

## REJECT HF 702 & SF 695: HINDERING PROTECTION OF CLEAN WATER

### PROBLEM

The federal Clean Water Act requires Minnesota to develop water quality standards to protect Minnesota's waters from pollution. Standards are technical and require input from the state's most expert water quality scientists. In 2014, MPCA adopted new standards to protect Minnesota's waters from "eutrophication," or phosphorus that causes choking algae, toxic algae and fish kills, among other problems.

**The proposed legislation gives powerful interests that oppose water quality standards the ability to force Administrative Law Judges and the Court of Appeals to conduct a costly "do over" of rulemaking based on their own determinations about which scientific issues and data matter.** These bills

- ask judges with no subject matter expertise to do the complex work of expert agency scientists;
- duplicate the rulemaking process and increase the cost, delay, and uncertainty, of developing water quality standards; and
- significantly undermine public input into rulemaking and agency transparency to the public.

### SOLUTION

Reject rulemaking by judges. Support water quality standards based on expert science and public input.  
**Oppose HF 702 and SF 695.**

### BACKGROUND

The Clean Water Act requires states to develop water quality standards to protect rivers, lakes, and streams. The state must show that the standards are scientifically proven to protect water for public uses like drinking, recreation or irrigation. Before a standard goes into effect, EPA must review and approve the underlying science. Any changes to the standard must be reviewed and approved by EPA.

In addition to these federal requirements, state water quality standards must comply with the requirements of the Minnesota Administrative Procedure Act (APA) which include:

- consider economic costs, including whether less expensive alternatives are available;
- demonstrate that the standard is needed and reasonable;
- collect and evaluate the supporting data, including evaluation by outside scientists;
- consider input and opposing viewpoints from the public including cities, industry, other regulated parties, and outside scientists; and
- consider recommendations of an Administrative Law Judge who reviews the proposed standard.

The job of Administrative Law Judges and the Court of Appeals is to review agency decisions and make sure they stay within the bounds of legislative intent. The ALJ or Court of Appeals may overturn decisions that exceed the authority of the agency or aren't supported by substantial evidence, but will generally defer to agency determinations on science because judges are lawyers, not scientists.

### REASONS TO REJECT HF 702 AND SF 695:

**The proposed bill would:**

- **Increase the costs and delay of rulemaking** by requiring courts to repeat the work of agencies;
- **Encourage judicial activism** by giving judges authority to independently decide what scientific issues and data are needed to uphold or invalidate a rule, even though judges usually lack the expertise to make such decisions;
- **Invalidate public input** by putting rule- and decision-making in the hands of a judge instead of an agency;
- **Enact unpromulgated rule-making provisions redundant with the APA**, specifically Minn. Stat. 14.381, except it creates a different standard of review for only MPCA, while leaving the process the same for other agencies; and
- **Reduce MPCA's accountability** to the legislature and the public.

**UPDATE:** The Senate State Government Committee on March 6, 2017 amended SF695 to remove references to the Court of Appeals, apparently sending appeals of PCA decisions to ALJs only. The committee also added a provision that could suspend some or all water quality standards, among other changes. A suspension of enforcement of water quality standards conflicts with federal law, which requires states to enforce their own protections of clean water. The conflict in law in the amended version of SF695 risks the state's ability to administer its own permits, as EPA may be forced to revoke Minnesota's authorization to enforce the Clean Water Act if Minnesota's laws are directly contrary to federal law.

## CONTACT

---

### **Minnesota Center for Environmental Advocacy**

Allison Wolf  
awolf@mncenter.org  
612-750-5449



Minnesota Center for  
Environmental Advocacy

### **Sierra Club**

Kara M. Josephson  
kara.josephson@sierraclub.org  
651-285-4735



**SIERRA  
CLUB**

NORTH STAR CHAPTER

### **Clean Water Action**

Jenna Grove  
jgrove@cleanwater.org  
712-229-8948



### **Friends of the Mississippi River**

Leili Fatehi  
lfatehi@fmr.org  
612-440-0077

