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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETIETH SESSION

H. F. No. 3908

03/15/2018 Authored by Fischer and Torkelson
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 natural resources; modifying Clean Water Legacy Act; providing for
1.3 coordinated watershed management; amending Minnesota Statutes 2016, sections
1.4 103B.3369, subdivisions 5, 9; 103B.801, subdivisions 2, 5; 114D.15, subdivisions
1.5 7, 11, 13, by adding subdivisions; 114D.20, subdivisions 2, 3, 5, 7, by adding
1.6 subdivisions; 114D.26; 114D.35, subdivisions 1, 3; proposing coding for new law
1.7 in Minnesota Statutes, chapter 114D.

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

1.9 Section 1. Minnesota Statutes 2016, section 103B.3369, subdivision 5, is amended to read:

1.10 Subd. 5. **Financial assistance.** A base grant, contract, or payment may be awarded to a
1.11 county or other local unit of government that provides a match utilizing a water
1.12 implementation tax or other local source. A water implementation tax that a county or other
1.13 local unit of government intends to use as a match to the base grant must be levied at a rate
1.14 sufficient to generate a minimum amount determined by the board. The board may award
1.15 performance-based or watershed-based grants, contracts, or payments to local units of
1.16 government that are responsible for implementing elements of applicable portions of
1.17 watershed management plans, comprehensive plans, local water management plans, or
1.18 comprehensive watershed management plans, developed or amended, adopted and approved,
1.19 according to chapter 103B, 103C, or 103D. Upon request by a local government unit, the
1.20 board may also award performance-based grants to local units of government to carry out
1.21 TMDL implementation plans as provided in chapter 114D, if the TMDL implementation
1.22 plan has been incorporated into the local water management plan according to the procedures
1.23 for approving comprehensive plans, watershed management plans, local water management
1.24 plans, or comprehensive watershed management plans under chapter 103B, 103C, or 103D,
1.25 or if the TMDL implementation plan has undergone a public review process. Notwithstanding

2.1 section 16A.41, the board may award ~~performance-based grants, contracts, or payments~~ on
2.2 an advanced basis. The fee authorized in section 40A.152 may be used as a local match or
2.3 as a supplement to state funding to accomplish implementation of comprehensive plans,
2.4 watershed management plans, local water management plans, or comprehensive watershed
2.5 management plans under this chapter and chapter 103C or 103D.

2.6 Sec. 2. Minnesota Statutes 2016, section 103B.3369, subdivision 9, is amended to read:

2.7 Subd. 9. **Performance-based criteria.** The board ~~shall~~ may develop and utilize
2.8 performance-based criteria for local water resources restoration, protection, and management
2.9 programs and projects. The criteria may include but are not limited to science-based
2.10 assessments, organizational capacity, priority resource issues, community outreach and
2.11 support, partnership potential, potential for multiple benefits, and program and project
2.12 delivery efficiency and effectiveness.

2.13 Sec. 3. Minnesota Statutes 2016, section 103B.801, subdivision 2, is amended to read:

2.14 Subd. 2. **Program purposes.** The purposes of the comprehensive watershed management
2.15 plan program under section 103B.101, subdivision 14, paragraph (a), are to:

2.16 (1) align local water planning purposes and procedures under this chapter and chapters
2.17 103C and 103D on watershed boundaries to create a systematic, watershed-wide,
2.18 science-based approach to watershed management;

2.19 (2) acknowledge and build off existing local government structure, water plan services,
2.20 and local capacity;

2.21 (3) incorporate and make use of data and information, including watershed restoration
2.22 and protection strategies under section 114D.26, which may serve to fulfill all or some of
2.23 the requirements under chapter 114D;

2.24 (4) solicit input and engage experts from agencies, citizens, and stakeholder groups;

2.25 (5) focus on implementation of prioritized and targeted actions capable of achieving
2.26 measurable progress; and

2.27 (6) serve as a substitute for a comprehensive plan, local water management plan, or
2.28 watershed management plan developed or amended, approved, and adopted, according to
2.29 this chapter or chapter 103C or 103D.

3.1 Sec. 4. Minnesota Statutes 2016, section 103B.801, subdivision 5, is amended to read:

3.2 Subd. 5. **Timelines; administration.** (a) The board shall develop and adopt, by June
3.3 30, 2016, a transition plan for development, approval, adoption, and coordination of plans
3.4 consistent with section 103A.212. The transition plan must include a goal of completing
3.5 statewide transition to comprehensive watershed management plans by 2025. The
3.6 metropolitan area may be considered for inclusion in the transition plan. The board may
3.7 amend the transition plan no more often than once every two years.

