

1.1 Senator moves to amend S.F. No. 639 as follows:

1.2 Delete everything after the enacting clause and insert:

1.3 "Section 1. Minnesota Statutes 2020, section 84.027, is amended by adding a subdivision
1.4 to read:

1.5 Subd. 14c. **Unadopted rules.** The commissioner of natural resources must not enforce
1.6 or attempt to enforce an unadopted rule. For purposes of this subdivision, "unadopted rule"
1.7 means a guideline, bulletin, criterion, manual standard, interpretive statement, policy plan,
1.8 or similar pronouncement if the guideline, bulletin, criterion, manual standard, interpretive
1.9 statement, policy plan, or similar pronouncement has not been adopted according to the
1.10 rulemaking process provided under chapter 14. If an unadopted rule is challenged under
1.11 section 14.381, the commissioner must cease enforcement of the unadopted rule and
1.12 overcome a presumption that the unadopted rule must be adopted according to the rulemaking
1.13 process provided under chapter 14.

1.14 Sec. 2. Minnesota Statutes 2020, section 115.03, subdivision 1, is amended to read:

1.15 Subdivision 1. **Generally.** (a) The agency is hereby given and charged with the following
1.16 powers and duties:

1.17 ~~(a)~~ (1) to administer and enforce all laws relating to the pollution of any of the waters
1.18 of the state;

1.19 ~~(b)~~ (2) to investigate the extent, character, and effect of the pollution of the waters of
1.20 this state and to gather data and information necessary or desirable in the administration or
1.21 enforcement of pollution laws, and to make such classification of the waters of the state as
1.22 it may deem advisable;

1.23 ~~(c)~~ (3) to establish and alter such reasonable pollution standards for any waters of the
1.24 state in relation to the public use to which they are or may be put as it ~~shall~~ must deem
1.25 necessary for the purposes of this chapter and, with respect to the pollution of waters of the
1.26 state, chapter 116;

1.27 ~~(d)~~ (4) to encourage waste treatment, including advanced waste treatment, instead of
1.28 stream low-flow augmentation for dilution purposes to control and prevent pollution;

1.29 ~~(e)~~ (5) to adopt, issue, reissue, modify, deny, or revoke, enter into or enforce reasonable
1.30 orders, permits, variances, standards, rules, schedules of compliance, and stipulation
1.31 agreements, under such conditions as it may prescribe, in order to prevent, control or abate

2.1 water pollution, or for the installation or operation of disposal systems or parts thereof, or
2.2 for other equipment and facilities:

2.3 ~~(1)~~ (i) requiring the discontinuance of the discharge of sewage, industrial waste or other
2.4 wastes into any waters of the state resulting in pollution in excess of the applicable pollution
2.5 standard established under this chapter;

2.6 ~~(2)~~ (ii) prohibiting or directing the abatement of any discharge of sewage, industrial
2.7 waste, or other wastes, into any waters of the state or the deposit thereof or the discharge
2.8 into any municipal disposal system where the same is likely to get into any waters of the
2.9 state in violation of this chapter and, with respect to the pollution of waters of the state,
2.10 chapter 116, or standards or rules promulgated or permits issued pursuant thereto, and
2.11 specifying the schedule of compliance within which such prohibition or abatement must be
2.12 accomplished;

2.13 ~~(3)~~ (iii) prohibiting the storage of any liquid or solid substance or other pollutant in a
2.14 manner which does not reasonably assure proper retention against entry into any waters of
2.15 the state that would be likely to pollute any waters of the state;

2.16 ~~(4)~~ (iv) requiring the construction, installation, maintenance, and operation by any person
2.17 of any disposal system or any part thereof, or other equipment and facilities, or the
2.18 reconstruction, alteration, or enlargement of its existing disposal system or any part thereof,
2.19 or the adoption of other remedial measures to prevent, control or abate any discharge or
2.20 deposit of sewage, industrial waste or other wastes by any person;

2.21 ~~(5)~~ (v) establishing, and from time to time revising, standards of performance for new
2.22 sources taking into consideration, among other things, classes, types, sizes, and categories
2.23 of sources, processes, pollution control technology, cost of achieving such effluent reduction,
2.24 and any nonwater quality environmental impact and energy requirements. Said standards
2.25 of performance for new sources ~~shall~~ must encompass those standards for the control of the
2.26 discharge of pollutants which reflect the greatest degree of effluent reduction which the
2.27 agency determines to be achievable through application of the best available demonstrated
2.28 control technology, processes, operating methods, or other alternatives, including, where
2.29 practicable, a standard permitting no discharge of pollutants. New sources ~~shall~~ must
2.30 encompass buildings, structures, facilities, or installations from which there is or may be
2.31 the discharge of pollutants, the construction of which is commenced after the publication
2.32 by the agency of proposed rules prescribing a standard of performance which will be
2.33 applicable to such source. Notwithstanding any other provision of the law of this state, any
2.34 point source the construction of which is commenced after May 20, 1973, and which is so

3.1 constructed as to meet all applicable standards of performance for new sources ~~shall~~ must,
3.2 consistent with and subject to the provisions of section 306(d) of the Amendments of 1972
3.3 to the Federal Water Pollution Control Act, not be subject to any more stringent standard
3.4 of performance for new sources during a ten-year period beginning on the date of completion
3.5 of such construction or during the period of depreciation or amortization of such facility
3.6 for the purposes of section 167 or 169, or both, of the Federal Internal Revenue Code of
3.7 1954, whichever period ends first. Construction ~~shall~~ must encompass any placement,
3.8 assembly, or installation of facilities or equipment, including contractual obligations to
3.9 purchase such facilities or equipment, at the premises where such equipment will be used,
3.10 including preparation work at such premises;

