

HF973 - 0 - "MPCA Citizens Board Reinstated"

Chief Author: **John Persell**
 Committee: **Environment & Natural Resources Finance Division**
 Date Completed: **03/08/2019**
 Agency: **Pollution Control Agency**

| State Fiscal Impact | Yes | No |
|---------------------------|-----|----|
| Expenditures | X | |
| Fee/Departmental Earnings | | X |
| Tax Revenue | | X |
| Information Technology | X | |
| Local Fiscal Impact | | |
| | | X |

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions shown in the parentheses.

| State Cost (Savings) | Biennium | | | Biennium | | |
|-----------------------|----------------------|------------|------------|------------|------------|------------|
| | Dollars in Thousands | FY2019 | FY2020 | FY2021 | FY2022 | FY2023 |
| Environmental | - | 380 | 289 | 289 | 289 | 289 |
| Total | - | 380 | 289 | 289 | 289 | 289 |
| Biennial Total | | | 669 | | | 578 |

| Full Time Equivalent Positions (FTE) | Biennium | | | Biennium | |
|--------------------------------------|----------|----------|-------------|-------------|-------------|
| | FY2019 | FY2020 | FY2021 | FY2022 | FY2023 |
| Environmental | - | 3 | 2.25 | 2.25 | 2.25 |
| Total | - | 3 | 2.25 | 2.25 | 2.25 |

Executive Budget Officer's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with MMB's Fiscal Note policies.

EBO Signature: Sean Fahnhorst Date: 3/8/2019 9:54:10 AM
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State Cost (Savings) Calculation Details

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions are shown in parentheses.

*Transfers In/Out and Absorbed Costs are only displayed when reported.

| State Cost (Savings) = 1-2 | | Biennium | | | Biennium | |
|--|----------|------------|------------|------------|------------|------------|
| Dollars in Thousands | FY2019 | FY2020 | FY2021 | FY2022 | FY2023 | |
| Environmental | - | 380 | 289 | 289 | 289 | |
| Total | - | 380 | 289 | 289 | 289 | 289 |
| Biennial Total | | | 669 | | | 578 |
| 1 - Expenditures, Absorbed Costs*, Transfers Out* | | | | | | |
| Environmental | - | 380 | 289 | 289 | 289 | |
| Total | - | 380 | 289 | 289 | 289 | 289 |
| Biennial Total | | | 669 | | | 578 |
| 2 - Revenues, Transfers In* | | | | | | |
| Environmental | - | - | - | - | - | |
| Total | - | - | - | - | - | - |
| Biennial Total | | | - | | | - |

Bill Description

HF973 (bill) amends M.S. 116.02 to reinstate the Minnesota Pollution Control Agency (MPCA) Citizens Board, which was eliminated in 2015. The MPCA Citizens Board was originally established in 1967. It was made up of nine members consisting of the commissioner of the MPCA, who serves as the chair, and eight citizens appointed by the Governor and confirmed by the Senate. The MPCA Citizens Board had a number of duties and authorities, including final decision making authority on the need for an environmental impact statement (EIS) under certain conditions and the issuance of certain permits. This bill would restore the board to its original makeup, duties, and authorities.

Section 1 establishes the purpose of the MPCA Citizens Board

Section 2 amends M.S. 116.02 related to the creation and power of the MPCA.

Subdivision 1 defines the MPCA to include a commissioner and eight members appointed by the governor, by and with the advice and consent of the Senate. It further states that one member must be a person knowledgeable in the field of agriculture and one must be a representative of organized labor.

Subdivision 2a provides for the membership terms, compensation, removal, and filling of vacancies as provided in M. S. 15.0575.

Subdivision 3a establishes the details of the membership. The members must be broadly representative of the skills and experience necessary to carry out the policy of M.S. 116.01 to 116.075, except that no member other than the commissioner may be an officer or employee of the state or federal government. Only two members may be officials or employees of a municipality or any governmental subdivision at one time, and neither shall be a member, ex officio or otherwise, on the management board of a municipal sanitary sewage disposal system.

Subdivision 4a establishes the commissioner as the chair of the agency and all other officers to be elected as necessary.

Subdivision 5 vests authorities in the MPCA rather than the commissioner.

Subdivision 6a requires the Citizens Board to make the final decisions:

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

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

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

- (ii) the project proposer or a person commenting on the proposal requests that the declaration be made by the agency and the agency requests that it make the decision under subdivision 8a; or
- (iii) the commissioner is recommending preparation of an environmental impact statement;
- (3) the scope and adequacy of environmental impact statements;
- (4) issuing, reissuing, modifying, or revoking a permit if:
 - (i) a variance is sought in the permit application or a contested case hearing request is pending; or
 - (ii) the permit applicant, the permittee, or a person commenting on the permit action requests that the decision be made by the agency and the agency requests that it make the decision under subdivision 8a;
- (5) final adoption or amendment of agency rules for which a public hearing is required under section 14.25 or for which the commissioner decides to proceed directly to a public hearing under section 14.14, subdivision 1;
- (6) approving or denying an application for a variance from an agency rule if:
 - (i) granting the variance request would change an air, soil, or water quality standard;
 - (ii) the commissioner determines that granting the variance would have a significant environmental impact; or
 - (iii) the applicant or a person commenting on the variance request requests that the decision be made by the agency and the agency requests that it make the decision under subdivision 8a; and
- (7) whether to reopen, rescind, or reverse a decision of the agency.

