

**SENATE**  
**STATE OF MINNESOTA**  
**EIGHTY-EIGHTH LEGISLATURE**

**S.F. No. 786**

(SENATE AUTHORS: SCHMIT, Dahle and Sieben)

DATE	D-PG	OFFICIAL STATUS
02/25/2013	395	Introduction and first reading Referred to Environment and Energy
02/28/2013	418a	Comm report: To pass as amended and re-refer to State and Local Government
03/07/2013	726a	Comm report: To pass as amended and re-refer to Finance
03/13/2013	976	Author stricken Sheran

A bill for an act

1.1 relating to environment; allowing the creation of a joint powers board related to  
 1.2 silica sand mining in southeastern Minnesota; allowing an extension or renewal of  
 1.3 interim ordinances for new permits for silica sand mining and facilities; requiring  
 1.4 a generic environmental impact statement report; modifying environmental  
 1.5 review; appropriating money; amending Minnesota Statutes 2012, section 93.25,  
 1.6 subdivision 1; proposing coding for new law as Minnesota Statutes, chapter 116Y.  
 1.7

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

1.9 Section 1. Minnesota Statutes 2012, section 93.25, subdivision 1, is amended to read:

1.10 Subdivision 1. **Leases.** The commissioner may issue leases to prospect for, mine,  
 1.11 and remove minerals other than iron ore upon any lands owned by the state, including trust  
 1.12 fund lands, lands forfeited for nonpayment of taxes whether held in trust or otherwise, and  
 1.13 lands otherwise acquired, and the beds of any waters belonging to the state. For purposes  
 1.14 of this section, iron ore means iron-bearing material where the primary product is iron  
 1.15 metal. The commissioner shall not issue or grant any new leases to prospect for, mine, or  
 1.16 remove silica sand from any lands owned by the state, including, but not limited to, school  
 1.17 trust lands, tax-forfeited lands, acquired lands, and the beds of navigable waters.

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

1.19 Sec. 2. **[116Y.01] APPLICABILITY.**

1.20 This chapter applies to the following units of local government:

1.21 (1) the counties of Blue Earth, Chisago, Dakota, Dodge, Fillmore, Goodhue,  
 1.22 Houston, LeSueur, Nicollet, Olmsted, Rice, Scott, Wabasha, Washington, and Winona;

1.23 (2) the largest home rule charter or statutory city in each county listed in clause  
 1.24 (1); and

2.1 (3) a city or town in a county listed in clause (1) that has a pending or approved  
2.2 permit for silica sand mining or processing, or for a transfer facility as of March 1, 2013.

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

2.4 Sec. 3. **[116Y.02] DEFINITIONS.**

2.5 The definitions in this section apply to this chapter.

2.6 (a) "Board" means the Southeastern Minnesota Silica Sand Board.

2.7 (b) "Extraction site" means a pit, quarry, or deposit containing silica sand and  
2.8 any contiguous property to the pit, quarry, or deposit that is used by the operator for  
2.9 stockpiling the silica sand.

2.10 (c) "Local unit of government" means a county, statutory or home rule charter city,  
2.11 or town that is within the counties listed in section 116Y.01, clause (1).

2.12 (d) "Operator" means any person engaged in the business of removing silica sand  
2.13 from the surface or subsurface of the soil, for the purpose of sale, either directly or  
2.14 indirectly, through the use of the sand in a marketable product or service.

2.15 (e) "Silica sand" means naturally occurring high quartz level sand used, among  
2.16 several industrial uses, as a proppant for the hydraulic fracturing of shale for oil and gas  
2.17 production. The term silica sand includes raw, washed, or otherwise processed silica  
2.18 sand. Silica sand does not include common rock, stone, aggregate, gravel, and sand with  
2.19 a low quartz level.

2.20 (f) "Silica sand mining" means the excavation and mining of silica sand by any  
2.21 process, including digging, excavating, mining, drilling, blasting, tunneling, dredging,  
2.22 stripping, or shafting.

2.23 (g) "Silica sand processing" means the washing, cleaning, screening, crushing,  
2.24 filtering, sorting, processing, stockpiling, and storing of silica sand, either at the mining  
2.25 site or at any other site.

