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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-THIRD SESSION

H. F. No. 637

01/23/2023 Authored by Lee, F.; Agbaje; Frazier; Gomez; Keeler and others
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; modifying requirement to analyze and consider cumulative
1.3 pollution before issuing air quality permit; providing for identification of
1.4 environmental justice areas; requiring demographic analysis in certain
1.5 environmental permitting and review; making technical corrections; amending
1.6 Minnesota Statutes 2022, sections 116.06, subdivision 1, by adding subdivisions;
1.7 116.07, subdivision 4a, by adding subdivisions; 116D.04, by adding a subdivision;
1.8 proposing coding for new law in Minnesota Statutes, chapter 116.

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

1.10 Section 1. Minnesota Statutes 2022, section 116.06, subdivision 1, is amended to read:

1.11 Subdivision 1. Applicability. The definitions given in this section shall obtain for the
1.12 purposes of sections 116.01 to ~~116.075~~ 116.076 except as otherwise expressly provided or
1.13 indicated by the context.

1.14 EFFECTIVE DATE. This section is effective the day following final enactment.

1.15 Sec. 2. Minnesota Statutes 2022, section 116.06, is amended by adding a subdivision to
1.16 read:

1.17 Subd. 6a. Commissioner. "Commissioner" means the commissioner of the Pollution
1.18 Control Agency.

1.19 EFFECTIVE DATE. This section is effective the day following final enactment.

1.20 Sec. 3. Minnesota Statutes 2022, section 116.06, is amended by adding a subdivision to
1.21 read:

1.22 Subd. 10a. Environmental justice. "Environmental justice" means that:

2.1 (1) communities of color, Indigenous communities, and low-income communities have  
 2.2 a healthy environment and are treated fairly when environmental statutes, rules, and policies  
 2.3 are developed, adopted, implemented, and enforced; and

2.4 (2) in all decisions that have the potential to affect the environment of an environmental  
 2.5 justice area or the public health of its residents, due consideration is given to the history of  
 2.6 the area's and its residents' cumulative exposure to pollutants and to any current  
 2.7 socioeconomic conditions that increase the physical sensitivity of those residents to additional  
 2.8 exposure to pollutants.

2.9 **EFFECTIVE DATE.** This section is effective the day following final enactment.

2.10 Sec. 4. Minnesota Statutes 2022, section 116.06, is amended by adding a subdivision to  
 2.11 read:

2.12 **Subd. 10b. Environmental justice area.** "Environmental justice area" means one or  
 2.13 more census tracts in Minnesota:

2.14 (1) in which, based on the most recent data published by the United States Census Bureau:

2.15 (i) 40 percent or more of the population is nonwhite;

2.16 (ii) 35 percent or more of the households have an income at or below 200 percent of the  
 2.17 federal poverty level; or

2.18 (iii) 40 percent or more of the population over the age of five have limited English  
 2.19 proficiency; or

2.20 (2) located within Indian Country, as defined in United State Code, title 18, section 1151.

2.21 **EFFECTIVE DATE.** This section is effective the day following final enactment.

2.22 Sec. 5. Minnesota Statutes 2022, section 116.07, subdivision 4a, is amended to read:

2.23 Subd. 4a. **Permits.** (a) ~~The Pollution Control Agency commissioner~~ commissioner may issue, continue  
 2.24 in effect or deny permits, under such conditions as it may prescribe for the prevention of  
 2.25 pollution, for the emission of air contaminants, or for the installation or operation of any  
 2.26 emission facility, air contaminant treatment facility, treatment facility, potential air  
 2.27 contaminant storage facility, or storage facility, or any part thereof, or for the sources or  
 2.28 emissions of noise pollution.

2.29 (b) ~~The Pollution Control Agency commissioner~~ commissioner may also issue, continue in effect or  
 2.30 deny permits, under such conditions as it may prescribe for the prevention of pollution, for  
 2.31 the storage, collection, transportation, processing, or disposal of waste, or for the installation

3.1 or operation of any system or facility, or any part thereof, related to the storage, collection,  
3.2 transportation, processing, or disposal of waste.

