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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-SECOND SESSION

H. F. No. 3164

02/07/2022 Authored by Sandstede, Lislegard, Lueck and Igo
The bill was read for the first time and referred to the Committee on Environment and Natural Resources Finance and Policy

1.1 A bill for an act
1.2 relating to mining; improving coordination, effectiveness, transparency, and
1.3 accountability of environmental review and permitting process for metallic mineral
1.4 mining projects; proposing coding for new law in Minnesota Statutes, chapter 93.

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

1.6 Section 1. 93.70] PURPOSE.

1.7 The purpose of sections 93.70 to 93.711 is to improve the coordination, effectiveness,
1.8 transparency, and accountability of the environmental review and permitting process for
1.9 metallic mineral mining projects.

1.10 Sec. 2. 93.705] DEFINITIONS.

1.11 Subdivision 1. Applicability. For purposes of sections 93.70 to 93.711, the terms defined
1.12 in this section have the meanings given.

1.13 Subd. 2. Commissioner. "Commissioner" means the commissioner of natural resources.

1.14 Subd. 3. Covered mining project. "Covered mining project" means a proposed metallic
1.15 mineral mining project or a modification to an existing metallic mining project for which
1.16 an environmental assessment worksheet or an environmental impact statement must be or
1.17 is being prepared according to chapter 116D, unless the project proposer requests that its
1.18 project be excluded from the requirements of sections 93.70 to 93.711.

1.19 Subd. 4. Dashboard. "Dashboard" means the online tool required under section 93.706,
1.20 subdivision 1.

2.1 Subd. 5. **Participating agency.** "Participating agency" means a state agency that has  
 2.2 regulatory authority over a covered mining project. Participating agency does not include  
 2.3 a state agency that informs the commissioner in writing that it does not intend to exercise  
 2.4 authority with respect to or submit comments in connection with a covered mining project.

2.5 Subd. 6. **Submission date.** "Submission date" means the date on which a project proposer  
 2.6 submits the completed data portion of an environmental assessment worksheet to the  
 2.7 responsible governmental unit for environmental review under chapter 116D.

2.8 **Sec. 3. [93.706] ENVIRONMENTAL AND PERMITTING REVIEW DASHBOARD.**

2.9 Subdivision 1. **Dashboard required.** The commissioner must create an environmental  
 2.10 review and permitting dashboard as an online tool for state and federal agencies, project  
 2.11 proposers, and interested members of the public to list and track environmental review and  
 2.12 permitting documents for covered mining projects.

2.13 Subd. 2. **Adding project to dashboard; summary of project.** The commissioner must  
 2.14 add a project to the dashboard within 15 days of the environmental assessment worksheet  
 2.15 submission date. Not later than 30 days after a project is added to the dashboard, the  
 2.16 commissioner must add to the dashboard a summary that includes:

2.17 (1) a statement of the purposes and objectives of the project;

2.18 (2) a concise description of the project, including:

2.19 (i) the general location of the project; and

2.20 (ii) a summary of geospatial information, if available, illustrating the project area and  
 2.21 the locations, if any, of environmental, cultural, and historic resources;

2.22 (3) a statement of any anticipated environmental reviews and local, state, and federal  
 2.23 permits to be required to complete the project; and

2.24 (4) a statement of any public hearings and opportunities to comment on environmental  
 2.25 review and permits for the project.

2.26 Subd. 3. **Posting additional information.** To the extent allowed by applicable law, the  
 2.27 commissioner must add and maintain the following project information to the dashboard  
 2.28 within 15 days of receiving it from a project proposer or from a participating agency:

2.29 (1) a hyperlink to a website that contains the completed data portions of the environmental  
 2.30 assessment worksheet, permit applications, and supporting documents for any required  
 2.31 environmental review or permit or a notice explaining how the public may obtain access to  
 2.32 these documents;

3.1 (2) the environmental review and permitting deadlines for the project;

3.2 (3) the compliance status of each participating agency with the environmental review  
 3.3 and permitting deadlines, including any information received by the commissioner under  
 3.4 section 93.707, subdivision 5;

3.5 (4) any modification to the environmental review and permitting deadlines, along with  
 3.6 an explanation of the modification;

3.7 (5) any memorandum of understanding for the project;

3.8 (6) a description of any action taken or decision made by a participating agency that  
 3.9 materially affects the status of the environmental review or permit for the project; and

3.10 (7) a description of the status of any litigation to which a state agency is a party and that  
 3.11 is directly related to the project, including, if practicable, any judicial document made  
 3.12 available on an electronic docket maintained by a federal, state, or local court.

