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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-SECOND SESSION

H. F. No. 954

02/10/2021 Authored by Hansen, R., and Hanson, J., 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 environment; modifying provisions for priority qualified facilities;
1.3 modifying authority to acquire property interests; amending Minnesota Statutes
1.4 2020, sections 115B.17, subdivision 13; 115B.406, subdivisions 1, 9; 115B.407;
1.5 116.07, by adding a subdivision; repealing Minnesota Rules, part 7044.0350.

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

1.7 Section 1. Minnesota Statutes 2020, section 115B.17, subdivision 13, is amended to read:

1.8 Subd. 13. Priorities; rules. (a) By November 1, 1983, the Pollution Control Agency
1.9 shall establish a temporary list of priorities among releases or threatened releases for the
1.10 purpose of taking remedial action and, to the extent practicable consistent with the urgency
1.11 of the action, for taking removal action under this section. The temporary list, with any
1.12 necessary modifications, shall remain in effect until the Pollution Control Agency adopts
1.13 rules establishing state criteria for determining priorities among releases and threatened
1.14 releases. The Pollution Control Agency shall adopt the rules by July 1, 1984. After rules
1.15 are adopted, a permanent priority list shall be established, and may be modified from time
1.16 to time, using the current guidance and tools for the Hazard Ranking System adopted by
1.17 the federal Environmental Protection Agency and according to the criteria set forth in the
1.18 rules. Before any list is established under this subdivision the Pollution Control Agency
1.19 shall publish the list in the State Register and allow 30 days for comments on the list by the
1.20 public.

1.21 (b) The temporary list and the rules required by this subdivision shall be based upon the
1.22 relative risk or danger to public health or welfare or the environment, taking into account
1.23 to the extent possible the population at risk, the hazardous potential of the hazardous
1.24 substances at the facilities, the potential for contamination of drinking water supplies, the

2.1 potential for direct human contact, the potential for destruction of sensitive ecosystems, the
 2.2 administrative and financial capabilities of the Pollution Control Agency, and other
 2.3 appropriate factors.

2.4 Sec. 2. Minnesota Statutes 2020, section 115B.406, subdivision 1, is amended to read:

2.5 Subdivision 1. **Legislative findings.** The legislature recognizes the need to protect the
 2.6 public health and welfare and the environment at priority qualified facilities. To implement
 2.7 a timely and effective cleanup and prevent multiparty litigation, the legislature finds it is in
 2.8 the public interest to direct the commissioner of the Pollution Control Agency to:

2.9 (1) take environmental response actions that the commissioner deems reasonable and
 2.10 necessary to protect the public health or welfare or the environment at priority qualified
 2.11 facilities and to;

2.12 (2) acquire real property interests at priority qualified facilities to ensure the completion
 2.13 and long-term effectiveness of environmental response actions; and

2.14 (3) prevent both an unjust financial windfall to and double liability of owners and
 2.15 operators of priority qualified facilities.

2.16 **EFFECTIVE DATE.** This section is effective the day following final enactment and
 2.17 applies to actions commenced on or after January 1, 2021.

2.18 Sec. 3. Minnesota Statutes 2020, section 115B.406, subdivision 9, is amended to read:

2.19 Subd. 9. **Environmental response costs; liens.** (a) All environmental response costs
 2.20 and reasonable and necessary expenses, including administrative and legal expenses, incurred
 2.21 by the commissioner at a priority qualified facility constitute a lien in favor of the state upon
 2.22 any real property located in the state, other than homestead property, owned by the owner
 2.23 or operator of the priority qualified facility who is subject to the requirements of section
 2.24 115B.40, subdivision 4 or 5. Notwithstanding section 514.672, a lien under this paragraph
 2.25 continues until the lien is satisfied or is released according to paragraph (c).

2.26 (b) If the commissioner conducts an environmental response action at a priority qualified
 2.27 facility and the environmental response action increases the fair market value of the facility
 2.28 above the fair market value of the facility that existed before the response action was initiated,
 2.29 then the state has a lien on the facility for the increase in fair market value of the property
 2.30 attributable to the response action, valued at the time that construction of the final
 2.31 environmental response action was completed, not including operation and maintenance.

3.1 Notwithstanding section 514.672, a lien under this paragraph continues until the lien is
 3.2 satisfied or is released according to paragraph (c).

3.3 (c) A lien under this subdivision paragraph (a) or (b) attaches when the environmental
 3.4 response costs are first incurred. Notwithstanding section 514.672, a lien under this
 3.5 subdivision continues until the lien is satisfied or six years after completion of construction
 3.6 of the final environmental response action, not including operation and maintenance. Notice,
 3.7 filing, and release, and enforcement of the lien are governed by sections 514.671 to 514.676,
 3.8 except where those requirements specifically are related to only cleanup action expenses
 3.9 as defined in section 514.671. The commissioner may release a lien under this subdivision
 3.10 if the commissioner determines that attachment or enforcement of the lien is not in the
 3.11 public interest. A lien under this subdivision is not subject to the foreclosure limitation
 3.12 described in section 514.674, subdivision 2. Relative priority of a lien under this subdivision
 3.13 is governed by section 514.672, except that a lien attached to property that was included in
 3.14 any permit for the priority qualified facility takes precedence over all other liens regardless
 3.15 of when the other liens were or are perfected. Amounts received to satisfy all or a part of a
 3.16 lien must be deposited in the remediation fund. An environmental lien notice for a lien under
 3.17 paragraph (a) or (b) must state that it is a lien in accordance with this section and identify
 3.18 whether the property described in the notice was included in any permit for the priority
 3.19 qualified facility.