3.11 ~~(6)~~ (vi) establishing and revising pretreatment standards to prevent or abate the discharge
3.12 of any pollutant into any publicly owned disposal system, which pollutant interferes with,
3.13 passes through, or otherwise is incompatible with such disposal system;

3.14 ~~(7)~~ (vii) requiring the owner or operator of any disposal system or any point source to
3.15 establish and maintain such records, make such reports, install, use, and maintain such
3.16 monitoring equipment or methods, including where appropriate biological monitoring
3.17 methods, sample such effluents in accordance with such methods, at such locations, at such
3.18 intervals, and in such a manner as the agency ~~shall~~ must prescribe, and providing such other
3.19 information as the agency may reasonably require;

3.20 ~~(8)~~ (viii) notwithstanding any other provision of this chapter, and with respect to the
3.21 pollution of waters of the state, chapter 116, requiring the achievement of more stringent
3.22 limitations than otherwise imposed by effluent limitations in order to meet any applicable
3.23 water quality standard by establishing new effluent limitations, based upon section 115.01,
3.24 subdivision 13, clause (b), including alternative effluent control strategies for any point
3.25 source or group of point sources to insure the integrity of water quality classifications,
3.26 whenever the agency determines that discharges of pollutants from such point source or
3.27 sources, with the application of effluent limitations required to comply with any standard
3.28 of best available technology, would interfere with the attainment or maintenance of the
3.29 water quality classification in a specific portion of the waters of the state. Prior to
3.30 establishment of any such effluent limitation, the agency ~~shall~~ must hold a public hearing
3.31 to determine the relationship of the economic and social costs of achieving such limitation
3.32 or limitations, including any economic or social dislocation in the affected community or
3.33 communities, to the social and economic benefits to be obtained and to determine whether
3.34 or not such effluent limitation can be implemented with available technology or other
3.35 alternative control strategies. If a person affected by such limitation demonstrates at such

4.1 hearing that, whether or not such technology or other alternative control strategies are
4.2 available, there is no reasonable relationship between the economic and social costs and
4.3 the benefits to be obtained, such limitation ~~shall~~ must not become effective and ~~shall~~ must
4.4 be adjusted as it applies to such person;

4.5 ~~(9)~~ (ix) modifying, in its discretion, any requirement or limitation based upon best
4.6 available technology with respect to any point source for which a permit application is filed
4.7 after July 1, 1977, upon a showing by the owner or operator of such point source satisfactory
4.8 to the agency that such modified requirements will represent the maximum use of technology
4.9 within the economic capability of the owner or operator and will result in reasonable further
4.10 progress toward the elimination of the discharge of pollutants; and

4.11 ~~(10)~~ (x) requiring that applicants for wastewater discharge permits evaluate in their
4.12 applications the potential reuses of the discharged wastewater;

4.13 ~~(f)~~ (6) to require to be submitted and to approve plans and specifications for disposal
4.14 systems or point sources, or any part thereof and to inspect the construction thereof for
4.15 compliance with the approved plans and specifications thereof;

4.16 ~~(g)~~ (7) to prescribe and alter rules, not inconsistent with law, for the conduct of the
4.17 agency and other matters within the scope of the powers granted to and imposed upon it by
4.18 this chapter and, with respect to pollution of waters of the state, in chapter 116, provided
4.19 that every rule affecting any other department or agency of the state or any person other
4.20 than a member or employee of the agency ~~shall~~ must be filed with the secretary of state;

4.21 ~~(h)~~ (8) to conduct such investigations, issue such notices, public and otherwise, and hold
4.22 such hearings as are necessary or which it may deem advisable for the discharge of its duties
4.23 under this chapter and, with respect to the pollution of waters of the state, under chapter
4.24 116, including, but not limited to, the issuance of permits, and to authorize any member,
4.25 employee, or agent appointed by it to conduct such investigations or, issue such notices and
4.26 hold such hearings;

4.27 ~~(i)~~ (9) for the purpose of water pollution control planning by the state and pursuant to
4.28 the Federal Water Pollution Control Act, as amended, to establish and revise planning areas,
4.29 adopt plans and programs and continuing planning processes, including, but not limited to,
4.30 basin plans and areawide waste treatment management plans, and to provide for the
4.31 implementation of any such plans by means of, including, but not limited to, standards, plan
4.32 elements, procedures for revision, intergovernmental cooperation, residual treatment process
4.33 waste controls, and needs inventory and ranking for construction of disposal systems;

5.1 ~~(j)~~ (10) to train water pollution control personnel; and charge ~~such fees therefor as are~~
5.2 for the training as necessary to cover the agency's costs. The fees under this clause are
5.3 subject to legislative approval under section 16A.1283. All such fees received shall must
5.4 be paid into the state treasury and credited to the Pollution Control Agency training account;

5.5 ~~(k)~~ (11) to impose as additional conditions in permits to publicly owned disposal systems
5.6 appropriate measures to insure compliance by industrial and other users with any pretreatment
5.7 standard, including, but not limited to, those related to toxic pollutants, and any system of
5.8 user charges ratably as is hereby required under state law or said Federal Water Pollution
5.9 Control Act, as amended, or any regulations or guidelines promulgated thereunder;

