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State of Minnesota HOUSE OF REPRESENTATIVES

EIGHTY-FIFTH SESSION

HOUSE FILE No. 1183

February 19, 2007

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The bill was read for the first time and referred to the Committee on Environment and Natural Resources

March 13, 2007

Committee Recommendation and Adoption of Report:

To Pass as Amended and re-referred to the Committee on Governmental Operations, Reform, Technology and Elections

March 27, 2007

Committee Recommendation and Adoption of Report:

To Pass as Amended and re-referred to the Committee on Finance

A bill for an act

relating to natural resources; providing for community forest management; providing for control of forest and shade tree pests; appropriating money; amending Minnesota Statutes 2006, sections 18G.03, by adding a subdivision; 18G.11; 84D.14; 88.01, by adding a subdivision; 88.79, subdivisions 1, 2; 88.82; 89.001, subdivision 8, by adding subdivisions; 89.01, subdivisions 1, 2, 4; 89.51, subdivisions 1, 6, 9; 89.52; 89.53; 89.54; 89.55; 89.56, subdivisions 1, 3; 89.57; 89.58; 89.59; 89.60; 89.61; 97A.205; proposing coding for new law in Minnesota Statutes, chapter 89; repealing Minnesota Statutes 2006, sections 18G.16; 89.51, subdivision 8.

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

Section 1. Minnesota Statutes 2006, section 18G.03, is amended by adding a subdivision to read:

Subd. 5. Certain species not subject to chapter 18G. This chapter does not apply to exotic aquatic plants and wild animal species regulated under chapter 84D.

Sec. 2. Minnesota Statutes 2006, section 18G.11, is amended to read:

18G.11 COOPERATION WITH OTHER JURISDICTIONS.

Subdivision 1. Detection and control agreements. The commissioner may enter into cooperative agreements with organizations, persons, civic groups, governmental agencies, or other organizations to adopt and execute plans to detect and control areas infested or infected with harmful plant pests. The cooperative agreements may include provisions of joint funding of any control treatment.

If a harmful plant pest infestation or infection occurs and cannot be adequately controlled by individual persons, owners, tenants, or local units of government, the

2.1 commissioner may conduct the necessary control measures independently or on a
2.2 cooperative basis with federal or other units of government.

2.3 Subd. 2. **New and emerging plant pest programs.** The commissioner may make
2.4 grants to municipalities or enter into contracts with municipalities, nurseries, colleges,
2.5 universities, state or federal agencies in connection with new or emerging plant pests
2.6 programs, including research, or any other organization with the legal authority to enter
2.7 into contractual agreements.

2.8 Sec. 3. Minnesota Statutes 2006, section 84D.14, is amended to read:

2.9 **84D.14 EXEMPTIONS.**

2.10 This chapter does not apply to:

2.11 (1) pathogens and terrestrial arthropods regulated under sections 18G.01 to ~~18G.16~~
2.12 18G.15; or

2.13 (2) mammals and birds defined by statute as livestock.

2.14 Sec. 4. Minnesota Statutes 2006, section 88.01, is amended by adding a subdivision to
2.15 read:

2.16 Subd. 27. **Community forest.** "Community forest" means public and private trees
2.17 and associated plants occurring individually, in small groups, or under forest conditions
2.18 within a municipality.

2.19 Sec. 5. Minnesota Statutes 2006, section 88.79, subdivision 1, is amended to read:

2.20 Subdivision 1. **Employment of competent foresters; service to private owners.**

2.21 The commissioner of natural resources may employ competent foresters to furnish owners
2.22 of forest lands within the state of Minnesota who own not more than 1,000 acres of forest
2.23 land, forest management services consisting of:

2.24 (1) advice in management and protection of timber, including written stewardship
2.25 and forest management plans;

2.26 (2) selection and marking of timber to be cut;

2.27 (3) measurement of products;

2.28 (4) aid in marketing harvested products;

2.29 (5) provision of tree-planting equipment; ~~and~~

2.30 (6) advice in community forest management; and

2.31 (7) such other services as the commissioner of natural resources deems necessary
2.32 or advisable to promote maximum sustained yield of timber and other benefits upon
2.33 such forest lands.

3.1 Sec. 6. Minnesota Statutes 2006, section 88.79, subdivision 2, is amended to read:

3.2 Subd. 2. **Charge for service; receipts to special revenue fund.** The commissioner
3.3 of natural resources may charge the owner receiving such services such sums as the
3.4 commissioner shall determine to be fair and reasonable. The charges must account for
3.5 differences in the value of timber and other benefits. The receipts from such services shall
3.6 be credited to the special revenue fund and are annually appropriated to the commissioner
3.7 for the purposes specified in subdivision 1.

3.8 Sec. 7. Minnesota Statutes 2006, section 88.82, is amended to read:

3.9 **88.82 MINNESOTA RELEAF PROGRAM.**

3.10 The Minnesota releaf program is established in the Department of Natural Resources
3.11 to encourage, promote, and fund the inventory, planting, assessment, maintenance, and
3.12 improvement, protection, and restoration of trees and forest resources in this state to
3.13 enhance community forest ecosystem health and sustainability as well as to reduce
3.14 atmospheric carbon dioxide levels and promote energy conservation.

3.15 Sec. 8. Minnesota Statutes 2006, section 89.001, subdivision 8, is amended to read:

3.16 Subd. 8. **Forest resources.** "Forest resources" means those natural assets of forest
3.17 lands, including timber and other forest crops; biological diversity; recreation; fish and
3.18 wildlife habitat; wilderness; rare and distinctive flora and fauna; air; water; soil; climate;
3.19 and educational, aesthetic, and historic values.

3.20 Sec. 9. Minnesota Statutes 2006, section 89.001, is amended by adding a subdivision
3.21 to read:

3.22 Subd. 15. **Forest pest.** "Forest pest" means any vertebrate or invertebrate animal,
3.23 plant pathogen, or plant that is determined by the commissioner to be harmful, injurious,
3.24 or destructive to forests or timber.

3.25 Sec. 10. