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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-SECOND SESSION

H. F. No. 1237

02/18/2021 Authored by Hansen, R., 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; modifying provisions for priority qualified facilities;
1.3 modifying authority to acquire property interests; authorizing requests for
1.4 information on contaminants; designating perfluorochemicals as hazardous
1.5 substance; modifying provisions for electronic waste; amending Minnesota Statutes
1.6 2020, sections 115A.1310, subdivision 12b; 115A.1312, subdivision 1; 115A.1314,
1.7 subdivision 1; 115A.1316, subdivision 1; 115A.1318, subdivision 2; 115A.1320,
1.8 subdivision 1; 115B.02, subdivision 8; 115B.17, subdivision 13; 115B.406,
1.9 subdivisions 1, 9; 115B.407; 116.07, by adding a subdivision; proposing coding
1.10 for new law in Minnesota Statutes, chapter 116; repealing Minnesota Rules, part
1.11 7044.0350.

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

1.13 Section 1. Minnesota Statutes 2020, section 115A.1310, subdivision 12b, is amended to
1.14 read:

1.15 Subd. 12b. Phase II recycling credits. "Phase II recycling credits" means ~~the number~~
1.16 ~~of pounds of covered electronic devices recycled by a manufacturer during a program year~~
1.17 ~~beginning July 1, 2019, and thereafter, from households located outside the 11-county~~
1.18 ~~metropolitan area, as defined in section 115A.1314, subdivision 2, less the manufacturer's~~
1.19 ~~recycling obligation calculated for the same program year in section 115A.1320, subdivision~~
1.20 ~~1, paragraph (g).~~ an amount calculated in a program year beginning July 1, 2019, and in
1.21 each program year thereafter, according to the formula (1.5 x A) - (B - C), where:

1.22 A = the number of pounds of covered electronic devices a manufacturer recycled or
1.23 arranged to have collected and recycled during a program year from households located
1.24 outside the 11-county metropolitan area, as defined in section 115A.1314, subdivision 2;

1.25 B = the manufacturer's recycling obligation calculated for the same program year in
1.26 section 115A.1320, subdivision 1, paragraph (g); and

2.1 C = the number of pounds of covered electronic devices a manufacturer recycled or
 2.2 arranged to have collected and recycled, up to but not exceeding B, during the same program
 2.3 year from households in the 11-county metropolitan area.

2.4 Sec. 2. Minnesota Statutes 2020, section 115A.1312, subdivision 1, is amended to read:

2.5 Subdivision 1. **Requirements for sale.** (a) On or after September 1, 2007, a manufacturer
 2.6 must not sell or offer for sale or deliver to retailers for subsequent sale a new video display
 2.7 device unless:

2.8 (1) the video display device is labeled with the manufacturer's brand, which label is
 2.9 permanently affixed and readily visible; and

2.10 (2) the manufacturer has filed a registration with the agency, as specified in subdivision
 2.11 2.

2.12 ~~(b) On or after February 1, 2008, a retailer who sells or offers for sale a new video display~~
 2.13 ~~device to a household must, before the initial offer for sale, review the agency website~~
 2.14 ~~specified in subdivision 2, paragraph (g), to determine that all new video display devices~~
 2.15 ~~that the retailer is offering for sale are labeled with the manufacturer's brands that are~~
 2.16 ~~registered with the agency.~~

2.17 (b) A retailer must not sell, offer for sale, rent, or lease a video display device unless
 2.18 the video display device is labeled according to this subdivision and listed as registered on
 2.19 the agency website according to subdivision 2.

2.20 (c) A retailer is not responsible for an unlawful sale under this subdivision if the
 2.21 manufacturer's registration expired or was revoked and the retailer took possession of the
 2.22 video display device prior to the expiration or revocation of the manufacturer's registration
 2.23 and the unlawful sale occurred within six months after the expiration or revocation.

2.24 Sec. 3. Minnesota Statutes 2020, section 115A.1314, subdivision 1, is amended to read:

2.25 Subdivision 1. **Registration fee.** (a) Each manufacturer who registers under section
 2.26 115A.1312 must, by August 15 each year, pay to the commissioner of revenue an annual
 2.27 registration fee, on a form and in a manner prescribed by the commissioner of revenue. The
 2.28 commissioner of revenue must deposit the fee in the state treasury and credit the fee to the
 2.29 environmental fund.

