

HOUSE RESEARCH

Bill Summary

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Section

Article 1

Environmental Permitting Efficiency

Overview

This article modifies permitting efficiency goals for the Department of Natural Resources (DNR) and the Pollution Control Agency (PCA). The goals were originally established in 2011 and set 150 days as the goal for each agency to approve or deny permit applications. The goals were further modified last session by establishing a shorter period of time, 90 days, for less complicated permits (Tier 1 permits). This article would reduce that time frame further to 45 days.

- 1 Permitting efficiency.** Reduces the DNR's permitting efficiency goal for Tier 1 permits. The new goal for the DNR would be to approve or deny permit applications for Tier 1 permits within 45 days, rather than the current goal of 90 days. The DNR determines what is considered a Tier 1 permit.
- 2 Permitting efficiency.** Reduces the PCA's permitting efficiency goal for Tier 1 permits. The new goal for the PCA would be to approve or deny permit applications for Tier 1 permits within 45 days, rather than the current goal of 90 days. Tier 1 permits are defined for the PCA in statute as permits "that do not require individualized actions or public comment periods."

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Article 2 **Rulemaking Reform**

1 **Objections to rules or proposed rules.** Under current law, the House or Senate governmental operations committee or the Legislative Coordinating Commission (LCC) can object to a state agency rule if the committee or commission considers the rule to be beyond the procedural or substantive authority delegated to the agency. In current law, this objection authority also applies to a proposed rule if an administrative law judge determines that the agency has not established the need for and reasonableness of the proposed rule. If an objection is not withdrawn, the burden is on the agency in a proceeding for judicial review or for enforcement of the rule to establish that the rule objected to is valid.

This bill changes the current law in several ways, including:

- Authority for the governmental operations committees to object is stricken, leaving authority in the LCC.
- The objection authority is applied to all proposed rules.
- The grounds for objection are expanded, so that the LCC can object to a current or proposed rule if it considers the rule to be: inconsistent with statute; unnecessary or redundant; having a substantial economic impact (as defined later in this article); not based on sound, reasonably available information; not cost effective; unduly burdensome; or more restrictive than federal law.
- If the LCC objects to a proposed rule, the agency may not adopt the rule until the legislature adjourns sine die. (Under current section 14.126, if both of the relevant policy committees in the House and the Senate advise an agency that a rule should not be adopted as proposed, the agency may not adopt the rule until the end of the next annual legislative session.)
- If the LCC objects to a rule, the burden is on the agency in judicial review or in an enforcement action to establish by clear and convincing evidence that the rule is valid and the agency must demonstrate that the LCC objection was not justified.

2 **Substantial economic impact.** Defines when a rule has a “substantial economic impact.” This includes: (1) adverse impact on Minnesota’s private-sector economy of \$1 million in a year; (2) significant increase in costs or prices; (3) adverse impact on competitiveness of Minnesota private-sector enterprises or on private-sector employment, investment, productivity, or innovation; or (4) compliance costs in the first year after the rule takes effect of more than \$25,000 for any one business with less than 50 full-time employees, or any one city that has less than 10 full-time employees.

3 **Authority to adopt original rules restricted.** Provides that agencies may adopt, amend, or repeal rules only pursuant to authority *expressly* delegated and only as necessary to serve the public interest.

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- 4** **Limitation regarding interpretive statements.** Forbids an agency from seeking to implement or enforce a policy, guideline, or other nonbinding interpretive statement that comes within the definition of a “rule” if the statement has not been adopted as a rule.
- 5** **Notice to legislature.** Adds to the law that requires agencies annually to submit rulemaking dockets to legislative officials a requirement that the docket be submitted to the LCC.
- 6** **Statement of Need and Reasonableness.** Adds to the required contents of the Statement of Need and Reasonableness (SONAR) an assessment of the cumulative effect of all rules adopted by the agency or any other agency and all federal regulations and local ordinances or regulations, related to the specific purpose for which the rule is being adopted. Requires the SONAR to include the agency’s findings and conclusions that support its determination that the proposed rule does not have a substantial economic impact. Requires the SONAR to describe with reasonable particularity the scientific, technical, and economic information that supports the proposed rule.
- 7** **Deadline to complete rulemaking.** Strikes a cross-reference to a section of law that is repealed later in this article.
- 8** **Notice.** Requires an agency adopting a rule using the “good cause exemption” to give notice to chairs and ranking minority members of the legislative policy and budget committees with jurisdiction over the subject matter of the proposed rules and to the LCC.
- 9** **Notice and comment.** Requires an agency adopting a rule using the expedited process in section 14.389 to give notice to chairs and ranking minority members of the legislative policy and budget committees with jurisdiction over the subject matter of the proposed rules and to the LCC.
- 10** **Repealer.** Repeals Minnesota Statutes, section 14.127. (Legislative approval may be required for a proposed rule if the cost of complying will exceed \$25,000 in the first year after the rule takes effect for any one business that has less than 50 full-time employees, or for any one city that has less than 10 full-time employees.)

