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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. 1133

03/04/2013 Authored by Hansen, by request and Fabian

The bill was read for the first time and referred to the Committee on Environment and Natural Resources Policy

1.1 A bill for an act
1.2 relating to environment; providing for permitting efficiency; modifying terms
1.3 for certain permits; creating a pollution control ombudsperson; modifying
1.4 environmental review petition requirements; appropriating money; amending
1.5 Minnesota Statutes 2012, sections 84.027, subdivision 14a, by adding a
1.6 subdivision; 116.03, subdivision 2b, by adding subdivisions; 116D.04,
1.7 subdivision 2a.

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

1.9 Section 1. Minnesota Statutes 2012, section 84.027, subdivision 14a, is amended to read:

1.10 Subd. 14a. **Permitting efficiency.** (a) It is the goal of the state that environmental
1.11 and resource management permits for construction be issued or denied within ~~150~~ 40 days
1.12 of the submission of a permit application, and that nonconstruction permits be issued or
1.13 denied within 90 days of submission of a permit application. The commissioner of natural
1.14 resources shall establish management systems designed to achieve the goal.

1.15 (b) The commissioner shall prepare semiannual permitting efficiency reports that
1.16 include statistics on meeting the goal in paragraph (a). The reports are due February 1
1.17 and August 1 each year. For permit applications that have not met the goal, the report
1.18 must state the reasons for not meeting the goal. In stating the reasons for not meeting the
1.19 goal, the commissioner shall separately identify delays caused by the responsiveness of
1.20 the proposer, lack of staff, scientific or technical disagreements, or the level of public
1.21 engagement. The report must specify the number of days from initial submission of the
1.22 application to the day of determination that the application is complete. The report for
1.23 August 1 each year must aggregate the data for the year and assess whether program
1.24 or system changes are necessary to achieve the goal. The report must be posted on the
1.25 department's Web site and submitted to the governor and the chairs and ranking minority

members of the house of representatives and senate committees having jurisdiction over natural resources policy and finance.

(c) The commissioner shall allow electronic submission of environmental review and permit documents to the department.

(d) ~~Beginning July 1, 2011,~~ Within 30 business days of application for a permit subject to paragraph (a), the commissioner of natural resources shall notify the project proposer, in writing, whether the application is complete or incomplete. If the commissioner determines that an application is incomplete, the notice to the applicant must enumerate all deficiencies, citing specific provisions of the applicable rules and statutes, and advise the applicant on how the deficiencies can be remedied. This paragraph does not apply to an application for a permit that is subject to a grant or loan agreement under chapter 446A.

Sec. 2. Minnesota Statutes 2012, section 84.027, is amended by adding a subdivision to read:

Subd. 14b. **Continuation of permits.** If, by July 1 of an odd-numbered year, a biennial appropriation law has not been enacted to fund air, water, and land programs at the department, existing permits shall not be terminated or suspended, provided the terms and conditions of the permit and local, state, and federal laws and rules are met, regardless of the state's ability to receive, review, or process fees, reports, or other filings.

Sec. 3. Minnesota Statutes 2012, section 116.03, subdivision 2b, is amended to read:

Subd. 2b. **Permitting efficiency.** (a) It is the goal of the state that environmental and resource management permits for construction be issued or denied within ~~150~~ 40 days of the submission of a permit application, and that nonconstruction permits be issued or denied within 90 days of submission of a permit application. The commissioner of the Pollution Control Agency shall establish management systems designed to achieve the goal.

(b) The commissioner shall prepare semiannual permitting efficiency reports that include statistics on meeting the goal in paragraph (a). The reports are due February 1 and August 1 each year. For permit applications that have not met the goal, the report must state the reasons for not meeting the goal. In stating the reasons for not meeting the goal, the commissioner shall separately identify delays caused by the responsiveness of the proposer, lack of staff, scientific or technical disagreements, or the level of public engagement. The report must specify the number of days from initial submission of the application to the day of determination that the application is complete. The report for August 1 each year must aggregate the data for the year and assess whether program or system changes are necessary to achieve the goal. The report must be posted on the agency's Web site and submitted to

the governor and the chairs and ranking minority members of the house of representatives and senate committees having jurisdiction over environment policy and finance.

(c) The commissioner shall allow electronic submission of environmental review and permit documents to the agency.

