

CHAPTER 40

SOIL AND WATER CONSERVATION

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40.01 DEFINITIONS.

[For text of subs 1 to 3, see M.S.1986]

Subd. 4. **State board or state board of water and soil resources.** "State board" or "state board of water and soil resources" means the agency created in section 110B.35.

[For text of subs 5 to 15, see M.S.1986]

History: 1987 c 358 s 88

40.03 STATE SOIL AND WATER CONSERVATION BOARD.

Subdivision 1. [Repealed, 1987 c 358 s 132]

Subd. 1a. [Repealed, 1987 c 358 s 132]

Subd. 2. [Repealed, 1987 c 358 s 132]

Subd. 3. [Repealed, 1987 c 358 s 132]

Subd. 4. **Powers and duties.** In addition to the powers and duties conferred upon the board by section 110B.35, it shall have the following powers and duties:

(1) Receive and disburse any grants made available to the state by the United States Department of Agriculture under the preferred program developed under United States Code, title 16, sections 2001 to 2009;

(2) Offer any appropriate assistance to the supervisors of the districts in implementing any of their powers and programs. Any funds made available to a district for expenditures necessary for the operations of the district shall be a grant to the district to be used only for purposes authorized by the state board pursuant to law. The soil and water conservation district may designate the board of county commissioners to act as the agent of the district to receive and expend these funds at the direction and with the approval of the board of supervisors of the district. At least annually the state board shall audit, in a manner it prescribes, the expenditure of funds so granted;

(3) Keep the supervisors of each district informed of the activities and experience of all other districts and facilitate cooperation and an interchange of advice and experience among the districts;

(4) Coordinate the programs and activities of the districts with appropriate agencies by advice and consultation;

(5) Approve or disapprove the plans or programs of districts relating to the use of state funds administered by the state board;

(6) Secure the cooperation and assistance of the appropriate agencies in the work of the districts and to develop a program to advise and assist appropriate agencies in obtaining state and federal funds for erosion, sedimentation, flooding, and agriculturally related pollution control programs;

(7) Develop and implement a comprehensive public information program concerning the districts' activities and programs, the problems and preventive practices of erosion, sedimentation, agriculturally related pollution, flood prevention, and the advantages of formation of districts in areas where their organization is desirable;

(8) Subdivide and consolidate districts without a hearing or a referendum so as to confine districts within county limits, provided that no district, when feasible and practicable, shall contain less than four full or fractional congressional townships;

(9) Assist in the implementation of a statewide program for inventorying and classification of the types of soils throughout the state as determined by the Minnesota cooperative soil survey;

(10) Identify research needs and cooperate with other public agencies in research concerning the nature and extent of erosion, sedimentation, flooding and agriculturally related pollution, the amounts and sources of sediment and pollutants delivered to the waters of the state, and long-term soil productivity;

(11) Develop programs to reduce or prevent soil erosion, sedimentation, flooding and agriculturally related pollution, including but not limited to structural and land-use management practices;

(12) Develop a system of priorities within the state to identify the erosion, flooding, sediment and agriculturally related pollution problem areas that are most severely in need of control systems; and

(13) Ensure compliance with statewide programs and policies established by the state board pursuant to this section and section 40.02 by advice, consultation, and approval of grant agreements with the districts.

History: 1987 c 358 s 89

40.035 PROGRAM PLAN.

[For text of subd 1, see M.S.1986]

Subd. 2. For the purpose of developing the program plan, the state board may request any existing pertinent information from any state agency and may conduct any hearing it deems necessary.

[For text of subds 3 and 4, see M.S.1986]

History: 1987 c 358 s 90

40.05 THREE SUPERVISORS ELECTED FOR EACH DISTRICT.

[For text of subds 1 and 2, see M.S.1986]

Subd. 3. After December 31, 1972, and for the elections required by subdivision 2, all elections except that provided for the organization of the district, in subdivision 1, shall be held at the time and place of holding the state general election, as specified in section 204D.03, subdivision 2. No primary shall be held. The names of candidates for election as supervisors of the soil and water conservation district shall be placed on the "canary ballot," as described in section 204D.11, subdivision 3. Nominating petitions conforming to the rules stated in subdivision 1 shall be filed with the secretary of the soil and water conservation district at least 60 days before the time of holding the state general election. The district secretary shall immediately submit the names of the candidates and the terms for which nominated to the appropriate county auditor. The ballots for use at the election shall be prepared by the county auditor. All laws relating to elections for county office shall govern insofar as applicable. The county auditor shall certify the result to the state soil and water conservation board, and if the soil and water conservation district embraces land in more than one county the county auditor shall forthwith certify to the state soil and water conservation board the vote, as shown by the report of the county canvassing board, for all candidates voted for in more than one county. In the latter case the state soil and water conservation board shall certify the results of the election and publish the result.

