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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-THIRD SESSION

H. F. No. 4114

02/22/2024 Authored by Hansen, R., The bill was read for the first time and referred to the Committee on Environment and Natural Resources Finance and Policy

1.1 A bill for an act
1.2 relating to natural resources; modifying provisions for conservation easement
1.3 programs; amending Minnesota Statutes 2022, sections 103F.511, by adding
1.4 subdivisions; 103F.515; 103F.535, subdivision 5; proposing coding for new law
1.5 in Minnesota Statutes, chapter 103F; repealing Minnesota Statutes 2022, section
1.6 103F.511, subdivision 8b; Minnesota Rules, parts 8400.3000; 8400.3030;
1.7 8400.3110; 8400.3210; 8400.3260; 8400.3300; 8400.3400; 8400.3460; 8400.3600;
1.8 8400.3610; 8400.3630; 8400.3700; 8400.3730; 8400.3800; 8400.3830; 8400.3930.

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

1.10 Section 1. Minnesota Statutes 2022, section 103F.511, is amended by adding a subdivision
1.11 to read:

1.12 Subd. 1a. Agricultural crop production. "Agricultural crop production" means an
1.13 agricultural activity that is devoted to producing horticultural, row, close-grown, introduced
1.14 pasture, or introduced hayland crops and includes but is not limited to tillage, planting, or
1.15 harvesting operations.

1.16 Sec. 2. Minnesota Statutes 2022, section 103F.511, is amended by adding a subdivision
1.17 to read:

1.18 Subd. 1b. Agricultural land. "Agricultural land" means land devoted to the following
1.19 uses and includes any contiguous land associated with the uses:

- 1.20 (1) pasture or hayland for domestic livestock or dairy animals;
1.21 (2) producing agricultural crops;
1.22 (3) growing nursery stocks; or
1.23 (4) animal feedlots.

2.1 Sec. 3. Minnesota Statutes 2022, section 103F.511, is amended by adding a subdivision
2.2 to read:

2.3 Subd. 1c. **Approved practice.** "Approved practice" means a conservation practice that
2.4 may be established on an easement area and that meets the requirements of section 103F.527.

2.5 Sec. 4. Minnesota Statutes 2022, section 103F.511, is amended by adding a subdivision
2.6 to read:

2.7 Subd. 3a. **Conservation easement program.** "Conservation easement program" means:

2.8 (1) the reinvest in Minnesota reserve program under section 103F.515;

2.9 (2) the permanent wetlands preserve program under section 103F.516;

2.10 (3) the reinvest in Minnesota clean energy program under section 103F.518; or

2.11 (4) the reinvest in Minnesota working lands program under section 103F.519.

2.12 Sec. 5. Minnesota Statutes 2022, section 103F.511, is amended by adding a subdivision
2.13 to read:

2.14 Subd. 3b. **Conservation plan.** "Conservation plan" means a written description and map
2.15 of approved practices that must be applied to or that already exist on an easement area.

2.16 Sec. 6. Minnesota Statutes 2022, section 103F.511, is amended by adding a subdivision
2.17 to read:

2.18 Subd. 5b. **Food plot.** "Food plot" means an area established to provide food for wildlife.

2.19 Sec. 7. Minnesota Statutes 2022, section 103F.511, is amended by adding a subdivision
2.20 to read:

2.21 Subd. 5d. **Land with crop history.** "Land with crop history" means land that has
2.22 produced horticultural, row, or close-grown crops or that has been enrolled at a cropland
2.23 rate in a federal or state conservation program for at least two of the five years preceding
2.24 an application to enroll the land in a conservation easement program. Land with crop history
2.25 includes acres devoted to set-aside or conserving use for programs of the United States
2.26 Department of Agriculture.

3.1 Sec. 8. Minnesota Statutes 2022, section 103F.511, is amended by adding a subdivision
3.2 to read:

3.3 Subd. 7a. **Pasture.** "Pasture" means land that is used for grazing by domestic livestock
3.4 and that is not considered land with crop history.

3.5 Sec. 9. Minnesota Statutes 2022, section 103F.511, is amended by adding a subdivision
3.6 to read:

3.7 Subd. 7b. **Perennial cover.** "Perennial cover" means:

3.8 (1) existing or established perennial vegetation within the easement boundary; or

3.9 (2) a restored or existing wetland or water-covered area within the easement boundary.

3.10 Sec. 10. Minnesota Statutes 2022, section 103F.515, is amended to read:

3.11 **103F.515 REINVEST IN MINNESOTA RESERVE PROGRAM.**

3.12 Subdivision 1. **Establishment.** The board, in consultation with the commissioner of
3.13 agriculture and the commissioner of natural resources, shall establish and administer the
3.14 reinvest in Minnesota reserve program. The board shall implement sections 103F.505 to
3.15 103F.531. Selection of land for the reinvest in Minnesota reserve program must be based
3.16 on its ~~enhancement potential for fish, wildlife, and native plant habitats, reducing erosion,~~
3.17 ~~and protecting water quality~~ benefit to accomplishing the purposes in section 103F.505.