Article 3

Tax Provisions

- 1** **Citation.** Provides the title of the statutory chapter is the “Minnesota New Markets Jobs Act.”
- 2** **Definitions.** Defines terms for purposes of the new markets tax credit statute (sections 0 to 10 of the article). These include:
- **Affiliate** is to be determined by considering all the relevant facts and circumstances related to an equity investment. In making this determination all of the information provided in the application is assumed to be true. Affiliates specifically include any entity that holds an equity investment in the qualified community development entity and any entity that provides insurance or a guarantee to a recipient of the tax credit.

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- **Applicable percentage** is used to determine the percentage rate of the credit for each taxable year under section 3. It is 0 for years 1 and 2; 8 percent for years 3 to 6; and 7 percent for year 7. Thus, the total credit percentage is 39 percent ($8\% * 4 + 7\% = 39\%$).
- **Code** means the version of the Internal Revenue Code that applies to the Minnesota income and corporate franchise taxes under chapter 290.
- **Credit allowance date** means the day on which the qualifying equity investment was made and that day of each of the six succeeding calendar years.
- **Department** means the Department of Employment and Economic Development (DEED).
- **Long-term debt security** means a debt security issued by a qualified community development entity that meets the following requirements. (These limits are designed to prevent debt from being used to transfer the credit to holders of the debt before the 7-year term of the credit is up.):
 - Must be issued at par value
 - Have a minimum maturity of 7 years (i.e., the same term as the tax credit)
 - Prohibit acceleration or prepayment, except if the issuer defaults
 - Cannot allow for cash interest payments during the credit allowance period (first seven years) that exceed cumulative operating income as defined by federal law.
- **Purchase price** is the amount paid to the issue for a qualified equity investment.
- **Qualified active low-income community businesses** are the defined businesses that can benefit from an investment that qualifies for the tax credit. These businesses must meet the requirements of the federal credit and in addition must be engaged in one of the following fields or lines of business:
 - A high technology field as defined under the Minnesota angel credit
 - Manufacturing
 - Mining
 - Forestry

A business does not qualify if it receives 15 percent or more of its revenue from one or more of the types of businesses that are disqualified under the angel tax credit law. Disqualified businesses include real estate development, financial services, wholesale or retail trade, hospitality, or professional services.

- **Qualified community development entity** is defined by reference to federal law. To qualify an entity must have an agreement with the U.S. Treasury Department allocating it a federal credit for investments located in Minnesota. Subsidiary or affiliated entities are treated as one for purposes of the application. Financial institutions do not qualify unless they are chartered or headquartered in Minnesota.

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- **Qualified equity investment** means an equity investment in or a long-term debt security issued by a qualified community development entity after January 1, 2016. The securities must be purchased for cash, all of which is used to invest in qualified active low-income community businesses. The investment cannot qualify for federal new markets tax credits if the proceeds are used to make investments in other qualified community development entity.
- **Qualified low-income community investment** means an investment or loan to a qualified active low-income community business. A \$10 million limit applies to the investments that can be made in one qualified active low-income community business, including investments made by different qualified community development entities.
- **Refundable performance fee** is the fee (equal to 0.5 percent of the equity investment up to a maximum of \$500,000) a qualified community development entity is required to pay to DEED to assure it complies with the credit’s legal requirements.
- **State premium tax liability** is the insurance premium tax paid under chapter 297I.

