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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-THIRD SESSION

H. F. No. 2076

02/20/2023 Authored by Pursell; Hanson, J.; Koegel; Brand; Pryor and others

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 environment; reinstating citizen membership for Pollution Control
1.3 Agency; amending Minnesota Statutes 2022, sections 116.02; 116.03, subdivisions
1.4 1, 2a.

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

1.6 Sec. 1. PURPOSE.

1.7 Since the Minnesota Pollution Control Agency was created in 1967, the citizens board
1.8 served as a check on the actions of the agency staff and commissioner. The citizens board
1.9 listened to the concerns of Minnesotans, giving voice to rural, urban, and suburban residents
1.10 concerned about decisions made by agency staff in St. Paul and occasionally overturning
1.11 those staff decisions. This valuable service to the people of Minnesota was eliminated by
1.12 the legislature in 2015, but it is in the public interest that the citizens board be reinstated
1.13 now.

1.14 Sec. 2. Minnesota Statutes 2022, section 116.02, is amended to read:

1.15 116.02 POLLUTION CONTROL AGENCY; CREATION AND POWERS.

1.16 Subdivision 1. Creation. A pollution control agency, designated as The Minnesota
1.17 Pollution Control Agency, is hereby created. The agency consists of the commissioner and
1.18 eight members appointed by the governor, by and with the advice and consent of the senate.

1.19 Subd. 2a. Terms, compensation, removal, vacancies. The membership terms,
1.20 compensation, removal of members, and filling of vacancies on the agency is as provided
1.21 in section 15.0575.

2.1 Subd. 3a. **Membership.** (a) The membership of the agency must be broadly representative
2.2 of the skills and experience necessary to effectuate the policy of sections 116.01 to 116.075,
2.3 except that no member other than the commissioner may be an officer or employee of the
2.4 state or federal government.

2.5 (b) The membership of the agency must reflect the diversity of the state in terms of race,
2.6 gender, and geography.

2.7 (c) Only two members at one time may be officials or employees of a municipality or
2.8 any governmental subdivision, but neither may be a member ex officio or otherwise on the
2.9 management board of a municipal sanitary sewage disposal system.

2.10 (d) At least one member must be an enrolled member of a Tribal Nation; at least three
2.11 members must live in environmental justice communities; at least one member must be a
2.12 livestock or crop farmer, or both, with fewer than 200 head of livestock or fewer than 500
2.13 acres of cropland, or both; and at least one member must be a member of a labor union.

2.14 (e) A member must not have a financial interest in any project coming before the agency
2.15 within two years before or during the member's term.

2.16 Subd. 4a. **Chair.** The commissioner serves as chair of the agency. The agency elects
2.17 other officers as the agency deems necessary.

2.18 Subd. 5. **Agency successor to commission.** The Minnesota Pollution Control Agency
2.19 is the successor of the Water Pollution Control Commission, and all powers and duties now
2.20 vested in or imposed upon said commission by chapter 115, or any act amendatory thereof
2.21 or supplementary thereto, are hereby transferred to, imposed upon, and vested in the
2.22 commissioner of the Minnesota Pollution Control Agency.

2.23 Subd. 6a. **Required decisions.** (a) The agency must make final decisions on the following
2.24 matters:

2.25 (1) a petition for preparing an environmental assessment worksheet, if the project proposer
2.26 or a person commenting on the proposal requests that the decision be made by the agency
2.27 and the agency requests that it make the decision under subdivision 8a;

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

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

3.1 (ii) the project proposer or a person commenting on the proposal requests that the decision
3.2 be made by the agency and the agency requests that it make the decision under subdivision
3.3 8a; or

3.4 (iii) the commissioner is recommending preparation of an environmental impact
3.5 statement;

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

3.7 (4) issuing, reissuing, modifying, or revoking a permit;

3.8 (5) final adoption or amendment of agency rules for which a public hearing is required
3.9 under section 14.25 or for which the commissioner decides to proceed directly to a public
3.10 hearing under section 14.14, subdivision 1;

3.11 (6) approving or denying an application for a variance from an agency rule; and

3.12 (7) whether to reopen, rescind, or reverse a decision of the agency.

3.13 (b) In reviewing projects, the agency must consider whether there has been free prior
3.14 and informed consent via government-to-government consultation with Tribal Nations and
3.15 how a project will impact the ability of communities to exercise rights guaranteed by treaties.

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

3.18 Subd. 8a. **Other actions.** (a) Any other action not specifically within the authority of
3.19 the commissioner must be made by the agency if:

3.20 (1) before the commissioner's final decision on an action, one or more members of the
3.21 agency notify the commissioner of their request that the decision be made by the agency;
3.22 or

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

3.25 (b) If the commissioner denies a petition submitted under paragraph (a), clause (2), the
3.26 commissioner must advise the agency and the petitioner of the reasons for the denial.

3.27 Subd. 9a. **Providing information.** (a) The commissioner must inform interested persons
3.28 as appropriate in public notices and other public documents of their right to request that the
3.29 agency make decisions in specific matters according to subdivision 6a and the right of
3.30 agency members to request that decisions be made by the agency according to subdivision
3.31 8a.

4.1 (b) The commissioner must regularly inform the agency of activities that have broad
 4.2 policy implications or potential environmental significance and of activities in which the
 4.3 public has exhibited substantial interest.

4.4 Subd. 11. **Changing decisions.** (a) The agency must not reopen, rescind, or reverse a
 4.5 decision of the agency except upon:

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

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

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

4.11 (1) applying the requirement in paragraph (a), clause (1) or (2), to certain decisions of
 4.12 the agency; or

4.13 (2) establishing additional or more stringent requirements for reopening, rescinding, or
 4.14 reversing decisions of the agency.

4.15 Sec. 3. Minnesota Statutes 2022, section 116.03, subdivision 1, is amended to read:

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

4.19 (b) The commissioner may appoint a deputy commissioner and assistant commissioners
 4.20 who ~~shall be~~ are in the unclassified service.

4.21 (c) The commissioner shall make all decisions on behalf of the agency that are not
 4.22 required to be made by the agency under section 116.02.

4.23 Sec. 4. Minnesota Statutes 2022, section 116.03, subdivision 2a, is amended to read:

4.24 Subd. 2a. **Mission; efficiency.** It is part of the agency's mission that, within the agency's
 4.25 resources, the commissioner and the members of the agency shall endeavor to:

4.26 (1) prevent the waste or unnecessary spending of public money;

4.27 (2) use innovative fiscal and human resource practices to manage the state's resources
 4.28 and operate the agency as efficiently as possible;

4.29 (3) coordinate the agency's activities wherever appropriate with the activities of other
 4.30 governmental agencies;

5.1 (4) use technology where appropriate to increase agency productivity, improve customer
5.2 service, increase public access to information about government, and increase public
5.3 participation in the business of government;

5.4 (5) ~~utilize~~ use constructive and cooperative labor-management practices to the extent
5.5 otherwise required by chapters 43A and 179A;

5.6 (6) report to the legislature on the performance of agency operations and the
5.7 accomplishment of agency goals in the agency's biennial budget according to section 16A.10,
5.8 subdivision 1; and

5.9 (7) recommend to the legislature appropriate changes in law necessary to carry out the
5.10 mission and improve the performance of the agency.