

SENATE  
STATE OF MINNESOTA  
EIGHTY-SEVENTH LEGISLATURE

S.F. No. 85

(SENATE AUTHORS: NEWMAN)

DATE	D-PG	OFFICIAL STATUS
01/24/2011	72	Introduction and first reading Referred to Environment and Natural Resources

A bill for an act  
relating to environment; modifying environmental impact statement process;  
amending Minnesota Statutes 2010, section 116D.04, subdivisions 2a, 3a, 11, 13,  
by adding a subdivision; repealing Minnesota Statutes 2010, section 116D.04,  
subdivisions 5a, 9, 10.

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

Section 1. Minnesota Statutes 2010, section 116D.04, subdivision 2a, is amended to  
read:

Subd. 2a. **When prepared.** Where there is potential for significant environmental  
effects resulting from any major governmental action, the action shall be preceded by a  
detailed environmental impact statement prepared by the responsible governmental unit.  
A responsible governmental unit may contract for the preparation of an environmental  
impact statement. The environmental impact statement shall be an analytical rather than  
an encyclopedic document which describes the proposed action in detail, analyzes its  
significant environmental impacts, discusses appropriate alternatives to the proposed  
action and their impacts, and explores methods by which adverse environmental impacts  
of an action could be mitigated. ~~The environmental impact statement shall also analyze  
those economic, employment and sociological effects that cannot be avoided should  
the action be implemented.~~ To ensure its use in the decision-making process, the  
environmental impact statement shall be prepared as rapidly and early as practical in the  
formulation of an action. No mandatory environmental impact statement may be required  
for an ethanol plant, as defined in section 41A.09, subdivision 2a, paragraph (b), that  
produces less than 125,000,000 gallons of ethanol annually and is located outside of the  
seven-county metropolitan area.

(a) The board shall by rule establish categories of actions for which environmental impact statements and for which environmental assessment worksheets shall be prepared as well as categories of actions for which no environmental review is required under this section.

(b) The responsible governmental unit shall promptly publish notice of the completion of an environmental assessment worksheet in a manner to be determined by the board and shall provide copies of the environmental assessment worksheet to the board and its member agencies. Comments on the need for an environmental impact statement may be submitted to the responsible governmental unit during a 30-day period following publication of the notice that an environmental assessment worksheet has been completed. The responsible governmental unit's decision on the need for an environmental impact statement shall be based on the environmental assessment worksheet and the comments received during the comment period, and shall be made within 15 days after the close of the comment period. ~~The board's chair may extend the 15-day period by not more than 15 additional days upon the request of the responsible governmental unit.~~

~~(c) An environmental assessment worksheet shall also be prepared for a proposed action whenever material evidence accompanying a petition by not less than 25 individuals, submitted before the proposed project has received final approval by the appropriate governmental units, demonstrates that, because of the nature or location of a proposed action, there may be potential for significant environmental effects. Petitions requesting the preparation of an environmental assessment worksheet shall be submitted to the board. The chair of the board shall determine the appropriate responsible governmental unit and forward the petition to it. A decision on the need for an environmental assessment worksheet shall be made by the responsible governmental unit within 15 days after the petition is received by the responsible governmental unit. The board's chair may extend the 15-day period by not more than 15 additional days upon request of the responsible governmental unit.~~

~~(d)~~ Except in an environmentally sensitive location where Minnesota Rules, part 4410.4300, subpart 29, item B, applies, the proposed action is exempt from environmental review under this chapter and rules of the board, if:

(1) the proposed action is:

(i) an animal feedlot facility with a capacity of less than 1,000 animal units; or

(ii) an expansion of an existing animal feedlot facility with a total cumulative capacity of less than 1,000 animal units;

(2) the application for the animal feedlot facility includes a written commitment by the proposer to design, construct, and operate the facility in full compliance with Pollution Control Agency feedlot rules; and

(3) the county board holds a public meeting for citizen input at least ten business days prior to the Pollution Control Agency or county issuing a feedlot permit for the animal feedlot facility unless another public meeting for citizen input has been held with regard to the feedlot facility to be permitted. The exemption in this paragraph is in addition to other exemptions provided under other law and rules of the board.

