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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. **1042**

02/11/2019 Authored by Anderson and Lueck

The bill was read for the first time and referred to the Agriculture and Food Finance and Policy Division

- 1.1 A bill for an act
- 1.2 relating to environment; modifying public notice and comment provisions for
- 1.3 animal feedlot facilities; modifying requirements for environmental review for
- 1.4 certain animal feedlot facilities; amending Minnesota Statutes 2018, section
- 1.5 116D.04, subdivision 2a.
- 1.6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
- 1.7 Section 1. Minnesota Statutes 2018, section 116D.04, subdivision 2a, is amended to read:
- 1.8 Subd. 2a. **When prepared.** (a) Where there is potential for significant environmental
- 1.9 effects resulting from any major governmental action, the action shall be preceded by a
- 1.10 detailed environmental impact statement prepared by the responsible governmental unit.
- 1.11 The environmental impact statement shall be an analytical rather than an encyclopedic
- 1.12 document which describes the proposed action in detail, analyzes its significant environmental
- 1.13 impacts, discusses appropriate alternatives to the proposed action and their impacts, and
- 1.14 explores methods by which adverse environmental impacts of an action could be mitigated.
- 1.15 The environmental impact statement shall also analyze those economic, employment, and
- 1.16 sociological effects that cannot be avoided should the action be implemented. To ensure its
- 1.17 use in the decision-making process, the environmental impact statement shall be prepared
- 1.18 as early as practical in the formulation of an action.
- 1.19 (b) The board shall by rule establish categories of actions for which environmental
- 1.20 impact statements and for which environmental assessment worksheets shall be prepared
- 1.21 as well as categories of actions for which no environmental review is required under this
- 1.22 section. A mandatory environmental assessment worksheet is not required for the expansion
- 1.23 of an ethanol plant, as defined in section 41A.09, subdivision 2a, paragraph (b), or the
- 1.24 conversion of an ethanol plant to a biobutanol facility or the expansion of a biobutanol

facility as defined in section 41A.15, subdivision 2d, 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 is the state agency with the greatest responsibility for supervising or approving the project as a whole.

(c) A mandatory environmental impact statement is not 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, or produces less than 400,000 tons of chemicals 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.15, subdivision 2d; or a cellulosic biofuel facility. A facility or plant that only uses a cellulosic feedstock to produce chemical products for use by another facility as a feedstock is not considered a fuel conversion facility as used in rules adopted under this chapter.

(d) 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 website 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.

(e) 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, 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.

(f) 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 before 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.

A mandatory environmental assessment worksheet is not required for an animal feedlot facility with a capacity of less than 2,000 animal units or an expansion of an existing animal feedlot facility with a total cumulative capacity of less than 2,000 animal units.

(g) The board may, before 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.

(h) An early and open process shall be utilized to limit the scope of the environmental impact statement to a discussion of those impacts that, 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 that are appropriate for consideration in the statement. In addition, the permits that 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.

(i) 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 before 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. All agencies having jurisdiction over a permit identified in the draft environmental assessment worksheet scoping document must begin reviewing any permit application upon publication of the notice of preparation of the environmental impact statement.

(j) 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.

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