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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-SIXTH
SESSION

HOUSE FILE No. **1875**

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The bill was read for the first time and referred to the Committee on Environment Policy and Oversight

1.1 A bill for an act
1.2 relating to environment; modifying environmental review requirements;
1.3 exempting certain projects that are subject to standards from environmental
1.4 review; requiring project proposers to prepare environmental impact statements
1.5 and environmental assessment worksheets; amending Minnesota Statutes 2008,
1.6 sections 116D.04, subdivisions 2a, 2b, 3a, 6a, 10, by adding a subdivision;
1.7 116D.045.

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

1.9 Section 1. Minnesota Statutes 2008, section 116D.04, subdivision 2a, is amended to
1.10 read:

1.11 Subd. 2a. **When prepared.** Where there is potential for significant environmental
1.12 effects resulting from any major governmental action that is not subject to any
1.13 environmental quality standard, limitation, rule, order, license, stipulation agreement,
1.14 or permit issued by the federal government or by the Pollution Control Agency,
1.15 Department of Natural Resources, Department of Health, or Department of Agriculture,
1.16 the action shall be preceded by a detailed environmental impact statement prepared by
1.17 the ~~responsible governmental unit~~ project proposer. The environmental impact statement
1.18 shall be an analytical rather than an encyclopedic document which describes the proposed
1.19 action in detail, analyzes its significant environmental impacts, discusses appropriate
1.20 alternatives to the proposed action and their impacts, and explores methods by which
1.21 adverse environmental impacts of an action could be mitigated. The environmental
1.22 impact statement shall also analyze those economic, employment and sociological
1.23 effects that cannot be avoided should the action be implemented. To ensure its use in
1.24 the decision-making process, the environmental impact statement shall be prepared as
1.25 early as practical in the formulation of an action. No mandatory environmental impact

2.1 statement may be required for an ethanol plant, as defined in section 41A.09, subdivision
2.2 2a, paragraph (b), that produces less than 125,000,000 gallons of ethanol annually and
2.3 is located outside of the seven-county metropolitan area.

2.4 (a) The board shall by rule establish categories of actions that are not subject to any
2.5 environmental quality standard, limitation, rule, order, license, stipulation agreement,
2.6 or permit issued by the federal government or by the Pollution Control Agency, the
2.7 Department of Natural Resources, Department of Health, or Department of Agriculture
2.8 for which environmental impact statements and for which environmental assessment
2.9 worksheets shall be prepared by the project proposer as well as categories of actions for
2.10 which no environmental review is required under this section.

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

2.22 (c) An environmental assessment worksheet shall also be prepared by the project
2.23 proposer for a proposed action whenever material evidence accompanying a petition by
2.24 not less than 25 individuals, submitted before the proposed project has received final
2.25 approval by the appropriate governmental units, demonstrates that, because of the nature
2.26 or location of a proposed action, there may be potential for significant environmental
2.27 effects that are not subject to any environmental quality standard, limitation, rule, order,
2.28 license, stipulation agreement, or permit issued by the federal government or by the
2.29 Pollution Control Agency, Department of Natural Resources, Department of Health, or
2.30 Department of Agriculture. Petitions requesting the preparation of an environmental
2.31 assessment worksheet shall be submitted to the board. The chair of the board shall
2.32 determine the appropriate responsible governmental unit and forward the petition to it.
2.33 A decision on the need for an environmental assessment worksheet shall be made by
2.34 the responsible governmental unit within 15 days after the petition is received by the
2.35 responsible governmental unit. The board's chair may extend the 15 day period by not
2.36 more than 15 additional days upon request of the responsible governmental unit.

