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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETIETH SESSION

H. F. No. 4118

03/21/2018

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The bill was read for the first time and referred to the Committee on Job Growth and Energy Affordability Policy and Finance

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 proposing coding for new law in Minnesota Statutes, chapter 116C.

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

1.6 Section 1. [116C.7793] BIOMASS BUSINESS COMPENSATION.

1.7 Subdivision 1. Findings. The legislature finds that the authorization of the sale and
1.8 closure of the biomass energy plant under section 216B.2424, subdivision 9, will produce
1.9 significant savings for utility ratepayers in the state of Minnesota. A consequence of the
1.10 sale and closure of the plant is that several businesses established to serve the biomass plant
1.11 have lost business opportunity and face catastrophic financial losses as a result of the sale
1.12 and closure of the plant. The cost of compensating businesses for losses is significantly less
1.13 than the savings accrued to ratepayers as a result of the sale and closure of the plant. A
1.14 compensation process to assist businesses losing business opportunity as a result of the sale
1.15 and closure of the biomass plant serves the public interest by (1) providing a remedy for
1.16 businesses adversely affected by state action, and (2) preserving business capital and job
1.17 opportunities in the affected communities.

1.18 Subd. 2. Office of Administrative Hearings; claims process. The chief administrative
1.19 law judge of the Office of Administrative Hearings must name an administrative law judge
1.20 to administer a claims award process to compensate businesses negatively affected by the
1.21 sale and closure of the biomass plant under section 216B.2424. The administrative law
1.22 judge may create a process, including creation of forms, to consider claims for affected
1.23 businesses and issue awards to eligible businesses. A form developed for the process must,

2.1 at a minimum, require the name of the business, the business address and telephone number,
2.2 and the name of a contact person.

2.3 Subd. 3. **Eligibility.** To be eligible for compensation, an affected business must verify
2.4 that as of May 1, 2017, it was operating under the terms of a valid contract or provide other
2.5 documentation demonstrating an ongoing business relationship with the company operating
2.6 either the biomass plant identified under section 116C.779, subdivision 1, paragraph (f), or
2.7 a fertilizer plant integrated with the biomass plant identified under section 116C.779,
2.8 subdivision 1, paragraph (f).

2.9 Subd. 4. **Calculation of award.** (a) An eligible business must demonstrate the extent
2.10 of its lost business opportunity by providing copies of any contracts or other documentation
2.11 under subdivision 3, including financial statements showing company financial performance
2.12 over the past five years for supplying or managing material for, or receiving material from,
2.13 the biomass plant identified under section 116C.779, subdivision 1, paragraph (f), or a
2.14 fertilizer plant integrated with the biomass plant identified under section 116C.779,
2.15 subdivision 1, paragraph (f).

2.16 (b) A business seeking compensation must report any payment received from business
2.17 interruption insurance policies, if any, the payment of which would offset compensation
2.18 provided under this section. A business seeking compensation must also provide a valuation
2.19 of the sales, salvage, or scrap value of real or personal property associated with the business
2.20 if there is no alternative use available for the company's real and personal property.

2.21 (c) A business seeking compensation may also provide information documenting its
2.22 stranded investment in personal property essential to the business operation but for which
2.23 there is no valuable alternative use in the market place. Such stranded investment may be
2.24 included in the calculation of compensable loss for purposes of seeking compensation under
2.25 this section.

2.26 (d) A business seeking compensation must provide any other documentation it deems
2.27 appropriate, or as required by the administrative law judge, to support its claim for
2.28 compensation, including a narrative regarding the facts of the business claim which gives
2.29 rise to the request for compensation.

2.30 Subd. 5. **Priority.** The administrative law judge must give priority to claims by eligible
2.31 businesses that demonstrate a significant effort to mitigate losses resulting from the closure
2.32 of the biomass plant under section 216B.2424, subdivision 9. The administrative law judge
2.33 must consider whether, as listed in order of importance, the business:

2.34 (1) has demonstrated effort to pivot the business through retasking and retooling;

3.1 (2) was formed as a result of the biomass plant identified under section 116C.779,
3.2 subdivision 1, paragraph (f), commencing operations;

3.3 (3) was in business prior to the date the biomass plant identified under section 116C.779,
3.4 subdivision 1, paragraph (f), commenced operations; or

3.5 (4) is requesting compensation for a total business loss without mitigation efforts.

3.6 Subd. 6. **Amount of claim.** Any claim is limited by and proportional to the amount
3.7 provided for compensation in the biomass business compensation fund established under
3.8 section 116C.7794, and the number of claimants. A request for compensation must not
3.9 exceed the average of the annual net revenue generated from a contract or business
3.10 relationship with the biomass plant identified under section 116C.779, subdivision 1,
3.11 paragraph (f), or a fertilizer plant integrated with the biomass plant identified under section
3.12 116C.779, subdivision 1, paragraph (f), for the past five years times ten or times the number
3.13 of years remaining on the biomass plant's original power purchase agreement, whichever
3.14 is less.

3.15 Subd. 7. **Deadlines.** A business seeking to submit a request for compensation and receive
3.16 an offer of settlement or enter into a settlement agreement under this section must file claims
3.17 with the administrative law judge within 60 days of the date the biomass plant was closed
3.18 under section 216B.2424, subdivision 9. Any offer of settlement must be made by,
3.19 2019. The business must accept the offer of settlement within 40 of the date it received the
3.20 offer.

3.21 Subd. 8. **Appeals.** A decision to deny compensation claimed under this section is subject
3.22 to the contested case review procedures under chapter 14.

3.23 Sec. 2. **[116C.7794] BIOMASS BUSINESS COMPENSATION ACCOUNT.**

3.24 Subdivision 1. **Account established.** A biomass business compensation account is
3.25 established as a separate account in the special revenue fund in the state treasury.
3.26 Appropriations and transfers to the account must be credited to the account. Earnings, such
3.27 as interest, and any other earnings arising from the assets of the account are credited to the
3.28 account. Funds remaining in the account as of December 31, 2020, must be transferred to
3.29 the renewable development account established under section 116C.779.

3.30 Subd. 2. **Funding for the special account.** On July 1, 2018, \$40,000,000 must be
3.31 transferred from the renewable development account under section 116C.779 to the biomass
3.32 business compensation account established under subdivision 1. The transferred funds must

4.1 be used to pay eligible obligations under the biomass business compensation program
4.2 established in section 116C.7793.

4.3 Subd. 3. **Payment of expenses.** The chief administrative law judge must submit to the
4.4 commissioner of management and budget documentation regarding salaries, expenses, and
4.5 administrative costs incurred for staff or consultants to administer the biomass business
4.6 compensation program. The commissioner of management and budget must reimburse the
4.7 chief administrative law judge from the renewable development account under section
4.8 116C.779 for the expenses submitted under this subdivision.