

A bill for an act
relating to agriculture; establishing a clean energy capital equipment loan
program; providing for cellulosic biofuel development; providing bioenergy
production initiatives; creating the reinvest in Minnesota clean energy program;
providing for enforcement; authorizing a technical committee; appropriating
money; proposing coding for new law in Minnesota Statutes, chapters 17; 41A;
103F.

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

Section 1. **[17.118] CLEAN ENERGY CAPITAL EQUIPMENT LOANS.**

(a) There is established a clean energy revolving loan fund that is eligible to receive appropriations and make loans under this section. The commissioner shall establish a clean energy loan program to make loans for capital equipment to persons participating in the reinvest in Minnesota clean energy program under section 103F.518 and other persons using native, perennial cropping systems for energy or seed production. The commissioner, in consultation with the technical committee established under section 103F.518, subdivision 11, shall establish guidelines for loans made under this section. All repayments of loans granted from this fund, including principal and interest, must be deposited into this fund. Interest earned on money in the fund accrues to the fund, and the money in the fund is appropriated to the commissioner to make clean energy capital equipment loans under this section.

(b) The definitions in section 41A.10, subdivision 2, apply to this section.

Sec. 2. **[41A.10] CELLULOSIC BIOFUEL DEVELOPMENT.**

Subdivision 1. **Appropriation.** A sum sufficient to make the payments required by this section is annually appropriated from the general fund to the commissioner of agriculture and all money so appropriated is available until expended.

Subd. 2. **Definitions.** For the purposes of this section and sections 17.118, 41A.11, and 103F.518, the terms defined in this subdivision have the meanings given them.

(a) "Cellulosic biofuel" means transportation fuel derived from cellulosic materials.

(b) "Cellulosic material" means an agricultural feedstock primarily comprised of cellulose, hemicellulose, or lignin or a combination of those ingredients grown on agricultural lands.

(c) "Agricultural land" means land used for horticultural, row, close grown, pasture, and hayland crops; growing nursery stocks; animal feedlots; farm yards; associated building sites; and public and private drainage systems and field roads located on any of that land.

(d) "Cellulosic biofuel facility" means a facility at which cellulosic biofuel is produced.

(e) "Perennial crops" means agriculturally produced plants that have a life cycle of at least three years at the location where the plants are being cultivated.

(f) "Perennial cropping system" means an agricultural production system that utilizes a perennial crop.

(g) "Native species" means a plant species which was present in a defined area of Minnesota prior to European settlement (circa 1850). A defined area may be an ecological classification province. Wild-type varieties therefore are regional or local ecotypes that have not undergone a selection process.

(h) "Diverse native prairie" means a prairie planted from a mix of nongenetically modified local Minnesota native prairie species consisting of at least two legumes, two cool season grasses, four warm season grasses, and eight nonleguminous forbs. A selection from all available native prairie species may be made so as to match species appropriate to local site conditions. Local species seed may be obtained alone or in prepared seed mixes from any source within a 100-mile radius of the planting site.

(i) "Commissioner" means the commissioner of agriculture.

(j) "Eligible biofuel producer" means a cellulosic biofuel facility that is at least 51 percent owned by farmers, as defined in section 500.24, subdivision 2, paragraph (n), residing in the county where the cellulosic biofuel facility is located or in an adjoining county, and an additional 24 percent of community ownership for any people residing in the county or adjoining county.

3.1 Subd. 3. **Cellulosic biofuel production goal.** The state cellulosic biofuel production
3.2 goal is one-quarter of the total amount necessary for ethanol use required under section
3.3 239.791, subdivision 1a, by 2015 or when cellulosic biofuel facilities in the state attain a
3.4 total annual production level of 60,000,000 gallons, whichever is first.