3.13 Subd. 4. **Participating agencies; duties.** (a) Within five days of a participating agency  
 3.14 receiving the completed data portion of the environmental assessment worksheet for a  
 3.15 covered mining project for which the participating agency is the responsible governmental  
 3.16 unit under chapter 116D, the participating agency must notify the commissioner of the  
 3.17 submission date and, no later than 20 days after the submission date, provide to the  
 3.18 commissioner the information described in subdivision 2.

3.19 (b) Each participating agency that possesses or receives any of the information described  
 3.20 in subdivision 3 must immediately submit the information to the commissioner for inclusion  
 3.21 in the dashboard under subdivision 3.

3.22 Sec. 4. **[93.707] COORDINATED PROJECT PLAN.**

3.23 Subdivision 1. **Coordinated project plan required.** Within 60 days of the date by which  
 3.24 a project is required to be added to the dashboard under section 93.706, subdivision 2, the  
 3.25 commissioner, in coordination with the other participating agencies and the project proposer,  
 3.26 must establish a coordinated project plan for coordinating public and agency participation  
 3.27 in and completing any required environmental review and permits for the project. A  
 3.28 coordinated project plan may be incorporated into a memorandum of understanding with  
 3.29 other state and federal agencies and Tribes.

3.30 Subd. 2. **Updating; required contents.** The commissioner must update a coordinated  
 3.31 project plan quarterly. A plan must include:

4.1 (1) a list of all entities with environmental review or permitting responsibility for the  
 4.2 project, including an explanation of each entity's specific roles and responsibilities;

4.3 (2) plans and a schedule for public and Tribal outreach and coordination, to the extent  
 4.4 required by applicable law; and

4.5 (3) a comprehensive schedule of deadlines by which all environmental reviews, permits,  
 4.6 and approvals, including those at the federal level to the extent practicable, must be  
 4.7 completed. The deadlines established under this clause must include intermediate and final  
 4.8 completion deadlines for actions by each participating agency and, except as provided in  
 4.9 subdivision 3, must be consistent with the following:

4.10 (i) when an environmental assessment worksheet is prepared for a project for which an  
 4.11 environmental impact statement is not required, the decision on the need for an environmental  
 4.12 impact statement must be made no later than 18 months after the environmental assessment  
 4.13 worksheet submission date; and

4.14 (ii) when an environmental impact statement is prepared for a project, the decision on  
 4.15 the adequacy of the final environmental impact statement must be made no later than three  
 4.16 years after the environmental assessment worksheet submission date.

4.17 Subd. 3. **Alternative deadlines.** If the commissioner includes deadlines that are  
 4.18 inconsistent with subdivision 2, clause (3), in a coordinated project plan, within five days  
 4.19 the commissioner must report to the chairs and ranking minority members of the legislative  
 4.20 committees and divisions with jurisdiction over mining to explain the reason for the decision,  
 4.21 including an explanation of why the deadlines under subdivision 2, clause (3), are inadequate.  
 4.22 The anticipated time required to obtain a federal permit or decision may not serve as the  
 4.23 basis for a decision to deviate from the deadlines under subdivision 2, clause (3).

4.24 Subd. 4. **Modifying deadlines.** (a) The commissioner may modify a deadline established  
 4.25 in a coordinated project plan only if:

4.26 (1) the commissioner or the applicable participating agency provides the project proposer  
 4.27 with a written justification for the modification; and

4.28 (2) the commissioner and affected participating agencies, after consultation with the  
 4.29 project proposer, subsequently agree to a different deadline.

4.30 (b) If the combined modifications to one or more deadlines established in a coordinated  
 4.31 project plan extend the initially anticipated project completion date by more than 20 percent:

4.32 (1) within five days of the most recent modification, the commissioner must report to  
 4.33 the chairs and ranking minority members of the legislative committees and divisions with

5.1 jurisdiction over mining to explain the reason the modifications are necessary. For purposes  
 5.2 of calculating the percentage of time that modifications have extended the anticipated project  
 5.3 completion date, modifications made necessary by reasons completely outside the control  
 5.4 of state agencies must not be considered; and

5.5 (2) the commissioner must annually submit to the committees and divisions under clause  
 5.6 (1) a report on progress toward final completion of the project until the earlier of the  
 5.7 completion of final environmental review and permitting actions by state agencies or the  
 5.8 withdrawal of the proposal by its proposer.

