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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. 2666

03/21/2019 Authored by Lippert and Fischer
The bill was read for the first time and referred to the Committee on Ways and Means

1.1 A bill for an act
1.2 relating to environment; providing reimbursement to owners of private drinking
1.3 water wells for mitigation of agricultural chemicals; modifying the membership
1.4 of the Agricultural Chemical Response Compensation Board; appropriating money
1.5 for private well mitigation; amending Minnesota Statutes 2018, sections 18E.02,
1.6 subdivision 5; 18E.03, subdivision 2; 18E.05, subdivision 1; proposing coding for
1.7 new law in Minnesota Statutes, chapter 18E.

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

1.9 Section 1. Minnesota Statutes 2018, section 18E.02, subdivision 5, is amended to read:

1.10 Subd. 5. Eligible person. "Eligible person" means:

1.11 (1) a responsible party or an owner of real property, but does not include the state, a
1.12 state agency, or a political subdivision of the state, except as provided in clause (2); common
1.13 carriers, as defined by section 218.011, subdivision 10; motor carriers as defined by section
1.14 221.012, subdivision 25, while transporting agricultural chemicals except as provided in
1.15 clause (3); or the federal government or an agency of the federal government;

1.16 (2) the owners of municipal airports in Minnesota where a licensed aerial pesticide
1.17 applicator has caused an incident through storage, handling, or distribution operations for
1.18 agricultural chemicals if (i) the commissioner has determined that corrective action is
1.19 necessary and (ii) the commissioner determines, and the Agricultural Chemical Response
1.20 Compensation Board concurs, that based on an affirmative showing made by the owner, a
1.21 responsible party cannot be identified or the identified responsible party is unable to comply
1.22 with an order for corrective action; ~~or~~

2.1 (3) a person involved in a transaction relating to real property who is not a responsible
 2.2 party or owner of the real property and who voluntarily takes corrective action on the
 2.3 property in response to a request or order for corrective action from the commissioner; or

2.4 (4) the owner of a private well used primarily for drinking water when:

2.5 (i) the level of agricultural chemical in the well's water exceeds a health risk limit adopted
 2.6 by the commissioner of health; and

2.7 (ii) this contamination is not the result of an incident covered under section 18E.04.

2.8 Sec. 2. Minnesota Statutes 2018, section 18E.03, subdivision 2, is amended to read:

2.9 Subd. 2. **Expenditures.** (a) Money in the agricultural chemical response and
 2.10 reimbursement account may only be used:

2.11 (1) to pay for the commissioner's responses to incidents under chapters 18B, 18C, and
 2.12 18D that are not eligible for payment under section 115B.20, subdivision 2;

2.13 (2) to pay for emergency responses that are otherwise unable to be funded;

2.14 (3) to reimburse and pay corrective action costs under section 18E.04; ~~and~~

2.15 (4) to reimburse mitigation costs under section 18E.045; and

2.16 (5) to reimburse the commissioner for board staff and other administrative costs and the
 2.17 commissioner's incident response program costs related to eligible incident sites, up to
 2.18 \$450,000 per fiscal year.

2.19 (b) Money in the agricultural chemical response and reimbursement account is
 2.20 appropriated to the commissioner to make payments as provided in this subdivision.

2.21 Sec. 3. **[18E.045] REIMBURSEMENT OF COSTS FOR PRIVATE DRINKING**
 2.22 **WATER WELL MITIGATION.**

2.23 Subdivision 1. Reimbursement of mitigation costs. The commissioner shall reimburse
 2.24 an eligible person, as defined in section 18E.02, subdivision 5, clause (4), from the
 2.25 agricultural chemical response and reimbursement account for the reasonable and necessary
 2.26 costs incurred by the eligible person to mitigate agricultural chemical contamination so that
 2.27 the well water no longer exceeds the applicable health risk limit or limits.

