

Good afternoon, Madam Chair, members of the committee. My name is Kathryn Hoffman, and I am the Executive Director of the Minnesota Center for Environmental Advocacy. With me today is Betsy Lawton, Water Quality Associate at MCEA. Thank you for the opportunity to testify on SF 695 and 702 (?). I will be addressing SF 605, and Ms. Lawton will be addressing 702.

The Minnesota Center for Environmental Advocacy is a 43-year-old environmental organization that specializes in law and policy. We employ lawyers and experts and our lawyers practice in environmental and administrative law, both of which are affected by this proposed bill. I'm here today to express MCEA's opposition to one portion of SF695, and (**support? Concern? Supreme indifference?**) to another portion. I'll start with the area of concern. Section 1 of the bill contains changes to Subdivision 13 of 115.05. These changes require the Minnesota Court of Appeals, or an Administrative Law Judge, to establish a panel of three experts. We have several concerns here. First, it causes additional delay in decision-making. Adding an second layer of experts after the Commissioner's decision will add months to every agency decision under this provision. We hear all the time about how companies are concerned about how slow permitting is, yet this process makes it even slower. Second, it's redundant. The agency already consults experts, and also hears from experts who submit comments on behalf of cities, local governments, environmental groups and other potential parties. It's simply making the court go through the same exercise yet again. Third, judges are not scientists, nor are they equipped to evaluate science. Judges tend to defer to agencies because the agencies have the expertise. And agencies, meanwhile, are already required to build a record to show that they had a reasonable basis for their decision in order to withstand court scrutiny. There is no reason to think that their current process isn't adequate, and there is less reason to think that putting a judge – who is, after all, a lawyer and not a scientist – will make it better.

Section 1 also makes changes to Subdivision 12, which changes the way that the Administrative Law Judge or Court reviews agencies decisions. Under this law, that reviewing body would not defer to the agencies, but instead would review the decisions in a way that lawyers called "de novo." I only have a single point about this, and I'll use a metaphor to make it – what's good for the goose is good for the gander. Agency deference presents a barrier to challenging agency decisions, but that is as true for organizations like mine as it is for other groups. If you open agency decisions up for easier challenges, they will come from all sides. There will be huge costs, and additional delays, and organizations like mine will be better positioned to challenge permits, rules, and other agency decisions that don't protect the environment. And we will win some of those challenges.

Thank for your for time and attention today. I am available to answer any questions.