

CHAPTER 116D

ENVIRONMENTAL POLICY

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116D.01 PURPOSE.

The purposes of Laws 1973, chapter 412, are: (a) to declare a state policy that will encourage productive and enjoyable harmony between human beings and their environment; (b) to promote efforts that will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of human beings; and (c) to enrich the understanding of the ecological systems and natural resources important to the state and to the nation.

History: 1973 c 412 s 1; 1986 c 444

116D.02 DECLARATION OF STATE ENVIRONMENTAL POLICY.

Subdivision 1. The legislature, recognizing the profound impact of human activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high density urbanization, industrial expansion, resources exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of human beings, declares that it is the continuing policy of the state government, in cooperation with federal and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which human beings and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of the state's people.

Subd. 2. In order to carry out the policy set forth in Laws 1973, chapter 412, it is the continuing responsibility of the state government to use all practicable means, consistent with other essential considerations of state policy, to improve and coordinate state plans, functions, programs and resources to the end that the state may:

(1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(2) assure for all people of the state safe, healthful, productive, and aesthetically and culturally pleasing surroundings;

(3) discourage ecologically unsound aspects of population, economic and technological growth, and develop and implement a policy such that growth occurs only in an environmentally acceptable manner;

(4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever practicable, an environment that supports diversity, and variety of individual choice;

(5) encourage, through education, a better understanding of natural resources management principles that will develop attitudes and styles of living that minimize environmental degradation;

(6) develop and implement land use and environmental policies, plans, and standards for the state as a whole and for major regions thereof through a coordinated program of planning and land use control;

(7) define, designate, and protect environmentally sensitive areas;

(8) establish and maintain statewide environmental information systems sufficient to gauge environmental conditions;

(9) practice thrift in the use of energy and maximize the use of energy efficient systems for the utilization of energy, and minimize the environmental impact from energy production and use;

(10) preserve important existing natural habitats of rare and endangered species of plants, wildlife, and fish, and provide for the wise use of our remaining areas of natural habitation, including necessary protective measures where appropriate;

(11) reduce wasteful practices which generate solid wastes;

(12) minimize wasteful and unnecessary depletion of nonrenewable resources;

(13) conserve natural resources and minimize environmental impact by encouraging extension of product lifetime, by reducing the number of unnecessary and wasteful materials practices, and by recycling materials to conserve both materials and energy;

(14) improve management of renewable resources in a manner compatible with environmental protection;

(15) provide for reclamation of mined lands and assure that any mining is accomplished in a manner compatible with environmental protection;

(16) reduce the deleterious impact on air and water quality from all sources, including the deleterious environmental impact due to operation of vehicles with internal combustion engines in urbanized areas;

(17) minimize noise, particularly in urban areas;

(18) prohibit, where appropriate, flood plain development in urban and rural areas; and

(19) encourage advanced waste treatment in abating water pollution.

History: 1973 c 412 s 2; 1986 c 444

116D.03 ACTION BY STATE AGENCIES.

Subdivision 1. The legislature authorizes and directs that, to the fullest extent practicable the policies, rules and public laws of the state shall be interpreted and administered in accordance with the policies set forth in sections 116D.01 to 116D.06.

Subd. 2. All departments and agencies of the state government shall:

(1) on a continuous basis, seek to strengthen relationships between state, regional, local and federal-state environmental planning, development and management programs;

(2) utilize a systematic, interdisciplinary approach that will insure the integrated use of the natural and social sciences and the environmental arts in planning and in decision making which may have an impact on the environment; as an aid in accomplishing this purpose there shall be established advisory councils or other forums for consultation with persons in appropriate fields of specialization so as to ensure that the latest and most authoritative findings will be considered in administrative and regulatory decision making as quickly and as amply as possible;

(3) identify and develop methods and procedures that will ensure that environmental amenities and values, whether quantified or not, will be given at least equal consideration in decision making along with economic and technical considerations;

(4) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(5) recognize the worldwide and long range character of environmental problems and, where consistent with the policy of the state, lend appropriate support to initiatives, resolutions, and programs designed to maximize interstate, national and international cooperation in anticipating and preventing a decline in the quality of the world environment;