5.10 ~~(l)~~ (12) to set a period not to exceed five years for the duration of any national pollutant
5.11 discharge elimination system permit or not to exceed ten years for any permit issued as a
5.12 state disposal system permit only;

5.13 ~~(m)~~ (13) to require each governmental subdivision identified as a permittee for a
5.14 wastewater treatment works to evaluate in every odd-numbered year the condition of its
5.15 existing system and identify future capital improvements that will be needed to attain or
5.16 maintain compliance with a national pollutant discharge elimination system or state disposal
5.17 system permit; and

5.18 ~~(n)~~ (14) to train subsurface sewage treatment system personnel, including persons who
5.19 design, construct, install, inspect, service, and operate subsurface sewage treatment systems,
5.20 and charge fees for the training as necessary to pay the agency's costs. The fees under this
5.21 clause are subject to legislative approval under section 16A.1283. All fees received must
5.22 be paid into the state treasury and credited to the agency's training account. Money in the
5.23 account is appropriated to the agency to pay expenses related to training.

5.24 (b) The information required in paragraph (a), clause ~~(m)~~ (13), must be submitted in
5.25 every odd-numbered year to the commissioner on a form provided by the commissioner.
5.26 The commissioner ~~shall~~ must provide technical assistance if requested by the governmental
5.27 subdivision.

5.28 (c) The powers and duties given the agency in this subdivision also apply to permits
5.29 issued under chapter 114C.

5.30 Sec. 3. Minnesota Statutes 2020, section 115.455, is amended to read:

5.31 **115.455 EFFLUENT LIMITATIONS; COMPLIANCE.**

5.32 To the extent allowable under federal law, for a municipality that constructs a publicly
5.33 owned treatment works or for an industrial national pollutant discharge elimination system

6.1 and state disposal system permit holder that constructs a treatment works to comply with a
6.2 new or modified effluent limitation, compliance with any new or modified effluent limitation
6.3 adopted after construction begins that would require additional capital investment is required
6.4 no sooner than 16 years after the date the facility begins operating.

6.5 Sec. 4. Minnesota Statutes 2020, section 115.77, subdivision 1, is amended to read:

6.6 Subdivision 1. **Fees.** The agency ~~shall~~ must collect fees in amounts necessary, but no
6.7 greater than the amounts necessary, to cover the reasonable costs of reviewing applications
6.8 and issuing certifications. The fees under this subdivision are subject to legislative approval
6.9 under section 16A.1283.

6.10 Sec. 5. Minnesota Statutes 2020, section 115.84, subdivision 2, is amended to read:

6.11 Subd. 2. **Rules.** The agency may adopt rules to govern certification of laboratories
6.12 according to this section. ~~Notwithstanding section 16A.1283, the agency may adopt rules~~
6.13 ~~establishing fees.~~

6.14 Sec. 6. Minnesota Statutes 2020, section 115.84, subdivision 3, is amended to read:

6.15 Subd. 3. **Fees.** (a) Until the agency adopts a rule establishing fees for certification, the
6.16 agency ~~shall~~ must collect fees from laboratories registering with the agency, but not
6.17 accredited by the commissioner of health under sections 144.97 to 144.99, in amounts
6.18 necessary to cover the reasonable costs of the certification program, including reviewing
6.19 applications, issuing certifications, and conducting audits and compliance assistance. The
6.20 fees under this paragraph are subject to legislative approval under section 16A.1283.

6.21 (b) Fees under this section must be based on the number, type, and complexity of
6.22 analytical methods that laboratories are certified to perform.

6.23 (c) Revenue from fees charged by the agency for certification ~~shall~~ must be credited to
6.24 the environmental fund.

6.25 Sec. 7. Minnesota Statutes 2020, section 116.03, subdivision 2b, is amended to read:

6.26 Subd. 2b. **Permitting efficiency.** (a) It is the goal of the state that environmental and
6.27 resource management permits be issued or denied within 90 days for tier 1 permits or 150
6.28 days for tier 2 permits following submission of a permit application. The commissioner of
6.29 the Pollution Control Agency ~~shall~~ must establish management systems designed to achieve
6.30 the goal. For the purposes of this section, "tier 1 permits" are permits that do not require

7.1 individualized actions or public comment periods, and "tier 2 permits" are permits that
7.2 require individualized actions or public comment periods.

7.3 (b) The commissioner ~~shall~~ must prepare ~~an annual~~ semiannual permitting efficiency
7.4 ~~report reports~~ that ~~includes~~ include statistics on meeting the tier 2 goal in paragraph (a) and
7.5 the criteria for tier 2 by permit categories. The ~~report is~~ reports are due on February 1 and
7.6 August 1 each year. For permit applications that have not met the goal, ~~the~~ each report must
7.7 state the reasons for not meeting the goal. In stating the reasons for not meeting the goal,
7.8 the commissioner ~~shall~~ must separately identify delays caused by the responsiveness of the
7.9 proposer, ~~lack of staff~~, scientific or technical disagreements, or the level of public
7.10 engagement. ~~The~~ Each report must specify the number of days from initial submission of
7.11 the application to the day of determination that the application is complete. ~~The~~ Each report
7.12 must aggregate the data for the year reporting period and assess whether program or system
7.13 changes are necessary to achieve the goal. Whenever a report required by this subdivision
7.14 states the number of permits completed within a particular period, the report must,
7.15 immediately after the number and in parentheses, state the percentage of total applications
7.16 received for that permit category that the number represents. Whenever a report required
7.17 by this subdivision states the number of permits completed within a particular period, the
7.18 report must separately state completion data for industrial and municipal permits. The ~~report~~
7.19 ~~reports~~ must be posted on the agency's website and submitted to the governor and the chairs
7.20 and ranking minority members of the house of representatives and senate committees having
7.21 jurisdiction over environment policy and finance.

