A bill for an act

relating to taxation; providing for an aggregate resource preservation property tax; changing criminal penalties provision; amending Minnesota Statutes 2006, sections 273.13, subdivision 23; 298.75, subdivisions 1, 2, 6, 7; proposing coding for new law in Minnesota Statutes, chapter 273.

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

Section 1. **[273.1115] AGGREGATE RESOURCE PRESERVATION PROPERTY TAX LAW.**

Subd. 1. **Definitions.** For purposes of this section, "commercial aggregate deposit" and "actively mined" have the meanings given them in section 273.13, subdivision 23, paragraph (h).

Subdivision 2. **Requirement.** Real estate is entitled to valuation under this section only if all of the following requirements are met:

(1) the property is classified 1a, 1b, 2a, or 2b property under section 273.13, subdivisions 22 and 23;

(2) the property is at least ten contiguous acres, when the application is filed under subdivision 3;

(3) the owner has filed a completed application for deferment as specified in subdivision 3 with the county assessor in the county in which the property is located;

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

(5) a covenant on the land restricts its use as provided in subdivision 3, clause (4).

Subd. 3. **Application.** Application for valuation deferment under this section must be filed by May 1 of the assessment year. Any application filed and granted continues in effect for subsequent years until the property no longer qualifies, provided that supplemental affidavits under subdivision 8 are timely filed. The application must

be filed with the assessor of the county in which the real property is located on such form as may be prescribed by the commissioner of revenue. The application must be executed and acknowledged in the manner required by law to execute and acknowledge a deed and must contain at least the following information and any other information the commissioner deems necessary:

(1) the legal description of the area;

(2) the name and address of owner;

(3) a copy of the affidavit filed under section 273.13, subdivision 23, paragraph (h), when property is classified as:

(i) 2b under section 273.13, subdivision 23, paragraph (b), clause (5);

(ii) 1b under section 273.13, subdivision 22, paragraph (b);

(iii) 2a under section 273.13, subdivision 23, paragraph (a); or

(iv) 2b under section 273.13, subdivision 23, paragraph (b), clauses (1) to (3).

The application must include a similar document with the same information as contained in the affidavit under section 273.13, subdivision 23, paragraph (h); and

(4) a statement of proof from the owner that the land contains a restrictive covenant limiting its use for the property's surface to that which exists on the date of the application and limiting its future use to the preparation and removal of the commercial aggregate deposit under its surface. To qualify under this clause, the covenant must be binding on the owner or the owner's successor or assignee, and run with the land, except as provided in subdivision 5 allowing for the cancellation of the covenant under certain conditions.

Subd. 4. **Determination of value.** Upon timely application by the owner as provided in subdivision 3, notwithstanding sections 272.03, subdivision 8, and 273.11, the value of any qualifying land described in subdivision 3 must be valued as if it were agricultural property, using a per acre valuation equal to the current assessment year's average per acre valuation of agricultural land in the county. The assessor shall not consider any additional value resulting from potential alternative and future uses of the property. The buildings located on the land shall be valued by the assessor in the normal manner.

Subd. 5. **Cancellation of covenant.** The covenant required under subdivision 3 may be canceled in two ways:

(1) by the owner beginning with the next subsequent assessment year provided that the additional taxes as determined under subdivision 7 are paid by the owner at the time of cancellation; or

(2) by the city or town in which the property is located beginning with the next subsequent assessment year, if the city council or town board:

(i) changes the conditional use of the property;

(ii) revokes the mining permit; or

(iii) changes the zoning to disallow mining.

No additional taxes are imposed on the property under this clause.

Subd. 6. **County termination.** Within two years of the effective date of this section, a county may, following notice and public hearing, terminate application of this section in the county. The termination is effective upon adoption of a resolution of the county board. A county has 60 days from receipt of the first application for enrollment under this section to notify the applicant and any subsequent applicants of the county's intent to begin the process of terminating application of this section in the county. The county must act on the termination within six months. Upon termination by a vote of the county board, all applications received prior to and during notification of intent to terminate shall be deemed void. If the county board does not act on the termination within six months of notification, all applications for valuation for deferment received shall be deemed eligible for consideration to be enrolled under this section. Following this initial 60-day grace period, a termination applies prospectively and does not affect property enrolled under this section prior to the termination date. A county may reauthorize application of this section by a resolution of the county board revoking the termination.