3.3 (c) The agency commissioner may not issue ~~a permit, renew, or approve a major~~  
3.4 amendment to a facility permit that potentially increases pollution levels or the toxicity of  
3.5 emissions in an environmental justice area without analyzing and considering:

3.6 (1) the cumulative levels and effects of past and current environmental pollution from  
3.7 all sources on the environment and residents of the geographic area within which the facility's  
3.8 emissions are likely to be deposited, provided that the facility is located in a community in  
3.9 a city of the first class in Hennepin County that meets all of the following conditions:  
3.10 environmental justice area, including mobile sources and toxic chemicals contaminating  
3.11 soils; and

3.12 (2) the demographic, social, and economic characteristics of the exposed population in  
3.13 the environmental justice area that affect the population's sensitivity to exposure to additional  
3.14 pollution, as required under subdivision 4m.

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

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

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

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

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

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

3.27 (e) The Pollution Control Agency commissioner has the authority for approval over the  
3.28 siting, expansion, or operation of a solid waste facility with regard to environmental issues.  
3.29 However, the agency's issuance of a permit does not release the permittee from any liability,  
3.30 penalty, or duty imposed by any applicable county ordinances. Nothing in this chapter  
3.31 precludes, or shall be construed to preclude, a county from enforcing land use controls,  
3.32 regulations, and ordinances existing at the time of the permit application and adopted

4.1 pursuant to sections ~~366.10 to 366.181~~, 394.21 to 394.37, or 462.351 to 462.365, with regard  
4.2 to the siting, expansion, or operation of a solid waste facility.

4.3 (f) Except as prohibited by federal law, a person may commence construction,  
4.4 reconstruction, replacement, or modification of any facility ~~prior to the issuance of a~~  
4.5 ~~construction permit by the agency~~ before the commissioner issues a construction permit.

4.6 (g) A permit application must indicate whether the permit action sought is likely to  
4.7 impact the environment or the health of residents of an environmental justice area and must  
4.8 include the data used by the applicant to make the determination. If the application is filed  
4.9 before the commissioner identifies all environmental justice areas in the state under section  
4.10 116.076, the commissioner must determine whether, based on the application's projected  
4.11 impacts of issuing the permit, the area impacted qualifies as an environmental justice area  
4.12 and whether, as a result, a cumulative analysis is required.

4.13 (h) The commissioner must review the applicant's determination made under paragraph  
4.14 (g), and is responsible for determining whether a proposed permit will impact the environment  
4.15 or health of an environmental justice area.

4.16 (i) The agency's reasonable costs of complying with this subdivision are to be reimbursed  
4.17 by the permit applicant.

4.18 **EFFECTIVE DATE.** This section is effective the day following final enactment and  
4.19 applies to an application for a new permit, permit renewal, or major permit amendment filed  
4.20 with the commissioner on or after that date.

4.21 Sec. 6. Minnesota Statutes 2022, section 116.07, is amended by adding a subdivision to  
4.22 read:

4.23 Subd. 4m. **Demographic analysis.** (a) A permit applicant subject to subdivision 4a,  
4.24 paragraph (c), must provide the information listed in clauses (1) to (15), if available, in the  
4.25 permit application. The commissioner, in collaboration with the State Demographic Center,  
4.26 the Minnesota Department of Health, and other state agencies, must provide an applicant  
4.27 with a list of sources for the information required in clauses (1) to (15). The information is  
4.28 intended to indicate the degree of sensitivity of the exposed population to incremental  
4.29 pollution emitted from a facility seeking a permit or permit amendment and the exposed  
4.30 population's ability to withstand, respond to, or recover from exposure to additional pollution.  
4.31 This required information includes:

4.32 (1) racial and ethnic characteristics;

4.33 (2) income and poverty levels;

