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State of Minnesota

HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. **1175**

03/04/2013 Authored by Wagenius and Poppe

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

03/11/2013 Adoption of Report: Pass as Amended and re-referred to the Committee on Civil Law

03/13/2013 Adoption of Report: Pass as Amended and re-referred to the Committee on Government Operations

1.1 A bill for an act  
1.2 relating to agriculture; establishing the Minnesota agricultural water quality  
1.3 program; authorizing rulemaking; requiring reports; proposing coding for new  
1.4 law in Minnesota Statutes, chapter 17.

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

1.6 Section 1. **[17.9891] PURPOSE.**

1.7 The commissioner, in consultation with the Pollution Control Agency (PCA),  
1.8 Department of Natural Resources (DNR), and Board of Water and Soil Resources  
1.9 (BWSR), may implement a Minnesota agricultural water quality certification program  
1.10 (MAWQCP) whereby once a producer demonstrates practices and management sufficient  
1.11 to protect and enhance water quality, the producer is exempt from having to comply with  
1.12 new rules affecting agricultural or land management practices that could affect water  
1.13 quality for up to ten years. The program is voluntary. The program will first be piloted in  
1.14 selected watersheds across the state, until such time as the commissioner, in consultation  
1.15 with the PCA, DNR, and BWSR, determines the program is ready to be expanded.

1.16 Sec. 2. **[17.9892] DEFINITIONS.**

1.17 Subdivision 1. **Application.** The definitions in this section apply to sections  
1.18 17.9891 to 17.993.

1.19 Subd. 2. **Technical assistance.** "Technical assistance" means professional, advisory,  
1.20 or cost-share assistance provided to individuals that is designed to achieve MAWQCP  
1.21 certification.

2.1 Subd. 3. **Certifying agent.** "Certifying agent" means a person who is authorized  
2.2 by the commissioner to assess producers to determine whether a producer satisfies the  
2.3 standards of the Minnesota agricultural water quality certification program.

2.4 Subd. 4. **Certification.** "Certification" means a producer has demonstrated  
2.5 compliance with all applicable environmental rules and statutes for all of the producer's  
2.6 owned and rented agricultural land, and has achieved a satisfactory score through the  
2.7 certification instrument and verified by a certifying agent. A certification is valid for up to  
2.8 ten years, as long as the producer maintains compliance with original certification practices.

2.9 Subd. 5. **Eligible land.** "Eligible land" means all acres of an agricultural operation  
2.10 of a producer, whether or not contiguous, that are under the effective control of the  
2.11 producer at the time the producer enters into the certification program, and is operated  
2.12 by the producer with equipment, labor, and management.

2.13 Subd. 6. **Effective control.** "Effective control" means possession of the land  
2.14 by ownership, written lease, or other legal agreement and authority to act as decision  
2.15 maker for the day-to-day management of the operation at the time the producer achieves  
2.16 certification and for the required period of the certification.

2.17 **Sec. 3. [17.9893] CERTIFICATION INSTRUMENT.**

2.18 The commissioner, in consultation with the PCA, DNR, and BWSR, shall develop an  
2.19 analytical instrument to assess the water quality practices and management of agricultural  
2.20 operations. This instrument shall be used to certify the water quality practices and  
2.21 management of an agricultural operation are consistent with state water quality goals and  
2.22 standards. The commissioner shall define a satisfactory score for certification purposes.  
2.23 The certification instrument tool shall:

- 2.24 (1) integrate applicable existing regulatory requirements;  
2.25 (2) utilize technology and prioritize ease of use;  
2.26 (3) utilize a water quality index or score applicable to the landscape;  
2.27 (4) incorporate a process for updates and revisions as practices, management, and  
2.28 technology changes become established and approved; and  
2.29 (5) comprehensively address water quality impacts.

2.30 **Sec. 4. [17.9894] LICENSE.**

2.31 Subdivision 1. **License.** Any person who offers certification services to producers  
2.32 as part of this program must satisfy all criteria in subdivision 2 and be licensed by  
2.33 the commissioner. A certifying agent is ineligible to provide certification services to

any producer to whom the certifying agent has also provided technical assistance. The department may set fees for such license.