3.5 Subd. 4. **Cellulosic biofuel producer payments.** (a) The commissioner shall
3.6 make cash payments to eligible producers of cellulosic biofuel located in the state that
3.7 have begun production at a specific location by June 30, 2012. For the purpose of this
3.8 subdivision, an entity that holds a controlling interest in more than one cellulosic biofuel
3.9 plant is considered a single eligible producer. The amount of the payment for each eligible
3.10 producer's annual production, except as provided in paragraph (d), is 15 cents per gallon
3.11 for each gallon of cellulosic biofuel produced at a specific location for five years after the
3.12 start of production. Cellulosic materials utilized in the production of cellulosic biofuel
3.13 must follow best available management practices or standards for their establishment,
3.14 growing, and harvesting. Cellulosic biofuel produced from corn stover or any row crop
3.15 must be grown according to management plans based on the University of Minnesota or
3.16 United States Department of Agriculture Natural Resource Conservation Service's best
3.17 practices for crop rotations, pests, and tillage that minimize soil erosion, contaminated
3.18 runoff, and leaching of nutrients.

3.19 (b) In lieu of the payment under paragraph (a), the commissioner shall make cash
3.20 payments to eligible producers of cellulosic biofuel located in the state that utilize
3.21 perennial, native cellulosic material grown that follow the standards derived under the
3.22 reinvest in Minnesota clean energy program, section 103F.518, subdivision 11, that
3.23 have begun production at a specific location by June 30, 2015. For the purpose of this
3.24 subdivision, an entity that holds a controlling interest in more than one cellulosic biofuel
3.25 facility is considered a single eligible producer. The amount of the payment for each
3.26 eligible biofuel producer's annual production, except as provided in paragraph (d), is
3.27 30 cents per gallon for each gallon of cellulosic biofuel produced at a specific location
3.28 for ten years after the start of production.

3.29 (c) No payments may be made for cellulosic biofuel production that occurs after
3.30 June 30, 2022, for those eligible biofuel producers under paragraph (a), and 2025 for
3.31 those eligible biofuel producers under paragraph (b). An eligible producer of cellulosic
3.32 biofuel shall not transfer the producer's eligibility for payments under this section to a
3.33 cellulosic biofuel facility at a different location.

3.34 (d) If the level of production at a cellulosic biofuel facility increases due to an
3.35 increase in the production capacity of the facility, the payment under paragraph (a) applies
3.36 to the additional increment of production until five years after the increased production

began and under paragraph (b) applies to the additional increment of production until ten years after the increased production began. If capacity under paragraph (a) is converted to payment under paragraph (b), the ten-year payment limit starts when the capacity increased under paragraph (a). Once a facility's production capacity reaches 15,000,000 gallons per year, no additional increment will qualify for the payment.

(e) Payments under paragraphs (a) and (b) to all eligible biofuel producers may not exceed \$27,000,000 in a fiscal year. Total payments under paragraphs (a) and (b) to an eligible biofuel producer in a fiscal year may not exceed the amount necessary for 15,000,000 gallons of biofuel production.

(f) An eligible biofuel producer may blend cellulosic feedstocks eligible under paragraphs (a) and (b), but only the percentage of gallons that is attributable to feedstocks under paragraph (a) receive 15 cents per gallon, and those under paragraph (b) receive 30 cents per gallon.

(g) By the last day of October, January, April, and July, each eligible biofuel producer shall file a claim for payment for cellulosic biofuel production during the preceding three calendar months. An eligible biofuel producer that files a claim under this subdivision shall include a statement of the eligible biofuel producer's total cellulosic biofuel production in Minnesota during the quarter covered by the claim. For each claim and statement of total cellulosic biofuel production filed under this subdivision, the volume of cellulosic biofuel production must be examined by an independent certified public accountant in accordance with standards established by the American Institute of Certified Public Accountants.

(h) Payments must be made November 15, February 15, May 15, and August 15. A separate payment must be made for each claim filed. The total quarterly payment to an eligible producer under this paragraph may not exceed the amount necessary for 3,750,000 gallons of biofuel production.

(i) If an eligible biofuel producer becomes ineligible within five years after the last payment has been received under paragraph (a), and ten years after the last payment under paragraph (b), all payments received for biofuel production must be refunded to the commissioner. Refunded payments received under this paragraph must be deposited in the general fund.

