

UNOFFICIAL ENGROSSMENT

SENATE

STATE OF MINNESOTA

EIGHTY-SEVENTH LEGISLATURE

H.F. No. 1

(SENATE AUTHORS: KELLY, McElfatrick, Murphy, M., Vogel, Huntley, Howes, Ward, Hansen, Thissen,

DATE	D-PG	OFFICIAL STATUS
08/24/2012	Dill, Hilty, Fritz, Persell, Melin, and Anzelc	Received from House
		Introduction and first reading
		Urgency declared rules suspended
		Second reading
		Third reading Passed

A bill for an act

relating to environment; providing for permitting efficiency; modifying environmental review requirements; amending Minnesota Statutes 2010, sections 84.027, by adding a subdivision; 115.07; 116.03, by adding a subdivision; 116.07, subdivision 2; 116D.04, subdivisions 1a, 2a, 3a, 10; 116D.045, subdivisions 1, 3.

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

Section 1. Minnesota Statutes 2010, section 84.027, is amended by adding a subdivision to read:

Subd. 14a. **Permitting efficiency.** (a) It is the goal of the state that environmental and resource management permits be issued or denied within 150 days of the submission of a substantially completed permit application. The commissioner of natural resources 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, steps that will be taken to complete action on the application, and the expected timeline. 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 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, of whether or not the permit application is complete enough for processing. If the permit is incomplete, the commissioner must identify where deficiencies exist and advise the applicant on how they can be remedied. A resubmittal of the application begins a new 30-day review period. If the commissioner fails to notify the project proposer of completeness within 30 business days, the application is deemed to be substantially complete and subject to the 150-day permitting review period in paragraph (a) from the date it was submitted. 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 2010, section 115.07, is amended to read:

115.07 VIOLATIONS AND PROHIBITIONS.

Subdivision 1. **Obtain permit.** (a) Except as provided in paragraph (b), it shall be is unlawful for any person to construct, install, or operate a disposal system, or any part thereof, until plans therefor shall and specifications for the disposal system have been submitted to the agency, unless the agency shall have waived the waives submission thereof to it of the plans and specifications and a written permit therefor shall have been for the disposal system is granted by the agency.

(b) If a person who discharges a pollutant into the waters of the state is required by statute or rule to obtain a national pollutant discharge elimination system permit or a state disposal system permit, the person may construct or install, prior to issuance of the permit, at the person's own risk, a disposal system or any part thereof, unless the action taken:

(1) is prohibited by federal law or regulation;

(2) is by a municipality constructing a wastewater system with a design capacity of 200,000 gallons per day, or less;

(3) is subject to environmental review under chapter 116D, and prohibited from commencing construction until that process is completed;

(4) is subject to a grant or loan agreement under chapter 446A;

(5) requires a construction storm water permit under rules of the agency; or

(6) requires a subsurface sewage treatment system permit under rules of the agency.

The person is prohibited from operating the system or discharging pollutants into the waters of the state until a written permit for the discharge is granted by the agency and until plans and specifications for the disposal system have been approved, unless the agency waives the submission of plans and specifications.

(c) For disposal systems operated on streams with extreme seasonal flows, the agency must allow seasonal permit limits based on a fixed or variable effluent limit when the municipality operating the disposal system requests them and is in compliance with agency water quality standards.

Subd. 3. **Permission for extension.** (a) Except as provided in paragraph (b), it shall be unlawful for any person to make any change in, addition to, or extension of any existing disposal system or point source, or part thereof, to effect any facility expansion, production increase, or process modification which results in new or increased discharges of pollutants, or to operate such system or point source, or part thereof as so changed, added to, or extended until plans and specifications therefor shall have been submitted to the agency, unless the agency shall have waived the submission thereof to it of the plans and specifications and a written permit therefor shall have been for the change, addition, or extension is granted by the agency.