**Subd. 2. Certifying agent requirements.** In order to be licensed as a certifying agent, a person must:

(1) be an agricultural conservation professional employed by the state of Minnesota, a Soil and Water Conservation District, the Natural Resources Conservation Service, or be a Minnesota certified crop advisor as recognized by the American Society of Agronomy; and

(2) have passed a comprehensive exam, as set by the commissioner, evaluating knowledge of water quality, soil health, best farm management techniques, and the certification instrument; and

(3) maintain continuing education requirements as set by the commissioner.

## Sec. 5. **[17.9895] DUTIES OF A CERTIFYING AGENT.**

**Subdivision 1. Duties of certifying agent.** A certifying agent shall conduct formal certification assessment utilizing the certification instrument to determine whether a producer meets the criteria set forth in the program. If a producer satisfies all requirements, the certifying agent shall notify the commissioner of the producer's eligibility and request that the state issue a certificate. All records and documents used in the assessment shall be compiled by the certifying agent and submitted to the commissioner.

**Subd. 2. Violations.** In the event a certifying agent violates any provision of sections 17.9891 to 17.993 or an order of the commissioner, the commissioner may issue a written warning, or a correction order, and may suspend or revoke a license. If a license or certificate is suspended or revoked, the certifying agent has ten days from the suspension or revocation to appeal. If a certifying agent appeals, the commissioner shall hold an administrative hearing within 30 days of the suspension or revocation of the license, or longer by agreement of the parties, to determine whether the license is revoked or suspended. The commissioner shall issue an opinion within 30 days. If a person notifies the commissioner that the person intends to contest the commissioner's opinion, the Office of Administrative Hearings shall conduct a hearing in accordance with the applicable provisions of chapter 14 for hearings in contested cases.

## Sec. 6. **[17.9896] CERTIFICATION PROCEDURES.**

A producer who seeks certification of eligible land shall conduct an initial assessment using the certification instrument, obtain technical assistance, if necessary, to achieve a satisfactory score on the certification instrument, and apply for certification from a licensed certifying agent. Once certified, if a producer obtains effective control

in additional agricultural land, the producer must notify a certifying agent and obtain certification on the additional land within one year in order to maintain the producer's original certification. The commissioner may terminate a certification if the producer fails to obtain certification on any additional land for which the producer obtains effective control. The commissioner may revoke a certification and seek reimbursement of any monetary benefit a producer may have received due to certification from a producer who fails to maintain certification criteria. The commissioner shall revoke a certification through the hearing process outlined in section 17.9895, subdivision 2.

Sec. 7. **[17.9897] CERTIFICATION CERTAINTY.**

(a) Once a producer is certified, the producer:

(1) will retain certification for up to ten years from the date of certification if the producer complies with the certification agreement even if the producer does not comply with new state water protection laws or rules that take effect during the certification period;

(2) is considered to be meeting the producer's contributions to any targeted reductions of pollutants during the period of certification;

(3) is required to continue implementation of practices that maintain the producer's certification; and

(4) is required to retain all records pertaining to certification.

(b) Paragraph (a) does not preclude enforcement of a local ordinance by a local unit of government.

Sec. 8. **[17.9898] AUDITS.**

The commissioner shall perform random audits of the producers and certifying agents to ensure compliance with the program. All producers and certifying agents shall cooperate with the commissioner during these audits, and provide all relevant documents to the commissioner for inspection and copying. Any delay, obstruction, or refusal to cooperate with the commissioner's audit, or falsification of or failure to provide required data or information, is a violation subject to the provisions of section 17.9895, subdivision 2, or 17.9896.

Sec. 9. **[17.9899] DATA.**

All data collected under this program that identifies the producer or the producer's location shall be considered nonpublic data as defined in section 13.02, subdivision 9, or private data on individuals as defined in section 13.02, subdivision 12. The commissioner shall make available summary data of program outcomes.

5.1       Sec. 10. **[17.991] RULEMAKING.**5.2               The commissioner may develop rules to implement this program.5.3       Sec. 11. **[17.992] REPORTS.**

5.4               The commissioner, in consultation with the DNR, BWSR, and PCA, shall issue a  
5.5 biennial report to the chairs and ranking minority members of the legislative committees  
5.6 with jurisdiction over agricultural policy on the status of the program.

5.7       Sec. 12. **[17.993] GRANTING.**

5.8               The commissioner may use contributions from gifts or other state accounts, provided  
5.9 that the purposes of the expenditures are consistent with the purpose of the accounts, for  
5.10 grants, loans, or other financial assistance.