(d) ~~Beginning July 1, 2011,~~ Within 30 business days of application for a permit subject to paragraph (a), the commissioner of the Pollution Control Agency shall notify the project proposer, in writing, whether the application is complete or incomplete. If the commissioner determines that an application is incomplete, the notice to the applicant must enumerate all deficiencies, citing specific provisions of the applicable rules and statutes, and advise the applicant on how the deficiencies can be remedied. This paragraph does not apply to an application for a permit that is subject to a grant or loan agreement under chapter 446A.

(e) For purposes of this subdivision, "permit professional" means an individual not employed by the Pollution Control Agency who:

(1) has a professional license issued by the state of Minnesota in the subject area of the permit;

(2) has at least ten years of experience in the subject area of the permit; and

(3) abides by the duty of candor applicable to employees of the Pollution Control Agency under agency rules and complies with all applicable requirements under chapter 326.

(f) Upon the agency's request, an applicant relying on a permit professional must participate in a meeting with the agency before submitting an application:

(1) at least two weeks prior to the preapplication meeting, the applicant must submit at least the following:

(i) project description, including, but not limited to, scope of work, primary emissions points, discharge outfalls, and water intake points;

(ii) location of the project, including county, municipality, and location on the site;

(iii) business schedule for project completion; and

(iv) other information requested by the agency at least four weeks prior to the scheduled meeting; and

(2) during the preapplication meeting, the agency shall provide for the applicant at least the following:

(i) an overview of the permit review program;

(ii) a determination of which specific application or applications will be necessary to complete the project;

(iii) a statement notifying the applicant if the specific permit being sought requires a mandatory public hearing or comment period;

(iv) a review of the timetable established in the permit review program for the specific permit being sought; and

(v) a determination of what information must be included in the application, including a description of any required modeling or testing.

(g) The applicant may select a permit professional to undertake the preparation of the permit application and draft permit.

(h) If a preapplication meeting was held, the agency shall, within seven business days of receipt of an application, notify the applicant and submitting permit professional that the application is complete or is denied, specifying the deficiencies of the application.

(i) Upon receipt of notice that the application is complete, the permit professional shall submit to the agency a timetable for submitting a draft permit. The permit professional shall submit a draft permit on or before the date provided in the timetable. Within 60 days after the close of the public comment period, the commissioner shall notify the applicant whether the permit can be issued.

(j) Nothing in this section shall be construed to modify:

(1) any requirement of law that is necessary to retain federal delegation to or assumption by the state; or

(2) the authority to implement a federal law or program.

(k) The permit application and draft permit shall identify or include as an appendix all studies and other sources of information used to substantiate the analysis contained in the permit application and draft permit. The commissioner shall request additional studies, if needed, and the project proposer shall submit all additional studies and information necessary for the commissioner to perform the commissioner's responsibility to review, modify, and determine the completeness of the application and approve the draft permit.

(l) The commissioner shall adopt rules to establish qualifications and training requirements to certify permit professionals to approve permits for hazardous waste land cleanup, above-ground storage tanks, sewer extensions, individual storm water, and construction storm water. Permits approved by a certified permit professional shall be deemed approved by the agency. The commissioner may audit the permitted sites and remove certification for substantive oversights by the certified permit professional. The commissioner may establish a fee schedule, by rule, for the certification and training program. Rules adopted under this paragraph may be adopted under the expedited rulemaking process, as provided in section 14.389, and are exempt from section 16A.1283.

5.1 Fee revenue collected under this paragraph shall be deposited in the special revenue fund
5.2 and is appropriated to the agency for the costs of permit professional certification.

5.3 Sec. 4. Minnesota Statutes 2012, section 116.03, is amended by adding a subdivision to
5.4 read:

5.5 Subd. 2c. **Continuation of permits.** If, by July 1 of an odd-numbered year, a
5.6 biennial appropriation law has not been enacted to fund air, water, and land programs at
5.7 the agency, existing permits shall not be terminated or suspended, provided the terms and
5.8 conditions of the permit and local, state, and federal laws and rules are met, regardless of
5.9 the state's ability to receive, review, or process fees, reports, or other filings.

5.10 Sec. 5. Minnesota Statutes 2012, section 116.03, is amended by adding a subdivision to
5.11 read:

5.12 Subd. 2d. **Pollution control ombudsperson.** (a) The commissioner shall appoint
5.13 a person to the position of pollution control ombudsperson. The pollution control
5.14 ombudsperson reports directly to the commissioner. The ombudsperson must be selected
5.15 without regard to political affiliation and must be qualified to perform the duties specified
5.16 in this subdivision.