(6) make available to the federal government, counties, municipalities, institutions and individuals, information useful in restoring, maintaining, and enhancing the quality of the environment, and in meeting the policies of the state as set forth in Laws 1973, chapter 412;

(7) initiate the gathering and utilization of ecological information in the planning and development of resource oriented projects; and

(8) undertake, contract for or fund such research as is needed in order to determine and clarify effects by known or suspected pollutants which may be detrimental to human health or to the environment, as well as to evaluate the feasibility, safety and environmental effects of various methods of dealing with pollutants.

History: 1973 c 412 s 3; 1985 c 248 s 70; 1986 c 444

116D.04 ENVIRONMENTAL IMPACT STATEMENTS.

Subdivision 1. [Repealed, 1980 c 447 s 10]

Subd. 1a. For the purposes of this chapter, the following terms have the meanings given to them in this subdivision.

(a) "Natural resources" has the meaning given it in section 116B.02, subdivision 4.

(b) "Pollution, impairment or destruction" has the meaning given it in section 116B.02, subdivision 5.

(c) "Environmental assessment worksheet" means a brief document which is designed to set out the basic facts necessary to determine whether an environmental impact statement is required for a proposed action.

(d) "Governmental action" means activities, including projects wholly or partially conducted, permitted, assisted, financed, regulated, or approved by units of government including the federal government.

(e) "Governmental unit" means any state agency and any general or special purpose unit of government in the state including, but not limited to, watershed districts organized under chapter 103D, counties, towns, cities, port authorities, housing authorities, and economic development authorities established under sections 469.090 to 469.108, but not including courts, school districts, and regional development commissions other than the metropolitan council.

Subd. 2. [Repealed, 1980 c 447 s 10]

Subd. 2a. 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. 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 early as practical in the formulation of an action.

(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) 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.

(e) An early and open 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.

(f) 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.

(g) An environmental impact statement shall be prepared and its adequacy determined within 280 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 days to prepare an adequate environmental impact statement.

Subd. 2b. If an environmental assessment worksheet or an environmental impact statement is required for a governmental action under subdivision 2a, a project may not be started and a final governmental decision may not be made to grant a permit, approve a project, or begin a project, until:

- (1) a petition for an environmental assessment worksheet is dismissed;
- (2) a negative declaration has been issued on the need for an environmental impact statement;
- (3) the environmental impact statement has been determined adequate; or
- (4) a variance has been granted from making an environmental impact statement by the environmental quality board.

Subd. 3. [Repealed, 1980 c 447 s 10]

Subd. 3a. Within 90 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 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.

Subd. 4. [Repealed, 1980 c 447 s 10]

Subd. 4a. The board shall by rule identify alternative forms of environmental review which will address the same issues and utilize similar procedures as an environmental impact statement in a more timely or more efficient manner to be utilized in lieu of an environmental impact statement.

Subd. 5. [Repealed, 1980 c 447 s 10]

Subd. 5a. The board shall, by January 1, 1981, promulgate rules in conformity with this chapter and the provisions of chapter 15, establishing:

(1) the governmental unit which shall be responsible for environmental review of a proposed action;

(2) the form and content of environmental assessment worksheets;

(3) a scoping process in conformance with subdivision 2a, clause (e);

(4) a procedure for identifying during the scoping process the permits necessary for a proposed action and a process for coordinating review of appropriate permits with the preparation of the environmental impact statement;

(5) a standard format for environmental impact statements;

(6) standards for determining the alternatives to be discussed in an environmental impact statement;

(7) alternative forms of environmental review which are acceptable pursuant to subdivision 4a;

(8) a model ordinance which may be adopted and implemented by local governmental units in lieu of the environmental impact statement process required by this section, providing for an alternative form of environmental review where an action does not require a state agency permit and is consistent with an applicable comprehensive plan. The model ordinance shall provide for adequate consideration of appropriate alternatives, and shall ensure that decisions are made in accordance with the policies and purposes of Laws 1980, chapter 447;

(9) procedures to reduce paperwork and delay through intergovernmental cooperation and the elimination of unnecessary duplication of environmental reviews;

(10) procedures for expediting the selection of consultants by the governmental unit responsible for the preparation of an environmental impact statement; and

(11) any additional rules which are reasonably necessary to carry out the requirements of this section.

