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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-SEVENTH SESSION

H. F. No. 2095

02/08/2012 Authored by Fabian, Quam, Cornish, Nornes, Hancock and others

The bill was read for the first time and referred to the Committee on Environment, Energy and Natural Resources Policy and Finance

1.1 A bill for an act
1.2 relating to environment; providing for permitting efficiency; modifying
1.3 environmental review requirements; amending Minnesota Statutes 2010,
1.4 sections 14.05, by adding a subdivision; 84.027, by adding a subdivision;
1.5 116.07, subdivision 4a; 116J.03, by adding subdivisions; 116J.035, by adding a
1.6 subdivision; Minnesota Statutes 2011 Supplement, sections 84.027, subdivision
1.7 14a; 116.03, subdivision 2b.

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

1.9 ARTICLE 1

1.10 PERMITTING

1.11 Section 1. Minnesota Statutes 2011 Supplement, section 84.027, subdivision 14a,
1.12 is amended to read:

1.13 Subd. 14a. **Permitting efficiency.** (a) It is the goal of the state that environmental
1.14 and resource management permits be issued or denied within 150 days of the submission
1.15 of a substantially completed permit application. The commissioner of natural resources
1.16 shall establish management systems designed to achieve the goal.

1.17 (b) The commissioner shall prepare semiannual permitting efficiency reports that
1.18 include statistics on meeting the goal in paragraph (a). The reports are due February 1
1.19 and August 1 each year. For permit applications that have not met the goal, the report
1.20 must state the reasons for not meeting the goal, steps that will be taken to complete action
1.21 on the application, and the expected timeline. In stating the reasons for not meeting the
1.22 goal, the commissioner shall separately identify delays caused by the responsiveness of
1.23 the proposer, lack of staff, scientific or technical disagreements, or the level of public
1.24 engagement. The report must specify the number of days from initial submission of the
1.25 application to the day of determination that the application is complete. The report for

2.1 August 1 each year must aggregate the data for the year and assess whether program
 2.2 or system changes are necessary to achieve the goal. The report must be posted on the
 2.3 department's Web site and submitted to the governor and the chairs and ranking minority
 2.4 members of the house of representatives and senate committees having jurisdiction over
 2.5 natural resources policy and finance.

2.6 (c) The commissioner shall allow electronic submission of environmental review
 2.7 and permit documents to the department.

2.8 (d) Beginning July 1, 2011, within 30 business days of application for a permit
 2.9 subject to paragraph (a), the commissioner of natural resources shall notify the project
 2.10 proposer, in writing, of ~~whether or not the permit application is complete enough for~~
 2.11 ~~processing. If the permit is incomplete, the commissioner must identify where any~~
 2.12 ~~deficiencies exist and advise the applicant on how they can be remedied. A resubmittal of~~
 2.13 ~~the application begins a new 30-day review period. If the commissioner fails to notify the~~
 2.14 ~~project proposer of completeness within 30 business days, the application is deemed to be~~
 2.15 ~~substantially complete and subject to the 150-day permitting review period in paragraph~~
 2.16 ~~(a) from the date it was submitted.~~ This paragraph does not apply to an application for a
 2.17 permit that is subject to a grant or loan agreement under chapter 446A.

2.18 Sec. 2. Minnesota Statutes 2010, section 84.027, is amended by adding a subdivision
 2.19 to read:

2.20 Subd. 14b. Irrevocability or suspensions of permits. Notwithstanding the
 2.21 suspension of any appropriation to fund programs to protect the air, water, and land
 2.22 resources of the state, permits granted may not be terminated or suspended for the term of
 2.23 the permits, nor shall they expire without the consent of the permittee, except for breach
 2.24 or nonperformance of any condition of the permit by the permittee that is an imminent
 2.25 threat to impair or destroy the environment or injure the health, safety, or welfare of
 2.26 the citizens of the state.

2.27 Sec. 3. Minnesota Statutes 2011 Supplement, section 116.03, subdivision 2b, is
 2.28 amended to read:

2.29 Subd. 2b. **Permitting efficiency.** (a) It is the goal of the state that environmental and
 2.30 resource management permits be issued or denied within 150 days of the submission of a
 2.31 substantially completed permit application. The commissioner of the Pollution Control
 2.32 Agency shall establish management systems designed to achieve the goal.