5.17 (b) Powers and duties of the pollution control ombudsperson include, but are not
5.18 limited to:

5.19 (1) providing a neutral, independent resource for dispute and issue resolution between
5.20 the agency and the general public where another mechanism or forum is not available;

5.21 (2) gathering information about decisions, acts, and other matters of the agency;

5.22 (3) providing information to the general public;

5.23 (4) facilitating discussions or arranging mediation when appropriate; and

5.24 (5) maintaining and monitoring performance measures for the ombudsperson
5.25 program.

5.26 (c) The pollution control ombudsperson may not hold another formal position within
5.27 the agency. The pollution control ombudsperson may not impose a complaint fee.

5.28 Sec. 6. Minnesota Statutes 2012, section 116D.04, subdivision 2a, is amended to read:

5.29 **Subd. 2a. When prepared.** Where there is potential for significant environmental
5.30 effects resulting from any major governmental action, the action shall be preceded by a
5.31 detailed environmental impact statement prepared by the responsible governmental unit.
5.32 The environmental impact statement shall be an analytical rather than an encyclopedic
5.33 document which describes the proposed action in detail, analyzes its significant

environmental impacts, discusses appropriate alternatives to the proposed action and their impacts, and explores methods by which adverse environmental impacts of an action could be mitigated. The environmental impact statement shall also analyze those economic, employment, and sociological effects that cannot be avoided should the action be implemented. To ensure its use in the decision-making process, the environmental impact statement shall be prepared as early as practical in the formulation of an action.

(a) The board shall by rule establish categories of actions for which environmental impact statements and for which environmental assessment worksheets shall be prepared as well as categories of actions for which no environmental review is required under this section. A mandatory environmental assessment worksheet shall not be required for the expansion of an ethanol plant, as defined in section 41A.09, subdivision 2a, paragraph (b), or the conversion of an ethanol plant to a biobutanol facility or the expansion of a biobutanol facility as defined in section 41A.105, subdivision 1a, based on the capacity of the expanded or converted facility to produce alcohol fuel, but must be required if the ethanol plant or biobutanol facility meets or exceeds thresholds of other categories of actions for which environmental assessment worksheets must be prepared. The responsible governmental unit for an ethanol plant or biobutanol facility project for which an environmental assessment worksheet is prepared shall be the state agency with the greatest responsibility for supervising or approving the project as a whole.

A mandatory environmental impact statement shall not be required for a facility or plant located outside the seven-county metropolitan area that produces less than 125,000,000 gallons of ethanol, biobutanol, or cellulosic biofuel annually, if the facility or plant is: an ethanol plant, as defined in section 41A.09, subdivision 2a, paragraph (b); a biobutanol facility, as defined in section 41A.105, subdivision 1a, clause (1); or a cellulosic biofuel facility, as defined in section 41A.10, subdivision 1, paragraph (d).

(b) The responsible governmental unit shall promptly publish notice of the completion of an environmental assessment worksheet by publishing the notice in at least one newspaper of general circulation in the geographic area where the project is proposed, by posting the notice on a Web site that has been designated as the official publication site for publication of proceedings, public notices, and summaries of a political subdivision in which the project is proposed, or in any other manner determined by the board and shall provide copies of the environmental assessment worksheet to the board and its member agencies. Comments on the need for an environmental impact statement may be submitted to the responsible governmental unit during a 30-day period following publication of the notice that an environmental assessment worksheet has been completed. The responsible governmental unit's decision on the need for an environmental impact statement shall be

based on the environmental assessment worksheet and the comments received during the comment period, and shall be made within 15 days after the close of the comment period. The board's chair may extend the 15-day period by not more than 15 additional days upon the request of the responsible governmental unit.

(c) An environmental assessment worksheet shall also be prepared for a proposed action whenever material evidence accompanying a petition by not less than 100 individuals who reside or own property in the state county or a contiguous county where the proposed action will be located, submitted before the proposed project has received final approval by the appropriate governmental units, demonstrates that, because of the nature or location of a proposed action, there may be potential for significant environmental effects. Petitions requesting the preparation of an environmental assessment worksheet shall be submitted to the board. The chair of the board shall determine the appropriate responsible governmental unit and forward the petition to it. A decision on the need for an environmental assessment worksheet shall be made by the responsible governmental unit within 15 days after the petition is received by the responsible governmental unit. The board's chair may extend the 15-day period by not more than 15 additional days upon request of the responsible governmental unit.

