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State of Minnesota  
HOUSE OF REPRESENTATIVES  
NINETIETH SESSION

H. F. No. 3836

03/15/2018 Authored by Torkelson  
The bill was read for the first time and referred to the Committee on Agriculture Policy

1.1 A bill for an act  
1.2 relating to natural resources; modifying conditions for agricultural best management  
1.3 practice loans to include environmental service providers; modifying drainage law  
1.4 to accelerate ditch buffer strip implementation; amending Minnesota Statutes 2016,  
1.5 sections 17.117, subdivisions 1, 4, 11; 103E.021, subdivision 6; 103E.071;  
1.6 103E.351, subdivision 1.

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

1.8 Section 1. Minnesota Statutes 2016, section 17.117, subdivision 1, is amended to read:

1.9 Subdivision 1. **Purpose.** The purpose of the agriculture best management practices loan  
1.10 program is to provide low or no interest financing to farmers, agriculture supply businesses,  
1.11 rural landowners, and ~~water-quality cooperatives~~ approved environmental service providers  
1.12 for the implementation of agriculture and other best management practices that reduce  
1.13 environmental pollution.

1.14 Sec. 2. Minnesota Statutes 2016, section 17.117, subdivision 4, is amended to read:

1.15 Subd. 4. **Definitions.** (a) For the purposes of this section, the terms defined in this  
1.16 subdivision have the meanings given them.

1.17 (b) "Agricultural and environmental revolving accounts" means accounts in the  
1.18 agricultural fund, controlled by the commissioner, which hold funds available to the program.

1.19 (c) "Agriculture supply business" means a person, partnership, joint venture, corporation,  
1.20 limited liability company, association, firm, public service company, or cooperative that  
1.21 provides materials, equipment, or services to farmers or agriculture-related enterprises.

2.1 (d) "Allocation" means the funds awarded to an applicant for implementation of best  
2.2 management practices through a competitive or noncompetitive application process.

2.3 (e) "Applicant" means a local unit of government eligible to participate in this program  
2.4 that requests an allocation of funds as provided in subdivision 6b.

2.5 (f) "Best management practices" has the meaning given in sections 103F.711, subdivision  
2.6 3, and 103H.151, subdivision 2. Best management practices also means other practices,  
2.7 techniques, and measures that have been demonstrated to the satisfaction of the  
2.8 commissioner: (1) to prevent or reduce adverse environmental impacts by using the most  
2.9 effective and practicable means of achieving environmental goals; or (2) to achieve drinking  
2.10 water quality standards under chapter 103H or under Code of Federal Regulations, title 40,  
2.11 parts 141 and 143, as amended.

2.12 (g) "Borrower" means a farmer, an agriculture supply business, or a rural landowner  
2.13 applying for a low-interest loan.

2.14 (h) "Commissioner" means the commissioner of agriculture, including when the  
2.15 commissioner is acting in the capacity of chair of the Rural Finance Authority, or the designee  
2.16 of the commissioner.

2.17 (i) "Committed project" means an eligible project scheduled to be implemented at a  
2.18 future date:

2.19 (1) that has been approved and certified by the local government unit; and

2.20 (2) for which a local lender has obligated itself to offer a loan.

2.21 (j) "Comprehensive water management plan" means a state-approved and locally adopted  
2.22 plan authorized under section 103B.231, 103B.255, 103B.311, 103C.331, 103D.401, or  
2.23 103D.405.

2.24 (k) "Cost incurred" means expenses for implementation of a project accrued because  
2.25 the borrower has agreed to purchase equipment or is obligated to pay for services or materials  
2.26 already provided as a result of implementing an approved eligible project.

2.27 (l) "Environmental service providers" means public or private organizations and  
2.28 businesses approved by the commissioner that provide services or materials for  
2.29 implementation of eligible best management practices for, or on behalf of, eligible individuals  
2.30 or multiple individuals, including but not limited to drainage authorities, watershed districts,  
2.31 municipalities, counties, water-quality cooperatives, or private businesses providing  
2.32 environment-related services or materials, except as expressly limited in this section.

3.1 ~~(h)~~ (m) "Farmer" means a person, partnership, joint venture, corporation, limited liability  
 3.2 company, association, firm, public service company, or cooperative that regularly participates  
 3.3 in physical labor or operations management of farming and files a Schedule F as part of  
 3.4 filing United States Internal Revenue Service Form 1040 or indicates farming as the primary  
 3.5 business activity under Schedule C, K, or S, or any other applicable report to the United  
 3.6 States Internal Revenue Service.

