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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-SECOND SESSION

H. F. No. 1093

02/15/2021

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

1.1 A bill for an act
1.2 relating to environment; establishing Environmental Justice Board in Pollution
1.3 Control Agency; amending Minnesota Statutes 2020, section 116.07, subdivision
1.4 4a; proposing coding for new law in Minnesota Statutes, chapter 116.

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

1.6 Section 1. 116.041 ENVIRONMENTAL JUSTICE BOARD.

1.7 Subdivision 1. Definitions. For purposes of this section, the following terms have the
1.8 meanings given:

1.9 (1) "agency" means the Minnesota Pollution Control Agency;

1.10 (2) "board" mean the Environmental Justice Board; and

1.11 (3) "environmental justice area" means an area in Minnesota that, based on the most
1.12 recent data published by the United States Census Bureau, meets one or more of the following
1.13 conditions:

1.14 (i) 50 percent or more of the population is nonwhite;

1.15 (ii) 40 percent or more of the households have an income at or below 185 percent of the
1.16 federal poverty level; or

1.17 (iii) the area is within Indian country, as defined in United State Code, title 18, section
1.18 1151.

1.19 Subd. 2. Establishment; membership. (a) The Environmental Justice Board is
1.20 established in the agency, consisting of ... members appointed by the governor with the
1.21 advice and consent of the senate. If the senate does not act under this paragraph within 60

2.1 days of an appointment, the board appointment is confirmed. At least ... of the members
2.2 must reside in an environmental justice area.

2.3 (b) The board must begin operating no later than March 15, 2022.

2.4 Subd. 3. **Permit review.** (a) The board must review the determination made by an
2.5 applicant in section 116.07, subdivision 4a, paragraph (c), and, if the board disagrees with
2.6 the applicant's determination, must provide notice to the applicant of the board's disagreement
2.7 and the reasons for it.

2.8 (b) The board must review each permit application the board determines may significantly
2.9 impact the environment or health of residents in an environmental justice area. In making
2.10 the determination, the board must consider:

2.11 (1) cumulative levels and effects of past and current environmental pollution on the
2.12 environment and population of the exposed area from all sources, including mobile sources
2.13 and toxic chemicals contaminating soils;

2.14 (2) the presence of subpopulations that may be particularly sensitive to exposure to
2.15 additional pollutants, including workers exposed to toxic chemicals in the workplace and
2.16 subsistence fishers, gatherers, and hunters;

2.17 (3) biomonitoring data indicating body burdens of environmental pollutants;

2.18 (4) the presence of environmental stressors that may make persons particularly sensitive
2.19 to exposure to additional pollutants or contaminants, including:

2.20 (i) the proportion of the population without access to health insurance and medical care;

2.21 (ii) the incidence of and hospital admission rates for respiratory disease, pulmonary
2.22 disease, cancer, diabetes, asthma, high levels of blood lead concentrations, compromised
2.23 immune systems, and other conditions that may be exacerbated by exposure to pollution;

2.24 (iii) the incidence of substandard housing conditions;

2.25 (iv) the proportion of the population receiving public assistance and medical assistance;

2.26 (v) other environmental stressors, including but not limited to noise, that impact the area
2.27 population;

2.28 (vi) racial and ethnic characteristics of the population; and

2.29 (vii) income levels and the incidence of poverty;

2.30 (5) whether tribal lands or populations holding tribal treaty rights are impacted;

2.31 (6) any other information deemed relevant by the board; and

3.1 (7) how the factors examined under this paragraph may interact to increase the likelihood
3.2 of portions of the population sustaining an adverse effect from exposure to incremental
3.3 pollution.

3.4 (c) The board may require an applicant to provide the information under this subdivision.

3.5 (d) The board must make the final decision for issuing, denying, reissuing, modifying,
3.6 or revoking a permit if the board determines that the permit may significantly impact the
3.7 environment or health of residents in an environmental justice area.

3.8 (e) The board's decision to invoke its authority to make a final decision on a permit under
3.9 this section is not subject to appeal. All other actions and decisions of the board are governed
3.10 by Minnesota Rules, chapter 7000.

