

# HOUSE RESEARCH

## Bill Summary

**FILE NUMBER:** H.F. 2616  
**Version:** As introduced

**DATE:** March 7, 2014

**Authors:** Fischer

**Subject:** Water Management and Penalties

**Analyst:** Janelle Taylor

This publication can be made available in alternative formats upon request. Please call 651-296-6753 (voice); or the Minnesota State Relay Service at 1-800-627-3529 (TTY) for assistance. Summaries are also available on our website at: [www.house.mn/hrd/](http://www.house.mn/hrd/).

### Overview

This bill would provide additional authority to the Department of Natural Resources (DNR) to enforce water use permitting provisions, including administrative penalty order authority and additional penalties. It also makes other water management changes, including prohibiting water use permits for once-through cooling systems and requiring flow-meters under certain circumstances.

A number of the changes in this bill were recommended by the DNR as part of a report required by the legislature in 2013 (Laws 2013, ch. 114, art. 4, § 102) asking for recommendations for additional tools needed to fully implement existing groundwater sustainability requirements in statute (Minn. Stat. § 103G.287, subd. 5). The statute requires the DNR to only issue permits for the use of groundwater when the use is "sustainable to supply the needs of future generations and the proposed use will not harm ecosystems, degrade water, or reduce water levels beyond the reach of public water supply and private domestic wells constructed" according to applicable rules.

### Section

- 1 Investigation of activities.** Amends § 103G.251. Expands the DNR's authority to investigate activities affecting waters of the state to allow monitoring of the activities as well and allow the investigations/monitoring for activities that are being conducted with a permit (current authorities apply to activities conducted without a permit).

## Section

- 2 **Prohibition on once-through water use permits.** Amends § 103G.271, subd. 5. Prohibits all groundwater appropriation permits for once-through cooling systems beginning January 1, 2015, with certain exceptions. (New water appropriation permits for systems using more than 5,000,000 gallons a year were prohibited in 1990 and permits for systems using more than 5,000,000 gallons a year were terminated at the end of 2010.)
- 3 **Water use permit processing fee.** Amends § 103G.271, subd. 6. Establishes a minimum penalty amount of \$150 a month for failing to pay water use permit fees. Allows the DNR to waive water use permit fees for installations that use storm water runoff from impervious surfaces.
- 4 **Measuring and records required.** Amends § 103G.281, subd. 1. Requires those appropriating or using water under a permit from the DNR to make the required records showing how much water was used/appropriated available for inspection at reasonable times and kept for seven years.
- 5 **Measuring equipment required.** Amends § 103G.281, subd. 2. Requires an installation for appropriating water through a pipe to have a tamper proof flow meter by January 1, 2017. States that measuring devices are subject to DNR inspection.
- 6 **Penalties for noncompliant reporting.** Adds § 103G.281, subd. 4. Allows the DNR to assess penalties for noncompliance with water use reporting requirements. Establishes a penalty of \$300 or two percent of the annual permit processing fee, whichever is greater. States that a person with three or more noncompliance incidents within five years shall have their permit terminated. Allows the person to apply to have the permit reinstated after a year. Allows the commissioner to terminate permits for the use of groundwater to irrigate agricultural land between May 1 and October 1 (current law restricts the DNR's authority to modify such permits unless the amount of appropriation endangers a domestic water supply).
- 7 **Administrative penalty orders.** Adds § 103G.299

**Subd. 1. Authority to issue penalty orders.** Allows the DNR to use administrative penalty orders (APOs) to address violations of certain water laws pertaining to the use and appropriation of water, including water use permit violations. An APO is an enforcement tool that allows the issuance of an order that may require payment of a penalty and corrective actions to be made in order to resolve violations.

**Subd. 2. Amount of penalty; considerations.** Caps the maximum penalty amount for an APO under this section at \$20,000. Provides guidance for the commissioner in determining the amount of the penalty, including the willfulness of the violation, history of past violations, and economic benefit gained under the violation.

**Subd. 3. Contents of order.** Lists what is required to be contained in an APO issued under this section.

**Subd. 4. Corrective order.** Allows the DNR to issue orders that contain a penalty and a requirement to correct the violation. Requires the person receiving a corrective order to respond to the DNR within 31 days of receiving the order demonstrating that

## Section

the violation has been corrected or that appropriate steps toward correcting the violation have been taken. Requires the commissioner to determine whether the violation has been corrected and notify the person.

**Subd. 5. Penalty.** If the commissioner determines that a violation has been corrected/appropriate steps are being taken to correct a violation, the commissioner must reduce the amount of the penalty to an amount that covers the department's costs in pursuing the action. For serious or repeat violations, the commissioner is not required to reduce the penalty amount after corrective actions have taken place.

**Subd. 6. Expedited administrative hearing.** Allows a person subject to an order to request an expedited hearing within 30 days of receiving an APO under this section (or 20 days of receiving notice that the violation has not been corrected).

**Subd. 7. Mediation.** Allows the commissioner to enter into mediation with a person subject to an order under this section if they both agree to it.

**Subd. 8. Penalties due and payable.** Allows the commissioner to enforce penalties that are due under this section in any manner provided by law for the collection of debts.

**Subd. 9. Revocation and suspension of permit.** Allows the commissioner to revoke or refuse to amend or issue a new permit if a person fails to pay a penalty owed under this section.

**Subd. 10. Cumulative remedy.** States that the authority to issue an APO under this section is in addition to other remedies available under law, except additional civil penalties may not be assessed.

**Subd. 11. Deposit of fees.** States that fees collected under this section are to be deposited in the water management account.

**Subd. 12. Plan for use of administrative penalties.** Requires the commissioner to prepare a plan for the use of the APO authority in this section within six months and provide a 30-day public comment period on the plan.

- 8 Permit application and notification fees.** Amends § 103G.301, subd. 2. Establishes a penalty of \$300 that can be assessed for each calendar year (up to seven years) that an unauthorized appropriation of water occurred. Exempts certain state entities (a state officer, employee, board, commission, authority, department, or other agency of the executive branch of state government) and federal government agencies from the penalty. States that the penalty is in addition to any other fee or penalty assessed.
- 9 Water reuse report; Environmental Quality Board.** Requires the Environmental Quality Board (by January 1, 2015) to report to the legislature on barriers to the reuse of water, jurisdictional conflicts, an analysis of the statutes/rules, and to develop recommendations to support water reuse and aquifer recharge.