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State of Minnesota
HOUSE OF REPRESENTATIVES

**EIGHTY-SIXTH
SESSION**

HOUSE FILE No. 2089

March 24, 2009

Authored by Hilty

The bill was read for the first time and referred to the Energy Finance and Policy Division

1.1 A bill for an act
1.2 relating to state government; transferring the Office of Energy Security to
1.3 the Pollution Control Agency and renaming it the Department of Energy
1.4 and Environmental Protection; requiring a report on necessary changes to
1.5 management of water in this state; transferring the responsibilities of the
1.6 commissioner of labor and industry to the commissioner of commerce
1.7 and changing the name to commissioner of labor and commerce; making
1.8 corresponding technical and housekeeping changes; transferring consumer
1.9 protection responsibilities of the commissioner of commerce to the attorney
1.10 general; transferring mortgage fraud investigation responsibilities from the
1.11 commissioner of commerce to the commissioner of public safety; amending
1.12 Minnesota Statutes 2008, sections 15.01; 15.06, subdivision 1; 15A.0815,
1.13 subdivision 2; 43A.08, subdivision 1a; 45.012; 116.02.

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

1.15 **ARTICLE 1**
1.16 **ENERGY AND ENVIRONMENTAL PROTECTION**

1.17 Section 1. **CONSOLIDATION OF STATE REGULATION OF ENERGY AND**
1.18 **ENVIRONMENTAL PROTECTION.**

1.19 In order to make state government more efficient and effective and to accomplish
1.20 more efficient and effective regulation of energy and environmental protection
1.21 in Minnesota, the responsibilities of the Office of Energy Security, including any
1.22 responsibilities set forth in the executive order dated January 17, 2008, are transferred to
1.23 the Pollution Control Agency under Minnesota Statutes, section 15.039. The Pollution
1.24 Control Agency is renamed the Department of Energy and Environmental Protection.

1.25 Sec. 2. Minnesota Statutes 2008, section 15.01, is amended to read:

1.26 **15.01 DEPARTMENTS OF THE STATE.**

2.1 The following agencies are designated as the departments of the state government:
 2.2 the Department of Administration; the Department of Agriculture; the Department
 2.3 of Commerce; the Department of Corrections; the Department of Education; the
 2.4 Department of Employment and Economic Development; the Department of Energy and
 2.5 Environmental Protection; the Department of Finance; the Department of Health; the
 2.6 Department of Human Rights; the Department of Labor and Industry; the Department of
 2.7 Military Affairs; the Department of Natural Resources; the Department of Public Safety;
 2.8 the Department of Human Services; the Department of Revenue; the Department of
 2.9 Transportation; the Department of Veterans Affairs; and their successor departments.

2.10 Sec. 3. Minnesota Statutes 2008, section 15.06, subdivision 1, is amended to read:

2.11 Subdivision 1. **Applicability.** This section applies to the following departments
 2.12 or agencies: the Departments of Administration, Agriculture, Commerce, Corrections,
 2.13 Education, Employment and Economic Development, Energy and Environmental
 2.14 Protection, Finance, Health, Human Rights, Labor and Industry, Natural Resources,
 2.15 Public Safety, Human Services, Revenue, Transportation, and Veterans Affairs; the
 2.16 Housing Finance ~~and Pollution Control Agencies~~ Agency; the Office of Commissioner of
 2.17 Iron Range Resources and Rehabilitation; the Bureau of Mediation Services; and their
 2.18 successor departments and agencies. The heads of the foregoing departments or agencies
 2.19 are "commissioners."