2.30 (b) The registration fee for manufacturers that sell 100 or more video display devices
 2.31 to households in the state during the previous calendar year is \$2,500, plus a variable
 2.32 recycling fee. The registration fee for manufacturers that sell fewer than 100 video display

3.1 devices in the state during the previous calendar year is a variable recycling fee. The variable
3.2 recycling fee is calculated according to the formula:

3.3 $[A - (B + C)] \times D$, where:

3.4 A = the manufacturer's recycling obligation as determined under section 115A.1320;

3.5 B = the number of pounds of covered electronic devices ~~recycled by~~ that a manufacturer
3.6 recycled or arranged to have collected and recycled from households during the immediately
3.7 preceding program year, as reported under section 115A.1316, subdivision 1;

3.8 C = the number of phase I or phase II recycling credits a manufacturer elects to use to
3.9 calculate the variable recycling fee; and

3.10 D = the estimated per-pound cost of recycling, initially set at \$0.50 per pound for
3.11 manufacturers who recycle less than 50 percent of the manufacturer's recycling obligation;
3.12 \$0.40 per pound for manufacturers who recycle at least 50 percent but less than 90 percent
3.13 of the manufacturer's recycling obligation; \$0.30 per pound for manufacturers who recycle
3.14 at least 90 percent but less than 100 percent of the manufacturer's recycling obligation; and
3.15 \$0.00 per pound for manufacturers who recycle 100 percent or more of the manufacturer's
3.16 recycling obligation.

3.17 (c) A manufacturer may petition the agency to waive the per-pound cost of recycling
3.18 fee, element D in the formula in paragraph (b), required under this section. The agency shall
3.19 direct the commissioner of revenue to waive the per-pound cost of recycling fee if the
3.20 manufacturer demonstrates to the agency's satisfaction a good faith effort to meet its recycling
3.21 obligation as determined under section 115A.1320. The petition must include:

3.22 (1) documentation that the manufacturer has met at least 75 percent of its recycling
3.23 obligation as determined under section 115A.1320;

3.24 (2) a list of political subdivisions and public and private collectors with whom the
3.25 manufacturer had a formal contract or agreement in effect during the previous program year
3.26 to recycle or collect covered electronic devices;

3.27 (3) the total amounts of covered electronic devices collected from both within and outside
3.28 of the 11-county metropolitan area, as defined in subdivision 2;

3.29 (4) a description of the manufacturer's best efforts to meet its recycling obligation as
3.30 determined under section 115A.1320; and

3.31 (5) any other information requested by the agency.

4.1 (d) A manufacturer may retain phase I and phase II recycling credits to be added, in
 4.2 whole or in part, to the actual value of C, as reported under section 115A.1316, subdivision
 4.3 2, during any succeeding program year, provided that no more than 25 percent of a
 4.4 manufacturer's recycling obligation (~~A x B~~) for any program year may be met with phase
 4.5 I and phase II recycling credits, separately or in combination, generated in a prior program
 4.6 year. A manufacturer may sell any portion or all of its phase I and phase II recycling credits
 4.7 to another manufacturer, at a price negotiated by the parties, who may use the credits in the
 4.8 same manner.

4.9 (e) For the purpose of determining B in calculating a manufacturer's variable recycling
 4.10 fee using the formula under paragraph (b), starting with the program year beginning July
 4.11 1, 2019, and continuing each year thereafter, the weight of covered electronic devices
 4.12 ~~collected from~~ that a manufacturer recycled or arranged to have collected and recycled from
 4.13 households located outside the 11-county metropolitan area, as defined in subdivision 2,
 4.14 paragraph (b), is calculated at 1.5 times their actual weight.

4.15 Sec. 4. Minnesota Statutes 2020, section 115A.1316, subdivision 1, is amended to read:

4.16 Subdivision 1. **Manufacturer reporting requirements.** ~~(a) By August 1, 2016, each~~
 4.17 ~~manufacturer must report to the agency using the form prescribed:~~

4.18 ~~(1) the total weight of each specific model of its video display devices sold to households~~
 4.19 ~~during the previous program year; and~~

4.20 ~~(2) either:~~

4.21 ~~(i) the total weight of its video display devices sold to households during the previous~~
 4.22 ~~program year; or~~