5.9 Subd. 5. **Participating agencies; duties.** (a) Each participating agency must meet the  
 5.10 deadlines established in the applicable coordinated project plan.

5.11 (b) If a participating agency fails to meet a deadline established in a coordinated project  
 5.12 plan or anticipates failing to meet a deadline, the agency must immediately:

5.13 (1) notify the commissioner of the failure or anticipated failure;

5.14 (2) explain the reason for the failure or anticipated failure; and

5.15 (3) propose a date for a modified deadline.

5.16 (c) After the commissioner receives the information under paragraph (b), the  
 5.17 commissioner must modify the deadline according to subdivision 4. Until the modified  
 5.18 deadline is met, the participating agency must submit monthly progress reports to the  
 5.19 commissioner on the agency's progress in meeting the modified deadline.

5.20 Sec. 5. **[93.708] COORDINATION.**

5.21 Subdivision 1. **Synchronization required.** To the extent practicable under applicable  
 5.22 law, the commissioner and participating agencies must synchronize state environmental  
 5.23 review and permitting processes for a covered mining project with any federal, local, or  
 5.24 Tribal agency responsible for conducting any review or authorization of the project to ensure  
 5.25 timely and efficient completion of environmental reviews and authorizations. To the extent  
 5.26 practicable, any synchronization plan must be included in a memorandum of understanding.

5.27 Subd. 2. **Facilitating early communication.** To the extent practicable, the commissioner  
 5.28 must establish and provide an expeditious process for project proposers to confer with  
 5.29 participating agencies, federal agencies, Tribal agencies, and local agencies and to obtain  
 5.30 from those agencies, within 60 days of a request, information about:

5.31 (1) the availability of information and tools, including pre-application toolkits, to facilitate  
 5.32 early planning efforts;

6.1 (2) key issues of concern to each agency and to the public; and

6.2 (3) issues that must be addressed before an environmental review, authorization, or  
6.3 permit can be completed.

6.4 **Subd. 3. Identifying potential problems. Each participating agency must:**

6.5 (1) identify, as early as practicable, any issues of concern regarding the potential  
6.6 environmental impacts of a covered mining project, including any issues that could  
6.7 substantially delay or prevent an agency from completing any environmental review or  
6.8 permitting process required for the project; and

6.9 (2) communicate those issues to the commissioner and to the project proposer.

6.10 **Sec. 6. [93.709] BEST PRACTICES.**

6.11 By July 1, 2023, and every two years thereafter, the commissioner must issue  
6.12 recommended best practices for environmental review and permitting of covered mining  
6.13 projects designed to:

6.14 (1) enhance early stakeholder engagement;

6.15 (2) ensure timely decisions regarding environmental reviews and permits, including by  
6.16 developing performance metrics;

6.17 (3) improve coordination between state and nonstate governmental entities, including  
6.18 by developing common data standards and terminology across agencies;

6.19 (4) increase transparency; and

6.20 (5) reduce information-collection requirements and other administrative burdens on  
6.21 agencies, project proposers, and other interested parties.

6.22 **Sec. 7. [93.71] RELATION TO OTHER LAW.**

6.23 (a) Nothing in sections 93.70 to 93.711 is to be construed to require an act that conflicts  
6.24 with applicable federal law.

6.25 (b) Nothing in sections 90.70 to 93.711 in any way affects the specific statutory  
6.26 obligations of a state agency to comply with criteria or standards of environmental quality.

6.27 **Sec. 8. [93.711] REPORT.**

6.28 By April 15 each year, the commissioner must submit a report to the chairs and ranking  
6.29 minority members of the legislative committees and divisions with jurisdiction over mining.

7.1 The report must describe progress during the previous fiscal year in making  
7.2 environmental-review and permitting-process improvements under sections 93.70 to 93.709  
7.3 and assess the performance of each participating agency in implementing the improvements.

7.4 Sec. 9. **ADDING OTHER MINING PROJECTS TO DASHBOARD.**

7.5 For any metallic mineral mining project for which an environmental assessment worksheet  
7.6 or an environmental impact statement was prepared according to Minnesota Statutes, chapter  
7.7 116D, before the effective date of sections 1 to 8, the commissioner of natural resources  
7.8 must add the information described in Minnesota Statutes, section 93.706, subdivision 2,  
7.9 to the dashboard required by Minnesota Statutes, section 93.706, subdivision 1.