

SENATE

STATE OF MINNESOTA

EIGHTY-EIGHTH SESSION

S.F. No. 2734

(SENATE AUTHORS: EATON)

DATE	D-PG	OFFICIAL STATUS
03/17/2014	6283	Introduction and first reading Referred to Taxes

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A bill for an act

relating to taxation; property; repealing the Sustainable Forest Incentive Act; repealing Minnesota Statutes 2012, sections 290C.01; 290C.02, subdivisions 1, 2, 3, 4, 5, 7, 8, 9; 290C.04; 290C.05; 290C.06; 290C.08; 290C.09; 290C.10; 290C.11; 290C.12; 290C.13; Minnesota Statutes 2013 Supplement, sections 290C.02, subdivision 6; 290C.03; 290C.055; 290C.07.

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

Section 1. **REPEALER.**

(a) Minnesota Statutes 2012, sections 290C.01; 290C.02, subdivisions 1, 2, 3, 4, 5, 7, 8, and 9; 290C.04; 290C.05; 290C.06; 290C.08; 290C.09; 290C.10; 290C.11; 290C.12; and 290C.13, are repealed.

(b) Minnesota Statutes 2013 Supplement, sections 290C.02, subdivision 6; 290C.03; 290C.055; and 290C.07, are repealed.

**EFFECTIVE DATE.** This section is effective the day following final enactment, except that all payments for calendar year 2014 must be certified by August 15, 2014, and paid by October 1, 2014. All landowner obligations under a covenant in accordance with Minnesota Statutes, chapter 290C, are terminated the day following final enactment.

**290C.01 PURPOSE.**

It is the policy of this state to promote sustainable forest resource management on the state's public and private lands. Recognizing that private forests comprise approximately one-half of the state forest land resources, that healthy and robust forest land provides significant benefits to the state of Minnesota, and that ad valorem property taxes represent a significant annual cost that can discourage long-term forest management investments, this chapter, hereafter referred to as the "Sustainable Forest Incentive Act," is enacted to encourage the state's private forest landowners to make a long-term commitment to sustainable forest management.

**290C.02 DEFINITIONS.**

Subdivision 1. **Application.** When used in sections 290C.01 to 290C.11, the terms in this section have the meanings given them.

Subd. 2. **Approved plan writers.** "Approved plan writers" are natural resource professionals who are self-employed, employed by private companies or individuals, nonprofit organizations, local units of government, or public agencies, and who are approved by the commissioner of natural resources. Persons determined to be certified foresters by the Society of American Foresters shall be deemed to meet the standards required under this subdivision. The commissioner of natural resources shall issue a unique identification number to each approved planner.

Subd. 3. **Claimant.** (a) "Claimant" means:

(1) a person, as that term is defined in section 290.01, subdivision 2, who owns forest land in Minnesota and files an application authorized by the Sustainable Forest Incentive Act;

(2) a purchaser or grantee if property enrolled in the program was sold or transferred after the original application was filed and prior to the annual incentive payment being made; or

(3) an owner of land previously covered by an auxiliary forest contract that automatically qualifies for inclusion in the Sustainable Forest Incentive Act program pursuant to section 88.49, subdivision 9a, or 88.491, subdivision 2.

The purchaser or grantee must notify the commissioner in writing of the sale or transfer of the property. Owners of land that qualifies for inclusion pursuant to section 88.49, subdivision 9a, or 88.491, subdivision 2, must notify the commissioner in writing of the expiration of the auxiliary forest contract or land trade with a governmental unit and submit an application to the commissioner by August 15 in order to be eligible to receive a payment by October 1 of that same year. For purposes of section 290C.11, claimant also includes any person bound by the covenant required in section 290C.04.

(b) No more than one claimant is entitled to a payment under this chapter with respect to any tract, parcel, or piece of land enrolled under this chapter that has been assigned the same parcel identification number. When enrolled forest land is owned by two or more persons, the owners must determine between them which person is eligible to claim the payments provided under sections 290C.01 to 290C.11. In the case of property sold or transferred, the former owner and the purchaser or grantee must determine between them which person is eligible to claim the payments provided under sections 290C.01 to 290C.11. The owners, transferees, or grantees must notify the commissioner in writing which person is eligible to claim the payments.