4.23 ~~(ii) an estimate of the total weight of its video display devices sold to households during~~
 4.24 ~~the previous program year, calculated by multiplying the weight of its video display devices~~
 4.25 ~~sold nationally times the quotient of Minnesota's population divided by the national~~
 4.26 ~~population. All manufacturers with sales of 99 or fewer video display devices to households~~
 4.27 ~~in the state during the previous calendar year must report using the method under this item~~
 4.28 ~~for calculating sales.~~

4.29 ~~(b) (a) By March 1, 2017, and each March 1 thereafter~~ each year, each manufacturer
 4.30 must report to the agency using the form prescribed:

4.31 (1) the total weight of each specific model of its video display devices sold to households
 4.32 during the previous calendar year; and

5.1 (2) either:

5.2 (i) the total weight of its video display devices sold to households during the previous
5.3 calendar year; or

5.4 (ii) an estimate of the total weight of its video display devices sold to households during
5.5 the previous calendar year, calculated by multiplying the weight of its video display devices
5.6 sold nationally times the quotient of Minnesota's population divided by the national
5.7 population. All manufacturers with sales of 99 or fewer video display devices to households
5.8 in the state during the previous calendar year must report using the method under this item
5.9 for calculating sales.

5.10 A manufacturer must submit with the report required under this paragraph a description of
5.11 how the information or estimate was calculated.

5.12 ~~(e)~~ (b) By August 15 each year, each manufacturer must report to the department until
5.13 ~~June 30, 2017, and to the agency thereafter;~~

5.14 (1) the total weight of covered electronic devices the manufacturer collected from
5.15 households and recycled or arranged to have collected and recycled during the preceding
5.16 program year;

5.17 ~~(d) By August 15 each year, each manufacturer must report separately to the department~~
5.18 ~~until June 30, 2017, and to the agency thereafter;~~

5.19 ~~(4)~~ (2) the number of phase I and phase II recycling credits the manufacturer has
5.20 purchased and sold during the preceding program year;

5.21 ~~(2)~~ (3) the number of phase I and phase II recycling credits possessed by the manufacturer
5.22 that the manufacturer elects to use in the calculation of its variable recycling fee under
5.23 section 115A.1314, subdivision 1; and

5.24 ~~(3)~~ (4) the number of phase I and phase II recycling credits the manufacturer retains at
5.25 the beginning of the current program year.

5.26 ~~(e)~~ (c) Upon request of the commissioner of revenue, the agency shall provide a copy
5.27 of each report to the commissioner of revenue.

5.28 Sec. 5. Minnesota Statutes 2020, section 115A.1318, subdivision 2, is amended to read:

5.29 Subd. 2. **Recycler responsibilities.** (a) As part of the report submitted under section
5.30 115A.1316, subdivision 2, a recycler must certify, except as provided in paragraph (b), that
5.31 facilities that recycle covered electronic devices, including all downstream recycling
5.32 operations:

- 6.1 (1) use only registered collectors;
- 6.2 (2) comply with all applicable health, environmental, safety, and financial responsibility
6.3 regulations;
- 6.4 (3) are licensed by all applicable governmental authorities;
- 6.5 (4) use no prison labor to recycle video display devices;
- 6.6 (5) possess liability insurance of not less than \$1,000,000 for environmental releases,
6.7 accidents, and other emergencies;
- 6.8 (6) provide a report annually to each registered collector regarding the video display
6.9 devices received from that entity; and
- 6.10 (7) do not charge collectors for ~~the transportation and~~ transporting, recycling of, or any
6.11 necessary supplies related to transporting or recycling covered electronic devices that meet
6.12 a manufacturer's recycling obligation as determined under section 115A.1320, unless
6.13 otherwise mutually agreed upon.

6.14 (b) A nonprofit corporation that contracts with a correctional institution to refurbish and
6.15 reuse donated computers in schools is exempt from paragraph (a), clauses (4) and (5).

6.16 (c) Except to the extent otherwise required by law and unless agreed upon otherwise by
6.17 the recycler or manufacturer, a recycler has no responsibility for any data that may be
6.18 contained in a covered electronic device if an information storage device is included in the
6.19 covered electronic device.

6.20 Sec. 6. Minnesota Statutes 2020, section 115A.1320, subdivision 1, is amended to read:

6.21 Subdivision 1. **Duties of agency.** (a) The agency shall administer sections 115A.1310
6.22 to 115A.1330.

6.23 (b) The agency shall establish procedures for:

6.24 (1) receipt and maintenance of the registration statements and certifications filed with
6.25 the agency under section 115A.1312; and

6.26 (2) making the statements and certifications easily available to manufacturers, retailers,
6.27 and members of the public.