3.11 Subd. 4. **Staffing.** (a) The agency provides staff to the board and its members.

3.12 (b) The Office of the Attorney General must designate an attorney from its staff to
3.13 provide legal services to the board. The attorney designated must not be the attorney
3.14 providing legal services to the agency.

3.15 Subd. 5. **Costs.** The reasonable direct and indirect costs to the agency of implementing
3.16 this section must be recovered through permit fees.

3.17 **EFFECTIVE DATE.** This section is effective the day following final enactment and
3.18 applies to all permit applications filed with the agency on or after March 15, 2022.

3.19 Sec. 2. Minnesota Statutes 2020, section 116.07, subdivision 4a, is amended to read:

3.20 Subd. 4a. **Permits.** (a) The Pollution Control Agency may issue, continue in effect or
3.21 deny permits, under such conditions as it may prescribe for the prevention of pollution, for
3.22 the emission of air contaminants, or for the installation or operation of any emission facility,
3.23 air contaminant treatment facility, treatment facility, potential air contaminant storage
3.24 facility, or storage facility, or any part thereof, or for the sources or emissions of noise
3.25 pollution.

3.26 (b) The Pollution Control Agency may also issue, continue in effect or deny permits,
3.27 under such conditions as it may prescribe for the prevention of pollution, for the storage,
3.28 collection, transportation, processing, or disposal of waste, or for the installation or operation
3.29 of any system or facility, or any part thereof, related to the storage, collection, transportation,
3.30 processing, or disposal of waste.

3.31 ~~(c) The agency may not issue a permit to a facility without analyzing and considering~~
3.32 ~~the cumulative levels and effects of past and current environmental pollution from all sources~~

4.1 ~~on the environment and residents of the geographic area within which the facility's emissions~~
4.2 ~~are likely to be deposited, provided that the facility is located in a community in a city of~~
4.3 ~~the first class in Hennepin County that meets all of the following conditions:~~

4.4 ~~(1) is within a half mile of a site designated by the federal government as an EPA~~
4.5 ~~superfund site due to residential arsenic contamination;~~

4.6 ~~(2) a majority of the population are low-income persons of color and American Indians;~~

4.7 ~~(3) a disproportionate percent of the children have childhood lead poisoning, asthma,~~
4.8 ~~or other environmentally related health problems;~~

4.9 ~~(4) is located in a city that has experienced numerous air quality alert days of dangerous~~
4.10 ~~air quality for sensitive populations between February 2007 and February 2008; and~~

4.11 ~~(5) is located near the junctions of several heavily trafficked state and county highways~~
4.12 ~~and two one-way streets which carry both truck and auto traffic.~~

4.13 (c) A permit application must indicate whether the permit action sought is likely to
4.14 impact the environment or health of residents in an environmental justice area, as defined
4.15 in section 116.041, and must include the data used by the applicant to make that
4.16 determination.

4.17 (d) The Pollution Control Agency may revoke or modify any permit issued under this
4.18 subdivision and section 116.081 whenever it is necessary, in the opinion of the agency, to
4.19 prevent or abate pollution.

4.20 (e) The Pollution Control Agency has the authority for approval over the siting, expansion,
4.21 or operation of a solid waste facility with regard to environmental issues. However, the
4.22 agency's issuance of a permit does not release the permittee from any liability, penalty, or
4.23 duty imposed by any applicable county ordinances. Nothing in this chapter precludes, or
4.24 shall be construed to preclude, a county from enforcing land use controls, regulations, and
4.25 ordinances existing at the time of the permit application and adopted pursuant to sections
4.26 366.10 to 366.181, 394.21 to 394.37, or 462.351 to 462.365, with regard to the siting,
4.27 expansion, or operation of a solid waste facility.

4.28 (f) Except as prohibited by federal law, a person may commence construction,
4.29 reconstruction, replacement, or modification of any facility prior to the issuance of a
4.30 construction permit by the agency.