2.20 Sec. 4. Minnesota Statutes 2008, section 15A.0815, subdivision 2, is amended to read:

2.21 Subd. 2. **Group I salary limits.** The salaries for positions in this subdivision may
 2.22 not exceed 95 percent of the salary of the governor:

2.23 Commissioner of administration;
 2.24 Commissioner of agriculture;
 2.25 Commissioner of education;
 2.26 Commissioner of commerce;
 2.27 Commissioner of corrections;
 2.28 Commissioner of energy and environmental protection;
 2.29 Commissioner of finance;
 2.30 Commissioner of health;
 2.31 Executive director, Minnesota Office of Higher Education;
 2.32 Commissioner, Housing Finance Agency;
 2.33 Commissioner of human rights;
 2.34 Commissioner of human services;

- 3.1 Commissioner of labor and industry;
- 3.2 Commissioner of natural resources;
- 3.3 Director of Office of Strategic and Long-Range Planning;
- 3.4 ~~Commissioner, Pollution Control Agency;~~
- 3.5 Executive director, Public Employees Retirement Association;
- 3.6 Commissioner of public safety;
- 3.7 Commissioner of revenue;
- 3.8 Executive director, State Retirement System;
- 3.9 Executive director, Teachers Retirement Association;
- 3.10 Commissioner of employment and economic development;
- 3.11 Commissioner of transportation; and
- 3.12 Commissioner of veterans affairs.

3.13 Sec. 5. Minnesota Statutes 2008, section 43A.08, subdivision 1a, is amended to read:

3.14 Subd. 1a. **Additional unclassified positions.** Appointing authorities for the

3.15 following agencies may designate additional unclassified positions according to this

3.16 subdivision: the Departments of Administration; Agriculture; Commerce; Corrections;

3.17 Education; Employment and Economic Development; Energy and Environmental

3.18 Protection; Explore Minnesota Tourism; Finance; Health; Human Rights; Labor and

3.19 Industry; Natural Resources; Public Safety; Human Services; Revenue; Transportation;

3.20 and Veterans Affairs; the Housing Finance ~~and Pollution Control Agencies~~ Agency; the

3.21 State Lottery; the State Board of Investment; the Office of Administrative Hearings; the

3.22 Offices of the Attorney General, Secretary of State, and State Auditor; the Minnesota State

3.23 Colleges and Universities; the Minnesota Office of Higher Education; the Perpich Center

3.24 for Arts Education; and the Minnesota Zoological Board.

3.25 A position designated by an appointing authority according to this subdivision must

3.26 meet the following standards and criteria:

3.27 (1) the designation of the position would not be contrary to other law relating

3.28 specifically to that agency;

3.29 (2) the person occupying the position would report directly to the agency head or

3.30 deputy agency head and would be designated as part of the agency head's management

3.31 team;

3.32 (3) the duties of the position would involve significant discretion and substantial

3.33 involvement in the development, interpretation, and implementation of agency policy;

3.34 (4) the duties of the position would not require primarily personnel, accounting, or

3.35 other technical expertise where continuity in the position would be important;

4.1 (5) there would be a need for the person occupying the position to be accountable to,
 4.2 loyal to, and compatible with, the governor and the agency head, the employing statutory
 4.3 board or commission, or the employing constitutional officer;

4.4 (6) the position would be at the level of division or bureau director or assistant
 4.5 to the agency head; and

4.6 (7) the commissioner has approved the designation as being consistent with the
 4.7 standards and criteria in this subdivision.

4.8 Sec. 6. Minnesota Statutes 2008, section 116.02, is amended to read:

4.9 **116.02 POLLUTION CONTROL AGENCY DEPARTMENT OF ENERGY**
 4.10 **AND ENVIRONMENTAL PROTECTION, CREATION AND POWERS.**

4.11 Subdivision 1. **Creation.** ~~A pollution control agency, designated as the Minnesota~~
 4.12 ~~Pollution Control Agency, The Department of Energy and Environmental Protection is~~
 4.13 ~~hereby created under the control and supervision of a commissioner. The agency A Board~~
 4.14 ~~of Energy and Environmental Protection shall consist of the commissioner and eight~~
 4.15 ~~members appointed by the governor, by and with the advice and consent of the senate.~~
 4.16 ~~One of such members shall be a person knowledgeable in the field of agriculture and one~~
 4.17 ~~shall be representative of organized labor.~~

4.18 Subd. 2. **Terms, compensation, removal, vacancies.** The membership terms,
 4.19 compensation, removal of members, and filling of vacancies on the ~~agency board~~ shall be
 4.20 as provided in section 15.0575.

