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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETIETH SESSION

H. F. No. 3280

03/01/2018 Authored by Lueck, Fabian, Heintzeman, Swedzinski, Layman 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; establishing findings and authorizing listing of wild-rice
1.3 waters; nullifying and restricting the application of certain water quality standards;
1.4 amending Laws 2015, First Special Session chapter 4, article 4, section 136, as
1.5 amended.

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

1.7 Section 1. Laws 2015, First Special Session chapter 4, article 4, section 136, as amended
1.8 by Laws 2017, chapter 93, article 2, section 149, is amended to read:

1.9 Sec. 136. WILD RICE WATER QUALITY STANDARDS.

1.10 (a) Until the commissioner of the Pollution Control Agency amends rules refining the
1.11 wild rice water quality standard in Minnesota Rules, part 7050.0224, subpart 2, to consider
1.12 all independent research and publicly funded research and to include criteria for identifying
1.13 waters and a list of waters subject to the standard, implementation of the wild rice water
1.14 quality standard in Minnesota Rules, part 7050.0224, subpart 2, shall be limited to the
1.15 following, unless the permittee requests additional conditions:

1.16 (1) when issuing, modifying, or renewing national pollutant discharge elimination system
1.17 (NPDES) or state disposal system (SDS) permits, the agency shall endeavor to protect wild
1.18 rice, and in doing so shall be limited by the following conditions:

1.19 (i) the agency shall not require permittees to expend money for design or implementation
1.20 of sulfate treatment technologies or other forms of sulfate mitigation; and

1.21 (ii) the agency may require sulfate minimization plans in permits; and

2.1 (2) the agency shall not list waters containing natural beds of wild rice as impaired for  
2.2 sulfate under section 303(d) of the federal Clean Water Act, United States Code, title 33,  
2.3 section 1313, until the rulemaking described in this paragraph takes effect.

2.4 (b) Upon the rule described in paragraph (a) taking effect, the agency may reopen permits  
2.5 issued or reissued after the effective date of this section as needed to include numeric permit  
2.6 limits based on the wild rice water quality standard.

2.7 ~~(c) The commissioner shall complete the rulemaking described in paragraph (a) by~~  
2.8 ~~January 15, 2019.~~

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

2.10 Sec. 2. **WILD RICE; LEGISLATIVE FINDINGS.**

2.11 (a) The legislature finds that naturally occurring wild rice is an ecologically and culturally  
2.12 important aquatic plant resource found in certain waters within the state, which serves as a  
2.13 food source for wildlife and humans. The legislature further finds that in recognition of the  
2.14 unique importance of this resource, the Pollution Control Agency, in conjunction with  
2.15 Minnesota Indian tribes, has identified and listed, in rule, select wild-rice waters for which  
2.16 the water quality and the aquatic habitat necessary to support the propagation and  
2.17 maintenance of wild rice must not be materially impaired or degraded. The legislature also  
2.18 finds that identifying and listing additional wild-rice waters based upon their exceptional  
2.19 wild-rice characteristics is an appropriate method of protecting naturally occurring wild  
2.20 rice.

2.21 (b) The legislature further finds that federal law vests broad authority in the state to  
2.22 define beneficial uses for waters for the state and grants the state the primary responsibility  
2.23 and right to plan the development and use of the state's water resources and to specify  
2.24 appropriate water uses to be achieved and protected. The legislature also finds that certain  
2.25 waters of the state are used to irrigate wild rice intentionally grown as an agricultural crop,  
2.26 which is an appropriate beneficial use to be achieved and protected and which is the only  
2.27 established beneficial use specifically pertaining to wild rice. The legislature also finds that  
2.28 Minnesota has a unique numeric water quality standard for sulfate in rule to protect this  
2.29 beneficial use to permit the use of waters for irrigation for the production of wild rice that  
2.30 is based on outdated information and ignores the current scientific understanding of the  
2.31 potential impacts of sulfate on wild rice.

2.32 (c) The legislature further finds that it is contrary to the public welfare to impose  
2.33 requirements or burdens on regulated parties in Minnesota on the basis of a water quality

3.1 standard that ignores current science. The legislature also finds that the water quality standard  
 3.2 for sulfate has not been enforced in Minnesota since it was adopted in 1973, that the Pollution  
 3.3 Control Agency has not designated in rules any waters subject to the water quality standard  
 3.4 for sulfate, and that initiating enforcement of the existing obsolete standard would impose  
 3.5 prohibitively expensive burdens on regulated parties with potentially grave economic impacts  
 3.6 on Minnesota communities and industry.