3.8 (b) The board may use the authority under section 103B.3369, subdivision 9, to support
3.9 development or implementation of a comprehensive watershed management plan under this
3.10 section.

3.11 Sec. 5. Minnesota Statutes 2016, section 114D.15, is amended by adding a subdivision to
3.12 read:

3.13 Subd. 3a. **Comprehensive local water management plan.** "Comprehensive local water
3.14 management plan" has the meaning given under section 103B.3363, subdivision 3.

3.15 Sec. 6. Minnesota Statutes 2016, section 114D.15, is amended by adding a subdivision to
3.16 read:

3.17 Subd. 3b. **Comprehensive watershed management plan.** "Comprehensive watershed
3.18 management plan" has the meaning given under section 103B.3363, subdivision 3a.

3.19 Sec. 7. Minnesota Statutes 2016, section 114D.15, subdivision 7, is amended to read:

3.20 Subd. 7. **Restoration.** "Restoration" means actions, ~~including effectiveness monitoring,~~
3.21 ~~that are~~ taken to pursue, achieve, and maintain water quality standards for impaired waters
3.22 ~~in accordance with a TMDL that has been approved by the United States Environmental~~
3.23 ~~Protection Agency under federal TMDL requirements.~~

3.24 Sec. 8. Minnesota Statutes 2016, section 114D.15, subdivision 11, is amended to read:

3.25 Subd. 11. **TMDL implementation plan.** "TMDL implementation plan" means:

3.26 (1) a document detailing restoration activities needed to meet the approved TMDL's
3.27 pollutant load allocations for point and nonpoint sources; or

3.28 (2) one of the following that the commissioner of the Pollution Control Agency
3.29 determines to be, in whole or part, sufficient to provide reasonable assurance of progress
3.30 toward water quality restoration or protection goals:

- 4.1 (i) a comprehensive watershed management plan;
 4.2 (ii) a comprehensive local water management plan; or
 4.3 (iii) an existing statewide or regional strategy published by the Pollution Control Agency.

4.4 Sec. 9. Minnesota Statutes 2016, section 114D.15, subdivision 13, is amended to read:

4.5 Subd. 13. **Watershed restoration and protection strategy or WRAPS.** "Watershed
 4.6 restoration and protection strategy" or "WRAPS" means a document summarizing scientific
 4.7 studies of a major watershed ~~no larger than~~ at approximately a hydrologic unit code 8 scale
 4.8 including the physical, chemical, and biological assessment of the water quality of the
 4.9 watershed; identification of impairments and water bodies in need of protection; identification
 4.10 of biotic stressors and sources of pollution, both point and nonpoint; TMDL's for the
 4.11 impairments; and ~~an implementation table containing~~ information to support strategies and
 4.12 ~~actions~~ designed to achieve and maintain water quality standards and goals.

4.13 Sec. 10. Minnesota Statutes 2016, section 114D.20, subdivision 2, is amended to read:

4.14 Subd. 2. **Goals for implementation.** The following goals must guide the implementation
 4.15 of this chapter:

4.16 (1) to identify impaired waters in accordance with federal TMDL requirements ~~within~~
 4.17 ~~ten years after May 23, 2006,~~ and thereafter to ensure continuing evaluation of surface
 4.18 waters for impairments;

4.19 (2) to submit TMDL's to the United States Environmental Protection Agency ~~for all~~
 4.20 ~~impaired waters in a timely manner~~ in accordance with federal TMDL requirements;

4.21 (3) to ~~set a reasonable time~~ inform and support strategies for implementing restoration
 4.22 ~~of each identified impaired water and protection;~~

4.23 (4) to systematically evaluate waters, to provide assistance and incentives to prevent
 4.24 waters from becoming impaired, and to improve the quality of waters that are listed as
 4.25 impaired ~~but do not have an approved TMDL addressing the impairment;~~

4.26 (5) to promptly seek the delisting of waters from the impaired waters list when those
 4.27 waters are shown to achieve the designated uses applicable to the waters;

4.28 (6) to achieve compliance with federal Clean Water Act requirements in Minnesota;

4.29 (7) to support effective measures to prevent the degradation of groundwater according
 4.30 to the groundwater degradation prevention goal under section 103H.001; and

5.1 (8) to support effective measures to restore degraded groundwater.