(b) If a person who discharges a pollutant into the waters of the state is required by statute or rule to obtain a national pollutant discharge elimination system permit or a state disposal system permit, the person may, prior to issuance of the permit, at the person's own risk, act to change, add to, or extend an existing disposal system or point source, or part thereof, unless the action taken:

(1) is prohibited by federal law or regulation;

(2) is by a municipality constructing a wastewater system with a design capacity of 200,000 gallons per day, or less;

(3) is subject to environmental review under chapter 116D, and prohibited from commencing construction until that process is completed;

(4) is subject to a grant or loan agreement under chapter 446A;

(5) requires a construction storm water permit under rules of the agency; or

(6) requires a subsurface treatment system permit under rules of the agency.

The person is prohibited from operating the system or discharging pollutants into the waters of the state until a written permit for the discharge is granted by the agency and until plans and specifications for the disposal system have been approved, unless the agency waives the submission of plans and specifications.

4.1 Sec. 3. Minnesota Statutes 2010, section 116.03, is amended by adding a subdivision to
4.2 read:

4.3 Subd. 2b. **Permitting efficiency.** (a) It is the goal of the state that environmental and
4.4 resource management permits be issued or denied within 150 days of the submission of a
4.5 substantially completed permit application. The commissioner of the Pollution Control
4.6 Agency shall establish management systems designed to achieve the goal.

4.7 (b) The commissioner shall prepare semiannual permitting efficiency reports that
4.8 include statistics on meeting the goal in paragraph (a). The reports are due February 1 and
4.9 August 1 each year. For permit applications that have not met the goal, the report must
4.10 state the reasons for not meeting the goal, steps that will be taken to complete action on
4.11 the application, and the expected timeline. In stating the reasons for not meeting the
4.12 goal, the commissioner shall separately identify delays caused by the responsiveness of
4.13 the proposer, lack of staff, scientific or technical disagreements, or the level of public
4.14 engagement. The report must specify the number of days from initial submission of the
4.15 application to the day of determination that the application is complete. The report for
4.16 August 1 each year must aggregate the data for the year and assess whether program
4.17 or system changes are necessary to achieve the goal. The report must be posted on the
4.18 agency's Web site and submitted to the governor and the chairs and ranking minority
4.19 members of the house of representatives and senate committees having jurisdiction over
4.20 environment policy and finance.

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

4.23 (d) Beginning July 1, 2011, within 30 business days of application for a permit
4.24 subject to paragraph (a), the commissioner of the Pollution Control Agency shall notify
4.25 the project proposer, in writing, of whether or not the permit application is complete
4.26 enough for processing. If the permit is incomplete, the commissioner must identify where
4.27 deficiencies exist and advise the applicant on how they can be remedied. A resubmittal of
4.28 the application begins a new 30-day review period. If the commissioner fails to notify the
4.29 project proposer of completeness within 30 business days, the application is deemed to be
4.30 substantially complete and subject to the 150-day permitting review period in paragraph
4.31 (a) from the date it was submitted. This paragraph does not apply to an application for a
4.32 permit that is subject to a grant or loan agreement under chapter 446A.

4.33 Sec. 4. Minnesota Statutes 2010, section 116.07, subdivision 2, is amended to read:

4.34 Subd. 2. **Adoption of standards.** (a) The Pollution Control Agency shall improve
4.35 air quality by promoting, in the most practicable way possible, the use of energy sources