3.7 (d) In recognition of the existence in rule of a water quality standard for sulfate that is  
 3.8 not supported by current scientific information, in recognition of the potentially grave  
 3.9 consequences that would occur from enforcement of that obsolete standard, and recognizing  
 3.10 that the administrative process to repeal the rule has proven to be inefficient and will not  
 3.11 provide the regulatory certainty required in a timely manner in the absence of legislative  
 3.12 action, the legislature finds that the most effective means to serve the welfare of the state  
 3.13 is to enact sections 3 to 8 to eliminate the water quality standard for sulfate, leaving in place  
 3.14 sufficient other provisions in law and rule for the protection of naturally occurring wild  
 3.15 rice, including but not limited to the listing of additional select wild-rice waters.

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

3.17 **Sec. 3. WATER QUALITY STANDARD FOR SULFATE; RULEMAKING.**

3.18 The commissioner of the Pollution Control Agency may not adopt, modify, or proceed  
 3.19 with any revisions to the rules pertaining to water quality standards for sulfate for wild-rice  
 3.20 waters in Minnesota Rules, part 7050.0224, subpart 2, that were disapproved by the chief  
 3.21 administrative law judge on January 11, 2018, without again going through the rulemaking  
 3.22 procedures under Minnesota Statutes, sections 14.05 to 14.28, except Minnesota Statutes,  
 3.23 section 14.101, does not apply.

3.24 **EFFECTIVE DATE.** This section is effective retroactively from January 11, 2018.

3.25 **Sec. 4. IDENTIFICATION AND LISTING OF WILD-RICE WATERS.**

3.26 The commissioner of the Pollution Control Agency may evaluate the waters of the state  
 3.27 to determine if any additional waters containing naturally occurring wild rice have exceptional  
 3.28 wild-rice characteristics. The commissioner may, by rule, identify and list these waters as  
 3.29 [WR] waters where the water quality and the aquatic habitat necessary to support the  
 3.30 propagation and maintenance of wild rice must not be materially impaired or degraded.  
 3.31 Before identifying and listing a wild-rice water, the commissioner must establish, in a  
 3.32 separate and prior rulemaking, criteria to be used in identifying and listing wild-rice waters.

4.1 The criteria must include the following, each of which must be met before a water body  
 4.2 can be identified and listed as a wild-rice water:

4.3 (1) the history of harvesting wild rice;

4.4 (2) minimum acreage; and

4.5 (3) minimum density of wild rice.

4.6 **Sec. 5. APPLICATION OF WATER QUALITY STANDARD FOR SULFATE FOR**  
 4.7 **WILD-RICE WATERS.**

4.8 The commissioner of the Pollution Control Agency must not apply the water quality  
 4.9 standard for sulfate for wild-rice waters nullified in this act when issuing, modifying, or  
 4.10 renewing national pollutant discharge elimination system or state disposal system permits.  
 4.11 The commissioner of the Pollution Control Agency must take all steps necessary to conform  
 4.12 the agency's rules and practices to this act and to ensure that no regulated party is required  
 4.13 to take any action or bear any burden arising from the nullified water quality standard for  
 4.14 sulfate unless requested by the permittee.

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

4.16 **Sec. 6. APPLICATION OF EQUATION-BASED WATER QUALITY STANDARD**  
 4.17 **FOR WILD-RICE WATERS.**

4.18 The commissioner of the Pollution Control Agency must not apply the proposed  
 4.19 equation-based sulfate standard rejected by the chief administrative law judge on January  
 4.20 11, 2018, including as a numeric translator to the narrative sulfate standard for wild rice  
 4.21 under Minnesota Rules, part 7050.0150, subpart 3, or 7050.0224, subpart 1, when issuing,  
 4.22 modifying, or renewing national pollutant discharge elimination system or state disposal  
 4.23 system permits.

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

4.25 **Sec. 7. APPLICATION OF WATER QUALITY STANDARDS; IRRIGATION.**

4.26 The commissioner of the Pollution Control Agency must not apply a water quality  
 4.27 standard established to protect water quality for purposes of permitting the water's use for  
 4.28 irrigation without significant damage or adverse effects upon crops or vegetation, including  
 4.29 water used for the production of wild rice, unless the water is appropriated for irrigation  
 4.30 use.

5.1       Sec. 8. **NULLIFICATION OF WATER QUALITY STANDARD FOR SULFATE**  
5.2 **IN WILD-RICE WATERS.**

5.3       (a) Notwithstanding Minnesota Rules, part 7050.0224, subpart 2, there is no numeric,  
5.4 nonnarrative, water quality standard for sulfates in class 4A waters in the state until the  
5.5 commissioner of the Pollution Control Agency adopts a standard in accordance with section  
5.6 3.

5.7       (b) That portion of Minnesota Rules, part 7050.0224, subpart 2, that conflicts with  
5.8 paragraph (a) is nullified and does not have the force and effect of law.

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