6.28 (c) The agency shall annually review the following variables that are used to calculate
6.29 a manufacturer's annual registration fee under section 115A.1314, subdivision 1:

6.30 (1) the obligation-setting mechanism for manufacturers as specified under paragraph
6.31 (g);

7.1 (2) the estimated per-pound price of recycling covered electronic devices sold to
7.2 households; and

7.3 (3) the base registration fee.

7.4 (d) If the agency determines that any of these values must be changed in order to improve
7.5 the efficiency or effectiveness of the activities regulated under sections 115A.1312 to
7.6 115A.1330, or if the revenues exceed the amount that the agency determines is necessary,
7.7 the agency shall submit recommended changes and the reasons for them to the chairs of the
7.8 senate and house of representatives committees with jurisdiction over solid waste policy.

7.9 (e) By ~~September 1, 2016, and by May 1, 2017, and each May 1 thereafter~~ each year,
7.10 the agency shall publish a statewide recycling goal for all video display device waste that
7.11 is the weight of all video display devices collected for recycling during each of the three
7.12 most recently completed program years, excluding the most recently concluded program
7.13 year, divided by two. ~~For the program years beginning July 1, 2016, July 1, 2017, and July~~
7.14 ~~1, 2018, the agency shall establish and publish separate statewide recycling goals for video~~
7.15 ~~display devices as follows:~~

7.16 ~~(1) the agency shall set the statewide recycling goal for video display devices at~~
7.17 ~~25,000,000 pounds, 23,000,000 pounds, and 21,000,000 pounds, respectively, during these~~
7.18 ~~successive program years;~~

7.19 ~~(2) the agency shall set the recycling goal for televisions at 80 percent of the applicable~~
7.20 ~~amount in clause (1); and~~

7.21 ~~(3) the agency shall set the recycling goal for computer monitors at 20 percent of the~~
7.22 ~~applicable amount in clause (1).~~

7.23 (f) By ~~September 1, 2016, and by May 1, 2017, and each May 1 thereafter~~ each year,
7.24 the agency shall determine each registered manufacturer's market share of video display
7.25 devices to be collected and recycled based on the manufacturer's percentage share of the
7.26 total weight of video display devices sold as reported to the agency under section 115A.1316,
7.27 subdivision 1.

7.28 (g) By ~~September 1, 2016, and by May 1, 2017, and each May 1 thereafter~~ each year,
7.29 the agency shall provide each manufacturer with a determination of the manufacturer's share
7.30 of video display devices to be collected and recycled. A manufacturer's market share of
7.31 video display devices as specified in paragraph (f) is applied proportionally to the statewide
7.32 recycling goal as specified in paragraph (e) to determine an individual manufacturer's
7.33 recycling obligation. Upon request by the commissioner of revenue, the agency must provide

8.1 the information submitted to manufacturers under this paragraph to the commissioner of
8.2 revenue.

8.3 (h) The agency shall provide a report to the governor and the legislature on the
8.4 implementation of sections 115A.1310 to 115A.1330. For each program year, the report
8.5 must discuss the total weight of covered electronic devices recycled and a summary of
8.6 information in the reports submitted by manufacturers and recyclers under section 115A.1316.
8.7 The report must also discuss the various collection programs used by manufacturers to
8.8 collect covered electronic devices; information regarding covered electronic devices that
8.9 are being collected by persons other than registered manufacturers, collectors, and recyclers;
8.10 and information about covered electronic devices, if any, being disposed of in landfills in
8.11 this state. The report must examine which covered electronic devices, based on economic
8.12 and environmental considerations, should be subject to the obligation-setting mechanism
8.13 under paragraph (g). The report must include a description of enforcement actions under
8.14 sections 115A.1310 to 115A.1330. The agency may include in its report other information
8.15 received by the agency regarding the implementation of sections 115A.1312 to 115A.1330.
8.16 The report must be done in conjunction with the report required under section 115A.121.

8.17 (i) The agency shall promote public participation in the activities regulated under sections
8.18 115A.1312 to 115A.1330 through public education and outreach efforts.