5.2 Sec. 11. Minnesota Statutes 2016, section 114D.20, subdivision 3, is amended to read:

5.3 Subd. 3. **Implementation policies.** The following policies must guide the implementation
5.4 of this chapter:

5.5 (1) develop regional ~~and, multiple pollutant, or watershed TMDL's and TMDL~~
5.6 ~~implementation plans, and TMDL's and TMDL implementation plans for multiple pollutants~~
5.7 ~~or WRAPSs~~, where reasonable and feasible;

5.8 (2) maximize use of available organizational, technical, and financial resources to perform
5.9 sampling, monitoring, and other activities to identify degraded groundwater and impaired
5.10 waters, including use of citizen monitoring and citizen monitoring data used by the Pollution
5.11 Control Agency in assessing water quality that meets the requirements ~~in Appendix D of~~
5.12 ~~the Volunteer Surface Water Monitoring Guide, Minnesota~~ established by the commissioner
5.13 of the Pollution Control Agency (2003);

5.14 (3) maximize opportunities for restoration of degraded groundwater and impaired waters,
5.15 by prioritizing and targeting of available programmatic, financial, and technical resources
5.16 and by providing additional state resources to complement and leverage available resources;

5.17 (4) use existing regulatory authorities to achieve restoration for point and nonpoint
5.18 sources of pollution where applicable, and promote the development and use of effective
5.19 nonregulatory measures to address pollution sources for which regulations are not applicable;

5.20 (5) use restoration methods that have a demonstrated effectiveness in reducing
5.21 impairments and provide the greatest long-term positive impact on water quality protection
5.22 and improvement and related conservation benefits while incorporating innovative approaches
5.23 on a case-by-case basis;

5.24 (6) identify for the legislature any innovative approaches that may strengthen or
5.25 complement existing programs;

5.26 (7) identify and encourage implementation of measures to prevent surface waters from
5.27 becoming impaired and to improve the quality of waters that are listed as impaired but have
5.28 no approved TMDL addressing the impairment using the best available data and technology,
5.29 and establish and report outcome-based performance measures that monitor the progress
5.30 and effectiveness of protection and restoration measures;

5.31 (8) monitor and enforce cost-sharing contracts and impose monetary damages in an
5.32 amount up to 150 percent of the financial assistance received for failure to comply; and

6.1 (9) identify and encourage implementation of measures to prevent groundwater from
6.2 becoming degraded and measures that restore groundwater resources.

6.3 Sec. 12. Minnesota Statutes 2016, section 114D.20, subdivision 5, is amended to read:

6.4 Subd. 5. **Priorities for preparing WRAPSs AND TMDL's.** In consultation with the
6.5 Clean Water Council shall recommend, the commissioner of the Pollution Control Agency
6.6 must coordinate with the commissioners of natural resources, health, and agriculture and
6.7 with the Board of Water and Soil Resources to establish priorities for scheduling and
6.8 preparing WRAPSs and TMDL's and TMDL implementation plans, taking into account,
6.9 considering the severity causes of the impairment impairments, the designated uses of those
6.10 the waters, and other applicable federal TMDL requirements. In recommending priorities,
6.11 the council shall also give Consideration must also be given to protecting groundwater and
6.12 high-quality waters and watersheds, waters and watersheds with declining water quality
6.13 trends, and waters and watersheds:

6.14 (1) with impairments that pose the greatest potential risk to human health;

6.15 (2) with impairments that pose the greatest potential risk to threatened or endangered
6.16 species;

6.17 (3) with impairments that pose the greatest potential risk to aquatic health;

6.18 (4) where other public agencies and participating organizations and individuals, especially
6.19 local, ~~basinwide~~ basin-wide, watershed, or regional agencies or organizations, have
6.20 demonstrated readiness to assist in carrying out the responsibilities, including availability
6.21 and organization of human, technical, and financial resources necessary to undertake the
6.22 work; and

6.23 (5) where there is demonstrated coordination and cooperation among cities, counties,
6.24 watershed districts, and soil and water conservation districts in planning and implementation
6.25 of activities that will assist in carrying out the responsibilities.

6.26 Sec. 13. Minnesota Statutes 2016, section 114D.20, subdivision 7, is amended to read:

6.27 Subd. 7. **Priorities for funding prevention actions.** The Clean Water Council shall
6.28 apply the priorities applicable under subdivision 6, as far as practicable, when recommending
6.29 priorities for funding actions to prevent groundwater and surface waters from becoming
6.30 degraded or impaired and to improve the quality of surface waters that are listed as impaired
6.31 ~~but do not have an approved TMDL.~~

7.1 Sec. 14. Minnesota Statutes 2016, section 114D.20, is amended by adding a subdivision
7.2 to read:

7.3 Subd. 8. **Alternatives; TMDL, TMDL implementation plan, or WRAPS.** (a) If the
7.4 commissioner of the Pollution Control Agency determines that a comprehensive watershed
7.5 management plan or comprehensive local water management plan is sufficient and consistent
7.6 with guidance from the United States Environmental Protection Agency for category 4b
7.7 waters under section 303(d) of the federal Clean Water Act, the commissioner may submit
7.8 the plan to the Environmental Protection Agency according to federal TMDL requirements
7.9 as an alternative to developing a TMDL.