7.22 (c) The commissioner ~~shall~~ must allow electronic submission of environmental review
7.23 and permit documents to the agency.

7.24 (d) Within 30 business days of application for a permit subject to paragraph (a), the
7.25 commissioner of the Pollution Control Agency ~~shall~~ must notify the permit applicant, in
7.26 writing, whether the application is complete or incomplete. If the commissioner determines
7.27 that an application is incomplete, the notice to the applicant must enumerate all deficiencies,
7.28 citing specific provisions of the applicable rules and statutes, and advise the applicant on
7.29 how the deficiencies can be remedied. If the commissioner determines that the application
7.30 is complete, the notice must confirm the application's tier 1 or tier 2 permit status. If the
7.31 commissioner believes that a complete application for a tier 2 construction permit cannot
7.32 be issued within the 150-day goal, the commissioner must provide notice to the applicant
7.33 with the commissioner's notice that the application is complete and, upon request of the
7.34 applicant, provide the permit applicant with a schedule estimating when the agency will
7.35 begin drafting the permit and issue the public notice of the draft permit. This paragraph

8.1 does not apply to an application for a permit that is subject to a grant or loan agreement
8.2 under chapter 446A.

8.3 (e) For purposes of this subdivision, "permit professional" means an individual not
8.4 employed by the Pollution Control Agency who:

8.5 (1) has a professional license issued by the state of Minnesota in the subject area of the
8.6 permit;

8.7 (2) has at least ten years of experience in the subject area of the permit; and

8.8 (3) abides by the duty of candor applicable to employees of the Pollution Control Agency
8.9 under agency rules and complies with all applicable requirements under chapter 326.

8.10 (f) Upon the agency's request, an applicant relying on a permit professional must
8.11 participate in a meeting with the agency before submitting an application:

8.12 (1) at least two weeks prior to the preapplication meeting, the applicant must submit at
8.13 least the following:

8.14 (i) project description, including, but not limited to, scope of work, primary emissions
8.15 points, discharge outfalls, and water intake points;

8.16 (ii) location of the project, including county, municipality, and location on the site;

8.17 (iii) business schedule for project completion; and

8.18 (iv) other information requested by the agency at least four weeks prior to the scheduled
8.19 meeting; and

8.20 (2) during the preapplication meeting, the agency ~~shall~~ must provide for the applicant
8.21 at least the following:

8.22 (i) an overview of the permit review program;

8.23 (ii) a determination of which specific application or applications will be necessary to
8.24 complete the project;

8.25 (iii) a statement notifying the applicant if the specific permit being sought requires a
8.26 mandatory public hearing or comment period;

8.27 (iv) a review of the timetable established in the permit review program for the specific
8.28 permit being sought; and

8.29 (v) a determination of what information must be included in the application, including
8.30 a description of any required modeling or testing.

9.1 (g) The applicant may select a permit professional to undertake the preparation of the
9.2 permit application and draft permit.

9.3 (h) If a preapplication meeting was held, the agency ~~shall~~ must, within seven business
9.4 days of receipt of an application, notify the applicant and submitting permit professional
9.5 that the application is complete or is denied, specifying the deficiencies of the application.

9.6 (i) Upon receipt of notice that the application is complete, the permit professional ~~shall~~
9.7 must submit to the agency a timetable for submitting a draft permit. The permit professional
9.8 ~~shall~~ must submit a draft permit on or before the date provided in the timetable. Within 60
9.9 days after the close of the public comment period, the commissioner ~~shall~~ must notify the
9.10 applicant whether the permit can be issued.

9.11 (j) Nothing in this section ~~shall~~ must be construed to modify:

9.12 (1) any requirement of law that is necessary to retain federal delegation to or assumption
9.13 by the state; or

9.14 (2) the authority to implement a federal law or program.

9.15 (k) The permit application and draft permit ~~shall~~ must identify or include as an appendix
9.16 all studies and other sources of information used to substantiate the analysis contained in
9.17 the permit application and draft permit. The commissioner ~~shall~~ must request additional
9.18 studies, if needed, and the permit applicant ~~shall~~ must submit all additional studies and
9.19 information necessary for the commissioner to perform the commissioner's responsibility
9.20 to review, modify, and determine the completeness of the application and approve the draft
9.21 permit.