Subd. 6. No state action significantly affecting the quality of the environment shall be allowed, nor shall any permit for natural resources management and development be granted, where such action or permit has caused or is likely to cause pollution, impairment, or destruction of the air, water, land or other natural resources located within the state, so long as there is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety, and welfare and the state's paramount concern for the protection of its air, water, land and other natural resources from pollution, impairment, or destruction. Economic considerations alone shall not justify such conduct.

Subd. 6a. Prior to the preparation of a final environmental impact statement, the governmental unit responsible for the statement shall consult with and request the comments of every governmental office which has jurisdiction by law or special expertise with respect to any environmental effect involved. Copies of the drafts of such statements and the comments and views of the appropriate offices shall be made available to the public. The final detailed environmental impact statement and the

comments received thereon shall precede final decisions on the proposed action and shall accompany the proposal through an administrative review process.

Subd. 7. Regardless of whether a detailed written environmental impact statement is required by the board to accompany an application for a permit for natural resources management and development, or a recommendation, project, or program for action, officials responsible for issuance of aforementioned permits or for other activities described herein shall give due consideration to the provisions of Laws 1973, chapter 412, as set forth in section 116D.03, in the execution of their duties.

Subd. 8. In order to facilitate coordination of environmental decision making and the timely review of agency decisions, the board shall establish by rule a procedure for early notice to the board and the public of natural resource management and development permit applications and other impending state actions having significant environmental effects.

Subd. 9. Prior to the final decision upon any state project or action significantly affecting the environment or for which an environmental impact statement is required, or within ten days thereafter, the board may delay implementation of the action or project by notice to the agency or department and to interested parties. Thereafter, within 45 days of such notice, the board may reverse or modify the decisions or proposal where it finds, upon notice and hearing, that the action or project is inconsistent with the policy and standards of sections 116D.01 to 116D.06. Any aggrieved party may seek judicial review pursuant to chapter 14.

Subd. 10. Decisions on the need for an environmental assessment worksheet, the need for an environmental impact statement and the adequacy of an environmental impact statement may be reviewed by a declaratory judgment action in the district court of the county wherein the proposed action, or any part thereof, would be undertaken. Judicial review under this section shall be initiated within 30 days after the governmental unit makes the decision, and a bond may be required under section 562.02 unless at the time of hearing on the application for the bond the plaintiff has shown that the claim has sufficient possibility of success on the merits to sustain the burden required for the issuance of a temporary restraining order. Nothing in this section shall be construed to alter the requirements for a temporary restraining order or a preliminary injunction pursuant to the Minnesota rules of civil procedure for district courts. The board may initiate judicial review of decisions referred to herein and may intervene as of right in any proceeding brought under this subdivision.

Subd. 11. 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.

Subd. 12. No attempt need be made to tabulate, analyze or otherwise evaluate the potential impact of elections made pursuant to section 116C.63, subdivision 4, in environmental impact statements done for large electric power facilities. It is sufficient for purposes of this chapter that such statements note the existence of section 116C.63, subdivision 4.

Subd. 13. 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.

History: 1973 c 412 s 4; 1975 c 204 s 74; 1975 c 271 s 6; 1980 c 447 s 1-8; 1980 c 614 s 88; 1982 c 424 s 130; 1985 c 248 s 70; 1986 c 399 art 2 s 1; 1986 c 400 s 1; 1986 c 444; 1Sp1986 c 3 art 2 s 41; 1988 c 501 s 3,4; 1989 c 209 art 2 s 1; 1990 c 391 art 8 s 27; 1992 c 464 art 2 s 1

116D.045 ENVIRONMENTAL IMPACT STATEMENTS; COSTS.

