

This Document can be made available
in alternative formats upon request

State of Minnesota

HOUSE OF REPRESENTATIVES

NINETIETH SESSION

H. F. No. **1058**

02/09/2017 Authored by Hamilton, Marquart and O'Driscoll
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; providing for review of certain agency actions;
1.3 appropriating money; amending Minnesota Statutes 2016, sections 3.886,
1.4 subdivision 4; 115.05.

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

1.6 Section 1. Minnesota Statutes 2016, section 3.886, subdivision 4, is amended to read:

1.7 Subd. 4. **Powers and duties.** (a) The Legislative Water Commission shall review water
1.8 policy reports and recommendations of the Environmental Quality Board, the Board of
1.9 Water and Soil Resources, the Pollution Control Agency, the Department of Natural
1.10 Resources, the Metropolitan Council, and other water-related reports as may be required
1.11 by law or the legislature.

1.12 (b) The commission may conduct public hearings and otherwise secure data and
1.13 comments.

1.14 (c) The commission shall make recommendations as it deems proper to assist the
1.15 legislature in formulating legislation.

1.16 (d) The commission may convene an independent scientific review according to section
1.17 115.05, subdivision 12.

1.18 ~~(d)~~ (e) Data or information compiled by the Legislative Water Commission or its
1.19 subcommittees shall be made available to the Legislative-Citizen Commission on Minnesota
1.20 Resources, the Clean Water Council, and standing and interim committees of the legislature
1.21 on request of the chair of the respective commission, council, or committee.

1.22 ~~(e)~~ (f) The commission shall coordinate with the Clean Water Council.

2.1 Sec. 2. Minnesota Statutes 2016, section 115.05, is amended to read:

2.2 **115.05 JUDICIAL REVIEW REVIEWING AGENCY ACTIONS.**

2.3 Subd. 11. **Judicial review.** Any person aggrieved by any final decision of the ~~agency~~
 2.4 ~~or of the commissioner of the Pollution Control Agency~~ may obtain judicial review thereof
 2.5 pursuant to sections 14.63 to 14.69 if the final decision is made pursuant to the ~~agency's or~~
 2.6 ~~the commissioner's~~ authority under section 115A.914, this chapter, chapter 116, or the rules
 2.7 adopted thereunder, and if the decision is a final decision pertaining to:

2.8 (1) issuance, amendment, or denial of a permit, license, or certification;

2.9 (2) granting or denial of a variance;

2.10 (3) issuance of an administrative order, except for an administrative penalty order issued
 2.11 pursuant to section 116.072; or

2.12 (4) denial of a contested case hearing on any of the matters listed in clauses (1) to (3).

2.13 **Subd. 12. Independent scientific review.** (a) Upon petition of five or more cities, towns,
 2.14 counties, local public utilities commissions, or sanitary districts, the Legislative Water
 2.15 Commission may convene an independent scientific review of the following actions or final
 2.16 decisions of the commissioner of the Pollution Control Agency:

2.17 (1) adopting or amending a water-quality standard under section 115.44;

2.18 (2) issuing, amending, or denying an impairment designation, a total maximum daily
 2.19 load (TMDL) allocation, a watershed restoration and protection strategy (WRAPS), or a
 2.20 water-related permit, license, or certification;

2.21 (3) identifying or listing impaired waters under section 114D.25;

2.22 (4) granting or denying a site-specific water-quality standard or a variance to a
 2.23 water-quality standard;

2.24 (5) issuing a water-related administrative order, except for an administrative penalty
 2.25 order issued under section 116.072;

2.26 (6) denying a contested case hearing on any of the matters listed in clauses (1) to (5);

2.27 or

2.28 (7) denying a request for reconsideration in an action identified in clauses (1) to (6).

2.29 (b) The petition must be submitted in writing to the Legislative Water Commission and
 2.30 must describe the need for the independent scientific review. The petition may include
 2.31 supporting expert opinion.

3.1 (c) Upon receipt of a petition complying with paragraph (b), the Legislative Water
3.2 Commission may convene an independent scientific review regardless of whether an external
3.3 peer review was conducted under section 115.035. If the commission decides to convene a
3.4 review, the commission must establish by order an expert review panel of three independent
3.5 experts with qualifications in the subject matter of the scientific dispute who are employed
3.6 neither by the agency nor by any adverse parties to the proceeding and who are not directly
3.7 or indirectly involved with the work conducted or contracted by the agency. The composition
3.8 of the panel must be determined as follows:

3.9 (1) the commissioner of the Pollution Control Agency must select one expert satisfying
3.10 the requirements of this paragraph;

3.11 (2) the petitioner must select one expert satisfying the requirements of this paragraph;

3.12 (3) the two experts selected under clauses (1) and (2) must mutually agree to a third
3.13 expert satisfying the requirements of this paragraph; and

3.14 (4) if the two experts selected under clauses (1) and (2) are unable to mutually agree on
3.15 a third expert, the Legislative Water Commission must make the appointment.

3.16 (d) In its order establishing the expert review panel, the Legislative Water Commission
3.17 must include a statement of the specific scientific issues or questions in dispute to be
3.18 submitted for review. The commissioner and petitioners must mutually agree to the issues
3.19 or questions, except that if the parties cannot agree on one or more issues or questions, the
3.20 Legislative Water Commission must determine the issue or question to be submitted. If the
3.21 Legislative Water Commission determines the issue or question to be submitted, the
3.22 commission must hold a public hearing on the issue or question.

3.23 (e) The expert review panel established by the Legislative Water Commission must
3.24 review the scientific evidence relevant to the issues or questions listed in the commission's
3.25 order, including the results of any external peer review conducted according to section
3.26 115.035, in general accordance with the guidance in the United States Environmental
3.27 Protection Agency's Peer Review Handbook. The panel must submit a written opinion on
3.28 the scientific validity of the commissioner's approach at issue. If the panel finds deficiencies,
3.29 the panel must recommend how the deficiencies can be corrected. The written opinion must
3.30 be submitted to the commissioner of the Pollution Control Agency, the petitioners, and the
3.31 chairs of the house of representatives and senate committees having jurisdiction over
3.32 environment and natural resources policy and finance.

4.1 Sec. 3. **APPROPRIATION.**

4.2 \$100,000 in fiscal year 2018 is appropriated from the general fund to the Legislative
4.3 Water Commission to conduct independent scientific reviews according to section 2. The
4.4 appropriation is available until expended.