3.18 Subd. 2. **Eligible land.** (a) Land may be placed in the reinvest in Minnesota reserve
3.19 program if the land meets the requirements of paragraphs (b) and (c) or paragraph (d).

3.20 (b) Land is eligible if the land:

3.21 (1) is marginal agricultural land;

3.22 (2) is adjacent to marginal agricultural land and is either beneficial to resource protection
3.23 or necessary for efficient recording of the land description;

3.24 (3) consists of a drained wetland;

3.25 (4) is land that with a windbreak or water quality improvement practice would be
3.26 beneficial to resource protection;

3.27 (5) is land in a sensitive groundwater area;

3.28 (6) is riparian or floodplain land;

4.1 (7) is cropland or noncropland adjacent to restored wetlands to the extent of up to eight
4.2 acres of cropland or ~~one acre~~ of noncropland for each acre of wetland restored;

4.3 (8) is a woodlot on agricultural land;

4.4 (9) is abandoned building site on agricultural land, provided that funds are not used for
4.5 compensation of the value of the buildings; ~~or~~

4.6 (10) is land used for pasture; or

4.7 (11) is land in an environmentally sensitive area, including grasslands, peatlands,
4.8 shorelands, karst geology, trout stream watersheds, and forest lands in priority areas.

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

4.10 (1) be owned by the landowner, or a parent or other blood relative of the landowner, for
4.11 at least one year before the date of application;

4.12 ~~(2) be at least five acres in size, except for a drained wetland area, riparian area,~~
4.13 ~~windbreak, woodlot, wellhead protection area, or abandoned building site, or be a whole~~
4.14 ~~field;~~

4.15 ~~(3)~~ (2) not be set aside, enrolled or diverted under another federal or state government
4.16 program unless enrollment in the reinvest in Minnesota reserve program would provide
4.17 additional conservation benefits or a longer term of enrollment than under the current federal
4.18 or state program; and

4.19 ~~(4) have been in agricultural crop production for at least two of the last five years before~~
4.20 ~~the date of application except drained wetlands, riparian lands, woodlots, abandoned building~~
4.21 ~~sites, environmentally sensitive areas, wellhead protection areas, or land used for pasture.~~

4.22 (3) benefit the purposes in section 103F.505.

4.23 (d) Land is eligible if the land is within a wellhead protection area as defined under
4.24 section 103I.005, subdivision 24, and has a wellhead protection plan approved by the
4.25 commissioner of health.

4.26 (e) In selecting land for enrollment in the program, highest priority must be given to
4.27 permanent easements that are consistent with the purposes stated in section 103F.505.

4.28 Subd. 3. **Conservation easements.** (a) The board may acquire, or accept by gift or
4.29 donation, conservation easements on eligible land. An easement may be permanent or of
4.30 limited duration. An easement acquired on land for wetland restoration or windbreak
4.31 purposes, under subdivision 2, may be only of permanent duration. An easement of limited
4.32 duration may not be acquired if it is for a period less than 20 years. The negotiation and

5.1 acquisition of easements authorized by this section are exempt from the contractual provisions
5.2 of chapters 16B and 16C.

5.3 (b) The board may acquire, or accept by gift or donation, flowage easements when
5.4 necessary for completion of wetland restoration projects.

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

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

5.8 (2) agricultural crop production and livestock grazing, unless specifically approved by
5.9 the board for conservation management purposes or extreme drought; ~~and~~

5.10 (3) spraying with chemicals or mowing, except:

5.11 (i) as necessary to comply with noxious weed control laws;

5.12 (ii) for emergency control of pests necessary to protect public health; or

5.13 (iii) as approved by the board for conservation management purposes; and

5.14 (4) extracting or mining any gravel, rock, topsoil, or minerals from the site by surface
5.15 or subsurface mining.

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

5.18 (c) A conservation easement must allow repairs, improvements, and inspections necessary
5.19 to maintain public drainage systems provided the easement area is restored to the condition
5.20 required by the terms of the conservation easement.

5.21 (d) Notwithstanding paragraph (a), the board must permit the harvest of native grasses
5.22 for use in seed production or bioenergy on wellhead protection lands eligible under
5.23 subdivision 2, paragraph (d).

5.24 (e) A conservation easement must allow the board and its employees and agents to enter
5.25 the easement area for inspection and for enforcing the terms and conditions of the
5.26 conservation easement.