9.22 Sec. 8. Minnesota Statutes 2020, section 116.07, subdivision 4d, is amended to read:

9.23 Subd. 4d. **Permit fees.** (a) The agency may collect permit fees in amounts not greater
9.24 than those necessary to cover the reasonable costs of developing, reviewing, and acting
9.25 upon applications for agency permits and implementing and enforcing the conditions of the
9.26 permits pursuant to agency rules. Permit fees ~~shall~~ must not include the costs of litigation.
9.27 The fee schedule must reflect reasonable and routine direct and indirect costs associated
9.28 with permitting, implementation, and enforcement. The agency may impose an additional
9.29 enforcement fee to be collected for ~~a period of~~ up to two years to cover the reasonable costs
9.30 of implementing and enforcing the conditions of a permit under the rules of the agency.
9.31 Water fees under this paragraph are subject to legislative approval under section 16A.1283.
9.32 Any money collected under this paragraph ~~shall~~ must be deposited in the environmental
9.33 fund.

10.1 (b) Notwithstanding paragraph (a), the agency ~~shall~~ must collect an annual fee from the
10.2 owner or operator of all stationary sources, emission facilities, emissions units, air
10.3 contaminant treatment facilities, treatment facilities, potential air contaminant storage
10.4 facilities, or storage facilities subject to a notification, permit, or license requirement under
10.5 this chapter, subchapters I and V of the federal Clean Air Act, United States Code, title 42,
10.6 section 7401 et seq., or rules adopted thereunder. The annual fee ~~shall~~ must be used to pay
10.7 for all direct and indirect reasonable costs, including legal costs, required to develop and
10.8 administer the notification, permit, or license program requirements of this chapter,
10.9 subchapters I and V of the federal Clean Air Act, United States Code, title 42, section 7401
10.10 et seq., or rules adopted thereunder. Those costs include the reasonable costs of reviewing
10.11 and acting upon an application for a permit; implementing and enforcing statutes, rules, and
10.12 the terms and conditions of a permit; emissions, ambient, and deposition monitoring;
10.13 preparing generally applicable regulations; responding to federal guidance; modeling,
10.14 analyses, and demonstrations; preparing inventories and tracking emissions; and providing
10.15 information to the public about these activities.

10.16 (c) The agency ~~shall~~ must set fees that:

10.17 (1) will result in the collection, in the aggregate, from the sources listed in paragraph
10.18 (b), of an amount not less than \$25 per ton of each volatile organic compound; pollutant
10.19 regulated under United States Code, title 42, section 7411 or 7412 (section 111 or 112 of
10.20 the federal Clean Air Act); and each pollutant, except carbon monoxide, for which a national
10.21 primary ambient air quality standard has been promulgated;

10.22 (2) may result in the collection, in the aggregate, from the sources listed in paragraph
10.23 (b), of an amount not less than \$25 per ton of each pollutant not listed in clause (1) that is
10.24 regulated under this chapter or air quality rules adopted under this chapter; and

10.25 (3) ~~shall~~ must collect, in the aggregate, from the sources listed in paragraph (b), the
10.26 amount needed to match grant funds received by the state under United States Code, title
10.27 42, section 7405 (section 105 of the federal Clean Air Act).

10.28 The agency must not include in the calculation of the aggregate amount to be collected
10.29 under clauses (1) and (2) any amount in excess of 4,000 tons per year of each air pollutant
10.30 from a source. The increase in air permit fees to match federal grant funds ~~shall be~~ is a
10.31 surcharge on existing fees. The commissioner may not collect the surcharge after the grant
10.32 funds become unavailable. In addition, the commissioner ~~shall~~ must use nonfee funds to
10.33 the extent practical to match the grant funds so that the fee surcharge is minimized.

11.1 (d) To cover the reasonable costs described in paragraph (b), the agency ~~shall~~ must
11.2 provide in the rules promulgated under paragraph (c) for an increase in the fee collected in
11.3 each year by the percentage, if any, by which the Consumer Price Index for the most recent
11.4 calendar year ending before the beginning of the year the fee is collected exceeds the
11.5 Consumer Price Index for the calendar year 1989. For purposes of this paragraph, the
11.6 Consumer Price Index for any calendar year is the average of the Consumer Price Index for
11.7 all-urban consumers published by the United States Department of Labor, as of the close
11.8 of the 12-month period ending on August 31 of each calendar year. The revision of the
11.9 Consumer Price Index that is most consistent with the Consumer Price Index for calendar
11.10 year 1989 ~~shall~~ must be used.

11.11 (e) Any money collected under paragraphs (b) to (d) must be deposited in the
11.12 environmental fund and must be used solely for the activities listed in paragraph (b).

11.13 (f) Permit applicants who wish to construct, reconstruct, or modify a project may offer
11.14 to reimburse the agency for the costs of staff time or consultant services needed to expedite
11.15 the preapplication process and permit development process through the final decision on
11.16 the permit, including the analysis of environmental review documents. The reimbursement
11.17 ~~shall be~~ is in addition to permit application fees imposed by law. When the agency determines
11.18 that it needs additional resources to develop the permit application in an expedited manner,
11.19 and that expediting the development is consistent with permitting program priorities, the
11.20 agency may accept the reimbursement. The commissioner must give the applicant an estimate
11.21 of costs to be incurred by the commissioner. The estimate must include a brief description
11.22 of the tasks to be performed, a schedule for completing the tasks, and the estimated cost for
11.23 each task. The applicant and the commissioner must enter into a written agreement detailing
11.24 the estimated costs for the expedited permit decision-making process to be incurred by the
11.25 agency. The agreement must also identify staff anticipated to be assigned to the project.
11.26 The commissioner must not issue a permit until the applicant has paid all fees in full. The
11.27 commissioner must refund any unobligated balance of fees paid. Reimbursements accepted
11.28 by the agency are appropriated to the agency for the purpose of developing the permit or
11.29 analyzing environmental review documents. Reimbursement by a permit applicant ~~shall~~
11.30 must precede and not be contingent upon issuance of a permit; ~~shall~~ must not affect the
11.31 agency's decision on whether to issue or deny a permit, what conditions are included in a
11.32 permit, or the application of state and federal statutes and rules governing permit
11.33 determinations; and ~~shall~~ must not affect final decisions regarding environmental review.