3 Credit established. Allows an insurance company that purchases a qualified equity investment to claim a credit against its premium tax liability. (This includes the retaliatory tax that a foreign insurance company may be subject to because its state of domicile imposes a higher insurance tax than Minnesota does.) The amount of the credit equals the applicable percentage for the year multiplied by the amount of the investment. The table below shows the credit rates (this is derived from the definition of “applicable percentage” in section 2):

Years after the investment is made	Applicable percentage
0	0
1	0
2	8%
3	8%
4	8%
5	8%
6	7%

If the credit exceeds the insurance company’s liability for tax, the excess is a carryforward to later tax years. There is no limit on the length of the carryforward.

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4 **Transferability.** Provides that the tax credits are not refundable and may not be sold on “the open market.” However, an investor may transfer credits to an affiliated insurance company and a partnership or LLC may allocate the credits to partners or members. Notification of a transfer to an affiliated insurance company must be provided to DEED in writing.

5 **Certification of qualified equity investments.** Authorizes qualified community development entities to apply to DEED for tax credits. Applications must include:

- Evidence that the entity is certified by the U.S. Treasury Department as a qualified entity for locations in Minnesota
- A copy of the allocation agreement and certification that the allocation remains in effect
- A description of the qualified investment
- The minimum allocation that the applicant is willing to accept
- Description of the plan for use of the funds, including qualified active low-income community businesses
- The application fee (\$5,000) and nonrefundable performance fee (described in the summary of section 2)

The department is directed to grant or deny the application within 30 days. The department must inform the applicant of the reason for any denial of the application or if accepted, notify the applicant in writing of the certification. The qualified community development entity must notify DEED in writing of the entities eligible to claim the credits, including any changes as a result of transfer to an affiliate.

The section authorizes DEED to certify \$250 million in investments. (This could generate up to \$97.5 million in tax credits, given the 39 percent credit rate.) DEED is required to award the credits to qualifying applications on a first-come-first-served basis. Approved community development entities can transfer their authority to controlling or subsidiary entities. The approved entities are to issue the securities and obtain cash investments within 60 days after approval and to notify DEED with 10 days after they receive the cash. If they don't receive the investment within the 60-day period, the certification lapses and DEED may reissue that amount.

6 **Disallowance of tax credits and penalties.** Provides for proportionate disallowance of the tax credits if the issuer (the qualified community development entity):

- Redeems or makes a principal repayment of the investment;
- Fails to invest all of the proceeds in a qualified low-income community investment in Minnesota and maintains the investment for six years; or
- Uses the proceeds for a prohibited purpose.

7 **Notice of noncompliance.** Allows an entity six months to cure a notice of the disallowance of a tax credit under section 6.

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- 8 Refundable performance fee.** Requires payment of the refundable performance fee (defined in section 2). The fee is deposited in a new account established for that purpose in the special revenue fund. The fee is forfeited to the state if:
- The entity fails to issue the full certified amount of the qualified equity investments (entire fee)
 - The proceeds of the equity investments are not used to making qualifying low-income community investment (same proportion of the fee as the proportion that was not used to make investments). The six-month cure period under section 7 applies to these forfeitures.

Once compliance with the law's requirements is established, the qualified community development entity is entitled to a refund of the performance fee within 30 days.

- 9 Preapproval of investments.** Authorizes a qualified community development entity to request a written determination from DEED as to whether an investment qualifies for the credit. DEED is required to respond within 10 days and is bound by the determination.
- 10 Prohibited use of proceeds.** Prohibits a qualified low-income community business entity that receives an investment qualifying for the credit from using the proceeds of the investment to lend or invest in a qualified community development entity. (This effectively prevents the business from rebating part of the investment or investing it in a way that could also qualify for the credit.)
- 11 Pass-through income subtraction.** Allows 10 percent of income from pass-through entities (S corporations, partnerships, and LLCs) to be subtracted in computing taxable income if the taxpayer materially participated in the business under the federal passive activity rules.
- Effective date:** Tax year 2015.
- 12 Research credit rate.** Increases the second-tier rate of the research credit from 2.5 percent to four percent. This rate applies to qualified research (increases over the base amount) that exceeds \$2 million.
- Effective date:** Tax year 2016.
- 13 Research credit carryover.** Provides that the research credit carryover does not apply to the portion of the credit that is refundable under section 14.
- 14 Research credit refundable.** Provides that the portion of the research credit that is attributable to the first-tier amounts (the 10 percent credit rate on first \$2 million of qualified research expenditures for the tax year) is refundable.
- Effective date:** Tax year 2015.
- 15 AMT exemption; pass-through income.** Provides that the subtraction for pass-through income under section 11 also applies under the alternative minimum tax (AMT).
- Effective date:** Tax year 2015.
- 16 Effective date.** Provides that the new market tax credit provisions of the article (sections 0 to 10) are effective for premium tax returns due after December 31, 2015.