3.20 **EFFECTIVE DATE.** This section is effective the day following final enactment and
 3.21 applies to actions commenced on or after January 1, 2021.

3.22 Sec. 4. Minnesota Statutes 2020, section 115B.407, is amended to read:

3.23 **115B.407 ACQUISITION AND DISPOSITION ACQUIRING AND DISPOSING**
 3.24 **OF REAL PROPERTY AT PRIORITY QUALIFIED FACILITIES.**

3.25 Subdivision 1. **Acquiring and disposing of real property.** (a) The commissioner may
 3.26 acquire interests in real property by donation or eminent domain at all or a portion of a
 3.27 priority qualified facility. Condemnation under this section includes acquisition of fee title
 3.28 or an easement. After acquiring an interest in real property under this section, the
 3.29 commissioner must take environmental response actions at the priority qualified facility
 3.30 according to sections 115B.39 to 115B.414 after the legislature makes an appropriation for
 3.31 that purpose.

3.32 (b) The commissioner may dispose of real property acquired under this section according
 3.33 to section 115B.17, subdivision 16.

4.1 (c) Except as modified by this section, chapter 117 governs condemnation proceedings
4.2 by the commissioner under this section. The exceptions under section 117.189 apply to the
4.3 use of eminent domain authority under this section. Section 117.226 does not apply to
4.4 properties acquired by the use of eminent domain authority under this section.

4.5 (d) The state is not liable under this chapter solely as a result of acquiring an interest in
4.6 real property under this section.

4.7 **Subd. 2. Eminent domain damages.** (a) For purposes of this subdivision, the following
4.8 terms have the meanings given:

4.9 (1) "after-market value" means the property value of that portion of the subject property
4.10 remaining after a partial taking;

4.11 (2) "as remediated" means the condition of the property assuming the environmental
4.12 response actions selected by the commissioner have been completed, including environmental
4.13 covenants and easements and other institutional controls that may apply;

4.14 (3) "before-market value" means the property value of the entire subject property before
4.15 the taking, less the remediation costs;

4.16 (4) "property value" means the fair market value of the real property, as remediated, less
4.17 any reduction in value attributable to the stigma of pollution; and

4.18 (5) "remediation costs" means the reasonably foreseeable costs and expenses, including
4.19 administrative and legal expenses, that the commissioner will incur to implement the
4.20 environmental response actions that the commissioner selected for the property according
4.21 to section 115B.406, subdivision 3, less the amount, if any, that the property owner
4.22 demonstrates was released under section 115B.443, subdivision 8, which must not be greater
4.23 than the extent of insurance coverage under policies for the property included in a settlement
4.24 consistent with section 115B.443, subdivision 8.

4.25 (b) The damages awarded for condemnation of real property under this section is the
4.26 greater of \$500 or:

4.27 (1) for a total taking of the subject property, the before-market value; or

4.28 (2) for a partial taking of the subject property, the before-market value less the
4.29 after-market value.

4.30 (c) When awarding damages in a condemnation proceeding under this section, in addition
4.31 to any other requirement of chapter 117, the finder of fact must report:

5.1 (1) the amount determined for the property value of the entire subject property before
 5.2 the taking; and

5.3 (2) the itemized amount determined for remediation costs.

5.4 (d) The commissioner may seek recovery of environmental response costs only to the
 5.5 extent the costs exceed the lower of the remediation costs or the property value of the entire
 5.6 subject property before the taking as reported under paragraph (c).

5.7 (e) If the actual expenses incurred by the commissioner to take environmental response
 5.8 actions at the priority qualified facility as determined at the time construction of the final
 5.9 environmental response action was completed would have yielded a higher award of damages
 5.10 under this section, then the commissioner must reimburse the owner an amount equal to the
 5.11 amount of damages as if the actual expenses were used instead of the remediation costs,
 5.12 less any damages already awarded.

5.13 **EFFECTIVE DATE.** This section is effective the day following final enactment and
 5.14 applies to actions commenced on or after January 1, 2021.

5.15 Sec. 5. Minnesota Statutes 2020, section 116.07, is amended by adding a subdivision to
 5.16 read:

5.17 Subd. 41. **Real property interests.** (a) The commissioner may acquire interests in real
 5.18 property at a solid waste disposal facility, limited to environmental covenants under chapter
 5.19 114E and easements for the environmental covenants, when the commissioner determines
 5.20 the property interests are related to:

5.21 (1) closure;

5.22 (2) postclosure care; and

5.23 (3) any other actions needed after the postclosure care period expires.

5.24 (b) The state is not liable under this chapter or any other law solely as a result of acquiring
 5.25 an interest in real property under this section.

5.26 (c) An environmental covenant under this subdivision must be in accordance with chapter
 5.27 114E and must be signed and acknowledged by every owner of the fee simple title to the
 5.28 real property subject to the covenant.

5.29 Sec. 6. **REPEALER.**

5.30 Minnesota Rules, part 7044.0350, is repealed.

7044.0350 HRS SCORING SYSTEM.

The Pollution Control Agency and the commissioner of agriculture shall score sites under part 7044.0250 utilizing the Hazard Ranking System (HRS) adopted by the United States Environmental Protection Agency, and published in the Federal Register, volume 55, pages 51583 to 51667 (December 14, 1990).