11.34 (g) The fees under this subdivision are exempt from section 16A.1285.

12.1 Sec. 9. Minnesota Statutes 2020, section 116.07, is amended by adding a subdivision to
12.2 read:

12.3 Subd. 13. **Unadopted rules.** The commissioner of the Pollution Control Agency must
12.4 not enforce or attempt to enforce an unadopted rule. For purposes of this subdivision,
12.5 "unadopted rule" means a guideline, bulletin, criterion, manual standard, interpretive
12.6 statement, policy plan, or similar pronouncement if the guideline, bulletin, criterion, manual
12.7 standard, interpretive statement, policy plan, or similar pronouncement has not been adopted
12.8 according to the rulemaking process provided under chapter 14. If an unadopted rule is
12.9 challenged under section 14.381, the commissioner must cease enforcement of the unadopted
12.10 rule and overcome a presumption that the unadopted rule must be adopted according to the
12.11 rulemaking process provided under chapter 14.

12.12 Sec. 10. Minnesota Statutes 2020, section 116D.04, subdivision 2a, is amended to read:

12.13 Subd. 2a. **When prepared.** (a) Where there is potential for significant environmental
12.14 effects resulting from any major governmental action, the action must be preceded by a
12.15 detailed environmental impact statement prepared by the responsible governmental unit.
12.16 The environmental impact statement must be an analytical rather than an encyclopedic
12.17 document that describes the proposed action in detail, analyzes its significant environmental
12.18 impacts, discusses appropriate alternatives to the proposed action and their impacts, and
12.19 explores methods by which adverse environmental impacts of an action could be mitigated.
12.20 The environmental impact statement must also analyze those economic, employment, and
12.21 sociological effects that cannot be avoided should the action be implemented. To ensure its
12.22 use in the decision-making process, the environmental impact statement must be prepared
12.23 as early as practical in the formulation of an action.

12.24 (b) The board ~~shall~~ must by rule establish categories of actions for which environmental
12.25 impact statements and for which environmental assessment worksheets must be prepared
12.26 as well as categories of actions for which no environmental review is required under this
12.27 section. A mandatory environmental assessment worksheet is not required for the expansion
12.28 of an ethanol plant, as defined in section 41A.09, subdivision 2a, paragraph (b), or the
12.29 conversion of an ethanol plant to a biobutanol facility or the expansion of a biobutanol
12.30 facility as defined in section 41A.15, subdivision 2d, based on the capacity of the expanded
12.31 or converted facility to produce alcohol fuel, but must be required if the ethanol plant or
12.32 biobutanol facility meets or exceeds thresholds of other categories of actions for which
12.33 environmental assessment worksheets must be prepared. The responsible governmental unit
12.34 for an ethanol plant or biobutanol facility project for which an environmental assessment

13.1 worksheet is prepared is the state agency with the greatest responsibility for supervising or
13.2 approving the project as a whole.

13.3 (c) A mandatory environmental impact statement is not required for a facility or plant
13.4 located outside the seven-county metropolitan area that produces less than 125,000,000
13.5 gallons of ethanol, biobutanol, or cellulosic biofuel annually, or produces less than 400,000
13.6 tons of chemicals annually, if the facility or plant is: an ethanol plant, as defined in section
13.7 41A.09, subdivision 2a, paragraph (b); a biobutanol facility, as defined in section 41A.15,
13.8 subdivision 2d; or a cellulosic biofuel facility. A facility or plant that only uses a cellulosic
13.9 feedstock to produce chemical products for use by another facility as a feedstock is not
13.10 considered a fuel conversion facility as used in rules adopted under this chapter.

13.11 (d) The responsible governmental unit ~~shall~~ must promptly publish notice of the
13.12 completion of an environmental assessment worksheet by publishing the notice in at least
13.13 one newspaper of general circulation in the geographic area where the project is proposed,
13.14 by posting the notice on a website that has been designated as the official publication site
13.15 for publication of proceedings, public notices, and summaries of a political subdivision in
13.16 which the project is proposed, or in any other manner determined by the board and ~~shall~~
13.17 must provide copies of the environmental assessment worksheet to the board and its member
13.18 agencies. Comments on the need for an environmental impact statement may be submitted
13.19 to the responsible governmental unit during a 30-day period following publication of the
13.20 notice that an environmental assessment worksheet has been completed. The responsible
13.21 governmental unit may extend the 30-day comment period for an additional 30 days one
13.22 time. Further extensions of the comment period may not be made unless approved by the
13.23 project's proposer. The responsible governmental unit's decision on the need for an
13.24 environmental impact statement must be based on the environmental assessment worksheet
13.25 and the comments received during the comment period, and must be made within 15 days
13.26 after the close of the comment period. The board's chair may extend the 15-day period by
13.27 not more than 15 additional days upon the request of the responsible governmental unit.