Subd. 7. **Additional taxes.** When real property which has been valued and assessed under this section no longer qualifies, the portion of the land classified under subdivision 2, clause (1), is subject to additional taxes. The additional tax amount is determined by:

(1) computing the difference between (i) the current year's taxes determined in accordance with subdivision 4, and (ii) an amount as determined by the assessor based upon the property's current year's estimated market value of like real estate at its highest and best use and the appropriate local tax rate; and

(2) multiplying the amount determined in clause (1) by the number of years the land was in the program under this section. The current year's estimated market value as determined by the assessor must not exceed the market value that would result if the property was sold in an arms-length transaction and must not be greater than it would have been had the actual bona fide sale price of the property been used in lieu of that market value. The additional taxes must be extended against the property on the tax list for the current year, except that interest or penalties must not be levied on these additional taxes if timely paid. The additional tax under this subdivision must not be imposed on that portion of the property which has actively been mined and has been removed from the program based upon the supplemental affidavits filed under subdivision 8.

Subd. 8. **Supplemental affidavits; mining activity on land.** When any portion of the property begins to be actively mined, the owner must file a supplemental affidavit

within 60 days from the day any aggregate is removed stating the number of acres of the property that is actively being mined. The acres actively being mined shall be (1) valued and classified under section 273.13, subdivision 24, in the next subsequent assessment year, and (2) removed from the aggregate resource preservation property tax program under this section. The additional taxes under subdivision 7 must not be imposed on the acres that are actively being mined and have been removed from the program under this section. Copies of the original affidavit and all supplemental affidavits must be filed with the county assessor, the local zoning administrator, and the Department of Natural Resources, Division of Land and Minerals. A supplemental affidavit must be filed each time a subsequent portion of the property is actively mined, provided that the minimum acreage change is five acres, even if the actual mining activity constitutes less than five acres. Failure to file the affidavits timely shall result in the property losing its valuation deferment under this section, and additional taxes must be imposed as calculated under subdivision 7.

Subd. 9. **Lien.** The additional tax imposed by this section is a lien upon the property assessed to the same extent and for the same duration as other taxes imposed upon property within this state and, when collected, must be distributed in the manner provided by law for the collection and distribution of other property taxes.

Subd. 10. **Continuation of tax treatment upon sale.** When real property qualifying under subdivision 2 is sold, additional taxes must not be extended against the property if the property continues to qualify under subdivision 2, and the new owner files an application with the assessor for continued deferment within 30 days after the sale.

EFFECTIVE DATE. This section is effective for taxes assessed in 2009, payable in 2010, and thereafter, except that for the 2009 assessment year, the application date under subdivision 5 shall be September 1, 2009, and subdivision 6 is effective the day following final enactment.

Sec. 2. Minnesota Statutes 2006, section 273.13, subdivision 23, is amended to read:

Subd. 23. **Class 2.** (a) Class 2a property is agricultural land including any improvements that is homesteaded. The market value of the house and garage and immediately surrounding one acre of land has the same class rates as class 1a property under subdivision 22. The value of the remaining land including improvements up to the first tier valuation limit of agricultural homestead property has a net class rate of 0.55 percent of market value. The remaining property over the first tier has a class rate of one percent of market value. For purposes of this subdivision, the "first tier valuation

limit of agricultural homestead property" and "first tier" means the limit certified under section 273.11, subdivision 23.

(b) Class 2b property is (1) real estate, rural in character and used exclusively for growing trees for timber, lumber, and wood and wood products; (2) real estate that is not improved with a structure and is used exclusively for growing trees for timber, lumber, and wood and wood products, if the owner has participated or is participating in a cost-sharing program for afforestation, reforestation, or timber stand improvement on that particular property, administered or coordinated by the commissioner of natural resources; (3) real estate that is nonhomestead agricultural land; ~~or~~ (4) a landing area or public access area of a privately owned public use airport; or (5) land with a commercial aggregate deposit that is not actively being mined and is not otherwise classified as class 2a under paragraph (a) or 2b, clauses (1) to (3). Class 2b property has a net class rate of one percent of market value.