5.1 and waste disposal methods which produce or emit the least air contaminants consistent
5.2 with the agency's overall goal of reducing all forms of pollution. The agency shall also
5.3 adopt standards of air quality, including maximum allowable standards of emission of air
5.4 contaminants from motor vehicles, recognizing that due to variable factors, no single
5.5 standard of purity of air is applicable to all areas of the state. In adopting standards the
5.6 Pollution Control Agency shall give due recognition to the fact that the quantity or
5.7 characteristics of air contaminants or the duration of their presence in the atmosphere,
5.8 which may cause air pollution in one area of the state, may cause less or not cause any air
5.9 pollution in another area of the state, and it shall take into consideration in this connection
5.10 such factors, including others which it may deem proper, as existing physical conditions,
5.11 zoning classifications, topography, prevailing wind directions and velocities, and the fact
5.12 that a standard of air quality which may be proper as to an essentially residential area of
5.13 the state, may not be proper as to a highly developed industrial area of the state. Such
5.14 standards of air quality shall be premised upon scientific knowledge of causes as well as
5.15 effects based on technically substantiated criteria and commonly accepted practices. No
5.16 local government unit shall set standards of air quality which are more stringent than
5.17 those set by the Pollution Control Agency.

5.18 (b) The Pollution Control Agency shall promote solid waste disposal control
5.19 by encouraging the updating of collection systems, elimination of open dumps, and
5.20 improvements in incinerator practices. The agency shall also adopt standards for the
5.21 control of the collection, transportation, storage, processing, and disposal of solid waste
5.22 and sewage sludge for the prevention and abatement of water, air, and land pollution,
5.23 recognizing that due to variable factors, no single standard of control is applicable to
5.24 all areas of the state. In adopting standards, the Pollution Control Agency shall give
5.25 due recognition to the fact that elements of control which may be reasonable and proper
5.26 in densely populated areas of the state may be unreasonable and improper in sparsely
5.27 populated or remote areas of the state, and it shall take into consideration in this connection
5.28 such factors, including others which it may deem proper, as existing physical conditions,
5.29 topography, soils and geology, climate, transportation, and land use. Such standards of
5.30 control shall be premised on technical criteria and commonly accepted practices.

5.31 (c) The Pollution Control Agency shall also adopt standards describing the
5.32 maximum levels of noise in terms of sound pressure level which may occur in the outdoor
5.33 atmosphere, recognizing that due to variable factors no single standard of sound pressure
5.34 is applicable to all areas of the state. Such standards shall give due consideration to
5.35 such factors as the intensity of noises, the types of noises, the frequency with which
5.36 noises recur, the time period for which noises continue, the times of day during which

noises occur, and such other factors as could affect the extent to which noises may be injurious to human health or welfare, animal or plant life, or property, or could interfere unreasonably with the enjoyment of life or property. In adopting standards, the Pollution Control Agency shall give due recognition to the fact that the quantity or characteristics of noise or the duration of its presence in the outdoor atmosphere, which may cause noise pollution in one area of the state, may cause less or not cause any noise pollution in another area of the state, and it shall take into consideration in this connection such factors, including others which it may deem proper, as existing physical conditions, zoning classifications, topography, meteorological conditions and the fact that a standard which may be proper in an essentially residential area of the state, may not be proper as to a highly developed industrial area of the state. Such noise standards shall be premised upon scientific knowledge as well as effects based on technically substantiated criteria and commonly accepted practices. No local governing unit shall set standards describing the maximum levels of sound pressure which are more stringent than those set by the Pollution Control Agency.

(d) The Pollution Control Agency shall adopt standards for the identification of hazardous waste and for the management, identification, labeling, classification, storage, collection, transportation, processing, and disposal of hazardous waste, recognizing that due to variable factors, a single standard of hazardous waste control may not be applicable to all areas of the state. In adopting standards, the Pollution Control Agency shall recognize that elements of control which may be reasonable and proper in densely populated areas of the state may be unreasonable and improper in sparsely populated or remote areas of the state. The agency shall consider existing physical conditions, topography, soils, and geology, climate, transportation and land use. Standards of hazardous waste control shall be premised on technical knowledge, and commonly accepted practices. Hazardous waste generator licenses may be issued for a term not to exceed five years. No local government unit shall set standards of hazardous waste control which are in conflict or inconsistent with those set by the Pollution Control Agency.

