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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-FIFTH
SESSION

HOUSE FILE No. **589**

February 5, 2007

Authored by Peterson, A.; Eken and Juhnke

The bill was read for the first time and referred to the Committee on Finance

February 13, 2007

By motion, recalled and re-referred to the Committee on Agriculture, Rural Economies and Veterans Affairs

1.1 A bill for an act
1.2 relating to agriculture; bioenergy development; establishing a bioenergy
1.3 producer payment program for cellulosic biofuel production; establishing a
1.4 bioenergy production incentive program; establishing a bioenergy working lands
1.5 conservation program; authorizing rulemaking; authorizing general obligation
1.6 bonds; appropriating money; proposing coding for new law in Minnesota
1.7 Statutes, chapters 17; 41A; 103F.

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

1.9 Section 1. **[17.118] RENEWABLE ENERGY CAPITAL EQUIPMENT LOANS.**

1.10 (a) There is established a renewable energy revolving loan fund that is eligible
1.11 to receive appropriations and make loans under this section. The commissioner shall
1.12 establish a renewable energy loan program to make loans for capital equipment to persons
1.13 participating in the reinvest in Minnesota renewable energy program under section
1.14 103F.518 and other persons using native, perennial cropping systems for energy or seed
1.15 production. The commissioner, in consultation with the technical committee established
1.16 under section 103F.518, subdivision 11, shall establish guidelines for loans made under
1.17 this section. All repayments of loans granted from this fund, including principal and
1.18 interest, must be deposited into this fund. Interest earned on money in the fund accrues
1.19 to the fund, and the money in the fund is appropriated to the commissioner to make
1.20 renewable energy capital equipment loans under this section.

1.21 (b) The definitions in section 41A.10, subdivision 2, apply to this section.

1.22 Sec. 2. **[41A.10] CELLULOSIC BIOFUEL DEVELOPMENT.**

2.1 Subdivision 1. **Appropriation.** A sum sufficient to make the payments required
2.2 by this section is annually appropriated from the general fund to the commissioner of
2.3 agriculture and all money so appropriated is available until expended.

2.4 Subd. 2. **Definitions.** For the purposes of this section and sections 41A.11 and
2.5 103F.518, the terms defined in this subdivision have the meanings given them.

2.6 (a) "Cellulosic biofuel" means transportation fuel derived from cellulosic materials.

2.7 (b) "Cellulosic material" means an agricultural feedstock primarily comprised
2.8 of cellulose, hemicellulose, or lignan or a combination of those ingredients grown on
2.9 agricultural lands.

2.10 (c) "Cellulosic biofuel facility" means a facility at which cellulosic biofuel is
2.11 produced.

2.12 (d) "Perennial crops" means agriculturally produced plants that have a life cycle of
2.13 at least three years at the location where the plants are being cultivated.

2.14 (e) "Perennial cropping system" means an agricultural production system that
2.15 utilizes a perennial crop.

2.16 (f) "Native species" means a plant species which was present in a defined area of
2.17 Minnesota prior to European settlement (circa 1850). A defined area may be an ecological
2.18 classification province. Wild-type varieties therefore are regional or local ecotypes that
2.19 have not undergone a selection process.

2.20 (g) "Commissioner" means the commissioner of agriculture.

2.21 (h) "Eligible biofuel producer" means a biofuel producer that has at least 60 percent
2.22 of the ownership interest and at least 70 percent of the governance rights held by persons
2.23 residing in the county where the cellulosic biofuel facility is located or in an adjoining
2.24 county. At least 50 percent of the required local ownership interest and governance rights
2.25 must be held by persons providing feedstock to the cellulosic biofuel facility.

2.26 Subd. 3. **Cellulosic biofuel production goal.** The state cellulosic biofuel production
2.27 goal is one-quarter of the total amount necessary for ethanol use required under section
2.28 239.791, subdivision 1a, by 2015 or when cellulosic biofuel facilities in the state attain a
2.29 total annual production level of 60,000,000 gallons, whichever is first.

2.30 Subd. 4. **Cellulosic biofuel producer payments.** (a) The commissioner shall
2.31 make cash payments to eligible producers of cellulosic biofuel located in the state that
2.32 have begun production at a specific location by June 30, 2012. For the purpose of this
2.33 subdivision, an entity that holds a controlling interest in more than one cellulosic biofuel
2.34 plant is considered a single eligible producer. The amount of the payment for each eligible
2.35 producer's annual production, except as provided in paragraph (d), is 20 cents per gallon

3.1 for each gallon of cellulosic biofuel produced at a specific location for ten years after the
3.2 start of production.

