

CHAPTER 251—S.F.No. 762

An act relating to the environment; modifying provisions for cost-sharing contracts for erosion control and water management; creating the Clean Water Legacy Act; providing authority, direction, and funding to achieve and maintain water quality standards according to section 303(d) of the federal Clean Water Act; creating loan and grant programs; providing for nutrient loading offset; requiring a report on phosphorus discharge rules; appropriating money; amending Minnesota Statutes 2004, sections 103C.501, subdivision 5; 115.03, by adding a subdivision; 446A.051; Minnesota Statutes 2005 Supplement, section 446A.073, subdivisions 1, 2; proposing coding for new law in Minnesota Statutes, chapter 446A; proposing coding for new law as Minnesota Statutes, chapter 114D.

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

Section 1. Minnesota Statutes 2004, section 103C.501, subdivision 5, is amended to read:

Subd. 5. **Contracts by districts.** (a) A district board may contract on a cost-share basis to furnish financial aid to a land occupier or to a state agency for permanent systems for erosion or sedimentation control or water quality improvement that are consistent with the district's comprehensive and annual work plans.

(b) The duration of the contract ~~may~~ must, at a minimum, be the time required to complete the planned systems. A contract must specify that the land occupier is liable for monetary damages, ~~not to exceed the and penalties in an amount of up to 150 percent of the~~ financial assistance received from the district, for failure to complete the systems or practices in a timely manner or maintain the systems or practices as specified in the contract.

(c) A contract may provide for cooperation or funding with federal agencies. A land occupier or state agency may provide the cost-sharing portion of the contract through services in kind.

(d) The state board or the district board may not furnish any financial aid for practices designed only to increase land productivity.

(e) When a district board determines that long-term maintenance of a system or practice is desirable, the board may require that maintenance be made a covenant upon the land for the effective life of the practice. A covenant under this subdivision shall be construed in the same manner as a conservation restriction under section 84.65.

Sec. 2. **[114D.05] CITATION.**

This chapter may be cited as the "Clean Water Legacy Act."

Sec. 3. **[114D.10] LEGISLATIVE PURPOSE AND FINDINGS.**

Subdivision 1. **Purpose.** The purpose of the Clean Water Legacy Act is to protect, restore, and preserve the quality of Minnesota's surface waters by providing authority, direction, and resources to achieve and maintain water quality standards for surface waters as required by section 303(d) of the federal Clean Water Act, United States Code, title 33, section 1313(d), and applicable federal regulations.

Subd. 2. **Findings.** The legislature finds that:

(1) there is a close link between protecting, restoring, and preserving the quality of Minnesota's surface waters and the ability to develop the state's economy, enhance its quality of life, and protect its human and natural resources;

(2) achieving the state's water quality goals will require long-term commitment and cooperation by all state and local agencies, and other public and private organizations and individuals, with responsibility and authority for water management, planning, and protection; and

(3) all persons and organizations whose activities affect the quality of waters, including point and nonpoint sources of pollution, have a responsibility to participate in and support efforts to achieve the state's water quality goals.

Sec. 4. **[114D.15] DEFINITIONS.**

Subdivision 1. **Application.** The definitions provided in this section apply to the terms used in this chapter.

Subd. 2. **Citizen monitoring.** "Citizen monitoring" means monitoring of surface water quality by individuals and nongovernmental organizations that is consistent with section 115.06, subdivision 4, and Pollution Control Agency guidance on monitoring procedures, quality assurance protocols, and data management.

Subd. 3. **Clean Water Council.** "Clean Water Council" or "council" means the Clean Water Council created pursuant to section 114D.30, subdivision 1.

Subd. 4. **Federal TMDL requirements.** "Federal TMDL requirements" means the requirements of section 303(d) of the Clean Water Act, United States Code, title 33, section 1313(d), and associated regulations and guidance.

Subd. 5. **Impaired water.** "Impaired water" means surface water that does not meet applicable water quality standards.