(e) A person who generates less than 100 kilograms of hazardous waste per month is exempt from the following agency hazardous waste rules:

(1) rules relating to transportation, manifesting, storage, and labeling for photographic fixer and x-ray negative wastes that are hazardous solely because of silver content; and

(2) any rule requiring the generator to send to the agency or commissioner a copy of each manifest for the transportation of hazardous waste for off-site treatment, storage,

or disposal, except that counties within the metropolitan area may require generators to provide manifests.

Nothing in this paragraph exempts the generator from the agency's rules relating to on-site accumulation or outdoor storage. A political subdivision or other local unit of government may not adopt management requirements that are more restrictive than this paragraph.

(f) In any rulemaking proceeding under chapter 14 to adopt standards for air quality, solid waste, or hazardous waste under this chapter, or standards for water quality under chapter 115, the statement of need and reasonableness must include:

(1) an assessment of any differences between the proposed rule and:

(i) existing federal standards adopted under the Clean Air Act, United States Code, title 42, section 7412(b)(2); the Clean Water Act, United States Code, title 33, sections 1312(a) and 1313(c)(4); and the Resource Conservation and Recovery Act, United States Code, title 42, section 6921(b)(1);

(ii) similar standards in states bordering Minnesota; and

(iii) similar standards in states within the Environmental Protection Agency Region 5; and

(2) a specific analysis of the need and reasonableness of each difference.

APPLICATION. This section applies to proceedings in which the notice under section 14.14, subdivision 1a, or 14.22, is made on or after the effective date.

Sec. 5. Minnesota Statutes 2010, section 116D.04, subdivision 1a, is amended to read:

Subd. 1a. **Definitions.** For the purposes of this chapter, the following terms have the meanings given to them in this subdivision.

(a) "Natural resources" has the meaning given it in section 116B.02, subdivision 4.

(b) "Pollution, impairment or destruction" has the meaning given it in section 116B.02, subdivision 5.

(c) "Environmental assessment worksheet" means a brief document which is designed to set out the basic facts necessary to determine whether an environmental impact statement is required for a proposed action.

(d) "Governmental action" means activities, including projects wholly or partially conducted, permitted, assisted, financed, regulated, or approved by units of government including the federal government.

(e) "Governmental unit" means any state agency and any general or special purpose unit of government in the state including, but not limited to, watershed districts organized under chapter 103D, counties, towns, cities, port authorities, housing authorities, and

economic development authorities established under sections 469.090 to 469.108, but not including courts, school districts, Iron Range resources and rehabilitation, and regional development commissions other than the Metropolitan Council.

Sec. 6. Minnesota Statutes 2010, section 116D.04, subdivision 2a, is amended to read:

Subd. 2a. **When prepared.** Where there is potential for significant environmental effects resulting from any major governmental action, the action shall be preceded by a detailed environmental impact statement prepared by the responsible governmental unit. The environmental impact statement shall be an analytical rather than an encyclopedic 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. No mandatory environmental impact statement may be required for an ethanol plant, as defined in section 41A.09, subdivision 2a, paragraph (b), that produces less than 125,000,000 gallons of ethanol annually and is located outside of the seven-county metropolitan area.

(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.

(b) The responsible governmental unit shall promptly publish notice of the completion of an environmental assessment worksheet in a manner to be 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 25 individuals, 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.

(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.

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

Sec. 7. Minnesota Statutes 2010, section 116D.04, subdivision 3a, is amended to read:

Subd. 3a. **Final decisions.** Within ~~90~~ 30 days after final approval of an environmental impact statement, final decisions shall be made by the appropriate governmental units on those permits which were identified as required and for which

information was developed concurrently with the preparation of the environmental impact statement. Provided, however, that the ~~90-day~~ 30-day period may be extended where a longer period is permitted by section 15.99 or required by federal law or state statute or is consented to by the permit applicant. The permit decision shall include the reasons for the decision, including any conditions under which the permit is issued, together with a final order granting or denying the permit.

APPLICATION. This section applies to matters in which final approval of an environmental impact statement is made on or after the effective date.