4.21 Subd. 3. **Membership.** The membership of the ~~Pollution Control Agency board~~
 4.22 shall be broadly representative of the skills and experience necessary to effectuate the
 4.23 policy of sections 116.01 to 116.075, except that no member other than the commissioner
 4.24 shall be an officer or employee of the state or federal government. Only two members at
 4.25 one time may be officials or employees of a municipality or any governmental subdivision,
 4.26 but neither may be a member ex officio or otherwise on the management board of a
 4.27 municipal sanitary sewage disposal system.

4.28 Subd. 4. **Chair.** The commissioner shall serve as chair of the ~~agency board~~. The
 4.29 ~~agency board~~ shall elect such other officers as it deems necessary.

4.30 Subd. 5. **Agency Board is successor to commission agency.** The ~~Pollution~~
 4.31 ~~Control Agency board~~ is the successor of the ~~Water Pollution Control Commission~~
 4.32 ~~Pollution Control Agency~~, and all powers and duties now vested in or imposed upon ~~said~~
 4.33 ~~commission the agency~~ by chapter 115, or any act amendatory thereof or supplementary
 4.34 thereto, are hereby transferred to, imposed upon, and vested in the ~~Minnesota Pollution~~
 4.35 ~~Control Agency, except as to those matters pending before the commission in which~~

5.1 ~~hearings have been held and evidence has been adduced. The Water Pollution Commission~~
5.2 ~~shall complete its action in such pending matters not later than six months from May 26,~~
5.3 ~~1967. The Water Pollution Control Commission, as heretofore constituted, is hereby~~
5.4 ~~abolished, (a) effective upon completion of its action in the pending cases, as hereinbefore~~
5.5 ~~provided for; or (b) six months from May 26, 1967, whichever is the earlier Board of~~
5.6 ~~Energy and Environmental Protection.~~

5.7 Subd. 6. **Required decisions.** The agency board shall make final decisions on the
5.8 following matters:

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

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

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

5.16 (ii) the project proposer or a person commenting on the proposal requests that the
5.17 declaration be made by the agency board and the agency board requests that it make the
5.18 decision under subdivision 8; or

5.19 (iii) the commissioner is recommending preparation of an environmental impact
5.20 statement;

5.21 (3) the scope and adequacy of environmental impact statements;

5.22 (4) issuance, reissuance, modification, or revocation of a permit if:

5.23 (i) a variance is sought in the permit application or a contested case hearing request
5.24 is pending; or

5.25 (ii) the permit applicant, the permittee, or a person commenting on the permit action
5.26 requests that the decision be made by the agency board and the agency board requests that
5.27 it make the decision under subdivision 8;

5.28 (5) final adoption or amendment of agency rules for which a public hearing is
5.29 required under section 14.25 or for which the commissioner decides to proceed directly to
5.30 a public hearing under section 14.14, subdivision 1;

5.31 (6) approval or denial of an application for a variance from an agency rule if:

5.32 (i) granting the variance request would change an air, soil, or water quality standard;

5.33 (ii) the commissioner has determined that granting the variance would have a
5.34 significant environmental impact; or

6.1 (iii) the applicant or a person commenting on the variance request requests that the
6.2 decision be made by the agency board and the agency board requests that it make the
6.3 decision under subdivision 8; and

6.4 (7) whether to reopen, rescind, or reverse a decision of the agency board.

6.5 Subd. 7. **Additional decisions.** The commissioner may request that the agency
6.6 board make additional decisions or provide advice to the commissioner.

6.7 Subd. 8. **Other actions.** Any other action not specifically within the authority of
6.8 the commissioner shall be made by the agency board if:

6.9 (1) prior to the commissioner's final decision on the action, one or more members
6.10 of the agency board notify the commissioner of their request that the decision be made
6.11 by the agency board; or

6.12 (2) any person submits a petition to the commissioner requesting that the decision be
6.13 made by the agency board and the commissioner grants the petition.