- 5.1 (3) the age distribution;
- 5.2 (4) the birth rate;
- 5.3 (5) education levels;
- 5.4 (6) the incidence of and hospital admission rates for respiratory disease, pulmonary  
5.5 disease, cancer, diabetes, asthma, high levels of blood lead concentrations, compromised  
5.6 immune systems, and other conditions that may be exacerbated by exposure to pollution;
- 5.7 (7) the incidence of substandard housing conditions;
- 5.8 (8) the proportion of the population without access to health insurance and medical care;
- 5.9 (9) the proportion of the population receiving public assistance and medical assistance;
- 5.10 (10) the incidence of low and very low food security, as defined by the United States  
5.11 Department of Agriculture publication Food Security in the U.S., Definitions of Food  
5.12 Security (2006 and as subsequently amended);
- 5.13 (11) biomonitoring data indicating body burdens of environmental pollutants;
- 5.14 (12) the presence of subpopulations that may be particularly sensitive to exposure to  
5.15 additional pollutants, including workers exposed to toxic chemicals in the workplace and  
5.16 subsistence fishers and hunters;
- 5.17 (13) microclimate or topographical factors of the area that affect exposure levels;
- 5.18 (14) other environmental stressors, including but not limited to noise, that impact the  
5.19 area population; and
- 5.20 (15) how the factors examined under this paragraph may interact to increase the likelihood  
5.21 of portions of the population sustaining an adverse effect from exposure to the additional  
5.22 pollution emitted by the permitted facility.
- 5.23 (b) A permit applicant must provide the information required under this subdivision to  
5.24 the commissioner in a format and at a level of quality and completeness required by the  
5.25 commissioner.
- 5.26 (c) The costs of complying with this subdivision must be paid by the permit applicant.
- 5.27 **EFFECTIVE DATE.** This section is effective the day following final enactment and  
5.28 applies to an application for a new permit, permit renewal, or major permit amendment filed  
5.29 with the commissioner on or after that date.

6.1 Sec. 7. Minnesota Statutes 2022, section 116.07, is amended by adding a subdivision to  
6.2 read:

6.3 Subd. 4n. **Permits; environmental justice area.** (a) At a public meeting held on a permit  
6.4 application required to undergo a cumulative analysis under subdivision 4a, paragraph (c),  
6.5 the commissioner must ensure that an accurate and complete reporting of public comments  
6.6 is made part of the public record on which the decision on permit issuance is based.

6.7 (b) Notwithstanding any other law, the commissioner must, after reviewing the permit  
6.8 application, the analysis of cumulative pollution conducted under subdivision 4a, paragraph  
6.9 (c), the permit applicant's demographic analysis under subdivision 4m, and any additional  
6.10 relevant information, including testimony and written comments received at a public meeting,  
6.11 determine whether the incremental environmental impacts that would result in an  
6.12 environmental justice area from approving the permit will, in conjunction with the cumulative  
6.13 pollution impacts and any heightened sensitivity to additional pollution of residents of the  
6.14 environmental justice area, cause or contribute to increased levels of environmental or health  
6.15 impacts compared with denying the permit.

6.16 (b) If the commissioner determines that approving the permit would cause or contribute  
6.17 to increased levels of environmental or health impacts compared with denying the permit,  
6.18 the commissioner must:

6.19 (1) deny the permit; or

6.20 (2) place conditions on the permit that eliminate any contribution to increased levels of  
6.21 environmental or health impacts from the permitted facility in an environmental justice  
6.22 area.

6.23 **EFFECTIVE DATE.** This section is effective the day following final enactment and  
6.24 applies to an application for a new permit, permit renewal, or major permit amendment filed  
6.25 with the agency on or after that date.

6.26 Sec. 8. **[116.076] ENVIRONMENTAL JUSTICE AREAS; BOUNDARIES; MAPS.**

6.27 (a) No later than December 1, 2023, the commissioner must determine the boundaries  
6.28 of all environmental justice areas in Minnesota. The determination of the geographic  
6.29 boundaries of an environmental justice area may be appealed by filing a petition that contains  
6.30 evidence to support amending the commissioner's determination. The petition must be  
6.31 signed by at least ... residents of census tracts within or adjacent to the environmental justice  
6.32 area, as determined by the commissioner. The commissioner may, after reviewing the  
6.33 petition, amend the boundaries of an environmental justice area.

7.1 (b) The commissioner must post updated maps of each environmental justice area in the  
7.2 state on the agency website.

7.3 **EFFECTIVE DATE.** This section is effective the day following final enactment.

7.4 Sec. 9. Minnesota Statutes 2022, section 116D.04, is amended by adding a subdivision to  
7.5 read:

7.6 Subd. 2c. **Demographic analysis.** An environmental assessment worksheet and  
7.7 environmental impact statement that indicate that a proposed project increases pollution  
7.8 levels or the toxicity of emissions in an environmental justice area, as defined under section  
7.9 116.06, must contain a demographic analysis of the population exposed to the proposed  
7.10 project's impacts as required under section 116.07, subdivision 4m.

7.11 **EFFECTIVE DATE.** This section is effective the day following final enactment and  
7.12 applies to an environmental assessment worksheet that has been determined by a responsible  
7.13 governmental unit to be complete on or after that date and to an environmental impact  
7.14 statement determined by a responsible governmental unit to be adequate on or after that  
7.15 date.