8.19 (j) The agency shall enforce sections 115A.1310 to 115A.1330 in the manner provided
8.20 by sections 115.071, subdivisions 1, 3, 4, 5, and 6; and 116.072, except for those provisions
8.21 enforced by the department, as provided in subdivision 2. The agency may revoke a
8.22 registration of a collector or recycler found to have violated sections 115A.1310 to
8.23 115A.1330.

8.24 (k) The agency shall facilitate communication between counties, collection and recycling
8.25 centers, and manufacturers to ensure that manufacturers are aware of video display devices
8.26 available for recycling.

8.27 (l) The agency shall post on its website the contact information provided by each
8.28 manufacturer under section 115A.1318, subdivision 1, paragraph (e).

8.29 Sec. 7. Minnesota Statutes 2020, section 115B.02, subdivision 8, is amended to read:

8.30 Subd. 8. **Hazardous substance.** "Hazardous substance" means:

8.31 (1) any commercial chemical designated pursuant to the Federal Water Pollution Control
8.32 Act, under United States Code, title 33, section 1321(b)(2)(A);

9.1 (2) any hazardous air pollutant listed pursuant to the Clean Air Act, under United States
9.2 Code, title 42, section 7412; ~~and~~

9.3 (3) any hazardous waste; and

9.4 (4) perfluorochemicals.

9.5 Hazardous substance does not include natural gas, natural gas liquids, liquefied natural
9.6 gas, synthetic gas usable for fuel, or mixtures of such synthetic gas and natural gas, nor
9.7 does it include petroleum, including crude oil or any fraction thereof ~~which~~ that is not
9.8 otherwise a hazardous waste.

9.9 Sec. 8. Minnesota Statutes 2020, section 115B.17, subdivision 13, is amended to read:

9.10 Subd. 13. **Priorities; rules.** (a) By November 1, 1983, the Pollution Control Agency
9.11 shall establish a temporary list of priorities among releases or threatened releases for the
9.12 purpose of taking remedial action and, to the extent practicable consistent with the urgency
9.13 of the action, for taking removal action under this section. The temporary list, with any
9.14 necessary modifications, shall remain in effect until the Pollution Control Agency adopts
9.15 rules establishing state criteria for determining priorities among releases and threatened
9.16 releases. The Pollution Control Agency shall adopt the rules by July 1, 1984. After rules
9.17 are adopted, a permanent priority list shall be established, and may be modified from time
9.18 to time, using the current guidance and tools for the Hazard Ranking System adopted by
9.19 the federal Environmental Protection Agency and according to the criteria set forth in the
9.20 rules. Before any list is established under this subdivision the Pollution Control Agency
9.21 shall publish the list in the State Register and allow 30 days for comments on the list by the
9.22 public.

9.23 (b) The temporary list and the rules required by this subdivision shall be based upon the
9.24 relative risk or danger to public health or welfare or the environment, taking into account
9.25 to the extent possible the population at risk, the hazardous potential of the hazardous
9.26 substances at the facilities, the potential for contamination of drinking water supplies, the
9.27 potential for direct human contact, the potential for destruction of sensitive ecosystems, the
9.28 administrative and financial capabilities of the Pollution Control Agency, and other
9.29 appropriate factors.

9.30 Sec. 9. Minnesota Statutes 2020, section 115B.406, subdivision 1, is amended to read:

9.31 Subdivision 1. **Legislative findings.** The legislature recognizes the need to protect the
9.32 public health and welfare and the environment at priority qualified facilities. To implement

10.1 a timely and effective cleanup and prevent multiparty litigation, the legislature finds it is in
10.2 the public interest to direct the commissioner of the Pollution Control Agency to:

10.3 (1) take environmental response actions that the commissioner deems reasonable and
10.4 necessary to protect the public health or welfare or the environment at priority qualified
10.5 facilities and to;

10.6 (2) acquire real property interests at priority qualified facilities to ensure the completion
10.7 and long-term effectiveness of environmental response actions; and

10.8 (3) prevent both an unjust financial windfall to and double liability of owners and
10.9 operators of priority qualified facilities.

10.10 **EFFECTIVE DATE.** This section is effective the day following final enactment and
10.11 applies to actions commenced on or after January 1, 2021.