2.33 (b) The commissioner shall prepare semiannual permitting efficiency reports that
 2.34 include statistics on meeting the goal in paragraph (a). The reports are due February 1

3.1 and August 1 each year. For permit applications that have not met the goal, the report
 3.2 must state the reasons for not meeting the goal, steps that will be taken to complete action
 3.3 on the application, and the expected timeline. In stating the reasons for not meeting the
 3.4 goal, the commissioner shall separately identify delays caused by the responsiveness of
 3.5 the proposer, lack of staff, scientific or technical disagreements, or the level of public
 3.6 engagement. The report must specify the number of days from initial submission of the
 3.7 application to the day of determination that the application is complete. The report for
 3.8 August 1 each year must aggregate the data for the year and assess whether program
 3.9 or system changes are necessary to achieve the goal. The report must be posted on the
 3.10 agency's Web site and submitted to the governor and the chairs and ranking minority
 3.11 members of the house of representatives and senate committees having jurisdiction over
 3.12 environment policy and finance.

3.13 (c) The commissioner shall allow electronic submission of environmental review
 3.14 and permit documents to the agency.

3.15 (d) Beginning July 1, 2011, within 30 business days of application for a permit
 3.16 subject to paragraph (a), the commissioner of the Pollution Control Agency shall notify the
 3.17 project proposer, in writing, of ~~whether or not the permit application is complete enough~~
 3.18 ~~for processing. If the permit is incomplete, the commissioner must identify where any~~
 3.19 ~~deficiencies exist and advise the applicant on how they can be remedied. A resubmittal of~~
 3.20 ~~the application begins a new 30-day review period. If the commissioner fails to notify the~~
 3.21 ~~project proposer of completeness within 30 business days, the application is deemed to be~~
 3.22 ~~substantially complete and subject to the 150-day permitting review period in paragraph~~
 3.23 ~~(a) from the date it was submitted.~~ This paragraph does not apply to an application for a
 3.24 permit that is subject to a grant or loan agreement under chapter 446A.

3.25 (e) For purposes of this subdivision, "permit applicant professional" means an
 3.26 individual not employed by the Pollution Control Agency, who:

3.27 (1) has a professional engineer license issued by the state of Minnesota; and

3.28 (2) has at least ten years of experience preparing applications for environmental
 3.29 permits issued by the agency.

3.30 (f) All applicants relying on a permit applicant professional must participate in a
 3.31 meeting with the agency before submitting an application:

3.32 (1) during the preapplication meeting, the applicant must submit at least the
 3.33 following:

3.34 (i) project description, including, but not limited to, scope of work, primary
 3.35 emissions points, discharge outfalls, and water intake points;

4.1 (ii) location of the project, including county, municipality, and location on the
4.2 site; and

4.3 (iii) business schedule for project completion; and

4.4 (2) during the preapplication meeting, the agency shall provide for the applicant at
4.5 least the following:

4.6 (i) an overview of the permit review program;

4.7 (ii) a determination of which specific application or applications will be necessary
4.8 to complete the project;

4.9 (iii) a statement notifying the applicant if the specific permit being sought requires a
4.10 mandatory public hearing or comment period;

4.11 (iv) a review of the timetable established in the permit review program for the
4.12 specific permit being sought; and

4.13 (v) a determination of what information must be included in the application,
4.14 including a description of any required modeling or testing.

4.15 (g) The applicant may select a permit applicant professional to undertake the
4.16 preparation and review of the permit application.

4.17 (h) A permit application submitted by a permit applicant professional shall be
4.18 deemed complete and approved unless the terms and conditions in the permit application
4.19 submitted by the permit applicant professional are clearly erroneous under statute or rule.
4.20 The agency shall, within 30 days of receipt of an application, return to the applicant and
4.21 submitting permit applicant professional any application the agency deems contrary to
4.22 statute or rule, specifying the deficiencies of the application.

4.23 (i) A person aggrieved by a final decision of the agency under this section has the
4.24 right within 30 days from notice of the action to appeal the final action to the district court
4.25 in the county in which the facility to be permitted is located.

4.26 (j) Nothing in this section shall be construed to modify:

4.27 (1) any requirement of law that is necessary to retain federal delegation to or
4.28 assumption by the state; or

4.29 (2) the authority to implement a federal law or program.

4.30 (k) Notwithstanding the suspension of any appropriation to fund programs to protect
4.31 the air, water, and land resources of the state, permits granted may not be terminated or
4.32 suspended for the term of the permits, nor shall they expire without the consent of the
4.33 permittee, except for breach or nonperformance of any condition of the permit by the
4.34 permittee that is an imminent threat to impair or destroy the environment or injure the
4.35 health, safety, or welfare of the citizens of the state.