Subd. 4. **Commissioner.** "Commissioner" means the commissioner of revenue.

Subd. 5. **Current use value.** "Current use value" means the statewide average annual income per acre, multiplied by 90 percent and divided by the capitalization rate determined under subdivision 9. The statewide net annual income shall be a weighted average based on the most recent data as of July 1 of the computation year on stumpage prices and annual tree growth rates and acreage by cover type provided by the Department of Natural Resources and the United States Department of Agriculture Forest Service North Central Research Station.

Subd. 6. **Forest land.** "Forest land" means land containing a minimum of 20 contiguous acres for which the owner has implemented a forest management plan that was prepared or updated within the past ten years by an approved plan writer. For purposes of this subdivision, acres are considered to be contiguous even if they are separated by a road, waterway, railroad track, or other similar intervening property. At least 50 percent of the contiguous acreage must meet the definition of forest land in section 88.01, subdivision 7. For the purposes of sections 290C.01 to 290C.11, forest land does not include (i) land used for residential or agricultural purposes, (ii) land enrolled in the reinvest in Minnesota program, a state or federal conservation reserve or easement reserve program under sections 103F.501 to 103F.531, the Minnesota agricultural property tax law under section 273.111, or land subject to agricultural land preservation controls or restrictions as defined in section 40A.02 or under the Metropolitan

## APPENDIX

Repealed Minnesota Statutes: 14-5299

Agricultural Preserves Act under chapter 473H, (iii) land exceeding 60,000 acres that is subject to a single conservation easement funded under section 97A.056 or a comparable permanent easement conveyed to a governmental or nonprofit entity; (iv) any land that becomes subject to a conservation easement funded under section 97A.056 or a comparable permanent easement conveyed to a governmental or nonprofit entity after May 30, 2013; or (v) land improved with a structure, pavement, sewer, campsite, or any road, other than a township road, used for purposes not prescribed in the forest management plan.

Subd. 7. **Forest management plan.** "Forest management plan" means a written document providing a framework for site-specific healthy, productive, and sustainable forest resources. A forest management plan must include at least the following: (i) forest management goals for the land; (ii) a reliable field inventory of the individual forest cover types, their age, and density; (iii) a description of the soil type and quality; (iv) an aerial photo and/or map of the vegetation and other natural features of the land clearly indicating the boundaries of the land and of the forest land; (v) the proposed future conditions of the land; (vi) prescriptions to meet proposed future conditions of the land; (vii) a recommended timetable for implementing the prescribed activities; and (viii) a legal description of the land encompassing the parcels included in the plan. All management activities prescribed in a plan must be in accordance with the recommended timber harvesting and forest management guidelines. The commissioner of natural resources shall provide a framework for plan content and updating and revising plans.

Subd. 8. **Timber harvesting and forest management guidelines.** "Timber harvesting and forest management guidelines" means guidelines developed under section 89A.05 and adopted by the Minnesota Forest Resources Council in effect at the time the tract, parcel, or piece of land is enrolled in the sustainable forest incentive program.

Subd. 9. **Capitalization rate.** By July 1 of each year, the commissioner shall determine a statewide capitalization rate for use under this chapter. The rate shall be the average annual effective interest rate for St. Paul on new loans under the Farm Credit Bank system calculated under section 2032A(e)(7)(A) of the Internal Revenue Code.

### 290C.03 ELIGIBILITY REQUIREMENTS.

(a) Land may be enrolled in the sustainable forest incentive program under this chapter if all of the following conditions are met:

(1) the land consists of at least 20 contiguous acres and at least 50 percent of the land must meet the definition of forest land in section 88.01, subdivision 7, during the enrollment;

(2) a forest management plan for the land must be prepared by an approved plan writer and implemented during the period in which the land is enrolled;

(3) timber harvesting and forest management guidelines must be used in conjunction with any timber harvesting or forest management activities conducted on the land during the period in which the land is enrolled;

(4) the land must be enrolled for a minimum of eight years;

(5) there are no delinquent property taxes on the land; and

(6) claimants enrolling more than 1,920 acres in the sustainable forest incentive program must allow year-round, nonmotorized access to fish and wildlife resources and motorized access on established and maintained roads and trails, unless the road or trail is temporarily closed for safety, natural resource, or road damage reasons on enrolled land except within one-fourth mile of a permanent dwelling or during periods of high fire hazard as determined by the commissioner of natural resources.