10.12 Sec. 10. Minnesota Statutes 2020, section 115B.406, subdivision 9, is amended to read:

10.13 **Subd. 9. Environmental response costs; liens.** (a) All environmental response costs
10.14 and reasonable and necessary expenses, including administrative and legal expenses, incurred
10.15 by the commissioner at a priority qualified facility constitute a lien in favor of the state upon
10.16 any real property located in the state, other than homestead property, owned by the owner
10.17 or operator of the priority qualified facility who is subject to the requirements of section
10.18 115B.40, subdivision 4 or 5. Notwithstanding section 514.672, a lien under this paragraph
10.19 continues until the lien is satisfied or is released according to paragraph (c).

10.20 (b) If the commissioner conducts an environmental response action at a priority qualified
10.21 facility and the environmental response action increases the fair market value of the facility
10.22 above the fair market value of the facility that existed before the response action was initiated,
10.23 then the state has a lien on the facility for the increase in fair market value of the property
10.24 attributable to the response action, valued at the time that construction of the final
10.25 environmental response action was completed, not including operation and maintenance.
10.26 Notwithstanding section 514.672, a lien under this paragraph continues until the lien is
10.27 satisfied or is released according to paragraph (c).

10.28 (c) A lien under this subdivision paragraph (a) or (b) attaches when the environmental
10.29 response costs are first incurred. Notwithstanding section 514.672, a lien under this
10.30 subdivision continues until the lien is satisfied or six years after completion of construction
10.31 of the final environmental response action, not including operation and maintenance. Notice,
10.32 filing, and release, and enforcement of the lien are governed by sections 514.671 to 514.676,
10.33 except where those requirements specifically are related to only cleanup action expenses

11.1 as defined in section 514.671. The commissioner may release a lien under this subdivision
 11.2 if the commissioner determines that attachment or enforcement of the lien is not in the
 11.3 public interest. A lien under this subdivision is not subject to the foreclosure limitation
 11.4 described in section 514.674, subdivision 2. Relative priority of a lien under this subdivision
 11.5 is governed by section 514.672, except that a lien attached to property that was included in
 11.6 any permit for the priority qualified facility takes precedence over all other liens regardless
 11.7 of when the other liens were or are perfected. Amounts received to satisfy all or a part of a
 11.8 lien must be deposited in the remediation fund. An environmental lien notice for a lien under
 11.9 paragraph (a) or (b) must state that it is a lien in accordance with this section and identify
 11.10 whether the property described in the notice was included in any permit for the priority
 11.11 qualified facility.

11.12 **EFFECTIVE DATE.** This section is effective the day following final enactment and
 11.13 applies to actions commenced on or after January 1, 2021.

11.14 Sec. 11. Minnesota Statutes 2020, section 115B.407, is amended to read:

11.15 **115B.407 ACQUISITION AND DISPOSITION ACQUIRING AND DISPOSING**
 11.16 **OF REAL PROPERTY AT PRIORITY QUALIFIED FACILITIES.**

11.17 **Subdivision 1. Acquiring and disposing of real property.** (a) The commissioner may
 11.18 acquire interests in real property by donation or eminent domain at all or a portion of a
 11.19 priority qualified facility. Condemnation under this section includes acquisition of fee title
 11.20 or an easement. After acquiring an interest in real property under this section, the
 11.21 commissioner must take environmental response actions at the priority qualified facility
 11.22 according to sections 115B.39 to 115B.414 after the legislature makes an appropriation for
 11.23 that purpose.

11.24 (b) The commissioner may dispose of real property acquired under this section according
 11.25 to section 115B.17, subdivision 16.

11.26 (c) Except as modified by this section, chapter 117 governs condemnation proceedings
 11.27 by the commissioner under this section. The exceptions under section 117.189 apply to the
 11.28 use of eminent domain authority under this section. Section 117.226 does not apply to
 11.29 properties acquired by the use of eminent domain authority under this section.

11.30 (d) The state is not liable under this chapter solely as a result of acquiring an interest in
 11.31 real property under this section.