5.27 Subd. 5. **Agreements by landowner.** The board may enroll eligible land in the reinvest
5.28 in Minnesota reserve program by signing an agreement ~~in recordable form~~ with a landowner
5.29 in which the landowner agrees:

6.1 (1) to convey to the state a conservation easement that is not subject to any prior ~~title,~~
6.2 ~~lien, or encumbrance~~ liens or encumbrances that are determined to be objectionable by the
6.3 attorney general;

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

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

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

6.14 ~~(5)~~ (4) that the easement duration may be lengthened through mutual agreement with
6.15 the board in consultation with the commissioners of agriculture and natural resources if
6.16 they determine that the changes effectuate the purpose of the program or facilitate its
6.17 administration;

6.18 (5) to be responsible for operating and maintaining approved practices designated in the
6.19 conservation plan;

6.20 (6) to pay, when due, all taxes and assessments that may be levied against the easement
6.21 area;

6.22 (7) to remove any existing structures as required before the conservation easement is
6.23 conveyed and not place, erect, or construct structures on the easement area;

6.24 (8) to remove any existing hazardous and toxic substances or any pollutants and
6.25 contaminants before the conservation easement is conveyed and not place such substances,
6.26 pollutants, or contaminants on the easement area; and

6.27 (9) to properly seal all abandoned wells on the easement area before the conservation
6.28 easement is conveyed and pay all associated costs.

6.29 Subd. 6. **Payments for easements.** (a) The board shall establish rates for payments to
6.30 the landowner for the conservation easement and related practices. The board shall consider
6.31 market factors, including the township average equalized estimated market value of property
6.32 as established by the commissioner of revenue at the time of easement application.

7.1 (b) The board may establish a payment system for flowage easements acquired under
7.2 this section.

7.3 (c) For wetland restoration projects involving more than one conservation easement,
7.4 state payments for restoration costs may exceed the limits set by the board for an individual
7.5 easement provided the total payment for the restoration project does not exceed the amount
7.6 payable for the total number of acres involved.

7.7 ~~(d) The board may use available nonstate funds to exceed the payment limits in this~~
7.8 ~~section.~~

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

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

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

7.27 (b) ~~Upon the request of the board,~~ The board may request that the attorney general
7.28 commence a legal action for a violation, and the attorney general may commence an action
7.29 for specific performances, injunctive relief, damages, including attorney's fees, and any
7.30 other appropriate relief to enforce sections 103F.505 to 103F.531 in district court in the
7.31 county where all or part of the violation is alleged to have been committed, or where the
7.32 landowner resides or has a principal place of business. In addition to or in lieu of making
7.33 a request under this paragraph, the board may use its authority under section 103B.101,

8.1 subdivision 12, to issue a penalty order for a violation. The penalties may be forgiven, in
8.2 whole or in part, upon compliance with the conservation easement conditions.

8.3 (c) A landowner is not in violation of the conservation easement if a failure of approved
8.4 practices was caused by reasons beyond the landowner's control.

8.5 **Subd. 10. Use for mitigation prohibited.** Money made available under the reinvest in
8.6 Minnesota reserve program may not be used for environmental regulatory or wetland
8.7 mitigation purposes required under federal or state law.

8.8 **Sec. 11. [103F.527] CONSERVATION PRACTICES.**

8.9 Subdivision 1. **Approved practices.** An approved practice must be consistent with
8.10 section 103F.505. The landowner is responsible for establishing all approved practices on
8.11 the easement area as specified by the board.

8.12 Subd. 2. **Approved practices eligible for reimbursement.** The board must determine
8.13 which approved practices are eligible for payments or reimbursement under a conservation
8.14 easement program. Food plots are not eligible for payments or reimbursement under a
8.15 conservation easement program.

8.16 Subd. 3. **Money from other sources.** The board may augment money available to pay
8.17 for or reimburse approved practices with money from other agencies, organizations, or
8.18 individuals.

8.19 **Sec. 12. [103F.528] DISTRICT RESPONSIBILITIES.**

8.20 Subdivision 1. **Program delegation.** With the consent of the Board of Water and Soil
8.21 Resources, a district board may enter into an agreement with others, as authorized under
8.22 section 103C.231, to delegate, in whole or in part, the responsibility for administering a
8.23 conservation easement program.

8.24 Subd. 2. **Land in more than one district.** If an application involves land in more than
8.25 one district, the districts or delegated parties may jointly agree for one of the districts or
8.26 delegated parties to be the responsible party to review and prioritize the application and
8.27 complete all tasks necessary to convey the conservation easement to the Board of Water
8.28 and Soil Resources.