3.7 ~~(m)~~ (n) "Lender agreement" means an agreement entered into between the commissioner  
 3.8 and a local lender which contains terms and conditions of participation in the program.

3.9 ~~(n)~~ (o) "Local government unit" means a county, soil and water conservation district, or  
 3.10 an organization formed for the joint exercise of powers under section 471.59 with the  
 3.11 authority to participate in the program.

3.12 ~~(o)~~ (p) "Local lender" means a local government unit as defined in paragraph (n), a state  
 3.13 or federally chartered bank, a savings association, a state or federal credit union, Agribank  
 3.14 and its affiliated organizations, or a nonprofit economic development organization or other  
 3.15 financial lending institution approved by the commissioner.

3.16 ~~(p)~~ (q) "Local revolving loan account" means the account held by a local government  
 3.17 unit and a local lender into which principal repayments from borrowers are deposited and  
 3.18 new loans are issued in accordance with the requirements of the program and lender  
 3.19 agreements.

3.20 ~~(q)~~ (r) "Nonpoint source" has the meaning given in section 103F.711, subdivision 6.

3.21 ~~(r)~~ (s) "Program" means the agriculture best management practices loan program in this  
 3.22 section.

3.23 ~~(s)~~ (t) "Project" means one or more components or activities located within Minnesota  
 3.24 that are required by the local government unit to be implemented for satisfactory completion  
 3.25 of an eligible best management practice.

3.26 ~~(t)~~ (u) "Rural landowner" means the owner of record of Minnesota real estate located in  
 3.27 an area determined by the local government unit to be rural after consideration of local land  
 3.28 use patterns, zoning regulations, jurisdictional boundaries, local community definitions,  
 3.29 historical uses, and other pertinent local factors.

3.30 ~~(u)~~ "Water quality cooperative" has the meaning given in section 115.58, paragraph (d),  
 3.31 except as expressly limited in this section.

4.1 Sec. 3. Minnesota Statutes 2016, section 17.117, subdivision 11, is amended to read:

4.2 Subd. 11. **Loans issued to borrower.** (a) Local lenders may issue loans only for projects  
4.3 that are approved and certified by the local government unit as meeting priority needs  
4.4 identified in a comprehensive water management plan or other local planning documents,  
4.5 are in compliance with accepted practices, standards, specifications, or criteria, and are  
4.6 eligible for financing under Environmental Protection Agency or other applicable guidelines.

4.7 (b) The local lender may use any additional criteria considered necessary to determine  
4.8 the eligibility of borrowers for loans.

4.9 (c) Local lenders shall set the terms and conditions of loans to borrowers, except that:

4.10 (1) no loan to a borrower may exceed \$200,000;

4.11 (2) no loan for a project may exceed \$200,000; and

4.12 (3) no borrower shall, at any time, have multiple loans from this program with a total  
4.13 outstanding loan balance of more than \$200,000.

4.14 (d) The maximum term length for projects in this paragraph is ten years.

4.15 (e) Fees charged at the time of closing must:

4.16 (1) be in compliance with normal and customary practices of the local lender;

4.17 (2) be in accordance with published fee schedules issued by the local lender;

4.18 (3) not be based on participation program; and

4.19 (4) be consistent with fees charged other similar types of loans offered by the local  
4.20 lender.

4.21 (f) The interest rate assessed to an outstanding loan balance by the local lender must not  
4.22 exceed three percent per year.

4.23 (g) Environmental service providers may request loans to finance projects implemented  
4.24 on behalf of multiple eligible individuals in excess of the limits in paragraph (c), not to  
4.25 exceed the total of the number of represented landowners multiplied by the limit in paragraph  
4.26 (c), clause (1).

4.27 Sec. 4. Minnesota Statutes 2016, section 103E.021, subdivision 6, is amended to read:

4.28 Subd. 6. **Incremental ~~implementation~~ establishment of vegetated ditch buffer strips**  
4.29 **and side inlet controls.** (a) Notwithstanding other provisions of this chapter requiring  
4.30 appointment of viewers and redetermination of benefits and damages, a drainage authority