Subdivision 7a allows the commissioner to request the Citizens Board to make additional decisions or provide advice.

Subdivision 8a establishes that other actions not specifically within the authority of the commissioner are made by the Citizens Board if:

- (1) before the commissioner's final decision on the action, one or more members of the agency notify the commissioner of their request that the decision be made by the agency; or
- (2) any person submits a petition to the commissioner requesting that the decision be made by the agency and the commissioner grants the petition.

Subdivision 8b that if the commissioner denies a petition submitted under paragraph (a), clause 2, the commissioner must inform the Citizens Board and the petitioner why the denial was made.

Subdivision 9a requires the commissioner to inform the public using public notices and other public documents of their right to request the Citizens Board to make decisions in specific matters according to subdivision 6a and the right of agency members to request that decisions be made by the agency according to subdivision 8a. The commissioner must regularly inform the agency of activities that have broad policy implications or potential environmental significance and of activities in which the public has exhibited substantial interest.

Subdivision 11 in paragraph a prohibits the Citizens Board from reopening, rescinding or reversing its decision unless two-thirds of the members approve by vote, or there is a finding that the hearing related to the decision had an irregularity, an error of law, or a newly discovered material issue of fact. In paragraph b, clarification is provided that clause a is the minimum requirements and it does not limit the agency authority to adopt rules to apply paragraph a to certain decisions or in establishing additional or more stringent requirements for reopening, rescinding, or reversing decisions of the agency.

Section 3 amends M.S. 116.03, subdivision 1, paragraph c to indicate that the commissioner shall make all decision on behalf of the agency that are not required to be made by the Citizens Board under M.S. 116.02.

Section 4 amends M.S. 116.03, subdivision 2a to add the Citizens Board to the mission statement.

Section 5 repeals the provision in the Laws of 2015 that requires the Revisor to prepare draft legislation to amend statutes to conform with elimination of the Citizens Board.

Assumptions

We assume the Citizens' Board members will be equally divided between Metro and non-Metro

representatives. We also estimate the Citizens Board will meet once per month, as they did in the past. We would provide public notice for each meeting per our normal public notice process. This process would make Board documents available on the MPCA webpage, which would also contain information regarding the Citizens Board.

Travel expenses in the cost calculation include mileage and meals. Not knowing exactly where the non-Metro members would live, we have estimated mileage and meals, but no overnight lodging. Board members will be paid a per diem as noted in Section 2, subdivision 2a.

We estimate we will need one FTE of support staff for the Board. The work of support staff will include planning and arranging logistics for the public meetings, communicating hearing schedules, reviewing all Board member travel and per diem expenses and other hearing expenses prior to submitting them for payment to Fiscal Services, coordinating with MPCA professional staff to coordinate the issues to be addressed and presented at the public hearings, and making the issues addressed and discussed at the hearings available to the public through the agency website. This FTE would be on-going.

We anticipate that in the first year we will need one FTE of additional professional staff time involved in setting up the webpage, web meetings, and other process and document steps. Once the process is operating smoothly, we believe the ongoing support would drop to 0.25 FTE.

Based on the topics and other agenda items appearing before the board, numerous agency staff would be required to develop and make subject matter expert presentations. This effort is estimated at 1 FTE/year.

Expenditure and/or Revenue Formula

Board Member Travel and Meeting Expenses

Mileage : 4 non-metro Citizens' Board members x 12 public meetings x 250 mi x \$0.58/mile = \$6,960

Mileage : 4 metro Citizens' Board members x 12 public meetings x 80 mi x \$0.58/mile = \$2,227

Meals: 14 Citizens' Board members and supporting staff x 12 public meetings x \$15/member = \$2,520

Per diem: 8 Citizens' Board members x 12 public hearings x \$55/day = \$5,280

Total Citizens' Board travel costs and per diem = \$16,987/year

Our annual cost of 1.0 FTE is \$121,000 For FY2019-22. Annual costs for 1.0 FTE include salary, fringe and shared services costs.

Citizens Board support staff. FY 2020 and ongoing = 1 FTE/year

Professional staff meetings support. FY 2020 = 1 FTE, FY 2021 and beyond = 0.25 FTE

Subject matter expert staff. FY2020 and beyond = 1 FTE

(2 staff x average of 22 hours preparation/agenda item x 4 agenda items/meeting x 12 meetings/year = 2,112/year. 1 FTE = 2,080 hours/year)

FY2020 = 3 FTE = \$363,000

FY2021 and beyond = 2.25 FTE = \$272,250/year ongoing costs

Long-Term Fiscal Considerations

Costs detailed above will continue into the future.

Local Fiscal Impact

None identified

References/Sources

Staff with knowledge about the MPCA Citizens Board.

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