Subd. 6. **Public agencies.** "Public agencies" means all state agencies, political subdivisions, joint powers organizations, and special purpose units of government with authority, responsibility, or expertise in protecting, restoring, or preserving the quality of surface waters, managing or planning for surface waters and related lands, or financing waters-related projects. Public agencies includes the University of Minnesota and other public education institutions.

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

Subd. 8. **Surface waters.** "Surface waters" means waters of the state as defined in section 115.01, subdivision 22, excluding groundwater as defined in section 115.01, subdivision 6.

Subd. 9. **Third-party TMDL.** "Third-party TMDL" means a TMDL by the Pollution Control Agency that is developed in whole or in part by a qualified public agency other than the Pollution Control Agency consistent with the goals, policies, and priorities in section 114D.20.

Subd. 10. **Total maximum daily load or TMDL.** "Total maximum daily load" or "TMDL" means a scientific study that contains a calculation of the maximum amount of a pollutant that may be introduced into a surface water and still ensure that applicable water quality standards for that water are restored and maintained. A TMDL also is the sum of the pollutant load allocations for all sources of the pollutant, including a wasteload allocation for point sources, a load allocation for nonpoint sources and

natural background, an allocation for future growth of point and nonpoint sources, and a margin of safety to account for uncertainty about the relationship between pollutant loads and the quality of the receiving surface water. "Natural background" means characteristics of the water body resulting from the multiplicity of factors in nature, including climate and ecosystem dynamics, that affect the physical, chemical, or biological conditions in a water body, but does not include measurable and distinguishable pollution that is attributable to human activity or influence. A TMDL must take into account seasonal variations.

Subd. 11. **TMDL implementation plan.** "TMDL implementation plan" means a document detailing restoration activities needed to meet the approved TMDL's pollutant load allocations for point and nonpoint sources.

Subd. 12. **Water quality standards.** "Water quality standards" for Minnesota surface waters are found in Minnesota Rules, chapters 7050 and 7052.

Sec. 5. [114D.20] IMPLEMENTATION; COORDINATION; GOALS; POLICIES; AND PRIORITIES.

Subdivision 1. **Coordination and cooperation.** In implementing this chapter, public agencies and private entities shall take into consideration the relevant provisions of local and other applicable water management, conservation, land use, land management, and development plans and programs. Public agencies with authority for local water management, conservation, land use, land management, and development plans shall take into consideration the manner in which their plans affect the implementation of this chapter. Public agencies shall identify opportunities to participate and assist in the successful implementation of this chapter, including the funding or technical assistance needs, if any, that may be necessary. In implementing this chapter, public agencies shall endeavor to engage the cooperation of organizations and individuals whose activities affect the quality of surface waters, including point and nonpoint sources of pollution, and who have authority and responsibility for water management, planning, and protection. To the extent practicable, public agencies shall endeavor to enter into formal and informal agreements and arrangements with federal agencies and departments to jointly utilize staff and educational, technical, and financial resources to deliver programs or conduct activities to achieve the intent of this chapter, including efforts under the federal Clean Water Act and other federal farm and soil and water conservation programs. Nothing in this chapter affects the application of silvicultural exemptions under any federal, state, or local law or requires silvicultural practices more stringent than those recommended in the timber harvesting and forest management guidelines adopted by the Minnesota Forest Resources Council under section 89A.05.

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

(1) to identify impaired waters in accordance with federal TMDL requirements within ten years after the effective date of this section and thereafter to ensure continuing evaluation of surface waters for impairments;

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

(3) to set a reasonable time for implementing restoration of each identified impaired water;

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

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

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

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

(1) develop regional and watershed TMDL's and TMDL implementation plans, and TMDL's and TMDL implementation plans for multiple pollutants, where reasonable and feasible;

(2) maximize use of available organizational, technical, and financial resources to perform sampling, monitoring, and other activities to identify impaired waters, including use of citizen monitoring and citizen monitoring data used by the Pollution Control Agency in assessing water quality must meet the requirements in Appendix D of the Volunteer Surface Water Monitoring Guide, Minnesota Pollution Control Agency (2003);

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

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

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

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

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

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

Subd. 4. **Priorities for identifying impaired waters.** The Pollution Control Agency, in accordance with federal TMDL requirements, shall set priorities for identifying impaired waters, giving consideration to:

(1) waters where impairments would pose the greatest potential risk to human or aquatic health; and

(2) waters where data developed through public agency or citizen monitoring or other means, provides scientific evidence that an impaired condition exists.