2.26 (h) "Silica sand transporting" means the hauling and transporting of silica sand,  
2.27 by any carrier: (1) from the mining site to a processing or transfer site; or (2) from a  
2.28 processing or storage site to a rail, barge, or transfer site for transporting to destinations.

2.29 (i) "Transfer facility" means a facility for transporting silica sand by rail, barge, or  
2.30 other means of transportation to destinations.

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

2.32 Sec. 4. **[116Y.03] SOUTHEASTERN MINNESOTA SILICA SAND BOARD.**

3.1 Subdivision 1. **Establishment.** (a) The Southeastern Minnesota Silica Sand Board  
3.2 may be established by the local units of government listed in section 116Y.01, pursuant to  
3.3 section 471.59, and is established as a permanent board with authority to develop a model  
3.4 ordinance designed to protect and enhance southeastern Minnesota from the negative  
3.5 effects of silica sand mining, transportation, and processing.

3.6 (b) The chair of the Environmental Quality Board shall assist interested local units of  
3.7 governments listed in section 116Y.01, in creating a joint powers agreement, as required  
3.8 by section 471.59. The chair of the Environmental Quality Board shall contact all local  
3.9 units of government listed in section 116Y.01, by July 1, 2013, to determine if the local  
3.10 unit of government is interested in joining the board. By September 1, 2013, the chair  
3.11 of the Environmental Quality Board must convene a meeting of interested local units of  
3.12 government to begin drafting the joint powers agreement.

3.13 Subd. 2. **Membership.** (a) The county board of each participating county shall  
3.14 appoint one of its members to serve on the board. The city council of the largest home rule  
3.15 charter or statutory city that is participating in the board shall appoint one of its members  
3.16 to serve on the board. The city council or town board of a city or town with a pending or  
3.17 approved permit for silica sand mining or processing as of March 1, 2013, may appoint  
3.18 one of its members to serve on the board.

3.19 (b) The governing body making an appointment pursuant to this section may  
3.20 designate another member of the governing body or a county, city, or town officer to act as  
3.21 an alternate for the member appointed by that governing body.

3.22 (c) Members of the technical advisory team, created in section 116Y.035, shall be ex  
3.23 officio, nonvoting members of the board. These members shall serve without term limit  
3.24 and serve at the pleasure of the appointing entity.

3.25 Subd. 3. **Officers.** (a) The board shall annually appoint from among its members a  
3.26 chair, vice-chair, and secretary-treasurer who shall serve for concurrent one-year terms.

3.27 (b) The chair shall preside over all meetings of the board.

3.28 (c) The vice-chair shall preside over the meetings of the board in the absence of  
3.29 the chair.

3.30 (d) The secretary-treasurer or the designee of the secretary-treasurer shall keep a  
3.31 record of all proceedings of the board. The secretary-treasurer shall provide for the proper  
3.32 receipt and disbursement of funds.

3.33 Subd. 4. **Terms; vacancies.** (a) The terms of board members are two years, starting  
3.34 on March 1 of each odd-numbered year. Members appointed to the board to start a term  
3.35 on any other date shall serve until March 1 of the next odd-numbered year.

4.1 (b) Vacancies on the board shall be filled for the remainder of the term and shall be  
4.2 appointed by the governing body that made the original appointment. A vacancy occurs  
4.3 when a member no longer serves on the governing body that appointed the member.

4.4 Subd. 5. **Meeting law quorum.** (a) Meetings of the board and advisory committees  
4.5 created by the board are subject to chapter 13D.

4.6 (b) A majority of all members of the board shall constitute a quorum and a majority  
4.7 vote of all members shall be required for actions taken by the board.

4.8 Subd. 6. **Staff and contracts.** The board may employ staff and contract for goods  
4.9 and services as necessary to implement this chapter. Contracts are subject to the statutory  
4.10 procedures and restrictions applicable to local unit of government contracts.