7.10 (b) A TMDL implementation plan or a WRAPS, or portions thereof, are not needed for
7.11 waters or watersheds when the commissioner of the Pollution Control Agency determines
7.12 that:

7.13 (1) a comprehensive watershed management plan or comprehensive local water
7.14 management plan is sufficient to provide reasonable assurance of progress toward water
7.15 quality restoration or protection goals; or

7.16 (2) an existing statewide or regional strategy published by the Pollution Control Agency
7.17 is sufficient to provide reasonable assurance of progress toward water quality restoration
7.18 or protection goals.

7.19 (c) The commissioner of the Pollution Control Agency may request that the Board of
7.20 Water and Soil Resources conduct an evaluation of the implementation efforts when the
7.21 commissioner determines that a comprehensive watershed management plan or
7.22 comprehensive local water management plan is sufficient to provide reasonable assurance
7.23 of progress toward water quality restoration or protection goals. The board must conduct
7.24 the evaluation in accordance with section 103B.102.

7.25 (d) The commissioner of the Pollution Control Agency may amend or revoke a
7.26 determination made under paragraph (a) or (b) after considering the evaluation conducted
7.27 under paragraph (c).

7.28 Sec. 15. Minnesota Statutes 2016, section 114D.20, is amended by adding a subdivision
7.29 to read:

7.30 Subd. 9. **Coordinating of municipal and local water quality activities.** A project,
7.31 practice, or program for water quality improvement or protection that is conducted by a
7.32 watershed management organization or a local government unit with a comprehensive
7.33 watershed management plan or other water management plan approved according to chapter

8.1 103B, 103C, or 103D must be considered as contributing to the requirements of a storm
 8.2 water pollution prevention plan (SWPPP) for a municipal separate storm sewer systems
 8.3 (MS4) permit unless the project, practice, or program was previously documented as
 8.4 contributing to a different SWPPP for an MS4 permit.

8.5 Sec. 16. Minnesota Statutes 2016, section 114D.26, is amended to read:

8.6 **114D.26 WATERSHED RESTORATION AND PROTECTION STRATEGIES.**

8.7 Subdivision 1. **Contents.** (a) The commissioner of the Pollution Control Agency shall
 8.8 must develop watershed restoration and protection strategies- for:

8.9 (1) quantifying impairments and risks to water quality;

8.10 (2) describing the causes of impairments and pollution sources;

8.11 (3) consolidating TMDLs in a major watershed; and

8.12 (4) informing comprehensive local water management plans and comprehensive
 8.13 watershed management plans.

8.14 (b) To ensure effectiveness, efficiency, and accountability in meeting the goals of this
 8.15 chapter, the commissioner of the Pollution Control Agency and the Board of Water and
 8.16 Soil Resources must coordinate the schedule, budget, scope, and use of a WRAPS and
 8.17 related documents and processes in consultation with local government units and in
 8.18 consideration of section 114D.20, subdivision 8. Each WRAPS shall must:

8.19 (1) identify impaired waters and waters in need of protection;

8.20 (2) identify biotic stressors causing impairments or threats to water quality;

8.21 (3) summarize watershed modeling outputs and resulting pollution load allocations, and
 8.22 wasteload allocations, and priority areas for targeting actions to improve water quality and
 8.23 identify areas with high pollutant-loading rates;

8.24 (4) identify point sources of pollution for which a national pollutant discharge elimination
 8.25 system permit is required under section 115.03;

8.26 (5) identify nonpoint sources of pollution for which a national pollutant discharge
 8.27 elimination system permit is not required under section 115.03, with sufficient specificity
 8.28 to prioritize and geographically locate inform watershed restoration and protection actions
 8.29 strategies;

9.1 (6) describe the current pollution loading and load reduction needed for each source or
 9.2 source category to meet water quality standards and goals, including wasteload and load
 9.3 allocations from TMDL's;

9.4 (7) ~~contain a plan for ongoing~~ identify water quality monitoring needed to fill data gaps,
 9.5 determine changing conditions, ~~and~~ or gauge implementation effectiveness; and

9.6 (8) contain ~~an implementation table of strategies and actions~~ that are capable of
 9.7 cumulatively achieving needed pollution load reductions for point and nonpoint sources,
 9.8 including identifying:

9.9 (i) water quality parameters of concern;

9.10 (ii) current water quality conditions;

9.11 (iii) water quality goals and targets by parameter of concern; and

9.12 (iv) strategies ~~and actions~~ by parameter of concern and the scale of adoptions needed
 9.13 ~~for each~~; to provide reasonable assurance of meeting water quality goals.