(j) Annually, within 90 days of the end of its fiscal year, a cellulosic biofuel producer receiving payments under this subdivision must file a disclosure statement on a form provided by the commissioner. The initial disclosure statement must include a summary description of the organization of the business structure of the claimant, a listing of the percentages of ownership and governance by any person or other entity with an ownership interest or governance rights of five percent or greater, and a copy of its annual audited

financial statements, including the auditor's report and footnotes. The disclosure statement must include information demonstrating what percentage of the entity receiving payments under this section is owned and governed by farmers or other entities that reside within the county where the cellulosic biofuel facility is located. Subsequent annual reports must reflect noncumulative changes in ownership of ten percent or more of the entity. The report need not disclose the identity of the persons or entities, but the claimant must retain information within its files confirming the accuracy of the data provided. This data must be made available to the commissioner upon request. Not later than the 15th day of February in each year, the commissioner shall deliver to the chairs of the standing committees of the senate and the house of representatives that deal with agricultural policy and agricultural finance an annual report summarizing aggregated and facility data from plants receiving payments under this section during the preceding calendar year. Audited financial statements and notes and disclosure statements submitted to the commissioner are nonpublic data under section 13.02, subdivision 9. Notwithstanding the provisions of chapter 13 relating to nonpublic data, summaries of the submitted audited financial reports and notes and disclosure statements must be contained in the report to the committee chairs and will be public data.

(k) Bioenergy production for which payment has been received under section 41A.11 is not eligible for payment under this section.

Sec. 3. ~~[41A.11]~~ BIOENERGY PRODUCTION INCENTIVE.

Subdivision 1. **Appropriation.** A sum sufficient to make the payments required by this section is annually appropriated from the general fund to the commissioner of agriculture and all money so appropriated is available until expended.

Subd. 2. **Definitions.** The definitions in this subdivision and section 41A.10 apply to this section.

(a) "Bioenergy production" means the generation of energy for commercial heat, industrial process heat, or electrical power from a cellulosic material for a new or expanded capacity facility or a facility that is displacing existing use of fossil fuel after the effective date of this section.

(b) "Project area" means a geographically defined area in which reinvest in Minnesota clean energy program easements are secured in order to provide a cellulosic material supply to an identified facility producing bioenergy.

Subd. 3. **Bioenergy producer payments.** (a) The commissioner shall make cash payments to eligible producers of bioenergy located in the state that have begun production at a specific location by June 30, 2009. For the purpose of this subdivision,

an entity that holds a controlling interest in more than one bioenergy production plant is considered a single eligible producer. The amount of the payment for each producer's annual production, except as provided in paragraph (d), is \$0.75 per 1,000,000 British thermal units (Btu) of bioenergy production produced at a specific location for three years after the start of production. Cellulosic materials utilized for bioenergy production must follow best available management practices or standards for their establishment, growing, and harvesting. Bioenergy produced from corn stover or any row crop must be grown according to management plans based on the University of Minnesota or United States Department of Agriculture Natural Resource Conservation Service's best practices for crop rotations, pests, and tillage that minimize soil erosion, contaminates runoff, and leaching of nutrients.

(b) The commissioner shall make cash payments to producers of bioenergy located in the state that utilize perennial, native cellulosic material grown according to standards derived under the reinvest in Minnesota clean energy program, section 103F.518, subdivision 11, that have begun a practice at a specific location by June 30, 2015. For the purpose of this subdivision, an entity that holds a controlling interest in more than one bioenergy production plant is considered a single producer. The amount of the payment for each producer's annual production, except as provided in paragraph (d), is \$1.50 per 1,000,000 British thermal units (Btu) of bioenergy production produced at a specific location for ten years after the start of production.

(c) No payments may be made for bioenergy production that occurs after June 30, 2012, for those eligible bioenergy producers under paragraph (a), and 2025 for those eligible biofuel producers under paragraph (b). A producer of bioenergy production shall not transfer the producer's eligibility for payments under this section to a bioenergy production plant at a different location.

(d) If the level of production at a bioenergy production plant increases due to an increase in the production capacity of the plant, the payment under paragraph (a) applies to the additional increment of production until three years after the increased production began, and under paragraph (b), ten years after the increased production began. If capacity under paragraph (a) is converted to payment under paragraph (b), the ten-year payment limit starts when the capacity increased under paragraph (a). Once a plant's bioenergy production capacity reaches 1,500,000,000 Btu per year, no additional increment will qualify for the payment under both paragraphs (a) and (b).