8.29 Subd. 3. **Violations and enforcement.** The district board may take measures that are
8.30 necessary to ensure landowner compliance with the conservation agreement, conservation
8.31 easement, and conservation plan. If the district board is unsuccessful in obtaining landowner

9.1 compliance, the district board must notify the Board of Water and Soil Resources of the
9.2 violation and may recommend appropriate measures to be taken to correct the violation.

9.3 Sec. 13. Minnesota Statutes 2022, section 103F.535, subdivision 5, is amended to read:

9.4 Subd. 5. **Altering conservation easements.** (a) Conservation easements may be altered,
9.5 released, or terminated by the board after consultation with the commissioners of agriculture
9.6 and natural resources. The board may alter, release, or terminate a conservation easement
9.7 only if the board determines that the public interest and general welfare are better served
9.8 by the alteration, release, or termination.

9.9 (b) The board may adopt policies and procedures to implement this subdivision, including
9.10 provisions to ensure at least equal resource value as a condition of approving a request to
9.11 alter, release, or terminate a conservation easement.

9.12 (c) The landowner must compensate the board for damages and loss of benefits to the
9.13 conservation easement that result from the alteration, release, or termination. The board
9.14 may require the landowner to reimburse the board's administrative expenses and costs
9.15 incurred in altering, releasing, or terminating a conservation easement.

9.16 Sec. 14. **REVISOR INSTRUCTION.**

9.17 The revisor of statutes must renumber Minnesota Statutes, section 103F.511, subdivision
9.18 5a, as Minnesota Statutes, section 103F.511, subdivision 5c.

9.19 Sec. 15. **REPEALER.**

9.20 (a) Minnesota Statutes 2022, section 103F.511, subdivision 8b, is repealed.

9.21 (b) Minnesota Rules, parts 8400.3000; 8400.3030; 8400.3110; 8400.3210; 8400.3260;
9.22 8400.3300; 8400.3400; 8400.3460; 8400.3600; 8400.3610; 8400.3630; 8400.3700;
9.23 8400.3730; 8400.3800; 8400.3830; and 8400.3930, are repealed.

APPENDIX
Repealed Minnesota Statutes: 24-05531

103F.511 DEFINITIONS.

Subd. 8b. **Reinvest in Minnesota reserve program.** "Reinvest in Minnesota reserve program" means the program established under section 103F.515.

8400.3000 AUTHORITY.

Minnesota Statutes, sections 84.95, 103A.209, and 103F.501 to 103F.531, authorize the state board, in consultation with districts, private groups, and state and federal agencies, to implement a program to acquire easements on land to retire certain marginal agricultural land and protect environmentally sensitive areas to enhance soil and water quality, minimize damage to flood-prone areas, sequester carbon, and support native plant, fish, and wildlife habitats and to reestablish perennial cover and restore wetlands on that land. Parts 8400.3000 to 8400.3930 provide procedures and criteria to be followed by the state board and district boards in implementing Minnesota Statutes, sections 103F.501 to 103F.531. The state board shall implement the reinvest in Minnesota reserve program with district boards when practical, but may also implement the program directly.

8400.3030 DEFINITIONS.

Subpart 1. **Scope.** The definitions in this part apply to parts 8400.3000 to 8400.3930.

Subp. 2. **Agricultural crop production.** "Agricultural crop production" means an agricultural activity:

- A. including but not limited to tillage, planting, or harvesting operations; and
- B. devoted to the production of horticultural, row, close grown, introduced pasture, or introduced hayland crops.

Subp. 3. [Repealed, 14 SR 1928]

Subp. 3a. **Agricultural land.** "Agricultural land" means land devoted for use as pasture or hayland for domestic livestock or dairy animals, or to agricultural crop production, or to growing nursery stocks, or for use as animal feedlots, and may include contiguous land associated with these uses.

Subp. 4. **Annual plan.** "Annual plan" means a plan prepared by the district under Minnesota Statutes, section 103C.331, subdivision 11, and according to the most recent version of the Guidelines for Soil and Water Conservation District Comprehensive and Annual Plans published by the state board. That publication is subject to periodic change. The current version is available at the district office and state board office and is incorporated by reference.

Subp. 5. **Approved practice.** "Approved practice" means a soil and water conservation practice or wildlife habitat enhancement that may be established on an easement area and is described in the easement program practice specifications.

Subp. 6. [Repealed, 37 SR 1277]

Subp. 6a. [Repealed, 37 SR 1277]

Subp. 7. [Repealed, 14 SR 1928]

Subp. 8. [Repealed, 19 SR 550]

Subp. 9. **Conservation agreement.** "Conservation agreement" means a written contract stating the terms and conditions for conveying a conservation easement by the landowner to the state.

Subp. 10. **Conservation easement.** "Conservation easement" has the meaning given for "conservation easement" in Minnesota Statutes, section 84C.01, paragraph (1).