Subd. 5. **Priorities for preparation of TMDL's.** The Clean Water Council shall recommend priorities for scheduling and preparing TMDL's and TMDL implementation plans, taking into account the severity of the impairment, the designated uses of those waters, and other applicable federal TMDL requirements. In recommending priorities, the council shall also give consideration to waters and watersheds:

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

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

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

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

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

Subd. 6. Priorities for restoration of impaired waters. In implementing restoration of impaired waters, in addition to the priority considerations in subdivision 5, the Clean Water Council shall give priority in its recommendations for restoration funding from the clean water legacy account to restoration projects that:

(1) coordinate with and utilize existing local authorities and infrastructure for implementation;

(2) can be implemented in whole or in part by providing support for existing or ongoing restoration efforts;

(3) most effectively leverage other sources of restoration funding, including federal, state, local, and private sources of funds;

(4) show a high potential for early restoration and delisting based upon scientific data developed through public agency or citizen monitoring or other means; and

(5) show a high potential for long-term water quality and related conservation benefits.

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

Sec. 6. **[114D.25] ADMINISTRATION; POLLUTION CONTROL AGENCY.**

Subdivision 1. General duties and authorities. (a) The Pollution Control Agency, in accordance with federal TMDL requirements, shall:

(1) identify impaired waters and propose a list of the waters for review and approval by the United States Environmental Protection Agency;

(2) develop and approve TMDL's for listed impaired waters and submit the approved TMDL's to the United State Environmental Protection Agency for final approval; and

(3) propose to delist waters from the Environmental Protection Agency impaired waters list.

(b) A TMDL must include a statement of the facts and scientific data supporting the TMDL and a list of potential implementation options, including:

(1) a range of estimates of the cost of implementation of the TMDL; and

(2) for point sources, the individual wasteload data and the estimated cost of compliance addressed by the TMDL.

(c) The implementation information need not be sent to the United States Environmental Protection Agency for review and approval.

Subd. 2. Administrative procedures for TMDL approval. The approval of a TMDL by the Pollution Control Agency is a final decision of the agency for purposes of section 115.05, and is subject to the contested case procedures of sections 14.57 to 14.62 in accordance with agency procedural rules. The

agency shall not submit an approved TMDL to the United States Environmental Protection Agency until the time for commencing judicial review has run or the judicial review process has been completed. A TMDL is not subject to the rulemaking requirements of chapter 14, including section 14.386.

Subd. 3. **TMDL submittal requirement.** Before submitting a TMDL to the United States Environmental Protection Agency, the Pollution Control Agency shall comply with the notice and procedure requirements of this section. If a contested case proceeding is not required for a proposed TMDL, the agency may submit the TMDL to the United States Environmental Protection Agency no earlier than 30 days after the notice required in subdivision 4. If a contested case proceeding is required for a TMDL, the TMDL may be submitted to the United States Environmental Protection Agency after the contested case proceeding and appeal process is completed.

Subd. 4. **TMDL notice; contents.** The Pollution Control Agency shall give notice of its intention to submit a TMDL to the United States Environmental Protection Agency. The notice must be given by publication in the State Register and by United States mail to persons who have registered their names with the agency. The notice must include either a copy of the proposed TMDL or an easily readable and understandable description of its nature and effect and an announcement of how free access to the proposed TMDL can be obtained. In addition, the agency shall make reasonable efforts to notify persons or classes of persons who may be significantly affected by the TMDL by giving notice of its intention in newsletters, newspapers, or other publications, or through other means of communication. The notice must include a statement informing the public:

(1) that the public has 30 days in which to submit comment in support of or in opposition to the proposed TMDL and that comment is encouraged;

(2) that each comment should identify the portion of the proposed TMDL addressed, the reason for the comment, and any change proposed;

(3) of the manner in which persons must request a contested case proceeding on the proposed TMDL;

(4) that the proposed TMDL may be modified if the modifications are supported by the data and facts;
and

(5) the date on which the 30-day comment period ends.