(d) Except in an environmentally sensitive location where Minnesota Rules, part 4410.4300, subpart 29, item B, applies, the proposed action is exempt from environmental review under this chapter and rules of the board, if:

(1) the proposed action is:

(i) an animal feedlot facility with a capacity of less than 1,000 animal units; or

(ii) an expansion of an existing animal feedlot facility with a total cumulative capacity of less than 1,000 animal units;

(2) the application for the animal feedlot facility includes a written commitment by the proposer to design, construct, and operate the facility in full compliance with Pollution Control Agency feedlot rules; and

(3) the county board holds a public meeting for citizen input at least ten business days prior to the Pollution Control Agency or county issuing a feedlot permit for the animal feedlot facility unless another public meeting for citizen input has been held with regard to the feedlot facility to be permitted. The exemption in this paragraph is in addition to other exemptions provided under other law and rules of the board.

(e) The board may, prior to final approval of a proposed project, require preparation of an environmental assessment worksheet by a responsible governmental unit selected by the board for any action where environmental review under this section has not been specifically provided for by rule or otherwise initiated.

(f) An early and open process shall be utilized to limit the scope of the environmental impact statement to a discussion of those impacts, which, because of the nature or location of the project, have the potential for significant environmental effects. The same process shall be utilized to determine the form, content and level of detail of the statement as well as the alternatives which are appropriate for consideration in the statement. In addition, the permits which will be required for the proposed action shall be identified during the scoping process. Further, the process shall identify those permits for which information will be developed concurrently with the environmental impact statement. The board shall provide in its rules for the expeditious completion of the scoping process. The determinations reached in the process shall be incorporated into the order requiring the preparation of an environmental impact statement.

(g) The responsible governmental unit shall, to the extent practicable, avoid duplication and ensure coordination between state and federal environmental review and between environmental review and environmental permitting. Whenever practical, information needed by a governmental unit for making final decisions on permits or other actions required for a proposed project shall be developed in conjunction with the preparation of an environmental impact statement. When an environmental impact statement is prepared for a project requiring multiple permits for which two or more agencies' decision processes include either mandatory or discretionary hearings before a hearing officer prior to the agencies' decision on the permit, the agencies may, notwithstanding any law or rule to the contrary, conduct the hearings in a single consolidated hearing process if requested by the proposer. All agencies having jurisdiction over a permit that is included in the consolidated hearing shall participate. The responsible governmental unit shall establish appropriate procedures for the consolidated hearing process, including procedures to ensure that the consolidated hearing process is consistent with the applicable requirements for each permit regarding the rights and duties of parties to the hearing, and shall utilize the earliest applicable hearing procedure to initiate the hearing. The procedures of section 116C.28, subdivision 2, apply to the consolidated hearing.

(h) An environmental impact statement shall be prepared and its adequacy determined within 280 days after notice of its preparation unless the time is extended by consent of the parties or by the governor for good cause. The responsible governmental unit shall determine the adequacy of an environmental impact statement, unless within 60 days after notice is published that an environmental impact statement will be prepared, the board chooses to determine the adequacy of an environmental impact statement. If an environmental impact statement is found to be inadequate, the responsible governmental unit shall have 60 days to prepare an adequate environmental impact statement.

9.1 (i) The proposer of a specific action may include in the information submitted to the
9.2 responsible governmental unit a preliminary draft environmental impact statement under
9.3 this section on that action for review, modification, and determination of completeness and
9.4 adequacy by the responsible governmental unit. A preliminary draft environmental impact
9.5 statement prepared by the project proposer and submitted to the responsible governmental
9.6 unit shall identify or include as an appendix all studies and other sources of information
9.7 used to substantiate the analysis contained in the preliminary draft environmental impact
9.8 statement. The responsible governmental unit shall require additional studies, if needed,
9.9 and obtain from the project proposer all additional studies and information necessary for
9.10 the responsible governmental unit to perform its responsibility to review, modify, and
9.11 determine the completeness and adequacy of the environmental impact statement.