11.32 **Subd. 2. Eminent domain damages.** (a) For purposes of this subdivision, the following
 11.33 terms have the meanings given:

12.1 (1) "after-market value" means the property value of that portion of the subject property
12.2 remaining after a partial taking;

12.3 (2) "as remediated" means the condition of the property assuming the environmental
12.4 response actions selected by the commissioner have been completed, including environmental
12.5 covenants and easements and other institutional controls that may apply;

12.6 (3) "before-market value" means the property value of the entire subject property before
12.7 the taking, less the remediation costs;

12.8 (4) "property value" means the fair market value of the real property, as remediated, less
12.9 any reduction in value attributable to the stigma of pollution; and

12.10 (5) "remediation costs" means the reasonably foreseeable costs and expenses, including
12.11 administrative and legal expenses, that the commissioner will incur to implement the
12.12 environmental response actions that the commissioner selected for the property according
12.13 to section 115B.406, subdivision 3, less the amount, if any, that the property owner
12.14 demonstrates was released under section 115B.443, subdivision 8, which must not be greater
12.15 than the extent of insurance coverage under policies for the property included in a settlement
12.16 consistent with section 115B.443, subdivision 8.

12.17 (b) The damages awarded for condemnation of real property under this section is the
12.18 greater of \$500 or:

12.19 (1) for a total taking of the subject property, the before-market value; or

12.20 (2) for a partial taking of the subject property, the before-market value less the
12.21 after-market value.

12.22 (c) When awarding damages in a condemnation proceeding under this section, in addition
12.23 to any other requirement of chapter 117, the finder of fact must report:

12.24 (1) the amount determined for the property value of the entire subject property before
12.25 the taking; and

12.26 (2) the itemized amount determined for remediation costs.

12.27 (d) The commissioner may seek recovery of environmental response costs only to the
12.28 extent the costs exceed the lower of the remediation costs or the property value of the entire
12.29 subject property before the taking as reported under paragraph (c).

12.30 (e) If the actual expenses incurred by the commissioner to take environmental response
12.31 actions at the priority qualified facility as determined at the time construction of the final
12.32 environmental response action was completed would have yielded a higher award of damages

13.1 under this section, then the commissioner must reimburse the owner an amount equal to the
 13.2 amount of damages as if the actual expenses were used instead of the remediation costs,
 13.3 less any damages already awarded.

13.4 **EFFECTIVE DATE.** This section is effective the day following final enactment and
 13.5 applies to actions commenced on or after January 1, 2021.

13.6 Sec. 12. Minnesota Statutes 2020, section 116.07, is amended by adding a subdivision to
 13.7 read:

13.8 Subd. 41. **Real property interests.** (a) The commissioner may acquire interests in real
 13.9 property at a solid waste disposal facility, limited to environmental covenants under chapter
 13.10 114E and easements for the environmental covenants, when the commissioner determines
 13.11 the property interests are related to:

13.12 (1) closure;

13.13 (2) postclosure care; and

13.14 (3) any other actions needed after the postclosure care period expires.

13.15 (b) The state is not liable under this chapter or any other law solely as a result of acquiring
 13.16 an interest in real property under this section.

13.17 (c) An environmental covenant under this subdivision must be in accordance with chapter
 13.18 114E and must be signed and acknowledged by every owner of the fee simple title to the
 13.19 real property subject to the covenant.

13.20 Sec. 13. **[116.0735] AUTHORITY TO REQUIRE INFORMATION ON**
 13.21 **CONTAMINANTS.**

13.22 Subdivision 1. **Definitions.** (a) For the purposes of this section, the terms in this
 13.23 subdivision have the meanings given them.

13.24 (b) "Activities" means actions by a person that produce, emit, discharge, release, threaten
 13.25 to release, or otherwise cause a contaminant to enter the environment or the human body
 13.26 and that occurred at a point in time or continue to occur. Activities includes but is not limited
 13.27 to manufacturing, distributing, using, or selling products.

13.28 (c) "Agency" means the Minnesota Pollution Control Agency.

13.29 (d) "Agency action" means investigating, monitoring, surveying, testing, or other similar
 13.30 action necessary or appropriate to identify the existence and extent of a release of a

14.1 contaminant or threat of a release, the source and nature of the contaminant, and the extent
 14.2 of danger to the public health or welfare or the environment.

14.3 (e) "Biomonitoring" means the process by which chemicals and their metabolites are
 14.4 identified and measured in a biospecimen.

14.5 (f) "Biospecimen" means a sample of human fluid, serum, or tissue that is reasonably
 14.6 available as a medium to measure the presence and concentration of chemicals or their
 14.7 metabolites in a human body.

14.8 (g) "Commissioner" means the commissioner of the agency.