Subd. 5. **Third-party TMDL development.** The Pollution Control Agency may enter into agreements with any qualified public agency setting forth the terms and conditions under which that agency is authorized to develop a third-party TMDL. In determining whether the public agency is qualified to develop a third-party TMDL, the Pollution Control Agency shall consider the technical and administrative qualifications of the public agency, cost, and shall avoid any potential organizational conflict of interest, as defined in section 16C.02, subdivision 10a, of the public agency with respect to the development of the third-party TMDL. A third-party TMDL is subject to modification and approval by the Pollution Control Agency, and must be approved by the Pollution Control Agency before it is submitted to the United States Environmental Protection Agency. The Pollution Control Agency shall only consider authorizing the development of third-party TMDL's consistent with the goals, policies, and priorities determined under section 114D.20.

Sec. 7. **[114D.30] CLEAN WATER COUNCIL.**

Subdivision 1. **Creation; duties.** A Clean Water Council is created to advise on the administration and implementation of this chapter, and foster coordination and cooperation as described in section 114D.20, subdivision 1. The council may also advise on the development of appropriate processes for expert scientific review as described in section 114D.35, subdivision 2. The Pollution Control Agency shall

provide administrative support for the council with the support of other member agencies. The members of the council shall elect a chair from the nonagency members of the council.

Subd. 2. **Membership; appointment.** The commissioners of natural resources, agriculture, and the Pollution Control Agency, and the executive director of the Board of Water and Soil Resources shall appoint one person from their respective agency to serve as a member of the council. Agency members serve as nonvoting members of the council. Seventeen additional nonagency members of the council shall be appointed by the governor as follows:

(1) two members representing statewide farm organizations;

(2) one member representing business organizations;

(3) one member representing environmental organizations;

(4) one member representing soil and water conservation districts;

(5) one member representing watershed districts;

(6) one member representing nonprofit organizations focused on improvement of Minnesota lakes or streams;

(7) two members representing organizations of county governments, one member representing the interests of rural counties and one member representing the interests of counties in the seven-county metropolitan area;

(8) two members representing organizations of city governments;

(9) one member representing the Metropolitan Council established under section 473.123;

(10) one township officer;

(11) one member representing the interests of tribal governments;

(12) one member representing statewide hunting organizations;

(13) one member representing the University of Minnesota or a Minnesota state university; and

(14) one member representing statewide fishing organizations.

Members appointed under clauses (1) to (14) must not be registered lobbyists. In making appointments, the governor must attempt to provide for geographic balance. The members of the council appointed by the governor are subject to the advice and consent of the senate.

Subd. 3. **Conflict of interest.** A Clean Water Council member may not participate in or vote on a decision of the council relating to an organization in which the member has either a direct or indirect personal financial interest. While serving on the Clean Water Council, a member shall avoid any potential conflict of interest.

Subd. 4. **Terms; compensation; removal.** The initial terms of members representing state agencies and the Metropolitan Council expire on the first Monday in January 2007. Thereafter, the terms of members representing the state agencies and the Metropolitan Council are four years and are coterminous with the governor. The terms of other members of the council shall be as provided in section 15.059, subdivision 2. Members may serve until their successors are appointed and qualify. Compensation and removal of council members is as provided in section 15.059, subdivisions 3 and 4. A vacancy on the council may be filled by the appointing authority provided in subdivision 1 for the remainder of the unexpired term.

Subd. 5. **Implementation plan.** The Clean Water Council shall recommend a plan for implementation of this chapter. The recommended plan shall address general procedures and time frames for implementing this chapter, and shall include a more specific implementation work plan for the next

fiscal biennium and a framework for setting priorities to address impaired waters consistent with section 114D.20, subdivisions 2 to 7. The council shall issue the first recommended plan under this subdivision by December 1, 2005, and shall issue a revised plan by December 1 of each even-numbered year thereafter.

