

## CHAPTER 40

## SOIL AND WATER CONSERVATION

40.31 Environmental agriculturalist  
education program.  
40.42 Definitions.  
40.43 Conservation reserve program.

40.44 Cooperation and technical assistance;  
supplemental conservation payment.  
40.45 Rulemaking.  
40.46 Reservation of marginal land and  
wetlands.

**40.31 ENVIRONMENTAL AGRICULTURALIST EDUCATION PROGRAM.**

Subdivision 1. **Program.** An environmental agricultural program is established:

- (1) to work with agricultural producers;
- (2) to advise and inform agricultural producers on the impact of certain farming practices on water quality;
- (3) to promote sustainable agriculture through use of best management practices and integrated pest management;
- (4) to demonstrate and evaluate alternative pesticide practices; and
- (5) to develop and promote farm profitability through a reduction in farm inputs.

Subd. 2. **Contracts.** Contracts to carry out the program must be awarded by the board of water and soil resources following review by the legislative water commission.

**History:** 1989 c 326 art 2 s 3

**40.42 DEFINITIONS.**

Subdivision 1. **Applicability.** The definitions in this section apply to sections 40.42 to 40.46.

Subd. 2. **Board.** "Board" means the board of water and soil resources.

Subd. 3. **Conservation easement.** "Conservation easement" means a conservation easement as defined in section 84C.01.

Subd. 4. **Conservation reserve program.** "Conservation reserve program" means the program established under section 40.43.

Subd. 5. **Drained wetland.** "Drained wetland" means a former natural wetland that has been altered by draining, dredging, filling, leveling, or other manipulation sufficient to render the land suitable for agricultural crop production. The alteration must have occurred before December 23, 1985, and must be a legal alteration as determined by the commissioner of natural resources.

Subd. 6. **Landowner.** "Landowner" means individuals, family farms, family farm partnerships, authorized farm partnerships, family farm corporations, authorized farm corporations as defined under section 500.24, subdivision 2, and estates and testamentary trusts, which either own eligible land or are purchasing eligible land under a contract for deed.

Subd. 6a. **Sensitive area.** "Sensitive area" means a geographic area defined by natural features where the groundwater is at significant risk of contamination from activities conducted at or near the land surface.

Subd. 7. **Marginal agricultural land.** "Marginal agricultural land" means land that is: (1) composed of class IIIe, IVe, V, VI, VII, or VIII land as identified in the land capability classification system of the United States Department of Agriculture; or (2) similar to land described under (1) and identified under a land classification system selected by the board.

Subd. 8. **Public waters.** "Public waters" means waters and wetlands as defined in section 105.37 and inventoried under section 105.391.

Subd. 9. **Sensitive groundwater area.** "Sensitive groundwater area" means a geographic area defined by natural features where there is a significant risk of groundwater

degradation from activities conducted at or near the land surface. These areas may be identified by mapping or other appropriate methods determined by the commissioner of natural resources and the board of water and soil resources. Wellhead protection areas may be designated as a sensitive groundwater area.

Subd. 10. **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. 11. **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:** 1989 c 326 art 2 s 4; 1989 c 353 s 2

#### 40.43 CONSERVATION RESERVE PROGRAM.

Subdivision 1. **Establishment of program.** The board, in consultation with the commissioner of agriculture and the commissioner of natural resources, shall establish and administer a conservation reserve program. The board shall 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.** (a) Land may be placed in the conservation reserve program if the land meets the requirements of paragraphs (b) and (c).

(b) Land is eligible if the land:

- (1) is marginal agricultural land;
- (2) is adjacent to marginal agricultural land and is either beneficial to resource protection or necessary for efficient recording of the land description;
- (3) consists of a drained wetland;
- (4) is land that with a windbreak would be beneficial to resource protection;
- (5) is land in a sensitive area;
- (6) is cropland in a sensitive groundwater area;
- (7) is cropland adjacent to public waters;
- (8) is cropland adjacent to restored wetlands to the extent of up to four acres of cropland for each acre of wetland restored;
- (9) is a woodlot on agricultural land;
- (10) is an abandoned building site on agricultural land, provided that funds are not used for compensation of the value of the buildings; or
- (11) is land on a hillside used for pasture.

(c) Eligible land under paragraph (a) must:

(1) have been owned by the landowner on January 1, 1985, or 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, except for a windbreak, woodlot, or abandoned building site, or be a whole field as defined by the United States Agricultural Stabilization and Conservation Services;

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

(4) have been in agricultural crop production for at least two years during the period 1981 to 1985, except drained wetlands, woodlots, abandoned building sites, or land on a hillside used for pasture.

(d) The enrolled land of a landowner may not exceed 20 percent of the average farm size in the county where the land is being enrolled according to the average farm size determined by the United States Department of Agriculture, Census of Agriculture.

(e) In selecting drained wetlands for enrollment in the program, the highest priority must be given to wetlands with a cropping history during the period 1976 to 1985.

(f) 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 board may acquire conservation easements on eligible land. An easement may be permanent or of limited duration. An easement acquired on land for windbreak purposes, under subdivision 2, may be only of permanent 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.

**Subd. 4. Nature of property rights acquired.** (a) A conservation easement must prohibit:

(1) alteration of wildlife habitat and other natural features, unless specifically approved by the board;

(2) agricultural crop production, unless specifically approved by the board for wildlife management purposes;

(3) grazing of livestock except, for agreements entered before July 1, 1989, grazing of livestock may be allowed only if approved by the board after consultation with the commissioner of natural resources, in the case of severe drought, or a local emergency declared under section 12.29; and

(4) spraying with chemicals or mowing, except as necessary to comply with noxious weed control laws or emergency control of pests necessary to protect public health.