13.28 (e) An environmental assessment worksheet must also be prepared for a proposed action
13.29 whenever material evidence accompanying a petition by not less than 100 individuals who
13.30 reside or own property in ~~the state~~ a county where the proposed action will be undertaken
13.31 or in one or more adjoining counties, submitted before the proposed project has received
13.32 final approval by the appropriate governmental units, demonstrates that, because of the
13.33 nature or location of a proposed action, there may be potential for significant environmental
13.34 effects. Petitions requesting the preparation of an environmental assessment worksheet must
13.35 be submitted to the board. The chair of the board ~~shall~~ must determine the appropriate

14.1 responsible governmental unit and forward the petition to it. A decision on the need for an
14.2 environmental assessment worksheet must be made by the responsible governmental unit
14.3 within 15 days after the petition is received by the responsible governmental unit. The
14.4 board's chair may extend the 15-day period by not more than 15 additional days upon request
14.5 of the responsible governmental unit.

14.6 (f) Except in an environmentally sensitive location where Minnesota Rules, part
14.7 4410.4300, subpart 29, item B, applies, the proposed action is exempt from environmental
14.8 review under this chapter and rules of the board, if:

14.9 (1) the proposed action is:

14.10 (i) an animal feedlot facility with a capacity of less than 1,000 animal units; or

14.11 (ii) an expansion of an existing animal feedlot facility with a total cumulative capacity
14.12 of less than 1,000 animal units;

14.13 (2) the application for the animal feedlot facility includes a written commitment by the
14.14 proposer to design, construct, and operate the facility in full compliance with Pollution
14.15 Control Agency feedlot rules; and

14.16 (3) the county board holds a public meeting for citizen input at least ten business days
14.17 before the Pollution Control Agency or county issuing a feedlot permit for the animal feedlot
14.18 facility unless another public meeting for citizen input has been held with regard to the
14.19 feedlot facility to be permitted. The exemption in this paragraph is in addition to other
14.20 exemptions provided under other law and rules of the board.

14.21 (g) The board may, before final approval of a proposed project, require preparation of
14.22 an environmental assessment worksheet by a responsible governmental unit selected by the
14.23 board for any action where environmental review under this section has not been specifically
14.24 provided for by rule or otherwise initiated.

14.25 (h) An early and open process must be used to limit the scope of the environmental
14.26 impact statement to a discussion of those impacts that, because of the nature or location of
14.27 the project, have the potential for significant environmental effects. The same process must
14.28 be used to determine the form, content, and level of detail of the statement as well as the
14.29 alternatives that are appropriate for consideration in the statement. In addition, the permits
14.30 that will be required for the proposed action must be identified during the scoping process.
14.31 Further, the process must identify those permits for which information will be developed
14.32 concurrently with the environmental impact statement. The board ~~shall~~ must provide in its
14.33 rules for the expeditious completion of the scoping process. The determinations reached in

15.1 the process must be incorporated into the order requiring the preparation of an environmental
15.2 impact statement.

15.3 (i) The responsible governmental unit ~~shall~~ must, to the extent practicable, avoid
15.4 duplication and ensure coordination between state and federal environmental review and
15.5 between environmental review and environmental permitting. Whenever practical,
15.6 information needed by a governmental unit for making final decisions on permits or other
15.7 actions required for a proposed project must be developed in conjunction with the preparation
15.8 of an environmental impact statement. When an environmental impact statement is prepared
15.9 for a project requiring multiple permits for which two or more agencies' decision processes
15.10 include either mandatory or discretionary hearings before a hearing officer before the
15.11 agencies' decision on the permit, the agencies may, notwithstanding any law or rule to the
15.12 contrary, conduct the hearings in a single consolidated hearing process if requested by the
15.13 proposer. All agencies having jurisdiction over a permit that is included in the consolidated
15.14 hearing ~~shall~~ must participate. The responsible governmental unit ~~shall~~ must establish
15.15 appropriate procedures for the consolidated hearing process, including procedures to ensure
15.16 that the consolidated hearing process is consistent with the applicable requirements for each
15.17 permit regarding the rights and duties of parties to the hearing, and ~~shall~~ must use the earliest
15.18 applicable hearing procedure to initiate the hearing. All agencies having jurisdiction over
15.19 a permit identified in the draft environmental assessment worksheet scoping document must
15.20 begin reviewing any permit application upon publication of the notice of preparation of the
15.21 environmental impact statement.

15.22 (j) An environmental impact statement must be prepared and its adequacy determined
15.23 within 280 days after notice of its preparation unless the time is extended by consent of the
15.24 parties or by the governor for good cause. The responsible governmental unit ~~shall~~ must
15.25 determine the adequacy of an environmental impact statement, unless within 60 days after
15.26 notice is published that an environmental impact statement will be prepared, the board
15.27 chooses to determine the adequacy of an environmental impact statement. If an environmental
15.28 impact statement is found to be inadequate, the responsible governmental unit has 60 days
15.29 to prepare an adequate environmental impact statement.

15.30 (k) The proposer of a specific action may include in the information submitted to the
15.31 responsible governmental unit a preliminary draft environmental impact statement under
15.32 this section on that action for review, modification, and determination of completeness and
15.33 adequacy by the responsible governmental unit. A preliminary draft environmental impact
15.34 statement prepared by the project proposer and submitted to the responsible governmental
15.35 unit must identify or include as an appendix all studies and other sources of information

16.1 used to substantiate the analysis contained in the preliminary draft environmental impact
16.2 statement. The responsible governmental unit ~~shall~~ must require additional studies, if needed,
16.3 and obtain from the project proposer all additional studies and information necessary for
16.4 the responsible governmental unit to perform its responsibility to review, modify, and
16.5 determine the completeness and adequacy of the environmental impact statement.