(b) Claimants required to allow access under paragraph (a), clause (6), do not by that action:

(1) extend any assurance that the land is safe for any purpose;

(2) confer upon the person the legal status of an invitee or licensee to whom a duty of care is owed; or

(3) assume responsibility for or incur liability for any injury to the person or property caused by an act or omission of the person.

### 290C.04 APPLICATIONS.

(a) A landowner may apply to enroll forest land for the sustainable forest incentive program under this chapter. The claimant must complete, sign, and submit an application to the commissioner by September 30 in order for the land to become eligible beginning in the next year. The application shall be on a form prescribed by the commissioner and must include the information the commissioner deems necessary. At a minimum, the application must show the

## APPENDIX

### Repealed Minnesota Statutes: 14-5299

following information for the land and the claimant: (i) the claimant's Social Security number or state or federal business tax registration number and date of birth, (ii) the claimant's address, (iii) the claimant's signature, (iv) the county's parcel identification numbers for the tax parcels that completely contain the claimant's forest land that is sought to be enrolled, (v) the number of acres eligible for enrollment in the program, (vi) the approved plan writer's signature and identification number, and (vii) proof, in a form specified by the commissioner, that the claimant has executed and acknowledged in the manner required by law for a deed, and recorded, a covenant that the land is not and shall not be developed in a manner inconsistent with the requirements and conditions of this chapter. The covenant shall state in writing that the covenant is binding on the claimant and the claimant's successor or assignee, and that it runs with the land for a period of not less than eight years. The commissioner shall specify the form of the covenant and provide copies upon request. The covenant must include a legal description that encompasses all the forest land that the claimant wishes to enroll under this section or the certificate of title number for that land if it is registered land.

(b) In all cases, the commissioner shall notify the claimant within 90 days after receipt of a completed application that either the land has or has not been approved for enrollment. A claimant whose application is denied may appeal the denial as provided in section 290C.13.

(c) Within 90 days after the denial of an application, or within 90 days after the final resolution of any appeal related to the denial, the commissioner shall execute and acknowledge a document releasing the land from the covenant required under this chapter. The document must be mailed to the claimant and is entitled to be recorded.

(d) The Social Security numbers collected from individuals under this section are private data as provided in section 13.355. The federal business tax registration number and date of birth data collected under this section are also private data on individuals or nonpublic data, as defined in section 13.02, subdivisions 9 and 12, but may be shared with county assessors for purposes of tax administration and with county treasurers for purposes of the revenue recapture under chapter 270A.

#### **290C.05 ANNUAL CERTIFICATION.**

On or before July 1 of each year, beginning with the year after the original claimant has received an approved application, the commissioner shall send each claimant enrolled under the sustainable forest incentive program a certification form. For purposes of this section, the original claimant is the person that filed the first application under section 290C.04 to enroll the land in the program. The claimant must sign the certification, attesting that the requirements and conditions for continued enrollment in the program are currently being met, and must return the signed certification form to the commissioner by August 15 of that same year. If the claimant does not return an annual certification form by the due date, the provisions in section 290C.11 apply.

#### **290C.055 LENGTH OF COVENANT.**

(a) The covenant remains in effect for a minimum of eight years. If land is removed from the program before it has been enrolled for four years, the covenant remains in effect for eight years from the date recorded.

(b) If land that has been enrolled for four years or more is removed from the program for any reason, there is a waiting period before the covenant terminates. The covenant terminates on January 1 of the fifth calendar year that begins after the date that:

(1) the commissioner receives notification from the claimant that the claimant wishes to remove the land from the program under section 290C.10; or

(2) the date that the land is removed from the program under section 290C.11.