Subp. 10a. [Repealed, 37 SR 1277]

Subp. 10b. **Conservation easement program.** "Conservation easement program" refers to both the RIM reserve program, as defined in subpart 42, and the permanent wetlands preserve program, as defined in subpart 36a.

Subp. 11. **Conservation plan.** "Conservation plan" means a written description and map of the approved practices that must be applied to or that already exist on the easement area.

Subp. 11a. **Cost-shared practice.** "Cost-shared practice" means an approved practice which qualifies for cost-sharing through a conservation easement program administered by the state board.

Subp. 12. [Repealed, 19 SR 550]

Subp. 13. [Repealed, 19 SR 550]

Subp. 14. **District.** "District" means a soil and water conservation district organized under Minnesota Statutes, chapter 103C.

Subp. 15. **District board.** "District board" means the board of supervisors of a soil and water conservation district organized under Minnesota Statutes, chapter 103C.

Subp. 16. [Repealed, 19 SR 550]

Subp. 17. **District technical representative.** "District technical representative" means a district employee or other designee assigned by the district who has expertise in the design and application of approved practices.

Subp. 17a. **Drained wetland.** "Drained wetland" means a former natural wetland that has been altered by draining, dredging, filling, leveling, or other manipulation sufficient to reduce its natural function.

Subp. 17b. **Easement program practice specifications.** "Easement program practice specifications" means the detailed descriptions of the approved practices that are allowed on lands enrolled in the conservation easement programs.

Subp. 18. [Repealed, 19 SR 550]

Subp. 19. [Repealed, 37 SR 1277]

Subp. 20. [Repealed, 37 SR 1277]

Subp. 20a. [Repealed, 37 SR 1277]

Subp. 20b. **Farmed wetland.** "Farmed wetland" means a wetland, as defined in subpart 48, that has been devoted to agricultural crop production, as defined in subpart 2, since December 23, 1985.

Subp. 21. [Repealed, 19 SR 550]

Subp. 22. [Repealed, 19 SR 550]

Subp. 23. **Food plot.** "Food plot" means an area established for the purpose of providing food for wildlife.

Subp. 24. [Repealed, 37 SR 1277]

Subp. 25. [Repealed, 37 SR 1277]

Subp. 26. [Repealed, 37 SR 1277]

Subp. 27. **Individual.** "Individual" means a person or legal entity, whether or not a resident of Minnesota.

Subp. 28. [Repealed, 37 SR 1277]

Subp. 29. **Introduced hayland.** "Introduced hayland" means an area devoted to the production of forage that has been cultivated in a rotation of row crops or small grains or interseeded with introduced or native species at least twice during the ten years prior to applying for enrollment in a conservation easement program. These areas must have been harvested by mechanical methods at least two years during the five years prior to applying for enrollment in a conservation easement program.

APPENDIX
Repealed Minnesota Rules: 24-05531

Subp. 30. **Introduced pasture.** "Introduced pasture" means an area devoted to the production of forage that has been cultivated in a rotation of row crops or small grains or interseeded with introduced or native species at least twice during the ten years prior to applying for enrollment in a conservation easement program. These areas must have been harvested by grazing at least two years during the five years prior to applying for enrollment in a conservation easement program.

Subp. 31. **Landowner.** "Landowner" means an individual or entity that is not prohibited from owning agricultural land under Minnesota Statutes, section 500.24, and who either owns eligible land or is purchasing eligible land under a contract for deed in Minnesota.

Subp. 31a. **Land with crop history.** "Land with crop history" means land that has produced horticultural, row, or close grown crops or that has been enrolled at a cropland rate in a federal or state conservation program at least two of the five years prior to applying for enrollment in a conservation easement program, or land that meets the definition of introduced hayland in subpart 29, or land that meets the definition of introduced pasture in subpart 30. For the purposes of parts 8400.3000 to 8400.3930, land with crop history includes acres devoted to "set aside" or "conserving use" for the United States Department of Agriculture programs.

Subp. 32. [Repealed, 37 SR 1277]

Subp. 33. **Marginal agricultural land.** "Marginal agricultural land" means land that is:

A. 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

B. similar to land described under item A and identified under a land classification system selected by the board.

Subp. 33a. **Pasture.** "Pasture" means land used for grazing by domestic livestock and land which is not considered land with crop history as defined in subpart 31a.

Subp. 33b. **Pastured hillside.** "Pastured hillside" means land on a hillside that is used for pasture as defined in subpart 33a or used for introduced pasture as defined in subpart 30.

Subp. 34. [Repealed, 19 SR 550]

Subp. 35. [Repealed, 19 SR 550]

Subp. 36. **Perennial cover.** "Perennial cover" means the water area created by restoring a drained wetland or the perennial vegetation established under a conservation easement program, or the perennial vegetation or the water or wetland areas that already exist on the easement area.