3.1 (d) Except in an environmentally sensitive location where Minnesota Rules, part
3.2 4410.4300, subpart 29, item B, applies, the proposed action is exempt from environmental
3.3 review under this chapter and rules of the board, if:

3.4 (1) the proposed action is:

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

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

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

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

3.16 (e) The board may, prior to final approval of a proposed project, require ~~preparation~~
3.17 ~~of a project proposer to prepare~~ an environmental assessment worksheet reviewed by a
3.18 responsible governmental unit selected by the board for any action that is not subject to
3.19 any environmental quality standard, limitation, rule, order, license, stipulation agreement,
3.20 or permit issued by the federal government or by the Pollution Control Agency,
3.21 Department of Natural Resources, Department of Health, or Department of Agriculture
3.22 where environmental review under this section has not been specifically provided for by
3.23 rule or otherwise initiated.

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

3.35 (g) ~~Whenever practical,~~ Information needed by a governmental unit for making final
3.36 decisions on permits or other actions required for a proposed project shall be collected,

4.1 reviewed, and developed in conjunction with the preparation of an environmental
 4.2 assessment worksheet or environmental impact statement.

4.3 (h) An environmental impact statement shall be prepared and its adequacy
 4.4 determined within 280 days after notice of its preparation unless the time is extended
 4.5 by consent of the ~~parties~~ proposer or by the governor for good cause. The responsible
 4.6 governmental unit shall determine the adequacy of an environmental impact statement,
 4.7 unless within 60 days after notice is published that an environmental impact statement
 4.8 will be prepared, the board chooses to determine the adequacy of an environmental
 4.9 impact statement. If an environmental impact statement is found to be inadequate, the
 4.10 ~~responsible governmental unit~~ project proposer shall have 60 days to prepare an adequate
 4.11 environmental impact statement.

4.12 Sec. 2. Minnesota Statutes 2008, section 116D.04, subdivision 2b, is amended to read:

4.13 Subd. 2b. **Project prerequisites.** If an environmental assessment worksheet or an
 4.14 environmental impact statement is required for a governmental action under subdivision
 4.15 2a, ~~a project may not be started and a final governmental decision may not be made to grant~~
 4.16 ~~a permit, approve a project, or begin a project,~~ construction must not commence until:

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

4.23 Sec. 3. Minnesota Statutes 2008, section 116D.04, is amended by adding a subdivision
 4.24 to read:

4.25 Subd. 2c. **Permits.** (a) Except as otherwise provided by law, no person required
 4.26 by statute or rule to obtain a permit from the Pollution Control Agency may operate the
 4.27 facility to be permitted, nor shall a person commence an activity for which a permit from
 4.28 the Pollution Control Agency is required by statute or rule until the Pollution Control
 4.29 Agency has issued a written permit for the facility or activity.

4.30 (b) Except as otherwise provided by law, no person may discharge a pollutant from a
 4.31 point source into the waters of the state without obtaining a national pollutant discharge
 4.32 elimination system permit from the Pollution Control Agency.

4.33 (c) Except as otherwise provided by law, no person may construct, modify,
 4.34 reconstruct, or operate an emissions unit, emission facility, or stationary source, except

5.1 in compliance with an air emission permit from the Pollution Control Agency. A person
 5.2 violates this paragraph when the person begins actual construction of a new source,
 5.3 reconstruction, or modification prior to obtaining the permit or amendment, except as
 5.4 otherwise provided by law.

5.5 Sec. 4. Minnesota Statutes 2008, section 116D.04, subdivision 3a, is amended to read:

5.6 Subd. 3a. **Final decisions.** Within ~~90~~ 30 days after final approval of an
 5.7 environmental impact statement, final decisions shall be made by the appropriate
 5.8 governmental units on those permits which were identified as required and for
 5.9 which information was ~~developed~~ reviewed concurrently with the preparation of the
 5.10 environmental impact statement. Provided, however, that the ~~90-day~~ 30-day period
 5.11 may be extended where a longer period is required by federal law ~~or state statute~~ or is
 5.12 consented to by the permit applicant. The permit decision shall include the reasons for
 5.13 the decision, including any conditions under which the permit is issued, together with a
 5.14 final order granting or denying the permit.