5.1 Sec. 4. Minnesota Statutes 2010, section 116.07, subdivision 4a, is amended to read:

5.2 Subd. 4a. **Permits.** (a) The Pollution Control Agency may issue, continue in
5.3 effect or deny permits, under such conditions as it may prescribe for the prevention of
5.4 pollution, for the emission of air contaminants, or for the installation or operation of
5.5 any emission facility, air contaminant treatment facility, treatment facility, potential air
5.6 contaminant storage facility, or storage facility, or any part thereof, or for the sources
5.7 or emissions of noise pollution.

5.8 The Pollution Control Agency may also issue, continue in effect or deny permits,
5.9 under such conditions as it may prescribe for the prevention of pollution, for the storage,
5.10 collection, transportation, processing, or disposal of waste, or for the installation or
5.11 operation of any system or facility, or any part thereof, related to the storage, collection,
5.12 transportation, processing, or disposal of waste.

5.13 The agency may not issue a permit to a facility without analyzing and considering
5.14 the cumulative levels and effects of past and current environmental pollution from all
5.15 sources on the environment and residents of the geographic area within which the facility's
5.16 emissions are likely to be deposited, provided that the facility is located in a community in
5.17 a city of the first class in Hennepin County that meets all of the following conditions:

5.18 (1) is within a half mile of a site designated by the federal government as an EPA
5.19 superfund site due to residential arsenic contamination;

5.20 (2) a majority of the population are low-income persons of color and American
5.21 Indians;

5.22 (3) a disproportionate percent of the children have childhood lead poisoning, asthma,
5.23 or other environmentally related health problems;

5.24 (4) is located in a city that has experienced numerous air quality alert days of
5.25 dangerous air quality for sensitive populations between February 2007 and February
5.26 2008; and

5.27 (5) is located near the junctions of several heavily trafficked state and county
5.28 highways and two one-way streets which carry both truck and auto traffic.

5.29 The Pollution Control Agency may revoke or modify any permit issued under this
5.30 subdivision and section 116.081 whenever it is necessary, in the opinion of the agency, to
5.31 prevent or abate pollution.

5.32 (b) The Pollution Control Agency has the authority for approval over the siting,
5.33 expansion, or operation of a solid waste facility with regard to environmental issues.
5.34 However, the agency's issuance of a permit does not release the permittee from any
5.35 liability, penalty, or duty imposed by any applicable county ordinances. Nothing in this
5.36 chapter precludes, or shall be construed to preclude, a county from enforcing land use

6.1 controls, regulations, and ordinances existing at the time of the permit application and
6.2 adopted pursuant to sections 366.10 to 366.181, 394.21 to 394.37, or 462.351 to 462.365,
6.3 with regard to the siting, expansion, or operation of a solid waste facility.

6.4 (c) Except as prohibited by federal law, a person may commence construction,
6.5 reconstruction, replacement, or modification of any facility prior to the issuance of a
6.6 construction permit.

6.7 Sec. 5. Minnesota Statutes 2010, section 116J.03, is amended by adding a subdivision
6.8 to read:

6.9 Subd. 1a. **Agency.** "Agency" means:

6.10 (1) a state department, commission, board, or other agency of the state however
6.11 titled; or

6.12 (2) a local governmental unit or instrumentality, only when that unit or
6.13 instrumentality is acting within existing legal authority to grant or deny a permit that
6.14 otherwise would be granted or denied by a state agency.

6.15 Sec. 6. Minnesota Statutes 2010, section 116J.03, is amended by adding a subdivision
6.16 to read:

6.17 Subd. 4. **Local governmental unit.** "Local governmental unit" means a county,
6.18 city, town, or special district with legal authority to issue a permit.

6.19 Sec. 7. Minnesota Statutes 2010, section 116J.03, is amended by adding a subdivision
6.20 to read:

6.21 Subd. 5. **Permit.** "Permit" means a license, permit, certificate, certification,
6.22 approval, compliance schedule, or other similar document pertaining to a regulatory or
6.23 management program related to the protection, conservation, or use of, or interference
6.24 with, the natural resources of land, air, or water that must be obtained from a state agency
6.25 before constructing or operating a project in the state.