Subd. 6. **Recommendations on appropriation of funds.** The Clean Water Council shall recommend to the governor the manner in which money from the clean water legacy account should be appropriated for the purposes identified in section 114D.45, subdivision 3. The council's recommendations must be consistent with the purposes, policies, goals, and priorities in sections 114D.05 to 114D.35, and shall allocate adequate support and resources to identify impaired waters, develop TMDL's, implement restoration of impaired waters, and provide assistance and incentives to prevent waters from becoming impaired and improve the quality of waters which are listed as impaired but have no approved TMDL. The council must recommend methods of ensuring that awards of grants, loans, or other funds from the clean water legacy account specify the outcomes to be achieved as a result of the funding and specify standards to hold the recipient accountable for achieving the desired outcomes. Expenditures from the account must be appropriated by law.

Subd. 7. **Biennial report to legislature.** By December 1 of each even-numbered year, the council shall submit a report to the legislature on the activities for which money has been or will be spent for the current biennium, the activities for which money is recommended to be spent in the next biennium, and the impact on economic development of the implementation of the impaired waters program. The report due on December 1, 2014, must include an evaluation of the progress made through June 30, 2014, in implementing this chapter, the need for funding of future implementation of those sections, and recommendations for the sources of funding.

Sec. 8. [114D.35] PUBLIC AND STAKEHOLDER PARTICIPATION; SCIENTIFIC REVIEW; EDUCATION.

Subdivision 1. **Public and stakeholder participation.** Public agencies and private entities involved in the implementation of this chapter shall encourage participation by the public and stakeholders, including local citizens, landowners and managers, and public and private organizations, in the identification of impaired waters, in developing TMDL's, and in planning, priority setting, and implementing restoration of impaired waters. In particular, the Pollution Control Agency shall make reasonable efforts to provide timely information to the public and to stakeholders about impaired waters that have been identified by the agency. The agency shall seek broad and early public and stakeholder participation in scoping the activities necessary to develop a TMDL, including the scientific models, methods, and approaches to be used in TMDL development, and to implement restoration pursuant to section 114D.15, subdivision 7.

Subd. 2. **Expert scientific advice.** The Clean Water Council and public agencies and private entities shall make use of available public and private expertise from educational, research, and technical organizations, including the University of Minnesota and other higher education institutions, to provide appropriate independent expert advice on models, methods, and approaches used in identifying impaired waters, developing TMDL's, and implementing prevention and restoration.

Subd. 3. **Education.** The Clean Water Council shall develop strategies for informing, educating, and encouraging the participation of citizens, stakeholders, and others regarding the identification of impaired waters, development of TMDL's, development of TMDL implementation plans, and implementation of restoration for impaired waters. Public agencies shall be responsible for implementing the strategies.

Sec. 9. [114D.45] CLEAN WATER LEGACY ACCOUNT.

Subdivision 1. **Creation.** The clean water legacy account is created as an account in the environmental fund. Money in the account must be made available for the implementation of this chapter and sections 446A.073, 446A.074, and 446A.075, without supplanting or taking the place of any other

funds which are currently available or may become available from any other source, whether federal, state, local, or private, for implementation of those sections.

Subd. 2. **Sources of revenue.** The following revenues must be deposited in the clean water legacy account:

- (1) money transferred to the account; and
- (2) interest accrued on the account.

Subd. 3. **Purposes.** Subject to appropriation by the legislature, the clean water legacy account may be spent for the following purposes:

(1) to provide grants, loans, and technical assistance to public agencies and others who are participating in the process of identifying impaired waters, developing TMDL's, implementing restoration plans for impaired waters, and monitoring the effectiveness of restoration;

(2) to support measures to prevent waters from becoming impaired and to improve the quality of waters that are listed as impaired but do not have an approved TMDL addressing the impairment;

(3) to provide grants and loans for wastewater and storm water treatment projects through the Public Facilities Authority;

(4) to support the efforts of public agencies associated with individual sewage treatment systems and financial assistance for upgrading and replacing the systems; and

(5) to provide funds to state agencies to carry out their responsibilities under this chapter.