14.9 (h) "Contaminant" means a substance with a distinct molecular composition or a group
 14.10 of structurally related substances, including the breakdown products of the substance or
 14.11 substances that form through decomposition, degradation, or metabolism, that may:

14.12 (1) harm normal development of a fetus or child or cause other developmental toxicity;

14.13 (2) cause cancer, genetic damage, or reproductive harm;

14.14 (3) disrupt the endocrine or hormone system;

14.15 (4) damage the nervous system, immune system, or organs or cause other systemic
 14.16 toxicity;

14.17 (5) be persistent, bioaccumulative, or toxic; or

14.18 (6) be very persistent or very bioaccumulative.

14.19 (i) "Monitoring" means sampling environmental media and analyzing general and specific
 14.20 data relating to the presence of contaminants.

14.21 (j) "Person" means an individual, partnership, association, public or private corporation,
 14.22 or other entity, including the United States government; any association, commission, or
 14.23 interstate body; the state and any agency, department, or political subdivision of the state;
 14.24 and any officer or governing or managing body of a municipality, governmental subdivision,
 14.25 public or private corporation, or other entity.

14.26 (k) "Supplier" means a person who provides goods or services that lead to or are
 14.27 incorporated into a finished product used in commerce or by consumers.

14.28 Subd. 2. Agency action. The commissioner may take agency action whenever:

14.29 (1) the commissioner detects a contaminant:

14.30 (i) during the agency's monitoring of Minnesota's environment;

15.1 (ii) through receipt of environmental monitoring data from a local, state, or federal
15.2 agency or nongovernmental organization in the United States; or

15.3 (iii) through receipt of biomonitoring data of residents of the United States; or

15.4 (2) the commissioner has reason to believe that:

15.5 (i) a release of a contaminant has occurred, is about to occur, or is connected to a person's
15.6 activities; or

15.7 (ii) illness, disease, environmental harm, or complaints thereof may be attributable to
15.8 exposure to a contaminant connected to a person's activities.

15.9 Subd. 3. **Duty to provide information.** (a) When requested by the commissioner or the
15.10 commissioner's designee, a person the commissioner has reason to believe is engaged in
15.11 activities where agency action is proposed to be taken must furnish to the commissioner
15.12 any information that the person may have or may reasonably obtain that is relevant to the
15.13 contaminant under investigation.

15.14 (b) For purposes of this subdivision, the commissioner may:

15.15 (1) request in writing that a person produce electronic or physical documents, papers,
15.16 books, or other tangible items in the possession, custody, or control of the person;

15.17 (2) request in writing that a person provide information submitted to the person from a
15.18 supplier or within the supply chain for production of a commercial or consumer good;

15.19 (3) examine and copy books, papers, records, memoranda, and other electronic or physical
15.20 data of a person who has a duty to provide information under this subdivision; and

15.21 (4) enter upon public or private property to take an action authorized under this section,
15.22 including to obtain information from a person who has a duty to provide the information
15.23 under this subdivision and to conduct agency action.

15.24 (c) A person must submit requested information to the commissioner within the time
15.25 specified in the commissioner's written request. If a person fails or refuses to comply with
15.26 the commissioner's request for information, the commissioner may petition the district court
15.27 for an order to compel compliance with the request or take other enforcement action
15.28 authorized by law.

15.29 Subd. 4. **Classifying data.** Except as otherwise provided in this subdivision, data obtained
15.30 from a person under this section are public data as defined in section 13.02. Upon certification
15.31 by the subject of the data that the data relate to sales figures, processes or methods of
15.32 production unique to that person, or information that would tend to adversely affect the

16.1 competitive position of that person, the commissioner must classify the data as private or
16.2 nonpublic data as defined in section 13.02. Notwithstanding any other law to the contrary,
16.3 data classified as private or nonpublic under this subdivision may be disclosed when relevant:

16.4 (1) in any proceeding under this section;

16.5 (2) in further agency actions, including permitting, setting local water quality standards,
16.6 or other similar actions; and

16.7 (3) to other public agencies involved in protecting human health, welfare, or the
16.8 environment.

16.9 Sec. 14. **REPEALER.**

16.10 Minnesota Rules, part 7044.0350, is repealed.

7044.0350 HRS SCORING SYSTEM.

The Pollution Control Agency and the commissioner of agriculture shall score sites under part 7044.0250 utilizing the Hazard Ranking System (HRS) adopted by the United States Environmental Protection Agency, and published in the Federal Register, volume 55, pages 51583 to 51667 (December 14, 1990).