16.6 **Sec. 11. ANALYSIS OF FUNDING ALTERNATIVES FOR AIR PERMIT**
16.7 **PROGRAM.**

16.8 \$...... in fiscal year 2023 is appropriated from the fund to the commissioner of the
16.9 Pollution Control Agency to conduct an analysis of how states within Environmental
16.10 Protection Agency Region 5 fund their air permitting programs. By January 15, 2024, the
16.11 commissioner must report the results of the analysis to the chairs and ranking minority
16.12 members of the house of representatives and senate committees and divisions with jurisdiction
16.13 over environment and natural resources. The report must include:

16.14 (1) identification of all sources of funding for Minnesota's air permitting program and
16.15 those of each other state within Environmental Protection Agency Region 5;

16.16 (2) a summary of how the funding sources identified under clause (1) have changed
16.17 during the last 20 years;

16.18 (3) an analysis of the costs that Minnesota's air permitting program and those of each
16.19 state within Environmental Protection Area Region 5 impose on permittees;

16.20 (4) a summary of how the costs identified under clause (3) have changed during the last
16.21 20 years and how they relate to total permittee emissions;

16.22 (5) identification of potential alternatives to Minnesota's current practice of increasing
16.23 the per-ton air emission fee as emissions are reduced; and

16.24 (6) an assessment of what policy changes, legal changes, and funding changes would
16.25 be required to successfully implement a program that did not increase permittee costs as air
16.26 emissions are reduced.

16.27 **Sec. 12. FILLING OF CERTAIN POLLUTION CONTROL AGENCY AIR PERMIT**
16.28 **PROGRAM VACANCIES.**

16.29 Subdivision 1. **Duty to fill certain positions.** The commissioner of the pollution control
16.30 agency must do the following for each position in the agency's air permit program that has
16.31 been open for at least one year as of the effective date of this section:

17.1 (1) within 60 days of the effective date of this section, post job opening information for
17.2 each position in the manner normally used by the commissioner to post job openings;

17.3 (2) within 90 days of the effective date of this section, conduct interviews to fill each
17.4 position; and

17.5 (3) within 120 days of the effective date of this section, complete hiring to fill each
17.6 position.

17.7 Subd. 2. Report. By January 15, 2024, the commissioner must submit a report to the
17.8 chairs and ranking minority members of the house of representatives and senate committees
17.9 and divisions with jurisdiction over environment and natural resources on its efforts to
17.10 comply with this section. The report must include the following:

17.11 (1) a summary of the commissioner's efforts to comply with each clause in subdivision
17.12 1; and

17.13 (2) for any position that receives less than five applicants, an explanation of the need
17.14 for each of the job requirements including in the job positing.

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

17.16 Sec. 13. **STATE IMPLEMENTATION PLAN REVISIONS.**

17.17 (a) The commissioner of the Pollution Control Agency must seek approval from the
17.18 federal Environmental Protection Agency for revisions to the state's federal Clean Air Act
17.19 state implementation plan so that under the revised plan, the Pollution Control Agency is
17.20 prohibited from applying a national or state ambient air quality standard in a permit issued
17.21 solely to authorize operations to continue at an existing facility with unmodified emissions
17.22 levels. Nothing in this section must be construed to require the commissioner to apply for
17.23 a revision that would prohibit the agency from applying a national or state ambient air
17.24 quality standard in a permit that authorizes an increase in emissions due to construction of
17.25 a new facility or in a permit that authorizes changes to existing facilities that result in a
17.26 significant net emissions increase of a regulated NSR pollutant, as defined in Code of Federal
17.27 Regulations, title 40, section 52.21(b)(50).

17.28 (b) The commissioner of the Pollution Control Agency must report quarterly to the chairs
17.29 and ranking minority members of the house of representatives and senate committees and
17.30 divisions with jurisdiction over environment and natural resources policy on the status of
17.31 efforts to implement paragraph (a) until the revisions required by paragraph (a) have been
17.32 either approved or denied."

18.1 Delete the title and insert:

18.2 "A bill for an act

18.3 relating to environment; clarifying that certain agency interpretive statements may
18.4 not be treated as if they are properly adopted rules; clarifying that certain fee
18.5 increases require legislative approval; modifying effluent limitation requirements;
18.6 modifying requirements for Pollution Control Agency permitting efficiency reports;
18.7 modifying procedure for filing petition seeking environmental assessment
18.8 worksheet; requiring the Pollution Control Agency to seek approval of certain
18.9 modifications to state implementation plan; requiring the Pollution Control Agency
18.10 to analyze funding alternatives for its industrial air permit program; requiring the
18.11 Pollution Control Agency to fill certain open positions in its air permitting program;
18.12 amending Minnesota Statutes 2020, sections 84.027, by adding a subdivision;
18.13 115.03, subdivision 1; 115.455; 115.77, subdivision 1; 115.84, subdivisions 2, 3;
18.14 116.03, subdivision 2b; 116.07, subdivision 4d, by adding a subdivision; 116D.04,
18.15 subdivision 2a."