4.11 Subd. 7. **Funding.** The board shall annually submit to each member county for the  
4.12 county's approval an estimate of the funds the board will need from that county in the  
4.13 next fiscal year to prepare the model ordinance under section 116Y.04 and otherwise  
4.14 carry out the duties imposed upon it by this chapter. Each member county shall furnish  
4.15 the necessary funds to the board. The board may apply for, receive, and disburse federal,  
4.16 state, and other grants and donations.

4.17 Subd. 8. **Committees.** (a) The board shall appoint an advisory committee, to advise  
4.18 the board on matters related to preparation of the model ordinance. The membership of the  
4.19 advisory committee must represent a broad geographical area and diverse public interests,  
4.20 including equal representation from concerned citizens, local units of government, and  
4.21 the sand mining industry.

4.22 (b) The board may establish other committees or subcommittees as necessary to  
4.23 assist the board in understanding and addressing region-specific issues.

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

4.25 Sec. 5. **[116Y.035] TECHNICAL ADVISORY TEAM.**

4.26 (a) The board shall initiate and maintain contacts with governmental agencies  
4.27 as necessary to properly prepare the model ordinance under section 116Y.04 and may  
4.28 negotiate cooperative management agreements. The board shall establish a technical  
4.29 advisory team with appropriate state agency staff from the Departments of Natural  
4.30 Resources, Health, and Transportation, and the Pollution Control Agency. The team shall  
4.31 advise the board on developing the model ordinance described in section 116Y.04.

4.32 (b) The technical advisory team shall serve as a resource to all local units of  
4.33 government in counties listed in section 116Y.01, clause (1), regardless of whether the  
4.34 local unit of government is a member of the board.

5.1 (c) Once established, the technical advisory team shall continue to serve as a  
 5.2 resource as provided in paragraph (b), even if the board is terminated. In the event that  
 5.3 the board is dissolved, members of the team shall agree on policies and procedures to  
 5.4 continue its service.

5.5 **Sec. 6. [116Y.04] MODEL ORDINANCE DEVELOPMENT AND ADOPTION.**

5.6 Subdivision 1. **Development and adoption.** The model ordinance shall be  
 5.7 developed by the board as provided in this section. The board may develop more than  
 5.8 one model ordinance to address geographic region-specific issues. If more than one  
 5.9 model ordinance is developed based on geographic region, the board must specify which  
 5.10 ordinance applies to each area. For purposes of this chapter, references to the model  
 5.11 ordinance shall refer to the model ordinance developed for the specific geographic region.

5.12 Subd. 2. **Model ordinance provides minimum standards.** The standards set forth  
 5.13 in the model ordinance are the minimum standards that may be adopted by the board  
 5.14 and by the local units of government for the protection and enhancement of the natural,  
 5.15 scientific, historical, recreational, and cultural resources from silica sand mining in  
 5.16 southeastern Minnesota. Silica sand mining, processing, and transport facilities permitted  
 5.17 by a local unit of government that adopts the model ordinance after the effective date of  
 5.18 this section must be in conformance with the model ordinance. Local units of government  
 5.19 may adopt ordinances that include the minimum standards in the model ordinance. Local  
 5.20 units of government may enact ordinances that are stricter than the minimum standard.

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

5.22 **Sec. 7. [116Y.05] RESPONSIBILITIES OF STATE AGENCIES.**

5.23 Within jurisdictions that have adopted a model ordinance pursuant to section  
 5.24 116Y.04, land owned by the state and political subdivisions is subject to the ordinance.

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

5.26 **Sec. 8. GENERIC ENVIRONMENTAL IMPACT STATEMENT; SILICA SAND**  
 5.27 **MINING, TRANSPORTING, AND FACILITIES.**

5.28 Subdivision 1. **Generic environmental impact statement required.** By May 1,  
 5.29 2014, the Environmental Quality Board shall complete a generic environmental impact  
 5.30 statement on silica sand mining, transporting, and related facilities. Except as provided  
 5.31 in subdivision 2, the generic environmental impact statement shall be conducted under  
 5.32 rules of the Environmental Quality Board.