~~(c)~~ (d) The board may, prior to final approval of a proposed project, require preparation of an environmental assessment worksheet by a responsible governmental unit selected by the board for any action where environmental review under this section has not been specifically provided for by rule or otherwise initiated.

~~(f)~~ (e) An ~~early and open~~ expedited process shall be utilized to limit the scope of the environmental impact statement to a discussion of those impacts, which, because of the nature or location of the project, have the potential for significant environmental effects. The same process shall be utilized to determine the form, content and level of detail of the statement as well as the alternatives which are appropriate for consideration in the statement. In addition, the permits which will be required for the proposed action shall be identified during the scoping process. Further, the process shall identify those permits for which information will be developed concurrently with the environmental impact statement. The board shall provide in its rules for the expeditious completion of the scoping process. The determinations reached in the process shall be incorporated into the order requiring the preparation of an environmental impact statement.

~~(g)~~ (f) The responsible governmental unit shall, to the extent practicable, avoid duplication and ensure coordination between state and federal environmental review and between environmental review and environmental permitting. Whenever practical, information needed by a governmental unit for making final decisions on permits or other actions required for a proposed project shall be developed in conjunction with the preparation of an environmental impact statement.

~~(h)~~ (g) An environmental impact statement shall be prepared and its adequacy determined within ~~280~~ 120 days after notice of its preparation ~~unless the time is extended by consent of the parties or by the governor for good cause~~. The responsible governmental unit shall determine the adequacy of an environmental impact statement, ~~unless within 60 days after notice is published that an environmental impact statement will be prepared, the board chooses to determine the adequacy of an environmental impact statement~~. If an environmental impact statement is found to be inadequate, the responsible governmental

unit shall have ~~60~~ 45 days to prepare an adequate environmental impact statement. If the responsible governmental unit fails to act within the time required under this paragraph, the environmental impact statement is deemed adequate, unless a written contract of exception has been agreed to by the project proposer.

(h) The total time allowed for public comments during an environmental assessment worksheet or environmental impact statement process shall be 30 days.

Sec. 2. Minnesota Statutes 2010, section 116D.04, subdivision 3a, is amended to read:

Subd. 3a. **Final decisions.** Within ~~90~~ 60 days after final approval of an environmental impact statement, final decisions shall be made by the appropriate governmental units on those permits which were identified as required and for which information was developed concurrently with the preparation of the environmental impact statement. Provided, however, that the ~~90-day~~ 60-day period may be extended where a longer period is required by federal law or state statute or is consented to by the permit applicant. The permit decision shall include the reasons for the decision, including any conditions under which the permit is issued, together with a final order granting or denying the permit.

Sec. 3. Minnesota Statutes 2010, section 116D.04, subdivision 11, is amended to read:

Subd. 11. **Failure to act.** If the board or governmental unit which is required to act within a time period specified in this section fails to so act, ~~any person may seek an order of the district court requiring the board or governmental unit to immediately take the action mandated by subdivisions 2a and 3a~~ the permit or other government action necessary is deemed approved and the project proposer may proceed with the project.

Sec. 4. Minnesota Statutes 2010, section 116D.04, subdivision 13, is amended to read:

Subd. 13. **Enforcement.** This section may be enforced by injunction, action to compel performance, or other appropriate action in the district court of the county where the violation takes place. ~~Upon the request of the board or the chair of the board, the attorney general may bring an action under this subdivision.~~

Sec. 5. Minnesota Statutes 2010, section 116D.04, is amended by adding a subdivision to read:

Subd. 15. **Rules.** The board shall, by June 30, 2011, amend rules to conform to sections 1 to 4. The rules adopted under this section are not subject to the rulemaking

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5.1 procedures of chapter 14 and section 14.386 does not apply. Subsequent rulemaking  
5.2 authority under this section must be explicitly authorized by the legislature.

5.3 Sec. 6. **REPEALER.**

5.4 Minnesota Statutes 2010, section 116D.04, subdivisions 5a, 9, and 10, are repealed.