27 ~~more than \$1,000;~~

2.28 ~~(2) a moderate potential for harm and deviation from compliance, the penalty will be~~
 2.29 ~~no more than \$10,000; and~~

3.1 ~~(3) a severe potential for harm and deviation from compliance, the penalty will be no~~
3.2 ~~more than \$20,000.~~

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

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

3.6 (2) the history of past violations;

3.7 (3) the number of violations;

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

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

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

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

3.16 (2) time elapsed since the last violation;

3.17 (3) number of previous violations; and

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

3.19 Sec. 5. Minnesota Statutes 2022, section 103G.299, subdivision 5, is amended to read:

3.20 Subd. 5. **Penalty.** (a) Except as provided in paragraph (b), if the commissioner determines
3.21 that the violation has been corrected or appropriate steps have been taken to correct the
3.22 action, the penalty must be forgiven. Unless the person requests review of the order under
3.23 subdivision 6 or 7 before the penalty is due, the penalty in the order is due and payable:

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

3.27 (2) on the 20th day after the person receives the commissioner's determination under
3.28 subdivision 4, paragraph (c), if the person subject to the order has provided information to
3.29 the commissioner that the commissioner determines is not sufficient to show that the violation
3.30 has been corrected or that appropriate steps have been taken toward correcting the violation.

4.1 (b) For repeated or serious violations, the commissioner may issue an order with a penalty
 4.2 that is not forgiven after the corrective action is taken. The penalty is due ~~by~~ 31 days after
 4.3 the order ~~was~~ is received, unless review of the order under subdivision 6 or 7 ~~has been~~ is
 4.4 sought.

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

4.7 Sec. 6. Minnesota Statutes 2022, section 103G.299, subdivision 10, is amended to read:

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

4.14 Sec. 7. [103G.299] PENALTIES; ENFORCEMENT.

4.15 Subdivision 1. Civil penalties. (a) The commissioner, according to section 103G.134,
 4.16 may issue a notice to a person who violates:

4.17 (1) this chapter;

4.18 (2) a permit issued under this chapter or a term or condition of a permit issued under
 4.19 this chapter;

4.20 (3) a duty under this chapter to permit an inspection, entry, or monitoring activity or a
 4.21 duty under this chapter to carry out an inspection or monitoring activity;

4.22 (4) a rule adopted under this chapter;

4.23 (5) a stipulation agreement, variance, or schedule of compliance entered into under this
 4.24 chapter; or

4.25 (6) an order issued by the commissioner under this chapter.

4.26 (b) A person issued a notice forfeits and must pay to the state a penalty, in an amount
 4.27 to be determined by the district court, of not more than \$10,000 per day of violation.

4.28 (c) In the discretion of the district court, a defendant under this section may be required
 4.29 to:

5.1 (1) forfeit and pay to the state a sum that adequately compensates the state for the
5.2 reasonable value of restoration, monitoring, and other expenses directly resulting from the
5.3 unauthorized use of or damage to natural resources of the state; and

5.4 (2) forfeit and pay to the state an additional sum to constitute just compensation for any
5.5 damage, loss, or destruction of the state's natural resources and for other actual damages to
5.6 the state caused by an unauthorized use of natural resources of the state.

5.7 (d) As a defense to damages assessed under paragraph (c), a defendant may prove that
5.8 the violation was caused solely by:

5.9 (1) an act of God;

5.10 (2) an act of war;

5.11 (3) negligence on the part of the state;

5.12 (4) an act or failure to act that constitutes sabotage or vandalism; or

5.13 (5) any combination of clauses (1) to (5).

5.14 (e) The civil penalties and damages provided for in this subdivision may be recovered
5.15 by a civil action brought by the attorney general in the name of the state in Ramsey County
5.16 District Court. Civil penalties and damages provided for in this subdivision may be resolved
5.17 by the commissioner through a negotiated stipulation agreement according to the authority
5.18 granted to the commissioner in section 103G.134.

5.19 Subd. 2. **Enforcement.** This chapter and rules, standards, orders, stipulation agreements,
5.20 schedules of compliance, and permits adopted or issued by the commissioner under this
5.21 chapter or any other law for preventing, controlling, or abating damage to natural resources
5.22 may be enforced by one or more of the following:

5.23 (1) criminal prosecution;

5.24 (2) action to recover civil penalties;

5.25 (3) injunction;

5.26 (4) action to compel performance; or

5.27 (5) other appropriate action according to this chapter.

5.28 Subd. 3. **Injunctions.** A violation of this chapter or rules, standards, orders, stipulation
5.29 agreements, variances, schedules of compliance, and permits adopted or issued under this
5.30 chapter constitutes a public nuisance and may be enjoined as provided by law in an action,
5.31 in the name of the state, brought by the attorney general.

6.1 Subd. 4. Actions to compel performance. (a) In an action to compel performance of
6.2 an order issued by the commissioner for any purpose related to preventing, controlling, or
6.3 abating damage to natural resources under this chapter, the court may require a defendant
6.4 adjudged responsible to do and perform any and all acts and things within the defendant's
6.5 power that are reasonably necessary to accomplish the purposes of the order.

6.6 (b) If a municipality or its governing or managing body or any of its officers is a
6.7 defendant, the court may require the municipality to exercise its powers, without regard to
6.8 any limitation of a requirement for an election or referendum imposed thereon by law and
6.9 without restricting the powers of the commissioner, to do any or all of the following, without
6.10 limiting the generality hereof:

6.11 (1) levy taxes or special assessments;

6.12 (2) prescribe service or use charges;

6.13 (3) borrow money;

6.14 (4) issue bonds;

6.15 (5) employ assistance;

6.16 (6) acquire real or personal property;

6.17 (7) let contracts;

6.18 (8) otherwise provide for doing work or constructing, installing, maintaining, or operating
6.19 facilities; and

6.20 (9) do all other acts and things reasonably necessary to accomplish the purposes of the
6.21 order.

6.22 (c) The court must grant a municipality under paragraph (b) the opportunity to determine
6.23 the appropriate financial alternatives to be used to comply with the court-imposed
6.24 requirements.

6.25 (d) An action brought under this subdivision must be venued in Ramsey County District
6.26 Court.