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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-THIRD SESSION

H. F. No. 4627

03/07/2024 Authored by Sencer-Mura, Gomez, Hollins, Feist and Lee, F., The bill was read for the first time and referred to the Committee on Transportation Finance and Policy

1.1 A bill for an act
1.2 relating to transportation; establishing requirements governing transportation
1.3 cumulative impacts analysis; amending Minnesota Statutes 2023 Supplement,
1.4 section 116.065, by adding a subdivision; proposing coding for new law in
1.5 Minnesota Statutes, chapter 161.

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

1.7 Section 1. Minnesota Statutes 2023 Supplement, section 116.065, is amended by adding
1.8 a subdivision to read:

1.9 Subd. 6a. Coordination. In adopting rules under subdivision 6, the commissioner must
1.10 consult with the commissioner of transportation and make efforts to arrange for the
1.11 requirements and policies under section 161.179 to be in conformance with the rules.

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

1.13 Sec. 2. [161.179] TRANSPORTATION CUMULATIVE IMPACTS ANALYSIS.

1.14 Subdivision 1. Definitions. (a) For purposes of this section, the following terms have
1.15 the meanings given.

1.16 (b) "Applicable entity" means the commissioner with respect to a project for inclusion
1.17 in the state transportation improvement program or a metropolitan planning organization
1.18 with respect to a project for inclusion in the appropriate metropolitan transportation
1.19 improvement program.

1.20 (c) "Cumulative impacts" means the impacts of aggregated levels of past and current
1.21 transportation pollutants in a defined geographic area to which current residents are exposed.

2.1 (d) "Environmental justice area" has the meaning given in section 116.065, subdivision
2.2 1.

2.3 (e) "Environmental stressors" has the meaning given in section 116.065, subdivision 1,
2.4 and includes environmental effects on health from exposure to past and current transportation
2.5 pollutants in the environmental justice area.

2.6 (f) "Impacts analysis" means an analysis of cumulative impacts as provided under this
2.7 section.

2.8 (g) "Participating governmental unit" means a local unit of government that has
2.9 jurisdiction within any portion of the environmental justice area.

2.10 (h) "Project" means a project for trunk highway construction, reconstruction, or
2.11 maintenance.

2.12 (i) "Transportation pollutants" means any of the following emitted from a transportation
2.13 source, including but not limited to a motor vehicle and a highway construction,
2.14 reconstruction, or maintenance project: carbon monoxide; greenhouse gas emissions,
2.15 including those emissions described in section 216H.01, subdivision 2; nitric oxide and
2.16 nitrogen dioxide; noise; and particulate matter less than ten microns wide (PM-10) as a
2.17 result of tire or brake wear.

2.18 Subd. 2. **Application; implementation.** (a) This section applies to a project for trunk
2.19 highway construction, reconstruction, or maintenance:

2.20 (1) that has a total project cost estimate that is at least the amount specified for a major
2.21 highway project in section 174.56, subdivision 1, paragraph (b); and

2.22 (2) in which any portion is located in or within one mile of a census tract that is part of
2.23 an environmental justice area.

2.24 (b) This section applies beginning one year after the commissioner of the Minnesota
2.25 Pollution Control Agency first adopts rules as provided under section 116.065, subdivision
2.26 6.

2.27 (c) This section does not apply to a project that was either included in the state
2.28 transportation improvement program or has been submitted for approval of the geometric
2.29 layout before the application date under paragraph (b).

2.30 Subd. 3. **Impacts analysis; process.** (a) Prior to inclusion of a trunk highway project
2.31 in the state transportation improvement program or a metropolitan transportation
2.32 improvement program, the applicable entity must:

3.1 (1) conduct an impacts analysis if:

3.2 (i) any of the following applies:

3.3 (A) the potential impacts of the project exceed any of the benchmarks for conducting
3.4 an impacts analysis as established by the commissioner under subdivision 4; or

3.5 (B) the project may substantially impact the environment or health of the residents of
3.6 an environmental justice area; or

3.7 (ii) the applicable entity determines that the analysis is warranted following an assessment
3.8 of any petitions under paragraph (c), material evidence, and any other relevant information;

3.9 and

3.10 (2) following an impacts analysis, make a determination of adverse impacts if:

3.11 (i) the impacts analysis concludes that performance of the project, in combination with
3.12 the environmental stressors present in the environmental justice area and considering the
3.13 socioeconomic impact of the facility to the residents of the environmental justice area, would
3.14 have substantial adverse cumulative impacts on the environment or health of the
3.15 environmental justice area and its residents; or

3.16 (ii) the applicable entity identifies a reasonable likelihood of substantial adverse
3.17 cumulative impacts under subdivision 4 based on public comments and testimony or any
3.18 other relevant information.

3.19 (b) If the applicable entity makes the determination under paragraph (a), clause (2), the
3.20 applicable entity must:

3.21 (1) alter the scope or design of the project and perform a revised impacts analysis that
3.22 meets the requirements under this section;

3.23 (2) enter into a community benefit agreement with a participating governmental unit as
3.24 provided under subdivision 6; or

3.25 (3) halt project development and disallow inclusion of the project in the appropriate
3.26 transportation improvement program.