(c) Agricultural land as used in this section means contiguous acreage of ten acres or more, used during the preceding year for agricultural purposes. "Agricultural purposes" as used in this section means the raising or cultivation of agricultural products. "Agricultural purposes" also includes enrollment in the Reinvest in Minnesota program under sections 103F.501 to 103F.535 or the federal Conservation Reserve Program as contained in Public Law 99-198 if the property was classified as agricultural (i) under this subdivision for the assessment year 2002 or (ii) in the year prior to its enrollment. Contiguous acreage on the same parcel, or contiguous acreage on an immediately adjacent parcel under the same ownership, may also qualify as agricultural land, but only if it is pasture, timber, waste, unusable wild land, or land included in state or federal farm programs. Agricultural classification for property shall be determined excluding the house, garage, and immediately surrounding one acre of land, and shall not be based upon the market value of any residential structures on the parcel or contiguous parcels under the same ownership.

(d) Real estate, excluding the house, garage, and immediately surrounding one acre of land, of less than ten acres which is exclusively and intensively used for raising or cultivating agricultural products, shall be considered as agricultural land.

Land shall be classified as agricultural even if all or a portion of the agricultural use of that property is the leasing to, or use by another person for agricultural purposes.

Classification under this subdivision is not determinative for qualifying under section 273.111.

The property classification under this section supersedes, for property tax purposes only, any locally administered agricultural policies or land use restrictions that define minimum or maximum farm acreage.

(e) The term "agricultural products" as used in this subdivision includes production for sale of:

(1) livestock, dairy animals, dairy products, poultry and poultry products, fur-bearing animals, horticultural and nursery stock, fruit of all kinds, vegetables, forage, grains, bees, and apiary products by the owner;

(2) fish bred for sale and consumption if the fish breeding occurs on land zoned for agricultural use;

(3) the commercial boarding of horses if the boarding is done in conjunction with raising or cultivating agricultural products as defined in clause (1);

(4) property which is owned and operated by nonprofit organizations used for equestrian activities, excluding racing;

(5) game birds and waterfowl bred and raised for use on a shooting preserve licensed under section 97A.115;

(6) insects primarily bred to be used as food for animals;

(7) trees, grown for sale as a crop, and not sold for timber, lumber, wood, or wood products; and

(8) maple syrup taken from trees grown by a person licensed by the Minnesota Department of Agriculture under chapter 28A as a food processor.

(f) If a parcel used for agricultural purposes is also used for commercial or industrial purposes, including but not limited to:

(1) wholesale and retail sales;

(2) processing of raw agricultural products or other goods;

(3) warehousing or storage of processed goods; and

(4) office facilities for the support of the activities enumerated in clauses (1), (2), and (3),

the assessor shall classify the part of the parcel used for agricultural purposes as class 1b, 2a, or 2b, whichever is appropriate, and the remainder in the class appropriate to its use. The grading, sorting, and packaging of raw agricultural products for first sale is considered an agricultural purpose. A greenhouse or other building where horticultural or nursery products are grown that is also used for the conduct of retail sales must be classified as agricultural if it is primarily used for the growing of horticultural or nursery products from seed, cuttings, or roots and occasionally as a showroom for the retail sale of those products. Use of a greenhouse or building only for the display of already grown horticultural or nursery products does not qualify as an agricultural purpose.

The assessor shall determine and list separately on the records the market value of the homestead dwelling and the one acre of land on which that dwelling is located. If any

farm buildings or structures are located on this homesteaded acre of land, their market value shall not be included in this separate determination.

(g) To qualify for classification under paragraph (b), clause (4), a privately owned public use airport must be licensed as a public airport under section 360.018. For purposes of paragraph (b), clause (4), "landing area" means that part of a privately owned public use airport properly cleared, regularly maintained, and made available to the public for use by aircraft and includes runways, taxiways, aprons, and sites upon which are situated landing or navigational aids. A landing area also includes land underlying both the primary surface and the approach surfaces that comply with all of the following:

(i) the land is properly cleared and regularly maintained for the primary purposes of the landing, taking off, and taxiing of aircraft; but that portion of the land that contains facilities for servicing, repair, or maintenance of aircraft is not included as a landing area;

(ii) the land is part of the airport property; and

(iii) the land is not used for commercial or residential purposes.