3.3 (b) In lieu of the payment under paragraph (a), the commissioner shall make cash
3.4 payments to eligible producers of cellulosic biofuel located in the state that follow the
3.5 standards derived under section 103F.518, subdivision 11, that have begun production at a
3.6 specific location by June 30, 2015. For the purpose of this subdivision, an entity that holds
3.7 a controlling interest in more than one cellulosic biofuel facility is considered a single
3.8 eligible producer. The amount of the payment for each eligible biofuel producer's annual
3.9 production, except as provided in paragraph (d), is 30 cents per gallon for each gallon of
3.10 cellulosic biofuel produced at a specific location for ten years after the start of production.

3.11 (c) No payments shall be made for cellulosic biofuel production that occurs after
3.12 June 30, 2022, for those eligible biofuel producers under paragraph (a), and 2025 for
3.13 those eligible biofuel producers under paragraph (b). An eligible producer of cellulosic
3.14 biofuel shall not transfer the producer's eligibility for payments under this section to a
3.15 cellulosic biofuel facility at a different location.

3.16 (d) If the level of production at a cellulosic biofuel facility increases due to an
3.17 increase in the production capacity of the facility, the payment under paragraphs (a) and
3.18 (b) apply to the additional increment of production until ten years after the increased
3.19 production began. Once a facility's production capacity reaches 15,000,000 gallons per
3.20 year, no additional increment will qualify for the payment.

3.21 (e) Payments under paragraphs (a) and (b) to all eligible biofuel producers may not
3.22 exceed \$27,000,000 in a fiscal year. Total payments under paragraph (a) to an eligible
3.23 biofuel producer in a fiscal year may not exceed the amount necessary for 15,000,000
3.24 gallons of biofuel production.

3.25 (f) By the last day of October, January, April, and July, each eligible biofuel producer
3.26 shall file a claim for payment for cellulosic biofuel production during the preceding three
3.27 calendar months. An eligible biofuel producer that files a claim under this subdivision shall
3.28 include a statement of the eligible biofuel producer's total cellulosic biofuel production in
3.29 Minnesota during the quarter covered by the claim. For each claim and statement of total
3.30 cellulosic biofuel production filed under this subdivision, the volume of cellulosic biofuel
3.31 production must be examined by an independent certified public accountant in accordance
3.32 with standards established by the American Institute of Certified Public Accountants.

3.33 (g) Payments must be made November 15, February 15, May 15, and August 15.
3.34 A separate payment must be made for each claim filed. The total quarterly payment
3.35 to an eligible producer under this paragraph may not exceed the amount necessary for
3.36 3,750,000 gallons of biofuel production.

4.1 (h) If an eligible biofuel producer becomes ineligible within ten years after the
 4.2 last payment has been received under this section, all payments received for biofuel
 4.3 production must be refunded to the commissioner. Refunded payments received under this
 4.4 paragraph shall be deposited in the general fund.

4.5 (i) Annually, within 90 days of the end of its fiscal year, a cellulosic biofuel producer
 4.6 receiving payments under this subdivision must file a disclosure statement on a form
 4.7 provided by the commissioner. The initial disclosure statement must include a summary
 4.8 description of the organization of the business structure of the claimant, a listing of the
 4.9 percentages of ownership and governance by any person or other entity with an ownership
 4.10 interest or governance rights of five percent or greater, and a copy of its annual audited
 4.11 financial statements, including the auditor's report and footnotes. The disclosure statement
 4.12 must include information demonstrating what percentage of the entity receiving payments
 4.13 under this section is owned and governed by farmers or other entities that reside within the
 4.14 county where the cellulosic biofuel facility is located. Subsequent annual reports must
 4.15 reflect noncumulative changes in ownership of ten percent or more of the entity. The
 4.16 report need not disclose the identity of the persons or entities, but the claimant must
 4.17 retain information within its files confirming the accuracy of the data provided. This data
 4.18 must be made available to the commissioner upon request. Not later than the 15th day
 4.19 of February in each year, the commissioner shall deliver to the chairs of the standing
 4.20 committees of the senate and the house of representatives that deal with agricultural
 4.21 policy and agricultural finance an annual report summarizing aggregated data from
 4.22 plants receiving payments under this section during the preceding calendar year. Audited
 4.23 financial statements and notes and disclosure statements submitted to the commissioner
 4.24 are nonpublic data under section 13.02, subdivision 9. Notwithstanding the provisions of
 4.25 chapter 13 relating to nonpublic data, summaries of the submitted audited financial reports
 4.26 and notes and disclosure statements will be contained in the report to the committee chairs
 4.27 and will be public data.