3.27 (c) In considering whether an impacts analysis is warranted under paragraph (a), the
3.28 applicable entity must give weight to any petition requesting the impacts analysis that is (1)
3.29 signed by at least 100 individuals who reside or own property in the relevant environmental
3.30 justice area affected by the project, and (2) supported by material evidence that demonstrates
3.31 a potential for substantial adverse cumulative impacts to the relevant environmental justice
3.32 area if the project is completed.

4.1 (d) Within 30 days of determining whether an impacts analysis is required or warranted
4.2 under paragraph (a), the applicable entity must publish a written document on the agency's
4.3 website that (1) contains the reasons for the entity's decision, and (2) describes the
4.4 information that was considered in making the decision and how the information was
4.5 weighed.

4.6 Subd. 4. **Impacts analysis; requirements.** (a) The commissioner must establish a process
4.7 to conduct an impacts analysis. The process must provide for a determination under
4.8 subdivision 3, paragraph (a), clause (2).

4.9 (b) The process must specify requirements that govern an impacts analysis, including
4.10 but not limited to:

4.11 (1) benchmarks for an agency to use in determining whether an impacts analysis is
4.12 required under this section;

4.13 (2) the form, manner, and content of an impacts analysis;

4.14 (3) conditions, criteria, or circumstances that establish an environmental or health impact
4.15 as substantial adverse cumulative impacts;

4.16 (4) procedures for submission of a petition by environmental justice area residents in
4.17 support of an impacts analysis; and

4.18 (5) methods for holding public meetings and handling public comments and testimony
4.19 as required under subdivision 5.

4.20 (c) To the fullest extent feasible, the requirements under this subdivision must conform
4.21 with rules adopted by the commissioner of the Minnesota Pollution Control Agency as
4.22 provided under section 116.065, subdivision 6.

4.23 Subd. 5. **Public meetings.** (a) An applicable entity who is subject to conducting an
4.24 impacts analysis under subdivision 3 must hold at least two public meetings in the relevant
4.25 environmental justice area affected by the project. The first public meeting must be held
4.26 before conducting an impacts analysis, and the second must be held after completion of the
4.27 impacts analysis.

4.28 (b) Before each public meeting held under this subdivision, the applicable entity must:

4.29 (1) at least 30 days before the meeting, publish notice that contains the date, time, and
4.30 location of the meeting and a brief description of the project (i) on the agency's website,
4.31 and (ii) in a newspaper of general circulation in the environmental justice area; and

5.1 (2) post physical signage in the relevant environmental justice area, as directed by the
 5.2 commissioner.

5.3 (c) At least 30 days before a public meeting that follows completion of an impacts
 5.4 analysis, the applicable entity must publish the impacts analysis on the agency's website.

5.5 (d) At each public meeting held under this subdivision, the applicable entity must:

5.6 (1) provide an opportunity for robust public and Tribal engagement; and

5.7 (2) accept written and oral comments, as directed by the commissioner, from any
 5.8 interested party.

5.9 (e) If there is more than one project that is subject to the requirements under this section
 5.10 in the same environmental justice area, the applicable entity may consolidate the public
 5.11 meeting requirements under this subdivision.

5.12 Subd. 6. **Community benefit agreement.** (a) The commissioner must establish policies
 5.13 that govern community benefit agreements, including but not limited to:

5.14 (1) procedures for an applicable entity and a participating governmental unit to enter
 5.15 into an agreement;

5.16 (2) the content of an agreement, in conformance with the requirements under paragraph
 5.17 (b); and

5.18 (3) a process for active outreach to residents of the relevant environmental justice area
 5.19 that is designed to achieve meaningful community participation, which must include but is
 5.20 not limited to requiring at least one public meeting on an agreement held within the
 5.21 environmental justice area prior to its finalization.

5.22 (b) A community benefit agreement must provide for one or more of the following in
 5.23 the relevant environmental justice area:

5.24 (1) a reduction in transportation pollutants;

5.25 (2) a reduction in adverse impacts on the environment or health;

5.26 (3) a mitigation action as provided under subdivision 7; or

5.27 (4) related beneficial impacts as determined by the commissioner.

5.28 (c) To the fullest extent feasible, the policies under this subdivision must conform with
 5.29 rules governing a community benefit agreement adopted by the commissioner of the
 5.30 Minnesota Pollution Control Agency as provided under section 116.065, subdivision 6.

6.1 Subd. 7. Mitigation action. (a) A mitigation action as specified under section 161.178,
6.2 subdivision 4, paragraph (c), may be included in a community benefit agreement if:

6.3 (1) there is a specified project, program, or modification;

6.4 (2) the necessary funding sources are identified and sufficient amounts are committed;

6.5 (3) the mitigation is localized as provided under paragraph (b); and

6.6 (4) procedures are established to ensure that the mitigation action remains in substantially
6.7 the same form or a revised form that continues to meet the purposes of the community
6.8 benefit agreement.

6.9 (b) A mitigation action must be localized in the following priority order:

6.10 (1) within the relevant environmental justice area; and

6.11 (2) as specified under section 161.178, subdivision 5, paragraph (a), provided that a
6.12 reference to the capacity expansion project means the project under this section.