(c) Notwithstanding the other provisions of this section, the covenant is terminated:

(1) at the same time that the land is removed from the program due to acquisition of title or possession for a public purpose under section 290C.10; or

(2) at the request of the claimant after a reduction in payments due to changes in the payment formula under section 290C.07.

#### **290C.06 CALCULATION OF AVERAGE ESTIMATED MARKET VALUE; MANAGED FOREST LAND.**

## APPENDIX

Repealed Minnesota Statutes: 14-5299

The commissioner shall annually calculate a statewide average estimated market value per acre for class 2c managed forest land under section 273.13, subdivision 23.

### **290C.07 CALCULATION OF INCENTIVE PAYMENT.**

An approved claimant under the sustainable forest incentive program is eligible to receive an annual payment. The payment shall equal \$7 per acre for each acre enrolled in the sustainable forest incentive program.

### **290C.08 ANNUAL INCENTIVE PAYMENT; APPROPRIATION.**

Subdivision 1. **Annual payment.** An incentive payment for each acre of enrolled land will be made annually to each claimant in the amount determined under section 290C.07. The incentive payment shall be paid on or before October 1 each year based on the certifications due August 15 of that year. Interest at the annual rate determined under section 270C.40 shall be included with any incentive payment not paid by the later of October 1 of the year the certification was due, or 45 days after the completed certification was returned or filed if the commissioner accepts a certification filed after August 15 of the taxes payable year as the resolution of an appeal.

Subd. 2. **Appropriation.** The amount necessary to make the payments under this section is annually appropriated to the commissioner from the general fund.

### **290C.09 REMOVAL FOR PROPERTY TAX DELINQUENCY.**

The commissioner shall immediately remove any land enrolled in the sustainable forest incentive program for which taxes are determined to be delinquent as provided in chapter 279 and shall notify the claimant of such action. Lands terminated from the sustainable forest incentive program under this section are not entitled to any payments provided in this chapter and are subject to removal penalties prescribed in section 290C.11. The claimant has 60 days from the receipt of notice from the commissioner under this section to pay the delinquent taxes. If the delinquent taxes are paid within this 60-day period, the lands shall be reinstated in the program as if they had not been withdrawn and without the payment of a penalty.

### **290C.10 WITHDRAWAL PROCEDURES.**

An approved claimant under the sustainable forest incentive program for a minimum of four years may notify the commissioner of the intent to terminate enrollment. Within 90 days of receipt of notice to terminate enrollment, the commissioner shall inform the claimant in writing, acknowledging receipt of this notice and indicating the effective date of termination from the sustainable forest incentive program. Termination of enrollment in the sustainable forest incentive program occurs on January 1 of the fifth calendar year that begins after receipt by the commissioner of the termination notice. After the commissioner issues an effective date of termination, a claimant wishing to continue the land's enrollment in the sustainable forest incentive program beyond the termination date must apply for enrollment as prescribed in section 290C.04. A claimant who withdraws a parcel of land from this program may not reenroll the parcel for a period of three years. Within 90 days after the termination date, the commissioner shall execute and acknowledge a document releasing the land from the covenant required under this chapter. The document must be mailed to the claimant and is entitled to be recorded. The commissioner may allow early withdrawal from the Sustainable Forest Incentive Act without penalty when the state of Minnesota, any local government unit, or any other entity which has the power of eminent domain acquires title or possession to the land for a public purpose notwithstanding the provisions of this section. In the case of such acquisition, the commissioner shall execute and acknowledge a document releasing the land acquired by the state, local government unit, or other entity from the covenant. All other enrolled land must remain in the program.

### **290C.11 PENALTIES FOR REMOVAL.**

(a) If the commissioner determines that land enrolled in the sustainable forest incentive program is in violation of the conditions for enrollment as specified in section 290C.03, the commissioner shall notify the claimant of the intent to remove all enrolled land from the sustainable forest incentive program. The claimant has 60 days to appeal this determination under the provisions of section 290C.13.