6.14 If the commissioner denies a petition submitted under clause (2), the commissioner
6.15 shall advise the agency board and the petitioner of the reasons for the denial.

6.16 Subd. 9. **Informing public.** The commissioner shall inform interested persons as
6.17 appropriate in public notices and other public documents of their right to request the
6.18 agency board to make decisions in specific matters provided in subdivision 6 and the
6.19 right of agency board members to request that decisions be made by the agency board as
6.20 provided in subdivision 8. The commissioner shall also regularly inform the agency board
6.21 of activities that have broad policy implications or potential environmental significance
6.22 and of activities in which the public has exhibited substantial interest.

6.23 Subd. 10. **Changing decisions.** (a) The agency board must not reopen, rescind, or
6.24 reverse a decision of the agency board except upon:

6.25 (1) the affirmative vote of two-thirds of the agency board; or

6.26 (2) a finding that there was an irregularity in a hearing related to the decision, an
6.27 error of law, or a newly discovered material issue of fact.

6.28 (b) The requirements in paragraph (a) are minimum requirements and do not limit the
6.29 agency's board's authority under sections 14.06 and 116.07, subdivision 3, to adopt rules:

6.30 (1) applying the requirement in paragraph (a), clause (1) or (2), to certain decisions
6.31 of the agency board; or

6.32 (2) establishing additional or more stringent requirements for reopening, rescinding,
6.33 or reversing decisions of the agency board.

6.34 Sec. 7. **REPORT.**

7.1 By January 15, 2010, the commissioner of energy and environmental protection shall
 7.2 report to the chairs of the senate and house of representatives committees with jurisdiction
 7.3 over environment and natural resources policy and budget on changes, including any
 7.4 statutory changes, necessary to create a new organizational structure for the management
 7.5 of water in this state. The commissioner shall work with the Board of Water and Soil
 7.6 Resources, the commissioner of natural resources, the commissioner of health, the
 7.7 Environmental Quality Board, and the Clean Water Council in creating the new structure.

7.8 **Sec. 8. REVISOR'S INSTRUCTION.**

7.9 (a) The revisor of statutes shall change "Pollution Control Agency" to "Department
 7.10 of Energy and Environmental Protection" wherever the term appears in Minnesota Statutes
 7.11 and Minnesota Rules.

7.12 (b) The revisor of statutes shall change the word "commerce," when it refers
 7.13 to the Department of Commerce or the commissioner of commerce, to "energy and
 7.14 environmental protection," or "Department of Energy and Environmental Protection"
 7.15 where it appears in Minnesota Statutes, sections 116C.779; 123B.65; 216A.01 to
 7.16 216A.085; 216A.095; 216B.02 to 216B.813; 216C.01 to 216C.44; 216E.03 to 216E.18;
 7.17 216F.011; and 216F.09.

7.18 **Sec. 9. EFFECTIVE DATE.**

7.19 Sections 1 to 8 are effective August 1, 2009.

7.20 **ARTICLE 2**
 7.21 **LABOR AND COMMERCE**

7.22 **Section 1. DEPARTMENT OF LABOR AND COMMERCE.**

7.23 In order to make state government more efficient and effective and to accomplish
 7.24 more efficient and effective regulation of labor and commerce in Minnesota, the
 7.25 responsibilities of the commissioner of labor and industry are transferred to the
 7.26 commissioner of commerce under Minnesota Statutes, section 15.039. The commissioner
 7.27 of commerce is renamed the commissioner of labor and commerce.

7.28 **Sec. 2. Minnesota Statutes 2008, section 15.01, is amended to read:**

7.29 **15.01 DEPARTMENTS OF THE STATE.**

7.30 The following agencies are designated as the departments of the state government:
 7.31 the Department of Administration; the Department of Agriculture; ~~the Department of~~
 7.32 ~~Commerce~~; the Department of Corrections; the Department of Education; the Department

8.1 of Employment and Economic Development; the Department of Finance; the Department
 8.2 of Health; the Department of Human Rights; the Department of Labor and ~~Industry~~
 8.3 Commerce; the Department of Military Affairs; the Department of Natural Resources;
 8.4 the Department of Public Safety; the Department of Human Services; the Department of
 8.5 Revenue; the Department of Transportation; the Department of Veterans Affairs; and
 8.6 their successor departments.