Sec. 8. Minnesota Statutes 2010, section 116D.04, subdivision 10, is amended to read:

Subd. 10. **Review. ~~Decisions~~** A person aggrieved by a final decision on the need for an environmental assessment worksheet, the need for an environmental impact statement and, or the adequacy of an environmental impact statement may be reviewed by a declaratory judgment action in the district court of the county wherein the proposed action, or any part thereof, would be undertaken is entitled to judicial review of the decision under sections 14.63 to 14.68. A petition for a writ of certiorari by an aggrieved person for judicial review under sections 14.63 to 14.68 must be filed with the Court of Appeals and served on the responsible governmental unit not more than 30 days after the party receives the final decision and order of the responsible governmental unit. Proceedings for review under this section must be instituted by serving a petition for a writ of certiorari personally or by certified mail upon the responsible governmental unit and by promptly filing the proof of service in the Office of the Clerk of the Appellate Courts and the matter will proceed in the manner provided by the Rules of Civil Appellate Procedure. A copy of the petition must be provided to the attorney general at the time of service. Copies of the writ must be served, personally or by certified mail, upon the responsible governmental unit and the project proposer. The filing of the writ of certiorari does not stay the enforcement of any other governmental action, provided that the responsible governmental unit may stay enforcement or the Court of Appeals may order a stay upon terms it deems proper. ~~Judicial review under this section shall be initiated within 30 days after the governmental unit makes the decision, and~~ A bond may be required under section 562.02 unless at the time of hearing on the application for the bond the ~~plaintiff petitioner-relator~~ has shown that the claim ~~has sufficient possibility of success~~ is likely to succeed on the merits ~~to sustain the burden required for the issuance of a temporary restraining order. Nothing in this section shall be construed to alter the requirements for a temporary restraining order or a preliminary injunction pursuant to the Minnesota Rules of Civil Procedure for district courts.~~ The board may initiate judicial review of decisions

12.1 referred to herein and the board or a project proposer may intervene as of right in any
12.2 proceeding brought under this subdivision.

12.3 **APPLICATION.** This section applies to matters in which the final decision that is
12.4 subject to judicial review is made on or after the effective date.

12.5 Sec. 9. Minnesota Statutes 2010, section 116D.045, subdivision 1, is amended to read:

12.6 Subdivision 1. **Assessment.** The board shall by rule adopt procedures to assess
12.7 the proposer of a specific action for reasonable costs of preparing, reviewing, and
12.8 distributing ~~an~~ the environmental impact statement ~~on that action required pursuant to~~
12.9 ~~section 116D.04. Such~~ The costs shall be determined by the responsible governmental
12.10 unit pursuant to the rules promulgated by the board.

12.11 Sec. 10. Minnesota Statutes 2010, section 116D.045, subdivision 3, is amended to read:

12.12 Subd. 3. **Use of assessment.** As necessary, the responsible governmental unit shall
12.13 assess the project proposer for reasonable costs that the responsible governmental unit
12.14 incurs in preparing, reviewing, and distributing the environmental impact statement and
12.15 the proposer shall pay the assessed cost to the responsible governmental unit. Money
12.16 received under this subdivision by a responsible governmental unit may be retained by the
12.17 unit for the same purposes. Money received by a state agency must be credited to a special
12.18 account and is appropriated to the agency to cover the assessed costs incurred.

12.19 Sec. 11. **RULE AMENDMENT.**

12.20 The commissioner of the Pollution Control Agency, the commissioner of natural
12.21 resources, and the Environmental Quality Board, must amend rules necessary to conform
12.22 to this act. The commissioners and the board may use the good cause exemption under
12.23 Minnesota Statutes, section 14.388, subdivision 1, clause (3), and Minnesota Statutes,
12.24 section 14.386, does not apply, except as provided in Minnesota Statutes, section 14.388.

12.25 Sec. 12. **EFFECTIVE DATE.**

12.26 This act is effective the day following final enactment.