(b) If the commissioner determines the land is to be removed from the sustainable forest incentive program, the claimant is liable for payment to the commissioner in the amount equal to

## APPENDIX

Repealed Minnesota Statutes: 14-5299

the payments received under this chapter for the previous four-year period, plus interest. The claimant has 90 days to satisfy the payment for removal of land from the sustainable forest incentive program under this section. If the penalty is not paid within the 90-day period under this paragraph, the commissioner shall certify the amount to the county auditor for collection as a part of the general ad valorem real property taxes on the land in the following taxes payable year.

### **290C.12 DEATH OF CLAIMANT.**

Within one year after the death of the claimant, the claimant's heir, devisee, or estate must either:

(1) notify the commissioner of election to terminate enrollment in the sustainable forest incentive program; or

(2) make an application under this chapter to continue enrollment of the land in the program.

Upon notification under clause (1), the commissioner shall terminate the enrollment and issue a document releasing the land from the covenant as provided in section 290C.04, paragraph (c). Penalties under section 290C.11 shall not apply. If the application under clause (2) is approved, the land is enrolled in the program without a break. If the commissioner does not receive notification within one year after the date of death, enrollment in the program shall be terminated and penalties under section 290C.11 shall not apply.

### **290C.13 APPEALS.**

Subdivision 1. **Claimant right to reconsideration.** A claimant may obtain reconsideration by the commissioner of a determination removing enrolled land from the sustainable forest incentive program, a determination denying an application to enroll land in the program, or a denial of part or all of an incentive payment by filing an administrative appeal under subdivision 4. A claimant cannot obtain reconsideration under this section if the action taken by the commissioner is the outcome of an administrative appeal.

Subd. 2. **Appeal by claimant.** A claimant who wishes to seek administrative review must follow the procedures in subdivision 4.

Subd. 3. **Notice date.** For purposes of this section, the term "notice date" means the date of the determination removing enrolled land or the date of the notice denying an application to enroll land or denying part or all of an incentive payment.

Subd. 4. **Time and content for administrative appeal.** Within 60 days after the notice date, the claimant must file a written appeal with the commissioner. The appeal need not be in any particular form but must contain the following information:

(1) name and address of the claimant;

(2) if a corporation, the state of incorporation of the claimant, and the principal place of business of the corporation;

(3) the Minnesota or federal business identification number or Social Security number of the claimant;

(4) the date;

(5) the periods involved and the amount of payment involved for each year or period;

(6) the findings in the notice that the claimant disputes;

(7) a summary statement that the claimant relies on for each exception; and

(8) the claimant's signature or signature of the claimant's duly authorized agent.

Subd. 5. **Extensions.** When requested in writing and within the time allowed for filing an administrative appeal, the commissioner may extend the time for filing an appeal for a period not more than 30 days from the expiration of the 60 days from the notice date.

Subd. 6. **Determination of appeal.** On the basis of applicable law and available information, the commissioner shall determine the validity, if any, in whole or in part, of the appeal and notify the claimant of the decision. This notice must be in writing and contain the basis for the determination.

Subd. 7. **Agreement determining issues under appeal.** When it appears to be in the best interests of the state, the commissioner may settle the amount of any incentive payments, payments owed by the claimant under section 290C.11, paragraph (b), penalties, or interest that the commissioner has under consideration by virtue of an appeal filed under this section. An agreement must be in writing and signed by the commissioner and the claimant, or the claimant's representative authorized by the claimant to enter into an agreement. The agreement is final and conclusive and, except upon a showing of fraud or malfeasance, or misrepresentation of a material fact, the case must not be reopened as to the matters agreed upon.

## APPENDIX

Repealed Minnesota Statutes: 14-5299

Subd. 8. **Appeal to Tax Court.** Within 60 days after the commissioner denies an appeal, or within 120 days after the commissioner received a written appeal if the commissioner has not made a determination in that time, the claimant may appeal to Tax Court under chapter 271 as if the appeal is from an order of the commissioner.

Subd. 9. **Exemption from Administrative Procedure Act.** This section is not subject to chapter 14.