(b) A conservation easement is subject to the terms of the agreement provided in subdivision 5.

(c) A conservation 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 conservation easement.

**Subd. 5. Agreements by landowner.** The board 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 board; or to plant trees or carry out other long-term capital improvements approved by the board for soil and water conservation or wildlife management;

(3) to convey to the state a permanent easement for the wetland restoration;

(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; and

(5) that the easement duration may be lengthened through mutual agreement with the board in consultation with the commissioners of agriculture and natural resources if they determine that the changes effectuate the purpose of the program or facilitates its administration.

**Subd. 6. Payments for conservation easements and establishment of cover.** (a) The board 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, 100 percent of the total eligible cost not to exceed \$100 per acre for perpetual easements, and 100 percent of the total eligible cost of wetland restoration not to exceed \$300 per acre;

(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 board.

(b) For hillside pasture conservation easements, the payments to the landowner in paragraph (a) for the conservation easement and agreement must be reduced to reflect the value of similar property.

**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 board and the landowner, under the terms of this section. The board 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.

**Subd. 8. Correction of conservation easement boundary lines.** To correct errors in legal descriptions for easements obtained that affect the ownership interests in the state and adjacent landowners, the board may, in the name of the state, with the approval of the attorney general, convey, without consideration, interests of the state necessary to correct legal descriptions of boundaries. The conveyance must be by quitclaim deed or release in a form approved by the attorney general.

**Subd. 9. Enforcement and damages.** (a) A landowner who violates the terms of a conservation easement or agreement under this section, or induces, assists, or allows another to do so, is liable to the state for treble damages if the trespass is willful, but liable for double damages only if the trespass is not willful. The amount of damages is the amount needed to make the state whole or the amount the landowner has gained due to the violation, whichever is greater.

(b) Upon the request of the board, the attorney general may commence an action for specific performances, injunctive relief, damages, including attorney fees, and any other appropriate relief to enforce sections 40.41 to 40.45 in district court in the county where all or part of the violation is alleged to have been committed, or where the landowner resides or has a principal place of business.

**History:** 1989 c 326 art 2 s 5,6; 1989 c 353 s 3

#### **40.44 COOPERATION AND TECHNICAL ASSISTANCE; SUPPLEMENTAL CONSERVATION PAYMENT.**

**Subdivision 1. Cooperation.** In implementing sections 40.41 to 40.44 the board must share information and cooperate with the department of agriculture, the department of natural resources, the pollution control agency, the United States Fish and Wildlife Service, the Agricultural Stabilization and Conservation Service and Soil Conservation Service of the United States Department of Agriculture, the Minnesota extension service, the University of Minnesota, county boards, and interested private organizations and individuals.

**Subd. 2. Technical assistance.** The board and 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 board 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 board and the commissioner of natural resources on the planting of windbreaks adjacent to highways. The board

and 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 board 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 board, including the federal conservation reserve program and federal and state waterbank program.

**Subd. 4. Food plots in windbreaks.** The board, in cooperation with the commissioner of natural resources, may authorize wildlife food plots on land with windbreaks.

**History:** 1989 c 353 s 4

#### 40.45 RULEMAKING.

The board may adopt rules to implement sections 40.41 to 40.45. 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:** 1989 c 353 s 5

#### 40.46 RESERVATION OF MARGINAL LAND AND WETLANDS.

**Subdivision 1. Reservation of marginal land and wetlands.** Notwithstanding any other law, marginal land and wetlands are withdrawn from sale by the state unless use of the marginal land or wetland is restricted by a conservation easement as provided in this section. This section does not apply to transfers of land by the board of water and soil resources to correct errors in legal descriptions under section 40.43, subdivision 8, or to transfers by the commissioner of natural resources for:

(1) land that is currently in nonagricultural commercial use if a conservation easement would interfere with the commercial use;

(2) land in platted subdivisions;

(3) conveyances of land to correct errors in legal descriptions under section 84.0273;

(4) exchanges of nonagricultural land with the federal government, or exchanges of Class A, Class B, and Class C nonagricultural land with local units of government under sections 94.342, 94.343, 94.344, and 94.349;

(5) land transferred to political subdivisions for public purposes under sections 84.027, subdivision 10, and 94.10; and

(6) land not needed for trail purposes that is sold to adjacent property owners and lease holders under section 85.015, subdivision 1, paragraph (b).

**Subd. 2. Delineation of wetland or marginal land.** (a) Before state land is sold, the land must be submitted to the board of water and soil resources to determine and delineate the marginal land and wetlands to be reserved or restricted by a conservation easement. The delineation of the reservation or conservation easement need not be by legal description and may be a description in general terms that identifies the marginal land or wetlands.

(b) Marginal land and wetlands may not be sold unless restricted by a conservation easement with the restrictions provided in section 40.43, subdivision 4, paragraphs (a) and (c), and other restrictions determined necessary by the board of water and soil resources.

**Subd. 3. School trust land.** If the sale of school trust land as defined in section 92.025 is restricted by a conservation easement and the restriction results in a reduction of the amount received from the sale, the commissioner of natural resources must determine the amount of the reduction. The amount of the reduction in sale price must be paid from appropriations to acquire conservation easements and shall be credited to the account to which the proceeds from the sale are credited.

**Subd. 4. Release and alteration of conservation easement.** The board of water and soil resources may alter, release, or terminate a conservation easement created under this section after consultation with the commissioners of agriculture and natural resources. The board of water and soil resources may alter, release, or terminate a conservation easement only if the board determines the public interests and general welfare are better served by the alteration, release, or termination.

**History:** 1989 c 353 s 6

**NOTE:** This section applies to state land and tax-forfeited land sold after March 15, 1990. See Laws 1989, chapter 353, section 13.