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State of Minnesota
HOUSE OF REPRESENTATIVES
First Division Engrossment

NINETY-FIRST SESSION

H. F. No. 167

01/17/2019 Authored by Lee, Long, Becker-Finn, Wagenius, Hansen and others
The bill was read for the first time and referred to the Committee on Environment and Natural Resources Policy
01/31/2019 Adoption of Report: Amended and re-referred to the Committee on Ways and Means

Division Action

Referred by Chair to the Health and Human Services Finance Division
03/14/2019 *Division action, to adopt as amended and return to the Committee on Ways and Means*
03/18/2019 *Referred by Chair to the Judiciary Finance and Civil Law Division*
03/20/2019 *Division action, return to the Committee on Ways and Means*
Referred by Chair to the Environment and Natural Resources Finance Division

1.1 A bill for an act
1.2 relating to environment; providing for offers of supplemental environmental projects
1.3 in conjunction with certain enforcement actions against polluters; amending
1.4 Minnesota Statutes 2018, sections 13.3805, subdivision 1; 13.7411, by adding a
1.5 subdivision; 16A.151, subdivision 2; proposing coding for new law in Minnesota
1.6 Statutes, chapter 116.

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

1.8 Section 1. Minnesota Statutes 2018, section 13.3805, subdivision 1, is amended to read:

1.9 Subdivision 1. **Health data generally.** (a) **Definitions.** As used in this subdivision:

1.10 (1) "Commissioner" means the commissioner of health.

1.11 (2) "Health data" are data on individuals created, collected, received, or maintained by
1.12 the Department of Health, political subdivisions, or statewide systems relating to the
1.13 identification, description, prevention, and control of disease or as part of an epidemiologic
1.14 investigation the commissioner designates as necessary to analyze, describe, or protect the
1.15 public health.

1.16 (b) **Data on individuals.** (1) Health data are private data on individuals. Notwithstanding
1.17 section 13.05, subdivision 9, health data may not be disclosed except as provided in this
1.18 subdivision and section 13.04.

1.19 (2) The commissioner or a community health board as defined in section 145A.02,
1.20 subdivision 5, may disclose health data to the data subject's physician as necessary to locate
1.21 or identify a case, carrier, or suspect case, to establish a diagnosis, to provide treatment, to
1.22 identify persons at risk of illness, or to conduct an epidemiologic investigation.

2.1 (3) With the approval of the commissioner, health data may be disclosed to the extent
2.2 necessary to assist the commissioner to locate or identify a case, carrier, or suspect case, to
2.3 alert persons who may be threatened by illness as evidenced by epidemiologic data, to
2.4 control or prevent the spread of serious disease, or to diminish an imminent threat to the
2.5 public health.

2.6 (4) Health information collected, created, or maintained as part of a public health
2.7 supplemental environmental project under section 116.0735 may be disclosed as provided
2.8 in section 116.0735, subdivision 5.

2.9 (c) **Health summary data.** Summary data derived from data collected under section
2.10 145.413 may be provided under section 13.05, subdivision 7.

2.11 Sec. 2. Minnesota Statutes 2018, section 13.7411, is amended by adding a subdivision to
2.12 read:

2.13 Subd. 10. **Supplemental environmental project data.** Health information collected,
2.14 created, or maintained as part of a public health supplemental environmental project is
2.15 governed by section 116.0735, subdivision 5.

2.16 Sec. 3. Minnesota Statutes 2018, section 16A.151, subdivision 2, is amended to read:

2.17 Subd. 2. **Exceptions.** (a) If a state official litigates or settles a matter on behalf of specific
2.18 injured persons or entities, this section does not prohibit distribution of money to the specific
2.19 injured persons or entities on whose behalf the litigation or settlement efforts were initiated.
2.20 If money recovered on behalf of injured persons or entities cannot reasonably be distributed
2.21 to those persons or entities because they cannot readily be located or identified or because
2.22 the cost of distributing the money would outweigh the benefit to the persons or entities, the
2.23 money must be paid into the general fund.

2.24 (b) Money recovered on behalf of a fund in the state treasury other than the general fund
2.25 may be deposited in that fund.

2.26 (c) This section does not prohibit a state official from distributing money to a person or
2.27 entity other than the state in litigation or potential litigation in which the state is a defendant
2.28 or potential defendant.

2.29 (d) State agencies may accept funds as directed by a federal court for any restitution or
2.30 monetary penalty under United States Code, title 18, section 3663(a)(3) or United States
2.31 Code, title 18, section 3663A(a)(3). Funds received must be deposited in a special revenue

3.1 account and are appropriated to the commissioner of the agency for the purpose as directed
3.2 by the federal court.