(e) Total payments under paragraphs (a) and (b) to all producers may not exceed \$11,000,000 in a fiscal year. Total payments under paragraphs (a) and (b) to a producer in a fiscal year may not exceed \$2,250,000.

(f) An eligible facility may blend a cellulosic feedstock with other fuels in the bioenergy production facility, but only the percentage attributable to cellulosic material listed is eligible to receive the producer payment.

(g) An eligible bioenergy producer may blend the cellulosic materials eligible under paragraphs (a) and (b), but only the percentage that is attributable to feedstocks under paragraph (a) receive \$0.75 per 1,000,000 Btu and those under paragraph (b) receive \$1.50 per 1,000,000 Btu.

(h) By the last day of October, January, April, and July, each producer shall file a claim for payment for bioenergy production during the preceding three calendar months.

A producer that files a claim under this subdivision shall include a statement of the producer's total bioenergy production in Minnesota during the quarter covered by the claim. For each claim and statement of total bioenergy production filed under this subdivision, the volume of bioenergy production must be examined by an independent certified public accountant in accordance with standards established by the American Institute of Certified Public Accountants.

(i) Payments must be made November 15, February 15, May 15, and August 15. A separate payment must be made for each claim filed. The total quarterly payment to a producer under this paragraph may not exceed \$562,500.

(j) Biofuel production for which payment has been received under section 41A.10 is not eligible for payment under this section.

Sec. 4. [103F.518] REINVEST IN MINNESOTA CLEAN ENERGY PROGRAM.

Subdivision 1. **Establishment of program.** (a) The board, in consultation with the technical committee established in subdivision 11, shall establish and administer a reinvest in Minnesota clean energy program that is in addition to the program under section 103F.515. The board may adopt rules to implement this section. Selection of land for the clean energy program must be based on its potential benefits for bioenergy crop production, water quality, soil health, reduction of chemical inputs, soil carbon storage, biodiversity, and wildlife habitat.

(b) The definitions in sections 41A.10 and 41A.11 apply to this section.

Subd. 2. **Eligible land.** Eligible land under this section must:

(1) be owned by the landowner, or a parent or other blood relative of the landowner, for at least one year before the date of application;

(2) be at least five acres in size;

(3) not be currently set aside, enrolled, or diverted under another federal or state government program; and

(4) have been in agricultural use, as defined in section 17.81, subdivision 4, or have been set aside, enrolled, or diverted under another federal or state program for at least two of the last five years before the date of application.

Subd. 3. **Designation of project areas.** The board shall develop a process to designate defined project areas. The designation process must prioritize projects that include coordinated cooperation of a cellulosic biofuel facility or a bioenergy production facility, target impaired waters, or support other state or local natural resource plans, goals, or objectives.

Subd. 4. **Easements.** The board may acquire, or accept by gift or donation, easements on eligible land. An easement may be permanent or of limited duration. An easement of limited duration may not be acquired if it is for less than 20 years. The negotiation and acquisition of easements authorized by this section are exempt from the contractual provisions of chapters 16B and 16C.

Subd. 5. **Nature of property rights acquired.** (a) An easement must prohibit:
(1) agricultural crop production, unless approved by the board for energy production purposes; and

(2) spraying with chemicals, except as necessary to comply with noxious weed control laws, emergency pest control necessary to protect public health, or as needed to establish a productive planting as determined by the technical committee under subdivision 11.

(b) An easement is subject to the terms of the agreement provided in subdivision 6.

(c) Agricultural crop production and harvest are limited to native, perennial bioenergy crops. Harvest must occur outside of bird nesting season.

(d) An easement must allow repairs, improvements, and inspections necessary to maintain public drainage systems provided the easement area is restored to the condition required by the terms of the easement.

(e) An easement may allow nonnative perennial prairie or pasture established by September 1, 2007, that meet the objectives outlined in subdivision 7.

(f) An easement may allow grazing of livestock only if practiced under a plan, approved by the board, that protects water quality, wildlife habitat, and biodiversity.