Subdivision 1. The board shall by rule adopt procedures to assess the proposer of a specific action for reasonable costs of preparing and distributing an environmental impact statement on that action required pursuant to section 116D.04. Such costs shall

be determined by the responsible governmental unit pursuant to the rules promulgated by the board.

Subd. 2. In the event of a disagreement between the proposer of the action and the responsible governmental unit over the cost of an environmental impact statement, the responsible governmental unit shall consult with the board, which may modify the cost or determine that the cost assessed by the responsible governmental unit is reasonable.

Subd. 3. The responsible governmental unit shall assess the project proposer for reasonable costs in preparing and distributing the environmental impact statement and the proposer shall pay the assessed cost to the responsible governmental unit. Money received under this subdivision by a responsible governmental unit may be retained by the unit for the same purposes. Money received by a state agency must be credited to a special account and is appropriated to the agency to cover the assessed costs incurred.

Subd. 4. No responsible governmental unit shall commence the preparation of an environmental impact statement until at least one-half of the assessed cost of the environmental impact statement is paid pursuant to subdivision 3. Other laws notwithstanding, no state agency may issue any permits for the construction or operation of a project for which an environmental impact statement is prepared until the assessed cost for the environmental impact statement has been paid in full.

Subd. 5. [Repealed, 1988 c 501 s 9]

History: 1976 c 344 s 3; 1988 c 501 s 5-8; 1990 c 594 art 1 s 55

116D.05 [Repealed, 1984 c 655 art 1 s 20]

116D.06 EFFECT OF EXISTING OBLIGATIONS.

Subdivision 1. Nothing in sections 116D.03 to 116D.045 shall in any way affect the specific statutory obligations of any state agency to (1) comply with criteria or standards of environmental quality, (2) coordinate or consult with any federal or state agency, or (3) act or refrain from acting contingent upon the recommendations or certification of any other state agency or federal agency.

Subd. 2. The policies and goals set forth in sections 116D.01 to 116D.06 are supplementary to those set forth in existing authorizations of state agencies.

History: 1973 c 412 s 6; 1984 c 655 art 1 s 21

116D.07 [Repealed, 1991 c 303 s 9]

116D.10 ENERGY AND ENVIRONMENTAL STRATEGY REPORT.

On or before January 1 of each even-numbered year, the governor shall transmit to the energy and environment and natural resources committees of the legislature a concise, comprehensive written report on the energy and environmental strategy of the state.

The report must be sufficiently comprehensive to assist the legislature in allocating funds to support all of the policies, plans, and programs of the state related to energy and the environment, and specifically must include:

(1) a concise, comprehensive discussion of state, and, as applicable, national and global energy and environmental problems, including but not limited to: indoor and outdoor air pollution, water pollution, atmospheric changes, stratospheric ozone depletion, damage to terrestrial systems, deforestation, regulation of pesticides and toxic substances, solid and hazardous waste management, ecosystem protection (wetlands, estuaries, groundwater, Lake Superior and the inland lakes and rivers), population growth, preservation of animal and plant species, soil erosion, and matters relating to the availability and conservation of crude oil and of refined petroleum product and other energy sources;

(2) a concise, comprehensive description and assessment of the policies and programs of all departments and agencies of the state responsible for issues listed in clause (1), including a concise discussion of the long-term objectives of such policies

and programs; existing and proposed funding levels; the impact of each policy and program on pollution prevention, emergency preparedness and response, risk assessment, land management, technology transfer, and matters relating to the availability and conservation of crude oil and of refined petroleum product and other energy sources; and the impact of each on relations with the other states, the federal government, membership in national organizations, and funding of programs for state environmental protection and energy issues;

(3) a concise description and assessment of the integration and coordination of policies, plans, environmental programs, and energy programs of the state with the policies and programs of the federal government, the environmental and energy policies and programs of the other states, and the environmental and energy policies and programs of major state and national nonprofit conservation organizations;

(4) a concise description and assessment of all efforts by the state to integrate effectively its energy and environmental strategy with:

(i) the science and technology strategy of the federal government, including objectives, priorities, timing, funding details, and expected results of all environmental and energy research and development supported by the federal government and of all efforts at regional, national, and international cooperation on environmental and energy research and development;