2.28 Subd. 2. Reimbursement conditions. (a) On request by an eligible person, the board
 2.29 must reimburse the eligible person for the reasonable and necessary mitigation costs incurred
 2.30 by the eligible person as provided under subdivision 4 if the board determines:

3.1 (1) the eligible person pays the first \$100 of the mitigation costs;

3.2 (2) the eligible person provides the board with a sworn affidavit and other convincing
3.3 evidence that the eligible person is unable to pay additional mitigation costs; and

3.4 (3) the eligible person submits an application for reimbursement to the board, along with
3.5 associated invoices, within three years of performance of the eligible mitigation work.

3.6 (b) An eligible person is not eligible for reimbursement and must refund amounts
3.7 reimbursed under this section if false statements or misrepresentations are made in the
3.8 affidavit or other evidence submitted to the board to show an inability to pay mitigation
3.9 costs.

3.10 (c) The board may reimburse the eligible person and one or more designees by multiparty
3.11 check.

3.12 Subd. 3. **Ineligibility for reimbursement.** Contamination due to pesticides that are
3.13 sanitizers or disinfectants that are exempt from surcharges are ineligible for reimbursement
3.14 under this section.

3.15 Subd. 4. **Reimbursement payments; appropriation.** (a) The board shall pay a person
3.16 that is eligible for reimbursement under subdivisions 1 and 2 from the agricultural chemical
3.17 response and reimbursement account for 80 percent of the total reasonable and necessary
3.18 mitigation costs greater than \$100 and less than or equal to \$20,000.

3.19 (b) A reimbursement payment must not be made until the board has determined that the
3.20 costs are reasonable and the payment is for the reimbursement of costs that were actually
3.21 incurred.

3.22 (c) The board may make periodic reimbursements as mitigation costs are incurred upon
3.23 receipt of sufficient invoices for the mitigation costs.

3.24 (d) Money in the agricultural chemical response and reimbursement account is
3.25 appropriated to the commissioner to make reimbursement payments as directed by the board
3.26 under this subdivision.

3.27 Subd. 5. **Reimbursement decisions; appeal.** (a) The board may issue a letter of intent
3.28 on whether a person is eligible for reimbursement. The letter is not binding on the board.

3.29 (b) The board must issue an order granting or denying a request within 30 days following
3.30 the board meeting at which the board votes to grant or deny a request for reimbursement
3.31 under this section.

4.1 (c) After an initial request for reimbursement is made, notwithstanding subdivisions 1
4.2 to 4, the board may deny additional requests for reimbursement.

4.3 (d) A person may appeal the board's decision under paragraph (b) as a contested case
4.4 hearing under chapter 14. A request for a contested case hearing must be submitted in writing
4.5 to the board within 30 days of receipt of the notification of denial issued under paragraph
4.6 (b).

4.7 Sec. 4. Minnesota Statutes 2018, section 18E.05, subdivision 1, is amended to read:

4.8 Subdivision 1. **Membership.** (a) The Agricultural Chemical Response Compensation
4.9 Board is created to consist of the commissioner of agriculture, the commissioner of
4.10 commerce, the commissioner of health, and three private industry members consisting of:
4.11 one representative of agricultural chemical manufacturers and wholesalers; one representative
4.12 of farmers; and one representative of dealers who sell the agricultural chemicals at retail.
4.13 The governor shall appoint the private industry members. Appointment, vacancies, removal,
4.14 terms, and payment of compensation and expenses of members, but not expiration of the
4.15 board itself, are governed by section 15.0575.

4.16 (b) The commissioner of agriculture shall provide staff to support the activities of the
4.17 board.

4.18 (c) The board shall adopt rules regarding its practices and procedures, the application
4.19 form and procedures for determining eligibility for and the amount of reimbursement, and
4.20 procedures for investigation of claims.

4.21 Sec. 5. **APPROPRIATION.**

4.22 \$500,000 in fiscal year 2020 is appropriated from the clean water fund to the
4.23 commissioner of health for private well mitigation and to upgrade substandard private wells
4.24 that are contaminated by contaminants that are not agricultural chemicals.