5.1 may ~~implement~~ make findings and order the establishment of permanent buffer strips of  
5.2 perennial vegetation approved by the drainage authority or side inlet controls, or both,  
5.3 adjacent to a public drainage ditch, where necessary to control erosion and sedimentation,  
5.4 improve water quality, or maintain the efficiency of the drainage system. The drainage  
5.5 authority's finding that the establishment of permanent buffer strips of perennial vegetation  
5.6 or side inlet controls is necessary to control erosion and sedimentation, improve water  
5.7 quality, or maintain the efficiency of the drainage system is sufficient to confer jurisdiction  
5.8 under this subdivision. Preference should be given to planting native species of a local  
5.9 ecotype. The approved perennial vegetation shall not impede future maintenance of the  
5.10 ditch. The permanent strips of perennial vegetation shall be 16-1/2 feet in width measured  
5.11 outward from the top edge of the existing constructed channel. Drainage system rights-of-way  
5.12 for the acreage and additional property required for the permanent strips must be acquired  
5.13 by the authority having jurisdiction.

5.14 (b) A project under this subdivision shall be implemented as a repair according to section  
5.15 103E.705, except that the drainage authority may appoint an engineer to examine the drainage  
5.16 system and prepare an engineer's repair report for the project.

5.17 (c) Damages shall be determined by the drainage authority, or viewers, appointed by  
5.18 the drainage authority, according to section 103E.315, subdivision 8. A damages statement  
5.19 shall be prepared, including an explanation of how the damages were determined for each  
5.20 property affected by the project, and filed with the auditor or watershed district. Within 30  
5.21 days after the damages statement is filed, the auditor or watershed district shall prepare  
5.22 property owners' reports according to section 103E.323, subdivision 1, clauses (1), (2), (6),  
5.23 (7), and (8), and mail a copy of the property owner's report and damages statement to each  
5.24 owner of property affected by the proposed project.

5.25 (d) After a damages statement is filed, the drainage authority shall set a time, by order,  
5.26 not more than 30 days after the date of the order, for a hearing on the project. At least ten  
5.27 days before the hearing, the auditor or watershed district shall give notice by mail of the  
5.28 time and location of the hearing to the owners of property and political subdivisions likely  
5.29 to be affected by the project.

5.30 (e) The drainage authority shall make findings and order the repairs to be made if the  
5.31 drainage authority determines from the evidence presented at the hearing and by the viewers  
5.32 and engineer, if appointed, that the repairs are necessary for the drainage system and the  
5.33 costs of the repairs are within the limitations of section 103E.705.

6.1 Sec. 5. Minnesota Statutes 2016, section 103E.071, is amended to read:

6.2 **103E.071 COUNTY ATTORNEY.**

6.3 The county attorney shall represent the county in all drainage proceedings and related  
 6.4 matters without special compensation, except as provided in section 388.09, subdivision 1.  
 6.5 A county attorney, the county attorney's assistant, or any attorney associated with the county  
 6.6 attorney in business, may not otherwise appear in any drainage proceeding for any interested  
 6.7 person.

6.8 Sec. 6. Minnesota Statutes 2016, section 103E.351, subdivision 1, is amended to read:

6.9 Subdivision 1. **Conditions to redetermine benefits and damages; appointment of**  
 6.10 **viewers.** If the drainage authority determines that the ~~original~~ benefits or damages of record  
 6.11 determined in a drainage proceeding do not reflect reasonable present day land values or  
 6.12 that the benefited or damaged areas have changed, or if more than ~~50~~ 26 percent of the  
 6.13 owners of property, or owners of 26 percent of the property, benefited or damaged by a  
 6.14 drainage system petition for ~~correction of an error that was made at the time of the~~  
 6.15 ~~proceedings that established the drainage system~~ a redetermination of benefits and damages,  
 6.16 the drainage authority may appoint three viewers to redetermine and report the benefits and  
 6.17 damages and the benefited and damaged areas.

6.18 Sec. 7. **PUBLIC DRAINAGE DITCH BUFFER STRIP; PLANTING AND**  
 6.19 **MAINTENANCE.**

6.20 With the consent of the property owner where the drainage ditch buffer will be located,  
 6.21 a drainage authority, as defined in Minnesota Statutes, section 103E.005, subdivision 9,  
 6.22 may plant and maintain 16-1/2-foot ditch buffer strips that meet the width and vegetation  
 6.23 requirements of Minnesota Statutes, section 103E.021, before acquiring and compensating  
 6.24 for the buffer strip land rights according to Minnesota Statutes, chapter 103E. Planting and  
 6.25 maintenance costs may be paid in accordance with Minnesota Statutes, chapter 103E. This  
 6.26 section expires June 30, 2019.

6.27 **EFFECTIVE DATE.** This section is effective the day following final enactment.