6.26 Sec. 8. Minnesota Statutes 2010, section 116J.03, is amended by adding a subdivision
6.27 to read:

6.28 Subd. 6. **Person.** "Person" means an individual; an association or partnership; or
6.29 a cooperative, municipal, public, or private corporation, including, but not limited to, a
6.30 state agency and a county.

7.1 Sec. 9. Minnesota Statutes 2010, section 116J.03, is amended by adding a subdivision
7.2 to read:

7.3 Subd. 7. **Project.** "Project" means a new activity or an expansion of or addition to
7.4 an existing activity, which is fixed in location and for which permits are required from
7.5 an agency prior to construction or operation, including, but not limited to, industrial and
7.6 commercial operations and developments.

7.7 Sec. 10. Minnesota Statutes 2010, section 116J.035, is amended by adding a
7.8 subdivision to read:

7.9 Subd. 8. **Environmental permits coordinator.** (a) The commissioner is designated
7.10 the environmental permits coordinator and shall coordinate the implementation and
7.11 administration of state permits, including:

7.12 (1) establishing a mechanism in state government that will coordinate administrative
7.13 decision-making procedures and related quasijudicial and judicial review pertaining to
7.14 permits related to the state's air, land, and water resources;

7.15 (2) providing better coordination and understanding between federal, state, and local
7.16 governmental units in the administration of the various programs relating to air, water,
7.17 and land resources;

7.18 (3) identifying all existing federal, state, and local licenses; permits and other
7.19 approvals; compliance schedules; or other programs that pertain to the use of natural
7.20 resources and protection of the environment; and

7.21 (4) recommending legislative or administrative modifications to existing permit
7.22 programs to increase their efficiency and utility.

7.23 (b) A person proposing a project may apply to the environmental permits coordinator
7.24 for assistance in obtaining necessary state licenses, permits, and other approvals. Upon
7.25 request, the environmental permits coordinator shall provide the requesting person:

7.26 (1) a list of all necessary federal, state, and local licenses, permits, and other
7.27 approvals for the project;

7.28 (2) a plan that will coordinate federal, state, and local administrative decision-making
7.29 practices, including monitoring; analysis and reporting; public comments and hearings;
7.30 and issuances of licenses, permits, and approvals;

7.31 (3) a timeline for the issuance of all federal, state, and local licenses, permits, and
7.32 other approvals required for the project; and

7.33 (4) other assistance necessary to obtain final approval and issuance of all federal,
7.34 state, and local licenses, permits, and other approvals required for the project.

8.1 Sec. 11. **RULEMAKING.**

8.2 The commissioner of the Pollution Control Agency shall amend Minnesota Rules,
 8.3 part 7001.0030, to comply with section 4. The commissioner may use the good cause
 8.4 exemption under Minnesota Statutes, section 14.388, subdivision 1, clause (3), to adopt
 8.5 the amendment under this section, and Minnesota Statutes, section 14.386, does not apply
 8.6 except as provided under Minnesota Statutes, section 14.388.

8.7 **ARTICLE 2**8.8 **ENVIRONMENTAL REVIEW**

8.9 Section 1. Minnesota Statutes 2010, section 14.05, is amended by adding a subdivision
 8.10 to read:

8.11 **Subd. 5a. Review and repeal of environmental assessment worksheets and**
 8.12 **impact statements.** By December 1, 2012, and each year thereafter, the Environmental
 8.13 Quality Board, Pollution Control Agency, Department of Natural Resources, and
 8.14 Department of Transportation, after consultation with political subdivisions, shall submit
 8.15 to the governor; the Legislative Coordinating Commission; the chairs of the house of
 8.16 representatives and senate committees having jurisdiction over environment and natural
 8.17 resources; and the revisor of statutes a list of mandatory environmental assessment
 8.18 worksheets or mandatory environmental impact statements for which the agency or a
 8.19 political subdivision is designated as the responsible government unit, and for each
 8.20 worksheet or statement, a document including:

8.21 (1) intended outcomes of the specific worksheet or statement;

8.22 (2) the cost to state and local government and the private sector;

8.23 (3) the relationship of the worksheet or statement to other local, state, and federal
 8.24 permits; and

8.25 (4) a justification for why the mandatory worksheet or statement should not be
 8.26 eliminated and its intended outcomes achieved through an existing permit or other federal,
 8.27 state, or local law.

APPENDIX
Article locations in 12-4608

ARTICLE 1 PERMITTING Page.Ln 1.9
ARTICLE 2 ENVIRONMENTAL REVIEW Page.Ln 8.7