8.7 Sec. 3. Minnesota Statutes 2008, section 15.06, subdivision 1, is amended to read:

8.8 Subdivision 1. **Applicability.** This section applies to the following departments
 8.9 or agencies: the Departments of Administration, Agriculture, ~~Commerce~~, Corrections,
 8.10 Education, Employment and Economic Development, Finance, Health, Human Rights,
 8.11 Labor and ~~Industry~~ Commerce, Natural Resources, Public Safety, Human Services,
 8.12 Revenue, Transportation, and Veterans Affairs; the Housing Finance and Pollution Control
 8.13 Agencies; the Office of Commissioner of Iron Range Resources and Rehabilitation; the
 8.14 Bureau of Mediation Services; and their successor departments and agencies. The heads
 8.15 of the foregoing departments or agencies are "commissioners."

8.16 Sec. 4. Minnesota Statutes 2008, section 15A.0815, subdivision 2, is amended to read:

8.17 Subd. 2. **Group I salary limits.** The salaries for positions in this subdivision may
 8.18 not exceed 95 percent of the salary of the governor:

8.19 Commissioner of administration;
 8.20 Commissioner of agriculture;
 8.21 Commissioner of education;
 8.22 ~~Commissioner of commerce;~~
 8.23 Commissioner of corrections;
 8.24 Commissioner of finance;
 8.25 Commissioner of health;
 8.26 Executive director, Minnesota Office of Higher Education;
 8.27 Commissioner, Housing Finance Agency;
 8.28 Commissioner of human rights;
 8.29 Commissioner of human services;
 8.30 Commissioner of labor and ~~industry~~ commerce;
 8.31 Commissioner of natural resources;
 8.32 Director of Office of Strategic and Long-Range Planning;
 8.33 Commissioner, Pollution Control Agency;
 8.34 Executive director, Public Employees Retirement Association;

- 9.1 Commissioner of public safety;
- 9.2 Commissioner of revenue;
- 9.3 Executive director, State Retirement System;
- 9.4 Executive director, Teachers Retirement Association;
- 9.5 Commissioner of employment and economic development;
- 9.6 Commissioner of transportation; and
- 9.7 Commissioner of veterans affairs.

9.8 Sec. 5. Minnesota Statutes 2008, section 43A.08, subdivision 1a, is amended to read:

9.9 Subd. 1a. **Additional unclassified positions.** Appointing authorities for the
 9.10 following agencies may designate additional unclassified positions according to this
 9.11 subdivision: the Departments of Administration; Agriculture; ~~Commerce~~; Corrections;
 9.12 Education; Employment and Economic Development; Explore Minnesota Tourism;
 9.13 Finance; Health; Human Rights; Labor and ~~Industry~~ Commerce; Natural Resources;
 9.14 Public Safety; Human Services; Revenue; Transportation; and Veterans Affairs; the
 9.15 Housing Finance and Pollution Control Agencies; the State Lottery; the State Board of
 9.16 Investment; the Office of Administrative Hearings; the Offices of the Attorney General,
 9.17 Secretary of State, and State Auditor; the Minnesota State Colleges and Universities;
 9.18 the Minnesota Office of Higher Education; the Perpich Center for Arts Education; and
 9.19 the Minnesota Zoological Board.