Subd. 6. **Agreements by landowner.** The board may enroll eligible land in the reinvest in Minnesota clean energy program by signing an agreement in recordable form with a landowner in which the landowner agrees:

(1) to convey to the state an easement that is not subject to any prior title, lien, or encumbrance;

9.1 (2) to seed the land subject to the easement, as specified in the agreement, at
9.2 seeding rates determined by the board, or carry out other long-term capital improvements
9.3 approved by the board; and

9.4 (3) that the easement duration may be lengthened through mutual agreement with
9.5 the board.

9.6 Subd. 7. **Payments for easements.** The board must develop a tiered payment
9.7 system for easements partially based on the benefits of the bioenergy crop production for
9.8 water quality, soil health, reduction in chemical inputs, soil carbon storage, biodiversity,
9.9 and wildlife habitat using cash rent or a similar system as may be determined by the
9.10 board. The payment system must provide that the highest per-acre payment is for diverse
9.11 native prairie and perennials.

9.12 Subd. 8. **Easement renewal.** When an easement of limited duration expires,
9.13 a new easement and agreement for an additional period of at least 20 years may be
9.14 acquired by agreement of the board and the landowner under the terms of this section.
9.15 The board may adjust payment rates as a result of renewing an agreement and easement
9.16 only after examining the condition of the established plantings, conservation practices,
9.17 and land values.

9.18 Subd. 9. **Correction of easement boundary lines.** To correct errors in legal
9.19 descriptions for easements that affect the ownership interest in the state and adjacent
9.20 landowners, the board may, in the name of the state, with the approval of the attorney
9.21 general, convey, without consideration, interests of the state necessary to correct legal
9.22 descriptions of boundaries. The conveyance must be by quitclaim deed or release in
9.23 a form approved by the attorney general.

9.24 Subd. 10. **Enforcement and damages.** (a) A landowner who violates the term of
9.25 an easement or agreement under this section, or induces, assists, or allows another to do
9.26 so, is liable to the state for treble damages if the trespass is willful, but liable for double
9.27 damages only if the trespass is not willful. The amount of damages is the amount needed
9.28 to make the state whole or the amount the landowner has gained due to the violation,
9.29 whichever is greater.

9.30 (b) On request of the board, the attorney general may commence an action for
9.31 specific performance, injunctive relief, damages, including attorney fees, and any other
9.32 appropriate relief to enforce this section in district court in the county where all or part
9.33 of the violation is alleged to have been committed, or where the landowner resides or
9.34 has a principal place of business.

9.35 Subd. 11. **Technical committee.** To ensure that public benefits, including water
9.36 quality, soil health, reduction of chemical inputs, soil carbon storage, biodiversity, and

10.1 wildlife habitat are secured along with bioenergy crop production, the Board of Water and
10.2 Soil Resources shall appoint a technical committee consisting of one representative each
10.3 from the Departments of Agriculture, Natural Resources, Commerce, and the Pollution
10.4 Control Agency; two farm organizations; one sustainable agriculture farmer organization;
10.5 three rural economic development organizations; three environmental organizations;
10.6 and three conservation or wildlife organizations. The board and technical committee
10.7 shall consult with private sector organizations and University of Minnesota researchers
10.8 involved in biomass establishment and bioenergy or biofuel conversion. The technical
10.9 committee shall develop program guidelines, standards, and rules, as appropriate to
10.10 ensure that reinvest in Minnesota clean energy program contracts provide public benefits
10.11 commensurate with the public investment. The technical committee shall review and
10.12 make recommendations on the guidelines, standards, and rules every five years.

10.13 Sec. 5. **APPROPRIATION; RIM CLEAN ENERGY PROGRAM STANDARDS.**

10.14 \$3,500,000 in fiscal year 2008 is appropriated from the general fund to the Board
10.15 of Water and Soil Resources to develop, in consultation with the technical committee
10.16 established under Minnesota Statutes, section 103F.518, subdivision 11, RIM clean energy
10.17 program guidelines, standards, and rules. This is a onetime appropriation and is available
10.18 until June 30, 2009.

10.19 Sec. 6. **APPROPRIATION; RIM CLEAN ENERGY PROGRAM EASEMENTS.**

10.20 Subdivision 1. **Bond proceeds; appropriation.** \$20,000,000 is appropriated from
10.21 the bond proceeds fund to the Board of Water and Soil Resources to acquire RIM clean
10.22 energy program easements under Minnesota Statutes, section 103F.518.