Sec. 10. Minnesota Statutes 2004, section 115.03, is amended by adding a subdivision to read:

Subd. 10. **Nutrient loading offset.** (a) Prior to the completion of a total maximum daily load for an impaired water, the Pollution Control Agency may issue a permit for a new discharger or an expanding discharger if it results in decreased loading to an impaired water. Where a new discharger or an expanding existing discharger cannot effectively implement zero discharge options, the agency may issue a permit if the increased loading is offset by reductions from other sources of loading to the impaired water, so that there is a net decrease in the pollutant loading of concern. The term "new discharger" is as defined in Code of Federal Regulations, title 40, section 122.2.

(b) The legislature intends this subdivision to confirm and clarify the authority of the pollution control agency to issue the authorized permits under prior law. The subdivision must not be construed as a legislative interpretation within the meaning of Minnesota Statutes, section 645.16, clause (8), or otherwise as the legislature's intent that the agency did not have authority to issue such a permit under prior law.

Sec. 11. Minnesota Statutes 2004, section 446A.051, is amended to read:

446A.051 PROJECT FINANCIAL ASSISTANCE.

The authority shall assist eligible governmental units in determining what grants or loans under sections 446A.06, ~~and~~ 446A.07, 446A.072, 446A.073, 446A.074, 446A.075, and 446A.081 to apply for to finance projects and the manner in which the governmental unit will pay for its portion of the project cost. If a project is eligible for a grant under section 446A.073, 446A.074, or 446A.075, the total grant shall not exceed the greater of the maximum amount from a single program or the amount the project could receive under section 446A.072. The authority shall review the proposed financing for each project certified by the agency to ascertain whether or not: (1) total financing of a project is assured; and (2) the governmental unit's financial plan to pay for its portion of the project cost is feasible.

Sec. 12. Minnesota Statutes 2005 Supplement, section 446A.073, subdivision 1, is amended to read:

Subdivision 1. **Program established.** When money is appropriated for grants under this program, the authority must make grants to municipalities to cover up to one-half the cost of wastewater treatment or stormwater projects made necessary by wasteload reductions under total maximum daily load plans required by section 303(d) of the federal Clean Water Act, United States Code, title 33, section 1313(d).

Sec. 13. Minnesota Statutes 2005 Supplement, section 446A.073, subdivision 2, is amended to read:

Subd. 2. **Grant application.** Application for a grant must be made to the authority on forms prescribed by the authority for the total maximum daily load grant program, with additional information as required by the authority, including a project schedule and cost estimate for the work necessary to comply with the point source wasteload allocation. ~~In accordance with section 116.182,~~ The Pollution Control Agency shall:

(1) in accordance with section 116.182, calculate the essential project component percentage, which must be multiplied by the total project cost to determine the eligible project cost; and

(2) review and certify ~~approved projects~~ to the authority those projects that have plans and specifications approved under section 115.03, subdivision 1, paragraph (f).

Sec. 14. **[446A.074] CLEAN WATER LEGACY PHOSPHORUS REDUCTION GRANTS.**

Subdivision 1. **Creation of account.** A clean water legacy capital improvement account is created in the bond proceeds fund. Money in the account may only be used for grants for eligible capital costs as provided in this section. Money in the clean water legacy capital improvement fund, including interest earned, is appropriated to the authority for the purposes of this section.

Subd. 2. **Grants.** The authority shall award grants from the clean water legacy capital improvement account to governmental units for the capital costs of wastewater treatment facility projects or a portion thereof that will reduce the discharge of total phosphorus from the facility to one milligram per liter or less. A project is eligible for a grant if it meets the following requirements:

(1) the applicable phosphorus discharge limit is incorporated in a permit issued by the agency for the wastewater treatment facility on or after March 28, 2000, the grantee agrees to comply with the applicable limit as a condition of receiving the grant, or the grantee made improvements to a wastewater treatment facility on or after March 28, 2000, that include infrastructure to reduce the discharge of total phosphorus to one milligram per liter or less;

(2) the governmental unit has submitted a facilities plan for the project to the agency and a grant application to the authority on a form prescribed by the authority; and

(3) the agency has approved the facilities plan, and certified the eligible costs for the project to the authority.

