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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. **1677**

02/25/2019 Authored by Baker, Ecklund, Fabian, Sundin, Lueck and others  
The bill was read for the first time and referred to the Committee on Ways and Means

1.1 A bill for an act  
1.2 relating to energy; establishing a process to compensate businesses for loss of  
1.3 business opportunity resulting from sale and closure of a biomass energy plant.

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

1.5 Section 1. **BIOMASS BUSINESS COMPENSATION.**

1.6 Subdivision 1. Definitions. (a) For the purposes of this section, the following terms have  
1.7 the meanings given.

1.8 (b) "Biomass plant" means the biomass plant identified under Minnesota Statutes, section  
1.9 116C.779, subdivision 1, paragraph (f).

1.10 (c) "Early termination" means the early termination of the power purchase agreement  
1.11 authorized under Minnesota Statutes, section 216B.2424, subdivision 9, with the biomass  
1.12 plant.

1.13 (d) "Operating income" means a business's revenue minus its operating expenses.

1.14 Subd. 2. Office of Administrative Hearings; claims process. (a) The chief  
1.15 administrative law judge of the Office of Administrative Hearings must assign an  
1.16 administrative law judge to administer a claims award process to compensate businesses  
1.17 negatively affected by the early termination. The chief administrative law judge may develop  
1.18 a process, prescribe forms, identify documentation affected businesses must submit with  
1.19 claims, and issue awards to eligible businesses consistent with this section. The process  
1.20 must allow, but not require, an authorized representative from each business that applies  
1.21 for compensation to appear in person before the assigned administrative law judge to provide  
1.22 evidence in support of the business's claim.

2.1 (b) The chief administrative law judge may contract with and use the services of financial  
2.2 or other consultants to examine financial documentation presented by claimants or otherwise  
2.3 assist in the evaluation and award of claims.

2.4 (c) Records submitted to the Office of Administrative Hearings as part of the claims  
2.5 process constitute business data under Minnesota Statutes, section 13.591.

2.6 (d) An award made under this section is final is and not subject to judicial review.

2.7 (e) An award made under this section does not constitute an admission of liability by  
2.8 the state for any damages or other losses suffered by a business affected by the early  
2.9 termination.

2.10 Subd. 3. **Eligibility.** To be eligible for an award of compensation, an affected business  
2.11 must meet the following criteria:

2.12 (1) as of May 1, 2017, the affected business was operating under the terms of a valid  
2.13 written contract, or an oral contract that is supported by business records, with the company  
2.14 operating the biomass plant or the fertilizer plant integrated with the biomass plant to supply  
2.15 or manage material for, or receive material from, the biomass plant or the fertilizer plant  
2.16 integrated with the biomass plant;

2.17 (2) the affected business is located in the state; and

2.18 (3) as the result of the early termination, the affected business suffered:

2.19 (i) decreased operating income; or

2.20 (ii) the loss of value of investments in real or personal property essential to its business  
2.21 operations with the biomass plant.

2.22 Subd. 4. **Types of claims.** (a) An eligible business may make claims for a compensation  
2.23 award based on either or both:

2.24 (1) decreased operating income; or

2.25 (2) the loss of value of investments in real or personal property essential to its business  
2.26 operations with the biomass plant.

2.27 (b) To establish and quantify a claim for decreased operating income, an eligible business  
2.28 must:

2.29 (1) demonstrate its operating income over the past five years derived from supplying or  
2.30 managing material for, or receiving material from, the biomass plant;

3.1 (2) present evidence of any alternative business opportunities it has pursued or could  
 3.2 pursue to mitigate the loss of revenue from the termination of its contract with the biomass  
 3.3 plant; and

3.4 (3) demonstrate the amount that the business's annual operating income, including  
 3.5 operating income from any alternative business opportunities, after the termination of the  
 3.6 business's contract with the biomass plant is less than the five-year average of the business's  
 3.7 annual operating income before the early termination;

3.8 (c) To establish and quantify a loss of value of investments in real or personal property  
 3.9 claim, an eligible business must provide sufficient evidence of:

3.10 (1) the essential nature of the investment made in the property to fulfill the contract with  
 3.11 the biomass plant;

3.12 (2) the extent to which the eligible business is able to repurpose the property for another  
 3.13 productive use after the early termination, including but not limited to the use, sales, salvage,  
 3.14 or scrap value of the property for which the loss is claimed; and

3.15 (3) the value of the eligible business's nondepreciated investment in the property.