[For text of subds 3a and 4, see M.S.1986]

History: 1987 c 62 s 1

40.071 ADDITIONAL POWERS OF A DISTRICT.

In addition to powers and duties otherwise provided by law, a soil and water conservation district may procure liability insurance as provided in section 466.06, automobile insurance on personal cars while used on official business, insurance on the contents of district offices, and workers' compensation insurance, or may require the county or counties in which the district is located to include the district in the county's or counties' insurance coverage for these purposes.

History: 1987 c 396 art 11 s 14

40.21 RULES, MODEL ORDINANCE, AND PERIODIC REVIEW.

Subdivision 1. **Rules and model ordinance as guide.** The board of water and soil resources, in consultation with counties, soil and water conservation districts, and other appropriate agencies, shall adopt a model ordinance and rules that serve as a guide for local governments to carry out the provisions of Laws 1985, chapter 256, sections 12 to 22 and sections 40.20 to 40.26, and provide administrative procedures for the board for Laws 1985, chapter 256, sections 12 to 21 and sections 40.20 to 40.26.

[For text of subd 2, see M.S.1986]

Subd. 3. **Periodic review.** At least once every five years the board shall review the rules and model ordinance in cooperation with counties, soil and water conservation districts, and appropriate agencies to ensure their continued applicability and relevance.

History: 1987 c 358 s 91,92

40.41 PURPOSE AND POLICY.

It is the purposes of sections 40.41 to 40.45 to keep certain marginal agricultural land out of crop production to protect soil and water quality and support fish and wildlife habitat. It is state policy to encourage the retirement of marginal, highly erodible land, particularly land adjacent to public waters and drainage systems, from crop production and to reestablish a cover of perennial vegetation.

History: 1987 c 357 s 1

40.42 DEFINITIONS.

[For text of subs 1 to 4, see M.S.1986]

Subd. 5. **Landowner.** "Landowner" means individuals, family farms, family farm corporations as defined under section 500.24, subdivision 2, paragraph (c), and authorized farm corporations as defined under section 500.24, subdivision 2, paragraph (d), which either own eligible land or are purchasing eligible land under a contract for deed.

[For text of subd 6, see M.S.1986]

Subd. 7. **Wetland.** "Wetland" means land that has a predominance of hydric soils and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, or that periodically does support, a predominance of hydrophytic vegetation typically adapted for life in saturated soil conditions.

Subd. 8. **Windbreak.** "Windbreak" means a strip or belt of trees, shrubs, or grass barriers at least six rows deep and within 300 feet of the right-of-way of a highway.

History: 1987 c 357 s 2-4

40.43 CONSERVATION RESERVE PROGRAM.

Subdivision 1. **Establishment of program.** The commissioner of agriculture, in consultation with the commissioner of natural resources, shall establish and administer a conservation reserve program. The commissioner of agriculture shall contract with the board of water and soil resources to implement sections 40.40 to 40.44. Selection

of land for the conservation reserve program must be based on its potential for fish and wildlife production, reducing erosion, and protecting water quality.

Subd. 2. **Eligible land.** Land may be placed in the conservation reserve program if the land:

(1) is marginal agricultural land, or is adjacent to marginal agricultural land and is either beneficial to resource protection or necessary for efficient recording of the land description, or consists of a drained wetland, or is land that with a windbreak would be beneficial to resource protection. Cropland adjacent to the restored wetland may also be enrolled to the extent of up to four acres of cropland for each acre of wetland restored;

(2) was owned by the landowner on January 1, 1985, or was owned by the landowner, or a parent or other blood relative of the landowner, for at least three years before the date of application;

(3) is at least five acres in size, except for a windbreak, or is a whole field as defined by the United States Agricultural Stabilization and Conservation Services;

(4) is not set aside, enrolled or diverted under another federal or state government program; and

(5) was in agricultural crop production for at least two years during the period 1981 to 1985.

The enrolled land of a landowner may not exceed 20 percent of the landowner's total agricultural land acreage in the state, if the landowner owns at least 200 acres of agricultural land as defined by section 500.24, subdivision 2. If a landowner owns less than 200 acres of agricultural land the amount that may be enrolled in the conservation reserve is:

(a) all agricultural land owned, if 20 acres or less; or

(b) if the total agricultural land owned is more than 20 acres but less than 200 acres, 20 acres plus ten percent of the balance of the agricultural land.

In selecting land for enrollment in the program, highest priority must be given to permanent easements that are consistent with the purposes stated in section 40.41.