5.15 Sec. 5. Minnesota Statutes 2008, section 116D.04, subdivision 6a, is amended to read:

5.16 Subd. 6a. **Comments.** Prior to the preparation of a final environmental impact
 5.17 statement, the governmental unit responsible for reviewing the statement shall consult
 5.18 with and request the comments of every governmental office which has jurisdiction by
 5.19 law or special expertise with respect to any environmental effect involved that is not
 5.20 subject to any environmental quality standard, limitation, rule, order, license, stipulation
 5.21 agreement, or permit issued by the federal government or by the Pollution Control Agency,
 5.22 Department of Natural Resources, Department of Health, or Department of Agriculture.
 5.23 Copies of the drafts of ~~such~~ the statements and the comments and views of the appropriate
 5.24 offices shall be made available to the public. The final detailed environmental impact
 5.25 statement and the comments received thereon shall precede final decisions on the proposed
 5.26 action and shall accompany the proposal through an administrative review process.

5.27 Sec. 6. Minnesota Statutes 2008, section 116D.04, subdivision 10, is amended to read:

5.28 Subd. 10. **Review.** Decisions on the need for an environmental assessment
 5.29 worksheet, the need for an environmental impact statement and the adequacy of an
 5.30 environmental impact statement may be reviewed by ~~a declaratory judgment action in~~
 5.31 ~~the district court of the county wherein the proposed action, or any part thereof, would be~~
 5.32 ~~undertaken~~ the Court of Appeals under sections 14.63 to 14.68. Judicial review under this
 5.33 section shall be initiated within 30 days after the governmental unit makes the decision,

6.1 and a bond ~~may~~ shall be required under section 562.02 unless ~~at the time of hearing on the~~
 6.2 ~~application for the bond~~ the plaintiff has shown that the claim has sufficient possibility
 6.3 of success on the merits to sustain the burden required for the issuance of a temporary
 6.4 restraining order. Nothing in this section shall be construed to alter the requirements
 6.5 for a temporary restraining order or a preliminary injunction pursuant to the Minnesota
 6.6 Rules of Civil Procedure for district courts. The board may initiate judicial review of
 6.7 decisions referred to herein and may intervene as of right in any proceeding brought
 6.8 under this subdivision.

6.9 Sec. 7. Minnesota Statutes 2008, section 116D.045, is amended to read:

6.10 **116D.045 ENVIRONMENTAL IMPACT STATEMENTS; PROCEDURES**
 6.11 **AND REVIEW COSTS.**

6.12 Subdivision 1. **Assessment Procedure.** The board shall by rule adopt procedures ~~to~~
 6.13 ~~assess~~ for the proposer of a specific action ~~for reasonable costs of preparing to prepare and~~
 6.14 ~~distributing~~ distribute an environmental impact statement on that action required pursuant
 6.15 to section 116D.04. ~~Such costs shall be determined by the responsible governmental unit~~
 6.16 ~~pursuant to the rules promulgated by the board.~~

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

6.22 Subd. 3. ~~Use of Assessment for review and distribution.~~ The responsible
 6.23 governmental unit shall assess the project proposer for reasonable costs in ~~preparing~~
 6.24 reviewing and distributing the environmental impact statement and the proposer shall
 6.25 pay the assessed cost to the responsible governmental unit. Money received under this
 6.26 subdivision by a responsible governmental unit may be retained by the unit for the same
 6.27 purposes. Money received by a state agency must be credited to a special account and is
 6.28 appropriated to the agency to cover the assessed costs incurred.

6.29 Subd. 4. **Partial Cost to be paid before permit is issued.** ~~No responsible~~
 6.30 ~~governmental unit shall commence the preparation of an environmental impact statement~~
 6.31 ~~until at least one-half of the assessed cost of the environmental impact statement is~~
 6.32 ~~paid pursuant to subdivision 3.~~ Other laws notwithstanding, no state agency may issue
 6.33 any permits for the construction or operation of a project for which an environmental
 6.34 impact statement is prepared until the assessed cost for review and distribution of the
 6.35 environmental impact statement has been paid in full.