6.1 Subd. 2. **Scoping.** (a) Notwithstanding the environmental review rules of the  
6.2 Environmental Quality Board, the scope of the generic environmental impact statement  
6.3 required in subdivision 1 shall be the impact of silica sand mining, transporting,  
6.4 processing, and transfer facilities on:

6.5 (1) water resources, including but not limited to surface water and groundwater  
6.6 quantity and quality;

6.7 (2) other natural resources, including but not limited to protected forest lands, rivers,  
6.8 streams, and fish hatcheries and habitat;

6.9 (3) air quality from air particulate and other emissions;

6.10 (4) existing agricultural, recreational, tourist, and other existing businesses; and

6.11 (5) state and local roads and bridges.

6.12 (b) In addition to the items listed under paragraph (a), the generic environmental  
6.13 impact statement shall address:

6.14 (1) guidance for local units of government in addressing phased and connected  
6.15 actions, as defined in rules of the Environmental Quality Board, for silica sand mining,  
6.16 processing, and transfer facilities; and

6.17 (2) necessary law and rule changes to address the issues identified in paragraph (a).

6.18 By March 1, 2015, state agencies shall adopt the rule changes identified in clause (2).

6.19 (c) By June 1, 2013, the Environmental Quality Board shall select the agencies and  
6.20 consultants for the preparation of the generic environmental impact statement.

6.21 Subd. 3. **State and local permits.** All state and local permits issued after the  
6.22 effective date of this section shall be modified to be consistent with or more restrictive  
6.23 than the conclusions of the generic environmental impact statement.

6.24 Subd. 4. **Moratorium.** Until March 1, 2014, the state, a local unit of government,  
6.25 or political subdivision of the state shall not permit a new or expanded silica sand mining,  
6.26 processing, or transfer facility as defined in Minnesota Statutes, section 116Y.02. The  
6.27 purpose of the moratorium is to provide sufficient time for the designated state agencies to  
6.28 study and determine the impacts of silica sand mining, processing, and transportation, and  
6.29 to adopt the necessary law and rule changes in subdivision 2, paragraph (b), clause (2).

6.30 **EFFECTIVE DATE.** This section is effective the day following final enactment,  
6.31 and subdivision 4 applies retroactively to applications received on March 1, 2013, and  
6.32 thereafter.

6.33 Sec. 9. **INTERIM ORDINANCE EXTENSION OR RENEWAL.**

7.1 Notwithstanding Minnesota Statutes, sections 394.34 and 462.355, subdivision 4,  
7.2 until March 1, 2015, a local unit of government may extend interim ordinances or renew  
7.3 an expired ordinance prohibiting new or expanded silica sand mining, processing, or  
7.4 transfer facilities, as defined in Minnesota Statutes, section 116Y.02.

7.5 **EFFECTIVE DATE.** This section is effective retroactively to March 1, 2013.

7.6 Sec. 10. **TEMPORARY ENVIRONMENTAL REVIEW REQUIREMENT;**  
7.7 **SILICA SAND.**

7.8 Until March 1, 2015, the Environmental Quality Board may reject the decision of  
7.9 a responsible governmental unit and require further deliberation when a decision on the  
7.10 need for an environmental impact statement under Minnesota Statutes, section 116D.04,  
7.11 subdivision 2a, paragraph (b), related to silica sand mining or processing does not follow  
7.12 requirements in the rules of the board. The board must make its decision and findings  
7.13 under this section within 30 days after the end of the comment period.

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

7.15 Sec. 11. **ENVIRONMENTAL REVIEW RULES.**

7.16 By August 1, 2013, the Environmental Quality Board shall amend its rules for  
7.17 environmental review, adopted under Minnesota Statutes, chapter 116D, for silica sand  
7.18 mining and processing to take into account the increased activity in the state and concerns  
7.19 over the size of specific operations. The board may use the good cause exemption under  
7.20 Minnesota Statutes, section 14.388, subdivision 1, clause (1).

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

7.22 Sec. 12. **APPROPRIATION; GEIS ON SILICA SAND MINING,**  
7.23 **TRANSPORTING, AND FACILITIES.**

7.24 \$..... is appropriated in fiscal year 2013 from the general fund to the Pollution  
7.25 Control Agency for the Environmental Quality Board to conduct the generic environmental  
7.26 impact statement required under section 8. This is a onetime appropriation.

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