9.14 ~~(v) a timeline for achievement of water quality targets;~~

9.15 ~~(vi) the governmental units with primary responsibility for implementing each watershed~~
 9.16 ~~restoration or protection strategy; and~~

9.17 ~~(vii) a timeline and interim milestones for achievement of watershed restoration or~~
 9.18 ~~protection implementation actions within ten years of strategy adoption.~~

9.19 Subd. 2. **Reporting.** ~~Beginning July 1, 2016, and every other year thereafter, The~~
 9.20 commissioner of the Pollution Control Agency must periodically report on its the agency's
 9.21 Web site the progress toward implementation milestones and water quality goals for all
 9.22 adopted TMDL's and, where available, WRAPS's.

9.23 Subd. 3. **Timelines; administration.** ~~Each year, (a) The commissioner of the Pollution~~
 9.24 Control Agency must complete WRAPS's for at least ten percent of watershed restoration
 9.25 and protection strategies for the state's major watersheds. WRAPS shall be by June 30,
 9.26 2023, unless the commissioner determines that a comprehensive watershed management
 9.27 plan or comprehensive local water management plan, in whole or part, is sufficient to provide
 9.28 reasonable assurance of progress toward water quality restoration or protection goals. As
 9.29 needed, the commissioner must update the strategies, in whole or part, after consultation
 9.30 with the Board of Water and Soil Resources and local government units.

10.1 (b) Watershed restoration and protection strategies are governed by the procedures for
 10.2 approval and notice in section 114D.25, subdivisions 2 and 4, except that WRAPS the
 10.3 strategies need not be submitted to the United States Environmental Protection Agency.

10.4 Sec. 17. Minnesota Statutes 2016, section 114D.35, subdivision 1, is amended to read:

10.5 Subdivision 1. **Public and stakeholder participation.** (a) Public agencies and private
 10.6 entities involved in the implementation of implementing this chapter shall must encourage
 10.7 participation by the public and stakeholders, including local citizens, landowners and, land
 10.8 managers, and public and private organizations, in identifying impaired waters, in developing
 10.9 TMDL's, in planning, priority setting, and implementing restoration of impaired waters, in
 10.10 identifying degraded groundwater, and in protecting and restoring groundwater resources.

10.11 (b) In particular, the commissioner of the Pollution Control Agency shall must make
 10.12 reasonable efforts to provide timely information to the public and to stakeholders about
 10.13 impaired waters that have been identified by the agency. The agency shall seek broad and
 10.14 early public and stakeholder participation in scoping the activities necessary to develop a
 10.15 TMDL, including the scientific models, methods, and approaches to be used in TMDL
 10.16 development, and to implement restoration pursuant to section 114D.15, subdivision 7, and
 10.17 to inform and consult with stakeholders in developing a WRAPS or TMDL.

10.18 (c) Public agencies and private entities involved in implementing restoration and
 10.19 protection identified in a comprehensive watershed management plan or comprehensive
 10.20 local water management plan must make efforts to inform, consult, and involve the public
 10.21 and stakeholders.

10.22 (d) The commissioner of the Pollution Control Agency and the Board of Water and Soil
 10.23 Resources must coordinate public and stakeholder participation in consultation with local
 10.24 government units.

10.25 Sec. 18. Minnesota Statutes 2016, section 114D.35, subdivision 3, is amended to read:

10.26 Subd. 3. **Education.** The Clean Water Council shall develop strategies for informing,
 10.27 educating, and encouraging the participation of citizens, stakeholders, and others regarding
 10.28 ~~the identification of impaired waters, development of TMDL's, development of TMDL~~
 10.29 ~~implementation plans, implementation of restoration for impaired waters, identification of~~
 10.30 ~~degraded groundwater, and protection and restoration of groundwater resources~~ this chapter.
 10.31 Public agencies ~~shall be~~ are responsible for implementing the strategies.

11.1 Sec. 19. **[114D.47] NONPOINT FUNDING ALTERNATIVE.**

11.2 Notwithstanding section 114D.50, subdivision 3a, the Board of Water and Soil Resources
11.3 may, by board order, establish alternative timelines or content for the priority funding plan
11.4 for nonpoint sources under section 114D.50, subdivision 3a, and may use information from
11.5 comprehensive watershed management plans or comprehensive local water management
11.6 plans to estimate or summarize costs.