Subp. 36a. **Permanent wetlands preserve program.** "Permanent wetlands preserve program" means the program established under Minnesota Statutes, section 103F.516.

Subp. 37. [Repealed, 19 SR 550]

Subp. 38. [Repealed, 19 SR 550]

Subp. 39. [Repealed, 19 SR 550]

Subp. 39a. **Public waters.** "Public waters" means waters as defined in Minnesota Statutes, section 103G.005, subdivision 15, and inventoried under Minnesota Statutes, section 103G.201. A copy of the inventory is available in the district office.

Subp. 39b. **Public waters wetlands.** "Public waters wetlands" means wetlands as defined in Minnesota Statutes, section 103G.005, subdivision 15a.

Subp. 39c. [Repealed, 37 SR 1277]

Subp. 40. [Repealed, 37 SR 1277]

Subp. 41. [Repealed, 19 SR 550]

Subp. 42. **RIM reserve program.** "RIM reserve program" means the program established in Minnesota Statutes, section 103F.515.

Subp. 42a. **Riparian land.** "Riparian land" means land adjacent to public waters, drainage systems, wetlands, or locally designated priority waters.

Subp. 43. **Screening committee.** "Screening committee" means a group established by the district board to assist in implementing the conservation easement programs. The screening committee is chaired by a district board member and is composed of representatives of private, state, and local organizations or clubs, and local, state, and federal agencies with an interest in the conservation easement programs.

Subp. 43a. **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 state board. Wellhead protection areas and land that is adjacent and draining to a sinkhole may be designated as a sensitive groundwater area.

Subp. 44. [Repealed, 37 SR 1277]

Subp. 45. **Soil and water conservation practice.** "Soil and water conservation practice" means structural or vegetative practices applied to land for the purposes of controlling soil erosion, sediment, agricultural nutrients or waste, or other water pollutants.

Subp. 46. [Repealed, 37 SR 1277]

Subp. 47. [Repealed, 14 SR 1928]

Subp. 47a. **State board.** "State board" means the Board of Water and Soil Resources.

Subp. 48. **Wetland.** "Wetland" means wetlands as defined in Minnesota Statutes, section 103G.005, subdivision 19.

8400.3110 DURATION OF CONSERVATION EASEMENTS.

For purposes of the RIM reserve program, a conservation easement may be permanent or of limited duration. A conservation easement acquired on restorable drained wetlands, replacement wetlands, or land for highway windbreak purposes, must be of permanent duration. A conservation easement of limited duration may be acquired on other eligible land within a district if it is for a period not less than 20 years and only if the state board has approved enrollment of limited duration conservation easements in that district.

All permanent wetlands preserve program conservation easements must be of permanent duration.

8400.3210 DELEGATION OF PROGRAM TO ANOTHER DISTRICT.

A district board may enter into an agreement with other district boards as authorized by Minnesota Statutes, section 103C.231, to delegate to another district board the responsibility for administering any conservation easement program of the state board. Where such delegation has been mutually agreed upon, each district board must so notify all landowners in their respective district and each district must so notify the state board.

8400.3260 LAND IN MORE THAN ONE DISTRICT.

If an application involves land in more than one district, the participating districts may jointly delegate to one of the districts the responsibility for review and prioritization of that application. If that application is accepted for enrollment, the affected districts may also jointly delegate to one of the districts the responsibility for completing all of the tasks necessary for conveyance of the conservation easement to the state board.

8400.3300 CRITERIA FOR SCREENING COMMITTEE REVIEW OF APPLICATIONS.

The state board may direct districts to utilize a local screening process or committee to prioritize local project areas or applications. The criteria for screening committee prioritization are as follows:

- A. consistency with the purpose and policy of the respective conservation easement program;
- B. the parcel's potential impact on reducing soil erosion and sedimentation, improving water quality, reducing flooding, and enhancing fish and wildlife habitat;
- C. compatibility with established priorities of the organizations and agencies participating in the screening process; and
- D. highest priority must be given to permanent easements pursuant to Minnesota Statutes, section 103F.515, subdivision 2, paragraph (e).