3.3 (e) Tobacco settlement revenues as defined in section 16A.98, subdivision 1, paragraph
3.4 (t), may be deposited as provided in section 16A.98, subdivision 12.

3.5 (f) This section does not prohibit an entity that has entered into a settlement agreement
3.6 with the commissioner of the Pollution Control Agency from contributing money to support
3.7 a public health supplemental environmental project under section 116.0735 that would result
3.8 in money being distributed to a person or entity other than the state.

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

3.10 Sec. 4. **[116.0735] SUPPLEMENTAL ENVIRONMENTAL PROJECTS.**

3.11 Subdivision 1. **Definitions.** (a) For the purposes of this section, the following terms have
3.12 the meanings given.

3.13 (b) "Agency" means the Minnesota Pollution Control Agency.

3.14 (c) "Commissioner" means the commissioner of the Minnesota Pollution Control Agency.

3.15 (d) "Health information" means any information, whether oral or recorded in any form
3.16 or medium, collected, created, or maintained as part of a public health supplemental
3.17 environmental project, that relates to the past, present, or future health or condition of a
3.18 person.

3.19 (e) "Noncompliance" means:

3.20 (1) violation by a regulated facility of a quantitative pollution emissions limit contained
3.21 in a state or federal statute or rule or in a permit issued by the agency; or

3.22 (2) release of a pollutant or hazardous substance, as defined in section 115B.02.

3.23 (f) "Public health supplemental environmental project" means a supplemental
3.24 environmental project that provides diagnostic, preventive, or health care treatment related
3.25 to the actual or potential harm to human health of persons exposed to pollution as a result
3.26 of a regulated facility's noncompliance. Public health supplemental environmental project
3.27 includes but is not limited to collection and analysis of epidemiological data; collection and
3.28 analysis of blood, fluid, or tissue samples; medical examinations of potentially affected
3.29 persons; and medical treatment and rehabilitation therapy of persons determined to be
3.30 affected by pollution from a noncompliant regulated facility.

4.1 (g) "Supplemental environmental project" means a project that benefits the environment
4.2 or public health and that a regulated facility agrees to undertake, though not legally required
4.3 to do so, as part of a settlement with respect to an enforcement action taken by the agency
4.4 to resolve noncompliance.

4.5 (h) "Supplemental environmental project type" or "project type" means a category of
4.6 supplemental environmental project, such as pollution prevention, environmental protection
4.7 and restoration, public health, and others, as enumerated in the agency's "Discussion of
4.8 Supplemental Environmental Projects (SEPs) as a means to achieve Pollution Prevention
4.9 or other Environmental Gains," October 2009, or successor agency guidance documents.

4.10 Subd. 2. **Supplemental environmental project.** The commissioner may offer a regulated
4.11 facility subject to an agency enforcement action the option to conduct, or pay for a third
4.12 party to conduct, a supplemental environmental project whenever the commissioner
4.13 determines it to be in the public interest.

4.14 Subd. 3. **Public health supplemental environmental project.** (a) The commissioner
4.15 must offer a regulated facility subject to an agency enforcement action the option to conduct,
4.16 or pay for a third party to conduct, a public health supplemental environmental project
4.17 whenever the commissioner, in consultation with the commissioner of health, determines
4.18 that pollution resulting from noncompliance may result in measurable impacts on the health
4.19 of the population exposed to the pollution. In making this determination, the commissioner
4.20 must consider:

4.21 (1) the extent and duration of the pollution;

4.22 (2) the nature of the pollutant and its potential effect on human health, taking into
4.23 consideration its tendency to:

4.24 (i) persist and bioaccumulate in the body;

4.25 (ii) produce adverse human health effects at very low levels of concentration; and

4.26 (iii) be associated with harmful reproductive or developmental impacts;

4.27 (3) the level of concern expressed by the population exposed to the pollutant regarding
4.28 potential health effects from exposure;

4.29 (4) the cumulative levels and effects of past and current pollution from all sources on
4.30 the exposed population; and

4.31 (5) demographic, economic, and social characteristics of the population exposed to the
4.32 pollutant that may impair the population's ability to withstand, respond to, or recover from

5.1 the exposure or that increase the population's likelihood of sustaining an adverse effect from
5.2 the exposure.

5.3 (b) The commissioner and the commissioner of health must approve the content of a
5.4 public health supplemental environmental project and, after the project is completed, must
5.5 certify that all project activities were adequately carried out. The estimated cost of these
5.6 reviews, and any additional costs to the agency or Department of Health to administer this
5.7 section, must be paid from the money contributed by the regulated facility that is a party to
5.8 the settlement agreement to conduct the public health supplemental environmental project.