Section

Article 4

Workforce Housing

- 1 Workforce housing grants; pilot program.** Directs the commissioner of DEED to establish a workforce housing grant program to make grants to cities to develop market-rate apartments. To qualify for grants, cities must:
- Have populations of 1,500 or more.
 - Have an average rental housing vacancy rate of 5 percent or less in the city or any other city within 25 miles for at least the last two years.
 - Have an employer or employers in the city or within 25 miles of the city with 20 or more full-time equivalent employees that stated, in writing, that the lack of available rental housing has impeded their ability to hire employees.
 - Have fewer than five market-rate residential units per 1,000 residents constructed in each of the last ten years.
 - Certify that grants will be used to construct workforce housing and will be matched by city, private, or nonprofit funds.

The grants are limited to the lesser of an unspecified percentage of the project cost or an unspecified dollar amount.

Cities receiving grants must report to the legislature on projects receiving grants and purposes for which they used grants.

Effective date: July 1, 2015.

- 2 Additions to federal taxable income; individuals.** Requires individuals to add to taxable income any deduction claimed at the federal level for contributions the individual used to claim a credit under section 4. This prohibits individuals from claiming at the state level both a deduction and a credit for the same contribution.

Effective date: Tax year 2015.

- 3 Additions to federal taxable income; corporations.** Requires corporations to add to taxable income any deduction claimed at the federal level for contributions the individual used to claim a credit under section 4. This prohibits corporations from claiming at the state level both a deduction and a credit for the same contribution.

Effective date: Tax year 2015.

- 4 Credit for contributions to land trusts.** Allows a refundable credit for businesses with at least 25 employees that make contributions to land trusts for the purpose of acquiring land and building market-rate owner-occupied housing in qualified cities. Defines a qualified city as a city that:

- Has an average rental housing vacancy rate of 5 percent or less in the city or any other city within 25 miles for at least the last two years;

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- Had fewer than five market-rate residential units per 1,000 residents constructed in each of the last ten years; and
- Has a population of 1,500 or more.

The credit equals five percent of the amount contributed in the tax year the contribution is made and in each of the next 19 tax years, so that cumulatively the credit will equal the full amount contributed. Disallows the credit in any year in which the number of people the business employs within 25 miles of the qualified city is less than the number employed in the year of the contribution.

Effective date: Tax year 2015.

- 5** **Promotion of creation of land trusts.** Directs the commissioner of the Minnesota Housing Finance Agency to develop a plan for encouraging creation of land trusts in areas of the state with shortages of workforce housing.

Effective date: Plan required by January 1, 2016.

- 6** **Appropriation.** Appropriates \$5 million in fiscal year 2016 from the general fund for the workforce housing grant program under section 1. This is a one-time appropriation that is available through fiscal year 2018.

Article 5

STEM and Long-term Care Employment Initiative

- 1** **Credit for new STEM and long-term care employees.** Allows a refundable income tax credit for individuals who take jobs after June 30, 2015, in the fields of science, technology, engineering, mathematics (STEM), or long-term care at businesses located in qualified economic development regions. To qualify an individual must have a two- or four-year degree in a field related to the employment. Defines a qualified economic development region as one that has a high rate of job vacancies in STEM and long-term care jobs, as determined by the commissioner of employment and economic development in the previous year's Job Vacancy Survey.

The credit equals 50 percent of the state grant allowance for tuition and fees at a two- or four-year public institution in Minnesota in the year the individual obtained his or her degree. The maximum credit is \$5,000 for individuals with four-year degrees and \$2,500 for individuals with two-year degrees. An individual may claim the credit in the tax year in which he or she gains employment and in each of the next four tax years.

Effective date: Tax year 2015.