3.16 Subd. 5. **Limitations on awards.** (a) A compensation award for a decreased operating  
 3.17 income claim must not exceed the amount calculated under subdivision 4, paragraph (b),  
 3.18 clause (3), multiplied by two.

3.19 (b) The use, sales, salvage, or scrap value of the property for which a loss is claimed  
 3.20 must be deducted from a compensation award for a loss of value of investments in real or  
 3.21 personal property claim.

3.22 (c) A payment received from business interruption insurance policies, settlements, or  
 3.23 other forms of compensation related to the termination of the business's contract with the  
 3.24 biomass plant must be deducted from any compensation award provided under this section.

3.25 Subd. 6. **Priority.** The chief administrative law judge may give priority to claims by  
 3.26 eligible businesses that demonstrate a significant effort to pursue alternative business  
 3.27 opportunities or to conduct other loss mitigation efforts to reduce its claimed losses related  
 3.28 to the termination of its contract with the company operating the biomass plant.

3.29 Subd. 7. **Awarding claims.** If the amount provided for compensation in the biomass  
 3.30 business compensation account established under section 2 is insufficient to fully award all  
 3.31 claims eligible for an award, all awards must be adjusted proportionally based on the value  
 3.32 of the claim.

4.1 Subd. 8. **Deadlines.** The chief administrative law judge must make the application  
4.2 process for eligible claims available by August 1, 2019. A business seeking an award under  
4.3 this section must file all claims with the chief administrative law judge within 60 days of  
4.4 the date the biomass plant closes. All preliminary awards on eligible claims must be made  
4.5 within 120 days of the deadline date to file claims. Any requests to reconsider an award  
4.6 denial must be filed with the chief administrative law judge within 60 days of the notice  
4.7 date for preliminary awards. All final awards for eligible claims must be made within 60  
4.8 days of the deadline date to file reconsideration requests. The commissioner of management  
4.9 and budget must pay all awarded claims within 45 days of the date the commissioner of  
4.10 management and budget receives notice of the final awards from the chief administrative  
4.11 law judge.

4.12 Subd. 9. **Expiration.** This section expires June 30, 2022.

4.13 **EFFECTIVE DATE.** This section is effective June 1, 2019.

4.14 Sec. 2. **BIOMASS BUSINESS COMPENSATION ACCOUNT.**

4.15 Subdivision 1. **Account established.** A biomass business compensation account is  
4.16 established as a separate account in the special revenue fund in the state treasury.  
4.17 Appropriations and transfers to the account must be credited to the account. Earnings, such  
4.18 as interest, and any other earnings arising from the assets of the account are credited to the  
4.19 account. Funds remaining in the account as of December 31, 2021, must be transferred to  
4.20 the renewable development account established under Minnesota Statutes, section 116C.779.

4.21 Subd. 2. **Funding for the special account.** Notwithstanding Minnesota Statutes, section  
4.22 116C.779, subdivision 1, paragraph (j), on July 1, 2019, \$40,000,000 must be transferred  
4.23 from the renewable development account under Minnesota Statutes, section 116C.779, to  
4.24 the biomass business compensation account established under subdivision 1. The transferred  
4.25 funds are appropriated to pay eligible obligations under the biomass business compensation  
4.26 program established under section 1.

4.27 Subd. 3. **Payment of expenses.** The chief administrative law judge must certify to the  
4.28 commissioner of management and budget the total costs incurred to administer the biomass  
4.29 business compensation claims process. The commissioner of management and budget must  
4.30 transfer an amount equal to the certified costs incurred for biomass business compensation  
4.31 claim activities from the renewable development account under Minnesota Statutes, section  
4.32 116C.779, and deposit it in the administrative hearings account under Minnesota Statutes,  
4.33 section 14.54. Transfers may occur quarterly throughout the fiscal year and must be based

- 5.1 on quarterly cost and revenue reports, with final certification and reconciliation after each
- 5.2 fiscal year. The total amount transferred under this subdivision must not exceed \$200,000.
- 5.3 Subd. 4. **Expiration.** This section expires June 30, 2022.
- 5.4 **EFFECTIVE DATE.** This section is effective June 1, 2019.