Subd. 3. **Conservation easements.** The commissioner may acquire conservation 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 a period less than 20 years. The negotiation and acquisition of easements authorized by this section are exempt from the contractual provisions of chapter 16B.

[For text of subd 4, see M.S.1986]

Subd. 5. **Agreements by landowner.** The commissioner may enroll eligible land in the conservation reserve program by signing an agreement in recordable form with a landowner in which the landowner agrees:

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

(2) to seed the land subject to the conservation easement, as specified in the agreement, to establish and maintain perennial cover of either a grass-legume mixture or native grasses for the term of the easement, at seeding rates determined by the commissioner; or to plant trees or carry out other long-term capital improvements approved by the commissioner for soil and water conservation or wildlife management;

(3) to restore any drained wetland and to convey to the state a permanent easement for the wetland;

(4) that other land supporting natural vegetation owned or leased as part of the same farm operation at the time of application, if it supports natural vegetation or has not been used in agricultural crop production, will not be converted to agricultural crop production or pasture;

(5) to the enforcement of the terms of the easement and agreements in this subdivision by an action for specific performance, a mandatory injunction, or for

damages in an amount not to exceed the total amount paid by the state to the landowner under subdivision 6, with interest from the date of each default under the agreement; and

(6) that the easement duration may be lengthened through mutual agreement with the commissioners of agriculture and natural resources if they determine that the changes effectuate the purpose of the program or to facilitate its administration.

Subd. 6. Payments for conservation easements and establishment of cover. The commissioner must make the following payments to the landowner for the conservation easement and agreement:

(1) to establish the perennial cover or other improvements required by the agreement, up to 75 percent of the total eligible cost not to exceed \$75 per acre for limited duration easements, and 100 percent of the total eligible cost not to exceed \$100 per acre for perpetual easements;

(2) for the cost of planting trees required by the agreement, up to 75 percent of the total eligible cost not to exceed \$200 per acre for limited duration easements, and 100 percent of the total eligible cost not to exceed \$300 per acre for perpetual easements;

(3) for a permanent easement, 70 percent of the township average equalized estimated market value of agricultural property as established by the commissioner of revenue at the time of easement application;

(4) for an easement of limited duration, 90 percent of the present value of the average of the accepted bids for the federal conservation reserve program, as contained in Public Law Number 99-198, in the relevant geographic area and on bids accepted at the time of easement application; or

(5) an alternative payment system for easements based on cash rent or a similar system as may be determined by the commissioner.

The commissioner may not pay more than \$50,000 to a landowner for all the landowner's conservation easements and agreements.

Subd. 7. Easement renewal. When a conservation easement of limited duration expires, a new conservation easement and agreement for an additional period of not less than 20 years may be acquired by agreement of the commissioner and the landowner, under the terms of this section. The commissioner may adjust payment rates as a result of renewing an agreement and conservation easement only after examining the condition of the established cover, conservation practices, and land values.

History: 1987 c 357 s 5-9; 1987 c 358 s 93

40.44 COOPERATION AND TECHNICAL ASSISTANCE; SUPPLEMENTAL CONSERVATION PAYMENT.

[For text of subd 1, see M.S.1986]

Subd. 2. Technical assistance. The commissioners of agriculture and natural resources must provide necessary technical assistance to landowners enrolled in the conservation reserve program. The commissioner of natural resources must provide technical advice and assistance to the commissioner on (1) the form and content of the conservation easement and agreement; (2) forestry and agronomic practices; and (3) hydrologic and hydraulic design relating to the establishment and maintenance of permanent cover, or other conservation improvements. The commissioner of transportation must provide technical advice and assistance to the commissioners of agriculture and natural resources on the planting of windbreaks adjacent to highways. The commissioners of agriculture and natural resources shall jointly prepare an informational booklet on the conservation reserve program and other state and federal programs for land acquisition, conservation, and retirement to be made available to eligible landowners and the general public.

Subd. 3. Supplemental conservation payments. The commissioner may supplement payments made under federal land retirement programs to the extent of available appropriations other than bond proceeds. The supplemental payments must be used

to establish perennial cover on land enrolled or increase payments for land enrollment in programs approved by the commissioner, including the federal conservation reserve program and federal and state waterbank program.

History: *1987 c 357 s 10,11*

40.45 RULEMAKING.

The commissioner may adopt emergency rules to implement Laws 1987, chapter 357. The emergency rules adopted on August 27, 1986, shall remain in effect until December 31, 1987, or until amended or replaced by emergency or permanent rules. The rules must include standards for tree planting so that planting does not conflict with existing electrical lines, telephone lines, rights-of-way, or drainage ditches.

History: *1987 c 357 s 12*