4.28 (j) Bioenergy production for which payment has been received under section 41A.11
 4.29 is not eligible for payment under this section.

4.30 **Sec. 3. [41A.11] BIOENERGY PRODUCTION INCENTIVE.**

4.31 Subdivision 1. **Appropriation.** A sum sufficient to make the payments required
 4.32 by this section is annually appropriated from the general fund to the commissioner of
 4.33 agriculture and all money so appropriated is available until expended.

4.34 Subd. 2. **Definitions.** The definitions in this subdivision and section 41A.10 apply
 4.35 to this section.

5.1 (a) "Bioenergy production" means the generation of energy for commercial heat,
5.2 industrial process heat, or electrical power from perennial, native bioenergy crops grown
5.3 according to standards developed for the reinvest in Minnesota renewable energy program
5.4 under section 103F.518.

5.5 (b) "Bioenergy crops" means perennial, native crops grown according to standards
5.6 developed under section 103F.518 or intermediary fuels processed from the crops.

5.7 (c) "Project area" means a geographically defined area in which reinvest in
5.8 Minnesota easements are secured in order to provide a bioenergy fuel supply to an
5.9 identified bioenergy facility.

5.10 (d) "Commissioner" means the commissioner of agriculture.

5.11 Subd. 3. **Bioenergy producer payments.** (a) The commissioner shall make cash
5.12 payments to producers of bioenergy located in the state that have begun production at a
5.13 specific location by June 30, 2010. For the purpose of this subdivision, an entity that holds
5.14 a controlling interest in more than one bioenergy production plant is considered a single
5.15 producer. The amount of the payment for each producer's annual production, except as
5.16 provided in paragraph (c), is \$1.50 per 1,000,000 British thermal units (Btu) of bioenergy
5.17 production produced at a specific location for ten years after the start of production.

5.18 (b) No payments shall be made for bioenergy production that occurs after June 30,
5.19 2020. A producer of bioenergy production shall not transfer the producer's eligibility for
5.20 payments under this section to a bioenergy production plant at a different location.

5.21 (c) If the level of production at a bioenergy production plant increases due to an
5.22 increase in the production capacity of the plant, the payment under paragraph (a) applies
5.23 to the additional increment of production until ten years after the increased production
5.24 began. Once a plant's bioenergy production capacity reaches 1,500,000,000 Btu per
5.25 year, no additional increment will qualify for the payment.

5.26 (d) Total payments under paragraph (a) to all producers may not exceed \$11,000,000
5.27 in a fiscal year. Total payments under paragraph (a) to a producer in a fiscal year may
5.28 not exceed \$2,500,000.

5.29 (e) By the last day of October, January, April, and July, each producer shall file a
5.30 claim for payment for bioenergy production during the preceding three calendar months.
5.31 A producer that files a claim under this subdivision shall include a statement of the
5.32 producer's total bioenergy production in Minnesota during the quarter covered by the
5.33 claim. For each claim and statement of total bioenergy production filed under this
5.34 subdivision, the volume of bioenergy production must be examined by an independent
5.35 certified public accountant in accordance with standards established by the American
5.36 Institute of Certified Public Accountants.

6.1 (f) Payments shall be made November 15, February 15, May 15, and August 15.
6.2 A separate payment shall be made for each claim filed. The total quarterly payment to a
6.3 producer under this paragraph may not exceed \$750,000.

6.4 (g) Biofuel production for which payment has been received under section 41A.10 is
6.5 not eligible for payment under this section.

6.6 **Sec. 4. [103F.518] REINVEST IN MINNESOTA CLEAN ENERGY PROGRAM.**

6.7 **Subdivision 1. Establishment of program.** (a) The board, in consultation with
6.8 the technical committee established in subdivision 11, shall establish and administer a
6.9 reinvest in Minnesota clean energy program that is in addition to the program under
6.10 section 103F.515. The board may adopt rules to implement this section. Selection of land
6.11 for the clean energy program must be based on its potential benefits for bioenergy crop
6.12 production, water quality, soil health, reduction of chemical inputs, soil carbon storage,
6.13 biodiversity, and wildlife habitat.

6.14 (b) The definitions in section 41A.10 apply to this section.