(ii) the national energy policies of the federal government, including objectives, priorities, timing, funding details, and expected results of all efforts supported by the federal government aimed at reducing energy demand, improving energy efficiency and conservation, fuel-switching, using safe nuclear power reactors, employing clean coal technology, promoting renewable energy sources, promoting research and possible use of alternative fuels, promoting biomass research, promoting energy research and development in general, and advancing regional, national, and international energy cooperation;

(iii) the national environmental education strategy of the federal government, including objectives, priorities, timing, funding details, and expected results of all domestic and international education efforts supported by the United States to improve both public participation and awareness of the need for environmental protection;

(iv) the technology transfer strategy of the federal government, including objectives, priorities, timing, funding details, and expected results of all domestic and international environmental and energy technology transfer efforts to foster collaboration and cooperation between federal agencies and state and local governments, universities, nonprofit conservation organizations, and private industry in order to improve the competitiveness of the state and the nation in the world marketplace and promote environmental and energy technology advancement; and

(v) the national security strategy of the federal government, including objectives, priorities, timing, funding, and expected results of the national security programs to be most compatible with requirements for environmental preservation and a national energy policy, while accomplishing missions essential to national security;

(5) a concise assessment of the overall effectiveness of the energy and environmental strategy of the state, including a concise description of the organizational processes used to provide a body of energy and environmental information and to evaluate the results of energy and environmental programs; the use of statistical methods; the degree to which the strategy is long term, comprehensive, integrated, flexible, and oriented toward achieving broad consensus in the state, the nation, and abroad; and recommendations on the ways in which the legislature can assist the governor in making the strategy more effective;

(6) specific two-year, five-year and, as appropriate, longer-term goals for the implementation of the energy and environmental strategy of the state; and

(7) such other pertinent information as may be necessary to provide information to the legislature on matters relating to the overall energy and environmental strategy of

the state and to develop state programs coordinated with those formulated on a national and international level.

History: 1991 c 303 s 6

116D.11 REPORT PREPARATION.

Subdivision 1. Agency responsibility. Each department or agency of the state, as designated by the governor, shall assist in the preparation of the strategy report. Each designated department or agency shall prepare a preliminary strategy report relating to those programs or policies over which the department or agency has jurisdiction. Each preliminary strategy report shall:

(1) describe concisely the existing policies and programs of the department or agency as they relate to the issues listed in section 116D.10, clause (1);

(2) describe concisely and evaluate the long-term objectives of the department or agency as they relate to the issues listed in section 116D.10, clause (1);

(3) identify and make proposals about the development of department or agency financial management budgets as they relate to the issues listed in section 116D.10, clause (1);

(4) describe concisely the strategy and procedure of the department or agency to recruit, select, and train personnel to carry out department or agency goals and functions as they relate to the issues listed in section 116D.10, clause (1);

(5) identify and make proposals to eliminate duplicative and unnecessary programs or systems, including encouraging departments and agencies to share systems or programs that have sufficient capacity to perform the functions needed as they relate to the issues listed in section 116D.10, clause (1); and

(6) establish two-year quantitative goals for policy implementation.

Subd. 2. Primary responsibility. The environmental quality board shall have the primary responsibility for preparing the energy and environmental strategy report of the state, as required by section 116D.10. The board shall assemble all preliminary reports prepared pursuant to subdivision 1 under a timetable established by the board and shall use the preliminary reports in the preparation of the draft energy and environmental strategy report of the state. Each department or agency designated by the governor to prepare a preliminary strategy report shall submit a copy of the preliminary strategy report to the governor and to the board at the same time.

Subd. 3. Report to governor. On or before October 1 of each odd-numbered year, the environmental quality board shall transmit to the governor a draft of the written report on the energy and environmental strategy of the state. The governor may change the report and may request additional information or data from any department or agency of the state responsible for issues listed in section 116D.10, clause (1). Any such requested additional information or data shall be prepared and submitted promptly to the governor.

Subd. 4. [Repealed, 1997 c 7 art 2 s 67]

History: 1991 c 303 s 7