8400.3400 CONSERVATION AGREEMENT FOR EASEMENT.

The district board shall direct its staff or the district technical representative to develop conservation agreements as prescribed by the state board and in a recordable form for all approved applications which incorporate the minimum requirements stated in Minnesota Statutes, section 103F.515, subdivisions 4 and 5. In addition, each conservation agreement must require the landowner to:

- A. pay, when due, all taxes and assessments that may be levied against the easement area;
- B. remove any existing structures as required by the district board or the state board prior to the conveyance of the conservation easement with all associated costs being the responsibility of the landowner, and not place, erect, or construct any temporary or permanent structures on the easement area;
- C. remove any existing hazardous and toxic substances or any pollutants and contaminants prior to the conveyance of the conservation easement with all associated costs being the responsibility of the landowner, and not place such substances, pollutants, or contaminants on the easement area;
- D. properly seal all abandoned wells on the easement area prior to the conveyance of the conservation easement, with all associated costs being the responsibility of the landowner; and
- E. allow the state board and its employees and agents to enter the easement area for the purposes of inspection and enforcement of the terms and conditions of the conservation easement.

8400.3460 TITLE REQUIREMENTS.

The landowner must have good and marketable title that is insurable under a title insurance policy. In addition, the title must not be subject to any prior liens or encumbrances determined to be objectionable by the Attorney General. Objectionable title defects, liens, or encumbrances must be promptly removed or corrected by the landowner prior to easement conveyance.

8400.3600 RENEWAL AND EXTENSION OF CONSERVATION EASEMENTS.

- A. When a conservation easement of limited duration expires, a new conservation agreement and conservation easement for an additional period of not less than 20 years may be acquired by agreement of the state board and the landowner under the rules in force at that time. The state board may adjust payment rates as a result of renewing a conservation

agreement and conservation easement after examining the condition of the established cover, conservation practices, and land values.

B. The easement duration may be lengthened through mutual agreement of the current landowner with the state board, in consultation with the commissioners of agriculture and natural resources, if the state board determines that the changes are consistent with the purpose of the conservation easement program. When converting limited duration easements to permanent easements, the payment is the difference between the amount that would be paid per acre for the permanent easement as established for the most recent sign-up period and the amount already paid for the limited duration easement on the area.

8400.3610 ALTERATION, RELEASE, OR TERMINATION OF CONSERVATION EASEMENTS.

The state board may alter, release, or terminate a conservation easement after consultation with the commissioners of agriculture and natural resources. The board may alter, release, or terminate an easement only if the state board determines that the public interests and general welfare are better served by the alteration, release, or termination.

The state board must be provided the following information at least 30 days prior to a state board meeting, before the state board will consider a request to alter, release, or terminate a conservation easement:

A. a copy of the letter from the landowner to the district board justifying the change and identifying how the public interest and general welfare will be better served;

B. a letter from the district board recommending either approval or disapproval of the proposed change;

C. a letter from the Department of Natural Resources recommending either approval or disapproval of the proposed change; and

D. other supporting documents, including:

(1) an aerial photo identifying the requested change;

(2) a soil survey map of the area;

(3) cropping history information; and

(4) other pertinent documentation that will support the request.

The state board reserves the right to require special provisions to ensure at least equal resource value as a condition of approving the request. The state board must be compensated by the landowner for all damages and loss of benefits to the conservation easement and the state board may also require reimbursement for administrative expenses and costs incurred in the alteration, release, or termination of a conservation easement.

8400.3630 APPROVED PRACTICES.

Subpart 1. **Criteria.** Approved practices must have as their primary purpose the control of soil erosion or sedimentation, protection or improvement of water quality, reduction of flooding, or enhancement of fish and wildlife habitat. Approved practices may be further specified in the easement program policies or practice specifications. Practices that do not qualify as approved practices include, but are not limited to, Christmas tree plantations and fruit orchards. Food plots are not eligible for conservation easement program cost-sharing, but are considered an approved practice and, therefore, are allowed on enrolled acres as specified in the easement conservation plan.

Subp. 2. **Establishment of approved practices.** A landowner is responsible for the establishment of all approved practices on the easement area in accordance with the easement program practice specifications. Establishment of approved practices must be monitored by the district board or its delegate to ensure compliance with the conservation plan and the

conservation easement. Upon establishment or partial completion of an approved practice, a district technical representative shall certify whether or not the approved practice, in whole or part, has been satisfactorily performed.

8400.3700 COST-SHARED PRACTICES.

Subpart 1. **Approved practices eligible for cost-sharing.** The state board shall determine which approved practices are eligible for conservation easement program cost-sharing, consistent with the criteria as described in part 8400.3630, subpart 1.

Subp. 2. Eligible costs for cost-shared practices.

A. Upon satisfactory performance under part 8400.3630, subpart 2, the landowner shall present receipts or invoices to the district board, or its delegate, of the costs incurred in the installation of the cost-shared practice. The district board shall review the receipts or invoices to determine the costs eligible for conservation easement program payment. If the district board determines that the costs requested for reimbursement are reasonable and necessary, it shall recommend payment to the landowner by submitting certification of satisfactory performance and providing documentation of reimbursable practice costs to the state board on forms provided by the state board. If the district board determines that certain costs requested for reimbursement are not eligible or reasonable, it shall notify the landowner in writing of this determination. The landowner may request reconsideration of this determination by the district board within 30 days of receipt of the determination. If additional costs are determined to be eligible and reasonable, the district board shall then recommend payment for the approved amount. The state board reserves the right to approve whether costs requested for reimbursement are eligible and reasonable.