The land contained in a landing area under paragraph (b), clause (4), must be described and certified by the commissioner of transportation. The certification is effective until it is modified, or until the airport or landing area no longer meets the requirements of paragraph (b), clause (4). For purposes of paragraph (b), clause (4), "public access area" means property used as an aircraft parking ramp, apron, or storage hangar, or an arrival and departure building in connection with the airport.

(h) To qualify for classification under paragraph (b), clause (5), the property must be at least ten contiguous acres in size and the owner of the property must record with the county recorder of the county in which the property is located an affidavit containing:

(1) a legal description of the property;

(2) a disclosure that the property contains a commercial aggregate deposit that is not actively being mined but is present on the entire parcel enrolled;

(3) documentation that the conditional use under the county or local zoning ordinance of this property is for mining; and

(4) documentation that a permit has been issued by the local unit of government or the mining activity is allowed under local ordinance. The disclosure must include a statement from a registered professional geologist, engineer, or soil scientist delineating the deposit and certifying that it is a commercial aggregate deposit.

For purposes of this section and section 273.1115, "commercial aggregate deposit" means a deposit that will yield crushed stone or sand and gravel that is suitable for use as a construction aggregate; and "actively mined" means the removal of top soil and overburden in preparation for excavation or excavation of a commercial deposit.

(i) When any portion of the property under this subdivision or subdivision 22 begins to be actively mined, the owner must file a supplemental affidavit within 60 days from the day any aggregate is removed stating the number of acres of the property that is actively being mined. The acres actively being mined must be (1) valued and classified under subdivision 24 in the next subsequent assessment year, and (2) removed from the aggregate resource preservation property tax program under section 273.1115, if the land was enrolled in that program. Copies of the original affidavit and all supplemental affidavits must be filed with the county assessor, the local zoning administrator, and the Department of Natural Resources, Division of Land and Minerals. A supplemental affidavit must be filed each time a subsequent portion of the property is actively mined, provided that the minimum acreage change is five acres, even if the actual mining activity constitutes less than five acres.

EFFECTIVE DATE. This section is effective for taxes payable in 2010 and thereafter.

Sec. 3. Minnesota Statutes 2006, section 298.75, subdivision 1, is amended to read:

Subdivision 1. **Definitions.** Except as may otherwise be provided, the following words, when used in this section, shall have the meanings herein ascribed to them.

(1) "Aggregate material" shall mean nonmetallic natural mineral aggregate including, but not limited to sand, silica sand, gravel, crushed rock, limestone, granite, and borrow, but only if the borrow is transported on a public road, street, or highway. Aggregate material shall not include dimension stone and dimension granite. Aggregate material must be measured or weighed after it has been extracted from the pit, quarry, or deposit.

(2) "Person" shall mean any individual, firm, partnership, corporation, organization, trustee, association, or other entity.

(3) "Operator" shall mean any person engaged in the business of removing aggregate material from the surface or subsurface of the soil, for the purpose of sale, either directly or indirectly, through the use of the aggregate material in a marketable product or service.

(4) "Extraction site" shall mean a pit, quarry, or deposit containing aggregate material and any contiguous property to the pit, quarry, or deposit which is used by the operator for stockpiling the aggregate material.

(5) "Importer" shall mean any person who buys aggregate material ~~produced~~ excavated from a county not listed in paragraph (6) or another state and causes the aggregate material to be imported into a county in this state which imposes a tax on aggregate material.

(6) "County" shall mean the counties of Pope, Stearns, Benton, Sherburne, Carver, Scott, Dakota, Le Sueur, Kittson, Marshall, Pennington, Red Lake, Polk, Norman, Mahnomen, Clay, Becker, Carlton, St. Louis, Rock, Murray, Wilkin, Big Stone, Sibley, Hennepin, Washington, Chisago, and Ramsey. County also means any other county whose board has voted after a public hearing to impose the tax under this section and has notified the commissioner of revenue of the imposition of the tax.

(7) "Borrow" shall mean granular borrow, consisting of durable particles of gravel and sand, crushed quarry or mine rock, crushed gravel or stone, or any combination thereof, the ratio of the portion passing the (#200) sieve divided by the portion passing the (1 inch) sieve may not exceed 20 percent by mass.

EFFECTIVE DATE. This section is effective January 1, 2009.