5.9 (c) The requirements of this subdivision do not affect the commissioner's authority to
5.10 offer other types of supplemental environmental projects for consideration by a regulated
5.11 facility.

5.12 Subd. 4. **Community participation.** The commissioner must ensure that, before
5.13 developing the specific activities that must be included in a public health supplemental
5.14 environmental project, the commissioner and any third party designated to manage the
5.15 public health supplemental environmental project meet directly with the population
5.16 potentially affected by the pollution to understand their concerns and incorporate those
5.17 concerns into the public health supplemental environmental project.

5.18 Subd. 5. **Privacy of health information.** (a) A regulated facility may not release or
5.19 disclose health information except:

5.20 (1) as specified in a written informed consent form signed and dated by the individual
5.21 subject of the health information or that person's legally authorized representative;

5.22 (2) to the commissioner or the commissioner of health; or

5.23 (3) pursuant to a specific authorization in law.

5.24 (b) A regulated facility must establish appropriate security safeguards for protecting the
5.25 privacy of health information, including procedures for ensuring that health information is
5.26 only accessible to persons whose work assignment reasonably requires access to the
5.27 information and is only being accessed by those persons for purposes described in the
5.28 procedure.

5.29 (c) Upon request by an individual subject of health information maintained by the
5.30 regulated facility or that person's legally authorized representative, a regulated facility must
5.31 supply a complete and current copy of all health information relating to that person. The
5.32 facility may not charge a fee for the information.

6.1 (d) If a third party conducts or manages a public health supplemental environmental
6.2 project under this section:

6.3 (1) the third party must comply with this subdivision as if it were a regulated facility;
6.4 and

6.5 (2) a regulated facility, the commissioner, and the commissioner of health may disclose
6.6 health information to the third party as necessary to administer the project.

6.7 (e) The commissioner and the commissioner of health may not approve a public health
6.8 supplemental environmental project under subdivision 3, paragraph (b), unless the regulated
6.9 facility and, if applicable, a third party engaged to conduct or manage the public health
6.10 supplemental environmental project certify in writing that the regulated facility and third
6.11 party will comply with this subdivision.

6.12 (f) Health information collected, created, or maintained by the commissioner of health
6.13 is health data as defined in section 13.3805, subdivision 1. The commissioner of health may
6.14 disclose health information to a regulated facility or the commissioner as necessary to
6.15 administer a public health supplemental environmental project under this section.

6.16 (g) Health information collected, created, or maintained by the commissioner is private
6.17 data on individuals as defined in section 13.02, subdivision 12. The commissioner may
6.18 disclose health information to a regulated facility or the commissioner of health as necessary
6.19 to administer a public health supplemental environmental project under this section.

6.20 (h) The Department of Health may establish a review process to ensure that privacy is
6.21 maintained with respect to any data collected or developed under a public health supplemental
6.22 environmental project.

6.23 Subd. 6. **Legislative report.** By January 1, 2020, and each January 1 thereafter, the
6.24 commissioner must submit a report to the chairs and ranking minority members of the senate
6.25 and house of representatives committees with primary jurisdiction over environmental policy
6.26 and finance, containing, at a minimum, the following information:

6.27 (1) for the most recent calendar year, and each of the three preceding calendar years:

6.28 (i) the number of enforcement actions taken by the agency against regulated facilities
6.29 for pollution emissions and the amount of penalties imposed and collected;

6.30 (ii) the number of offers of supplemental environmental projects the commissioner made
6.31 to regulated facilities, by project type;

7.1 (iii) the number of offers of supplemental environmental projects accepted and
7.2 implemented by regulated facilities, by project type; and

7.3 (iv) the amount of funds spent on supplemental environmental projects implemented by
7.4 regulated facilities, reported by range of expenditures and by project type;

7.5 (2) for the most recent calendar year, a summary of the activities of each supplemental
7.6 environmental project implemented; and

7.7 (3) for the most recent calendar year, for each public health supplemental environmental
7.8 project conducted, the number of persons:

7.9 (i) from whom data and samples were collected and the results of their analysis; and

7.10 (ii) who underwent medical examinations, treatment, and rehabilitation, each reported
7.11 separately.

7.12 **EFFECTIVE DATE.** This section is effective the day following final enactment and
7.13 applies to facilities that enter into a settlement agreement with the Pollution Control Agency
7.14 on or after that date.