Section

Article 6

State Agency Penalty Reform

- 1 All penalties deposited in general fund.** Requires most state agency penalties to be deposited into the general fund unless constitutionally protected or if the penalty is deposited in another fund and not appropriated to a state agency.
- 2 Minnesota grown account.** Directs the deposit of penalties into the general fund.
- 3 Funding sources.** Updates the composition of the Minnesota grown account to reflect the deposit of penalties into the general fund.
- 4 Fees for livestock weighing.** Directs the deposit of penalties into the general fund.
- 5 Pesticide regulatory account.** Directs the deposit of penalties into the general fund.
- 6 Fertilizer inspection account.** Directs the deposit of penalties into the general fund.
- 7 Crediting of penalties, fees, and costs.** Directs the deposit of penalties into the general fund.
- 8 Disposition and use of money received.** Directs the deposit of penalties related to plant protection and export certification into the general fund.
- 9 Nursery and phytosanitary account.** Directs the deposit of penalties into the general fund.
- 10 Crediting of penalties, fees, and costs.** Directs the deposit of penalties into the general fund.
- 11 Fees; seed potato inspection account.** Directs the deposit of penalties into the general fund.
- 12 Seed inspection account.** Directs the deposit of penalties into the general fund.
- 13 Commercial feed inspection account.** Directs the deposit of penalties into the general fund.
- 14 Account appropriation.** Directs the deposit of penalties related to wholesale produce dealers into the general fund.
- 15 Penalties.** Directs the deposit of milk producer penalties into the general fund.
- 16 Beverage inspection account.** Directs the deposit of penalties into the general fund.
- 17 Compliance and investigations.** Directs the deposit of penalties related to health care providers into the general fund.
- 18 Business assistance; compliance grant program; appropriation.** Establishes a compliance assistance grant program within DEED to make grants to businesses with 15 or fewer employees to assist the business in complying with state law. The grants would be available to businesses that unknowingly violated a state law and subsequently paid a penalty to the state or that were required to make a substantial investment in equipment in order to comply with a state law. Directs that each year five percent of all penalties and fines deposited in the general fund is appropriated to finance the grants.

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- 19 Violation; petty misdemeanor.** Directs the deposit of penalties related to child restraint system violations into the general fund. Under current law, fines for violation of mandatory use of child restraints are deposited in (and statutorily appropriated from) an account for passenger restraint system purchases and related educational programming on child restraints.
- 20 Appropriation; special account.** Makes a conforming change to remove language on the deposit of child car seat fines into the child passenger restraint and education account.
- 21 Fines; proceeds allocated.** Directs the deposit of civil penalties related to motor vehicle operation in excess of various vehicle weight limits into the general fund. Currently, fine revenue is allocated across a mixture of state and local funds depending on the circumstances of the violation and who pursues the civil case against the violator.
- 22 Fines; disbursement.** Directs the deposit of administrative citation revenue for traffic offenses into the general fund. Administrative citations can be issued instead of a citation through the state court system and are administered by local units of government. They can be used for some specified traffic violations (like speeding) following statutory conditions. Under current law, a portion of the fine revenue goes to the relevant local unit of government and a portion is allocated to the state general fund (and the split varies depending on whether the State Patrol issued the citation).
- 23 Administrative penalties.** Directs the deposit of administrative penalties related to vehicle equipment and operating standards for special transportation service providers into the general fund. Special transportation service is composed of transportation providers for elderly and disabled populations who are unable to use other types of transportation; providers are regulated by the Minnesota Department of Transportation.
- 24 Penalties.** Directs the deposit of penalties related to the transportation by special transportation service providers of persons needing ambulance services into the general fund.
- 25 Deposit of penalties.** Directs the deposit of administrative penalties related to various commercial motor carrier regulations into the general fund (including carrier registration, insurance, and hazardous materials transportation requirements).
- 26 Administrative penalties.** Directs the deposit of administrative penalties related to regulation of limousine services into the general fund.
- 27 Liquefied petroleum gas account.** Directs the deposit of penalties into the general fund.
- 28 Inventory; judicial determination; appeal; disposition of seized property.** Directs the deposit of 75 percent of the penalties related to cigarette and tobacco taxes into the general fund.
- 29 Inventory; judicial determination; appeal; disposition of seized property.** Directs the deposit of 75 percent of the penalties related to contraband liquor into the general fund.
- 30 Fee schedule.** Directs the deposit of penalties related to combative sports into the general fund.