Sec. 4. Minnesota Statutes 2006, section 298.75, subdivision 2, is amended to read:

Subd. 2. **Tax imposed.** (a) A county that imposes the aggregate production tax shall impose upon every ~~importer and~~ operator a production tax ~~up to ten cents~~ of 21.5 cents per cubic yard or ~~up to seven~~ 15 cents per ton of aggregate material ~~removed~~ excavated in the county except that the county board may decide not to impose this tax if it determines that in the previous year operators removed less than 20,000 tons or 14,000 cubic yards of aggregate material from that county. The tax shall not be imposed on aggregate material ~~produced~~ excavated in the county ~~when~~ until the aggregate material is transported from the extraction site or sold, whichever occurs first. When aggregate material is stored in a stockpile within the state of Minnesota and a public highway, road or street is not used for transporting the aggregate material, the tax shall not be imposed until either when the aggregate material is sold, or when it is transported from the stockpile site, or when it is used from the stockpile, whichever occurs first.

(b) A county that imposes the aggregate production tax under paragraph (a) shall impose upon every importer a production tax of 21.5 cents per cubic yard or 15 cents per ton of aggregate material imported into the county. The tax shall be imposed when the aggregate material is imported from the extraction site or sold. When imported aggregate material is stored in a stockpile within the state of Minnesota and a public highway, road, or street is not used for transporting the aggregate material, the tax shall be imposed either when the aggregate material is sold, when it is transported from the stockpile site, or when it is used from the stockpile, whichever occurs first. The tax shall be imposed on an importer when the aggregate material is imported into the county that imposes the tax.

(c) If the aggregate material is transported directly from the extraction site to a waterway, railway, or another mode of transportation other than a highway, road or street,

the tax imposed by this section shall be apportioned equally between the county where the aggregate material is extracted and the county to which the aggregate material is originally transported. If that destination is not located in Minnesota, then the county where the aggregate material was extracted shall receive all of the proceeds of the tax.

(d) A county, city, or town that receives revenue under this section is prohibited from imposing any additional host community fees on aggregate production within that county, city, or town.

EFFECTIVE DATE. This section is effective January 1, 2009.

Sec. 5. Minnesota Statutes 2006, section 298.75, subdivision 6, is amended to read:

Subd. 6. **Penalties; removal of aggregate if previous tax not paid; false report.** It is a misdemeanor for any operator or importer to remove aggregate material from a pit, quarry, or deposit or for any importer to import aggregate material unless all taxes due under this section for ~~the~~ all previous reporting ~~period~~ periods have been paid or objections thereto have been filed pursuant to subdivision 4.

It is a misdemeanor for the operator or importer who is required to file a report to file a false report with intent to evade the tax.

EFFECTIVE DATE. This section is effective January 1, 2009.

Sec. 6. Minnesota Statutes 2006, section 298.75, subdivision 7, is amended to read:

Subd. 7. **Proceeds of taxes.** (a) All money collected as taxes under this section shall be deposited in the county treasury and credited ~~as follows, for expenditure by the county board:~~ according to this subdivision.

(b) The county auditor may retain an annual administrative fee of up to five percent of the total taxes collected in any year.

(c) The balance of the taxes, after any deduction under paragraph (b), shall be credited as follows:

~~(a) Sixty~~ (1) 42.5 percent to the county road and bridge fund for expenditure for the maintenance, construction and reconstruction of roads, highways and bridges;

~~(b) Thirty~~ (2) 42.5 percent to the ~~road and bridge fund of those towns as determined by the county board and to the~~ general fund ~~or other designated fund of those cities as determined by the county board~~ of the city or town in which the mine is located, or to the county, if the mine is located in an unorganized town, to be expended for maintenance, construction and reconstruction of roads, highways and bridges; and

~~(c) Ten~~ (3) 15 percent to a special reserve fund which is hereby established, for expenditure for the restoration of abandoned pits, quarries, or deposits located ~~upon public and tax forfeited lands~~ within the county.

If there are no abandoned pits, quarries or deposits located ~~upon public or tax forfeited lands~~ within the county, this portion of the tax shall be ~~deposited in the county road and bridge fund for expenditure for the maintenance, construction and reconstruction of roads, highways and bridges~~ used for any other unmet reclamation need or for conservation or other environmental needs.

EFFECTIVE DATE. This section is effective January 1, 2009.