6.15 **Subd. 2. Eligible land.** Eligible land under this section must:

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

6.18 (2) be at least five acres in size;

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

6.21 (4) have been in agricultural use, as defined in Minnesota Statutes 2006, section
6.22 17.81, subdivision 4, or have been set aside, enrolled, or diverted under another federal or
6.23 state program for at least two of the last five years before the date of application.

6.24 **Subd. 3. Designation of project areas.** The board shall develop a process to
6.25 designate defined project areas. The designation process shall prioritize projects that
6.26 include coordinated cooperation of a cellulosic biofuel plant or a bioenergy production
6.27 plant, target impaired waters, or support other state or local natural resource plans, goals,
6.28 or objectives.

6.29 **Subd. 4. Easements.** The board may acquire, or accept by gift or donation,
6.30 easements on eligible land. An easement may be permanent or of limited duration. An
6.31 easement of limited duration may not be acquired if it is for a period less than 20 years.
6.32 The negotiation and acquisition of easements authorized by this section are exempt from
6.33 the contractual provisions of chapters 16B and 16C.

6.34 **Subd. 5. Nature of property rights acquired.** (a) An easement must prohibit:

7.1 (1) agricultural crop production, unless approved by the board for energy production
7.2 purposes;

7.3 (2) grazing of livestock, unless approved by the board; and

7.4 (3) spraying with chemicals, except as necessary to comply with noxious weed
7.5 control laws, emergency pest control necessary to protect public health, or as needed to
7.6 maintain and manage a productive planting.

7.7 (b) An easement is subject to the terms of the agreement provided in subdivision 6.

7.8 (c) Agricultural crop production and harvest are limited to native, perennial
7.9 bioenergy crops. Harvest shall occur outside of bird nesting season.

7.10 (d) An easement must allow repairs, improvements, and inspections necessary to
7.11 maintain public drainage systems provided the easement area is restored to the condition
7.12 required by the terms of the easement.

7.13 Subd. 6. **Agreements by landowner.** The board may enroll eligible land in the
7.14 reinvest in Minnesota renewable energy program by signing an agreement in recordable
7.15 form with a landowner in which the landowner agrees:

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

7.18 (2) to seed the land subject to the easement, as specified in the agreement, at
7.19 seeding rates determined by the board, or carry out other long-term capital improvements
7.20 approved by the board; and

7.21 (3) that the easement duration may be lengthened through mutual agreement with
7.22 the board.

7.23 Subd. 7. **Payments for easements.** The board must develop a tiered payment system
7.24 for easements partially based on the benefits of the bioenergy crop production for water
7.25 quality, soil health, reduction in chemical inputs, soil carbon storage, biodiversity, and
7.26 wildlife habitat using cash rent or a similar system as may be determined by the board. The
7.27 payment system must provide that the highest per-acre payment is for mixed perennials.

7.28 Subd. 8. **Easement renewal.** When an easement of limited duration expires, a
7.29 new easement and agreement for an additional period of not less than 20 years may be
7.30 acquired by agreement of the board and the landowner under the terms of this section.
7.31 The board may adjust payment rates as a result of renewing an agreement and easement
7.32 only after examining the condition of the established plantings, conservation practices,
7.33 and land values.

7.34 Subd. 9. **Correction of easement boundary lines.** To correct errors in legal
7.35 descriptions for easements that affect the ownership interest in the state and adjacent
7.36 landowners, the board may, in the name of the state, with the approval of the attorney

8.1 general, convey, without consideration, interests of the state necessary to correct legal
8.2 descriptions of boundaries. The conveyance must be by quitclaim deed or release in
8.3 a form approved by the attorney general.

8.4 Subd. 10. **Enforcement and damages.** (a) A landowner who violates the term of
8.5 an easement or agreement under this section, or induces, assists, or allows another to do
8.6 so, is liable to the state for treble damages if the trespass is willful, but liable for double
8.7 damages only if the trespass is not willful. The amount of damages is the amount needed
8.8 to make the state whole or the amount the landowner has gained due to the violation,
8.9 whichever is greater.

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

8.15 Subd. 11. **Technical committee.** To ensure that public benefits, including water
8.16 quality, soil health, reduction of chemical inputs, soil carbon storage, biodiversity, and
8.17 wildlife habitat are secured along with bioenergy crop production, the Board of Water
8.18 and Soil Resources shall appoint a technical committee consisting of representatives
8.19 from the Departments of Agriculture, Natural Resources, and Commerce, the Pollution
8.20 Control Agency, and other appropriate public and private stakeholders to develop program
8.21 guidelines, standards, and rules, as appropriate to ensure that reinvest in Minnesota
8.22 renewable energy program contracts provide public benefits commensurate with the public
8.23 investment. The technical committee shall review and make recommendations on the
8.24 guidelines, standards, and rules every five years.