Subd. 3. **Eligible capital costs.** Eligible capital costs for phosphorus reduction grants under subdivision 4, paragraph (a), include engineering and inspection costs and the as-bid construction costs for phosphorus treatment. Eligible capital costs for phosphorus reduction grants under subdivision 4, paragraph (b), include the final, incurred construction, engineering, and inspection costs for phosphorus treatment.

Subd. 4. **Grant amounts and priorities.** (a) Priority must be given to projects that start construction on or after July 1, 2006. If a facility's plan for a project is approved by the agency before July 1, 2010, the amount of the grant is 75 percent of the eligible capital cost of the project. If a facility's plan for a project is approved by the agency on or after July 1, 2010, the amount of the grant is 50 percent of the eligible capital cost of the project. Priority in awarding grants under this paragraph must be based on the date of approval of the facility's plan for the project.

(b) Projects that meet the eligibility requirements in subdivision 2 and have started construction before July 1, 2006, may be eligible for grants to reimburse up to 75 percent of the eligible capital cost of the project, less any amounts previously received in grants from other sources, provided that reimbursement is an eligible use of funds. Application for a grant under this paragraph must be submitted to the authority no later than June 30, 2008. Priority for award of grants under this paragraph must be based on the date of agency approval of the facility plan.

(c) In each fiscal year that money is available for grants, the authority shall first award grants under paragraph (a) to projects that met the eligibility requirements of subdivision 2 by May 1 of that year. The authority shall use any remaining money available that year to award grants under paragraph (b). Grants that have been approved but not awarded in a previous fiscal year carry over and must be awarded in subsequent fiscal years in accordance with the priorities in this paragraph.

(d) Disbursements of grants under this section by the authority to recipients must be made for eligible project costs as incurred by the recipients, and must be made by the authority in accordance with the project financing agreement and applicable state law.

Subd. 5. **Fees.** The authority may charge the grant recipient a fee for its administrative costs not to exceed one-half of one percent of the grant amount, to be paid upon execution of the grant agreement.

Sec. 15. **[446A.075] SMALL COMMUNITY WASTEWATER TREATMENT PROGRAM.**

Subdivision 1. **Creation of account.** A small community wastewater treatment account is created in the special revenue fund. The authority shall make loans and grants from the account as provided in this section. Money in the fund is annually appropriated to the authority and does not lapse. The account shall be credited with all loan repayments and investment income from the account and servicing fees assessed under section 446A.04, subdivision 5. The authority shall manage and administer the small community wastewater treatment account and for these purposes, may exercise all powers provided in this chapter.

Subd. 2. **Loans and grants.** (a) The authority shall award loans as provided in paragraph (b) and grants as provided in paragraphs (c) and (d) to governmental units from the small community wastewater treatment account for projects to replace noncomplying individual sewage treatment systems with a community wastewater treatment system or systems meeting the requirements of section 115.55. A governmental unit receiving a loan or loan and grant from the account shall own the individual wastewater treatment systems or community wastewater treatment systems built under the program and shall be responsible, either directly or through a contract with a private vendor, for all inspections, maintenance, and repairs necessary to ensure proper operation of the systems.

(b) Loans may be awarded for up to 100 percent of eligible project costs as described in this section.

(c) When the area to be served by a project has a median household income below the state average median household income, the governmental unit may receive 50 percent of the funding provided under this section in the form of a grant. An applicant may submit income survey data collected by an independent party if it believes the most recent United States census does not accurately reflect the median household income of the area to be served.

(d) If requested, and if it is an eligible use of funds, a governmental unit receiving funding under this section may receive a grant equal to ten percent of its first year's award, up to a maximum of \$30,000, to contract for technical assistance services from the University of Minnesota Extension Service to develop the technical, managerial, and financial capacity necessary to build, operate, and maintain the systems.