9.20 A position designated by an appointing authority according to this subdivision must
 9.21 meet the following standards and criteria:

9.22 (1) the designation of the position would not be contrary to other law relating
 9.23 specifically to that agency;

9.24 (2) the person occupying the position would report directly to the agency head or
 9.25 deputy agency head and would be designated as part of the agency head's management
 9.26 team;

9.27 (3) the duties of the position would involve significant discretion and substantial
 9.28 involvement in the development, interpretation, and implementation of agency policy;

9.29 (4) the duties of the position would not require primarily personnel, accounting, or
 9.30 other technical expertise where continuity in the position would be important;

9.31 (5) there would be a need for the person occupying the position to be accountable to,
 9.32 loyal to, and compatible with, the governor and the agency head, the employing statutory
 9.33 board or commission, or the employing constitutional officer;

9.34 (6) the position would be at the level of division or bureau director or assistant
 9.35 to the agency head; and

10.1 (7) the commissioner has approved the designation as being consistent with the
10.2 standards and criteria in this subdivision.

10.3 Sec. 6. Minnesota Statutes 2008, section 45.012, is amended to read:

10.4 **45.012 COMMISSIONER.**

10.5 (a) The Department of Labor and Commerce is under the supervision and control of
10.6 the commissioner of labor and commerce. The commissioner is appointed by the governor
10.7 in the manner provided by section 15.06.

10.8 (b) Data that is received by the commissioner or the commissioner's designee by
10.9 virtue of membership or participation in an association, group, or organization that is
10.10 not otherwise subject to chapter 13 is confidential or protected nonpublic data but may
10.11 be shared with the department employees as the commissioner considers appropriate.
10.12 The commissioner may release the data to any person, agency, or the public if the
10.13 commissioner determines that the access will aid the law enforcement process, promote
10.14 public health or safety, or dispel widespread rumor or unrest.

10.15 (c) It is part of the department's mission that within the department's resources the
10.16 commissioner shall endeavor to:

10.17 (1) prevent the waste or unnecessary spending of public money;

10.18 (2) use innovative fiscal and human resource practices to manage the state's
10.19 resources and operate the department as efficiently as possible;

10.20 (3) coordinate the department's activities wherever appropriate with the activities
10.21 of other governmental agencies;

10.22 (4) use technology where appropriate to increase agency productivity, improve
10.23 customer service, increase public access to information about government, and increase
10.24 public participation in the business of government;

10.25 (5) utilize constructive and cooperative labor-management practices to the extent
10.26 otherwise required by chapters 43A and 179A;

10.27 (6) report to the legislature on the performance of agency operations and the
10.28 accomplishment of agency goals in the agency's biennial budget according to section
10.29 16A.10, subdivision 1; and

10.30 (7) recommend to the legislature appropriate changes in law necessary to carry out
10.31 the mission and improve the performance of the department.

10.32 (d) The commissioner also has all the powers and responsibilities and shall
10.33 perform all the duties previously assigned to the commissioner of public service and
10.34 the Department of Public Service under chapters 216, 216A, 216B, 216C, 237, 238,
10.35 239, and other statutes prior to the date of final enactment of Laws 2001, First Special

11.1 Session chapter 4, except in the case where those powers, responsibilities, or duties have
11.2 been specifically otherwise assigned by law.

11.3 Sec. 7. **REVISOR'S INSTRUCTION.**

11.4 The revisor of statutes shall change "commissioner of commerce" and "Department
11.5 of Commerce" and similar terms, wherever they appear in Minnesota Statutes or
11.6 Minnesota Rules, to "commissioner of labor and commerce" and "Department of Labor
11.7 and Commerce" respectively.

11.8 Sec. 8. **EFFECTIVE DATE.**

11.9 Sections 1 to 7 are effective August 1, 2009.

11.10 **ARTICLE 3**

11.11 **CONSUMER PROTECTION**

11.12 Section 1. **CONSUMER PROTECTION.**

11.13 The responsibilities of the commissioner of commerce under Minnesota Statutes,
11.14 chapters 325F and 325G, regarding consumer protection are transferred to the attorney
11.15 general.

11.16 Sec. 2. **MORTGAGE FRAUD.**

11.17 The responsibilities of the commissioner of commerce under Minnesota Statutes,
11.18 chapter 58, regarding mortgage fraud investigations are transferred to the commissioner of
11.19 public safety.

11.20 Sec. 3. **EFFECTIVE DATE.**

11.21 Sections 1 and 2 are effective the day following final enactment.