10.23 Subd. 2. **Bond sale.** To provide the money appropriated in this section from the
10.24 bond proceeds fund, the commissioner of finance shall sell and issue bonds of the state in
10.25 an amount up to \$20,000,000 in the manner, upon the terms, and with the effect prescribed
10.26 by Minnesota Statutes, sections 16A.631 to 16A.675, and by the Minnesota Constitution,
10.27 article XI, sections 4 to 7.

10.28 Subd. 3. **General fund; appropriation.** \$500,000 in fiscal year 2008 and \$500,000
10.29 in fiscal year 2009 are appropriated from the general fund to the Board of Water and
10.30 Soil Resources to be used for long-term inspection and protection of easements acquired
10.31 by the board.

11.1 Sec. 7. **TRANSFER; CLEAN ENERGY CAPITAL EQUIPMENT REVOLVING**
11.2 **LOAN FUND.**

11.3 By June 30, 2008, the commissioner of finance shall transfer \$3,000,000 from the
11.4 general fund to the clean energy capital equipment revolving fund.

11.5 Sec. 8. **APPROPRIATION; BIOENERGY CROP UTILIZATION**
11.6 **TECHNOLOGY PERMITTING.**

11.7 \$1,000,000 in fiscal year 2008 and \$1,000,000 in fiscal year 2009 are appropriated
11.8 from the general fund to the Pollution Control Agency to permit new and emerging
11.9 bioenergy crop utilization technologies. This is a onetime appropriation.

11.10 Sec. 9. **APPROPRIATION; BIOENERGY PRODUCTION AND UTILIZATION**
11.11 **TECHNICAL ASSISTANCE.**

11.12 \$600,000 in fiscal year 2008 is appropriated from the general fund to the Agricultural
11.13 Utilization Research Institute for technical assistance and technology transfer to bioenergy
11.14 crop producers and users. This appropriation is available until June 30, 2009.

11.15 Sec. 10. **APPROPRIATION; BIOENERGY PRODUCTION RESEARCH AND**
11.16 **MONITORING.**

11.17 \$1,000,000 in fiscal year 2008 is appropriated from the general fund to the Board of
11.18 Water and Soil Resources to provide grants, in consultation with the technical committee
11.19 established under Minnesota Statutes, section 103F.518, subdivision 11, for bioenergy
11.20 crop research and monitoring including, but not limited to, water quality, water quantity
11.21 utilized, soil carbon storage, biological diversity, wildlife and habitat impacts and benefits,
11.22 and small diameter woody bioenergy. This appropriation is available until June 30, 2009.

11.23 Sec. 11. **APPROPRIATION; BIOENERGY AGRONOMIC ECONOMIC AND**
11.24 **POLICY RESEARCH.**

11.25 \$1,000,000 in fiscal year 2008 and \$1,000,000 in fiscal year 2009 are appropriated
11.26 from the general fund to the Minnesota Institute for Sustainable Agriculture at the
11.27 University of Minnesota to provide funds for on-station and on-farm field scale research
11.28 and outreach to develop and test the agronomic and economic requirements of diverse
11.29 stands of prairie plants and other perennials for bioenergy systems including, but not
11.30 limited to, multiple species selection and establishment, ecological management between
11.31 planting and harvest, harvest technologies, financial and agronomic risk management,
11.32 farmer goal setting and adoption of technologies, integration of wildlife habitat into

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12.1 management approaches, evaluation of carbon and other benefits, and robust policies
12.2 needed to induce farmer conversion on marginal lands.

12.3 Sec. 12. **APPROPRIATION; BUSINESS DEVELOPMENT ASSISTANCE**
12.4 **GRANTS.**

12.5 \$150,000 in fiscal year 2008 is appropriated from the general fund to the
12.6 commissioner of agriculture for grants to nongovernmental entities to assist in the
12.7 development of business plans and structures related to community ownership of eligible
12.8 cellulosic biofuel facilities under Minnesota Statutes, section 41A.10. This is a onetime
12.9 appropriation and is available until June 30, 2009.