Subd. 3. **Project priority list.** Governmental units seeking loans or loans and grants from the small community wastewater treatment program shall first submit a project proposal to the agency on a form prescribed by the agency. A project proposal shall include the compliance status for all individual sewage

treatment systems in the project area. The agency shall rank project proposals on its project priority list used for the water pollution control revolving fund under section 446A.07.

Subd. 4. **Applications.** Governmental units with projects on the project priority list shall submit applications to the authority on forms prescribed by the authority. The application shall include:

(1) a list of the individual sewage treatment systems proposed to be replaced over a period of up to three years;

(2) a project schedule and cost estimate for each year of the project;

(3) a financing plan for repayment of the loan; and

(4) a management plan providing for the inspection, maintenance, and repairs necessary to ensure proper operation of the systems.

Subd. 5. **Awards.** The authority shall award loans or loans and grants as provided in subdivision 2 to governmental units with approved applications based on their ranking on the agency's project priority list. The total amount awarded shall be based on the estimated project costs for the portion of the project expected to be completed within one year, up to an annual maximum of \$500,000. For projects expected to take more than one year to complete, the authority may make a multiyear commitment for a period not to exceed three years, contingent on the future availability of funds. Each year of a multiyear commitment must be funded by a separate loan or loan and grant agreement meeting the terms and conditions in subdivision 6. A governmental unit receiving a loan or loan and grant under a multiyear commitment shall have priority for additional loan and grant funds in subsequent years.

Subd. 6. **Loan terms and conditions.** Loans from the small community wastewater treatment account shall comply with the following terms and conditions:

(1) principal and interest payments must begin no later than two years after the loan is awarded;

(2) loans shall carry an interest rate of one percent;

(3) loans shall be fully amortized within ten years of the first scheduled payment or, if the loan amount exceeds \$10,000 per household, shall be fully amortized within 20 years but not to exceed the expected design life of the system;

(4) a governmental unit receiving a loan must establish a dedicated source or sources of revenues for repayment of the loan and must issue a general obligation note to the authority for the full amount of the loan; and

(5) each property owner voluntarily seeking assistance for repair or replacement of an individual treatment system under this program must provide an easement to the governmental unit to allow access to the system for management and repairs.

Subd. 7. **Special assessment deferral.** (a) A governmental unit receiving a loan under this section that levies special assessments to repay the loan may defer payment of the assessments under the provisions of sections 435.193 to 435.195.

(b) A governmental unit that defers payment of special assessments for one or more properties under paragraph (a) may request deferral of that portion of the debt service on its loan, and the authority shall accept appropriate amendments to the general obligation note of the governmental unit. If special assessment payments are later received from properties that received a deferral, the funds received shall be paid to the authority with the next scheduled loan payment.

Subd. 8. **Eligible costs.** Eligible costs for small community wastewater treatment loans and grants shall include the costs of technical assistance as provided in subdivision 2, paragraph (d), design, construction, related legal fees, and land acquisition.

Subd. 9. **Disbursements.** Loan and grant disbursements by the authority under this section must be made for eligible project costs as incurred by the recipients, and must be made in accordance with the project loan or grant and loan agreement and applicable state law.

Subd. 10. **Audits.** A governmental unit receiving a loan under this section must annually provide to the authority for the term of the loan a copy of its annual independent audit or, if the governmental unit is not required to prepare an independent audit, a copy of the annual financial reporting form it provides to the state auditor.

Sec. 16. **PHOSPHORUS RULE; REPORT.**

(a) Notwithstanding any law to the contrary, a provision of a Minnesota Pollution Control Agency rule establishing new or changed limits on phosphorus discharges from a new or existing wastewater facility must not take effect until July 1, 2007.

(b) The Minnesota Pollution Control Agency must report to the legislature by February 1, 2007, on a proposed or adopted rule changing limits on phosphorus discharges. The report must address scientific justification for the new rule and the impact the proposed or adopted rule will have on needed funding to implement the Clean Water Legacy Act.

Sec. 17. **EFFECTIVE DATE.**

Sections 1 to 16 are effective the day following final enactment.

Presented to the governor May 22, 2006

Signed by the governor June 1, 2006, 8:52 p.m.