B. Eligible costs for approved practices are limited to those prescribed by the state board as allowed in Minnesota Statutes, section 103F.515, subdivision 6.

C. The state board reserves the right to approve and provide funding for cost-shared practices.

Subp. 3. **Payment for in-kind services.** In-kind services provided by the landowner including, but not limited to, earthwork, seedbed preparation, and seeding, may be credited to the landowner's share of the total cost of establishing the cost-shared practice. The district board shall credit only those costs it determines to be practical and reasonable and may approve receipts or invoices directly or through its delegate.

Subp. 4. **Funds from other sources.** Conservation easement program cost-sharing funds may be augmented by funds from other agencies, organizations, or individuals.

8400.3730 FAILURE OF APPROVED PRACTICES.

Subpart 1. **Cost-shared practices.** A landowner is not in violation of the conservation easement if the failure, in whole or part, of a cost-shared practice was caused by reasons beyond the landowner's control such as extreme weather conditions. In these instances, the district board may recommend to the state board that conservation easement program cost-sharing funds be encumbered for reestablishment of the cost-shared practice. The encumbrance must comply with the limits prescribed by the state board. In no case may a district board authorize conservation easement program financial assistance to a landowner for the reestablishment of cost-shared practices that were removed or altered by the landowner, or that have failed due to improper maintenance during the term of the conservation easement.

Subp. 2. **All other approved practices.** A landowner is not in violation of the conservation easement if the failure of approved practices was caused by reasons beyond the landowner's control.

8400.3800 OPERATION AND MAINTENANCE.

A landowner is responsible for the operation and maintenance of approved practices designated in the conservation plan.

8400.3830 VIOLATIONS AND ENFORCEMENT.

Subpart 1. **District board action.** The district board may take such measures as are necessary to ensure landowner compliance with the conservation agreement, conservation easement, and conservation plan. If the district board is unsuccessful at obtaining landowner compliance, the district board shall notify the state board of the violation and may recommend appropriate measures to be taken to correct violations.

Subp. 2. **State board action.** Upon notification or discovery of a violation of a conservation agreement, conservation easement, or conservation plan, the state board shall take action to resolve the violation.

A landowner who violates the terms of a conservation agreement, conservation easement, or conservation plan under this chapter, or induces, assists, or allows another to do so, is liable to the state for treble damages if the violation is willful or double damages if the violation 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.

If the state board is not successful in resolving the violation, it may request the state attorney general to commence legal action to enforce the conservation agreement, conservation easement, or conservation plan.

Subp. 3. **Attorney general action.** Upon request by the state board, the attorney general may commence an action for specific performances, injunctive relief, damages, including attorney fees, and any other appropriate relief to enforce Minnesota Statutes, sections 103F.501 to 103F.531 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.

Conservation easements remain in effect even if maintenance violations have occurred.

8400.3930 RECONSIDERATION AND APPEAL.

Subpart 1. **Reconsideration by district board.** An affected landowner may request the district board to reconsider its:

A. recommendation or determination regarding that landowner's application for enrollment in a conservation easement program;

B. recommendation or determination to cancel that landowner's conservation agreement;

C. determination regarding that landowner's eligible and allowable costs to be reimbursed by the state board;

D. request to that landowner to correct any alleged noncompliant conditions regarding that landowner's enrolled easement area; or

E. recommendation to disapprove that landowner's request to change an enrolled easement area.

Subp. 2. **Time for reconsideration by district board.** A landowner requesting reconsideration under subpart 1 shall mail a written request to the district board within 15 days of receipt of notice of the district board's determination or recommendation of the matters specified in subpart 1. The request for reconsideration shall include the specific reasons for the request and evidence to support the landowner's claims. The district board shall notify the landowner in writing of its final recommendation and the reasons for the recommendation within 60 days of receipt of the landowner's request for reconsideration.

APPENDIX
Repealed Minnesota Rules: 24-05531

Subp. 3. **Appeal to state board.** An affected landowner may appeal to the state board from a final recommendation made by the district board pursuant to subpart 2. The landowner shall mail a written appeal to the state board within 15 days after receipt of the district board's final recommendation. The appeal shall include the specific reasons for the request and evidence to support the landowner's claims. The state board shall notify in writing the landowner and the district board of its final decision and the reasons for the decision within 60 days of receipt of the landowner's appeal.

Subp. 4. [Repealed, 14 SR 1928]