8.25 Sec. 5. **APPROPRIATION; CLEAN ENERGY RESERVE STANDARDS.**

8.26 \$500,000 in fiscal year 2008 is appropriated from the general fund to the Board
8.27 of Water and Soil Resources to develop, in consultation with the technical committee
8.28 established under section 4, subdivision 11, clean energy reserve program guidelines,
8.29 standards, and rules. This is a onetime appropriation and is available until June 30, 2009.

8.30 Sec. 6. **APPROPRIATION; CLEAN ENERGY RESERVE EASEMENTS.**

8.31 Subdivision 1. **Appropriation.** \$20,000,000 is appropriated from the bond proceeds
8.32 fund to the Board of Water and Soil Resources to acquire clean energy reserve easements
8.33 under section 4.

9.1 Subd. 2. **Bond sale.** To provide the money appropriated in this act from the bond
9.2 proceeds fund, the commissioner of finance shall sell and issue bonds of the state in an
9.3 amount up to \$20,000,000 in the manner, upon the terms, and with the effect prescribed by
9.4 Minnesota Statutes, sections 16A.631 to 16A.675, and by the Minnesota Constitution,
9.5 article XI, sections 4 to 7.

9.6 **Sec. 7. TRANSFER; RENEWABLE ENERGY CAPITAL EQUIPMENT**
9.7 **REVOLVING LOAN FUND.**

9.8 By June 30, 2008, the commissioner of finance shall transfer \$3,000,000 from the
9.9 general fund to the renewable energy capital equipment revolving fund.

9.10 **Sec. 8. APPROPRIATION; BIOENERGY CROP UTILIZATION**
9.11 **TECHNOLOGY PERMITTING.**

9.12 \$500,000 in fiscal year 2008 is appropriated from the general fund to the Pollution
9.13 Control Agency to permit new and emerging bioenergy crop utilization technologies. This
9.14 appropriation is available until June 30, 2009.

9.15 **Sec. 9. APPROPRIATION; BIOENERGY PRODUCTION AND UTILIZATION**
9.16 **TECHNICAL ASSISTANCE.**

9.17 \$600,000 in fiscal year 2008 is appropriated from the general fund to the Agricultural
9.18 Utilization Research Institute for technical assistance and technology transfer to bioenergy
9.19 crop producers and users. This appropriation is available until June 30, 2009.

9.20 **Sec. 10. APPROPRIATION; BIOENERGY PRODUCTION RESEARCH AND**
9.21 **MONITORING.**

9.22 \$1,000,000 in fiscal year 2008 is appropriated from the general fund to the Board of
9.23 Water and Soil Resources to provide grants, in consultation with the technical committee
9.24 established under section 4, subdivision 11, for bioenergy crop research and monitoring
9.25 including, but not limited to, water quality, soil carbon storage, biological diversity,
9.26 wildlife and habitat impacts and benefits, and small diameter woody bioenergy. This
9.27 appropriation is available until June 30, 2009.

9.28 **Sec. 11. APPROPRIATION; BIOENERGY AGRONOMIC ECONOMIC AND**
9.29 **POLICY RESEARCH.**

9.30 \$1,000,000 in fiscal year 2008 and \$1,000,000 in fiscal year 2009 are appropriated
9.31 from the general fund to the Minnesota Institute for Sustainable Agriculture at the

10.1 University of Minnesota to provide funds for on-station and on-farm field scale research
10.2 and outreach to develop and test the agronomic and economic requirements of diverse
10.3 stands of prairie plants and other perennials for bioenergy systems including, but not
10.4 limited to, multiple species selection and establishment, ecological management between
10.5 planting and harvest, harvest technologies, financial and agronomic risk management,
10.6 farmer goal setting and adoption of technologies, integration of wildlife habitat into
10.7 management approaches, evaluation of carbon and other benefits, and robust policies
10.8 needed to induce farmer conversion on marginal lands.

10.9 Sec. 12. **APPROPRIATION; BUSINESS DEVELOPMENT ASSISTANCE**
10.10 **GRANTS.**

10.11 \$150,000 in fiscal year 2008 is appropriated from the general fund to the
10.12 commissioner of agriculture for grants to nongovernmental entities to assist in the
10.13 development of business plans and structures related to community ownership of eligible
10.14 cellulosic biofuel facilities under Minnesota Statutes, section 41A.10. This is a onetime
10.15 appropriation and is available until June 30, 2009.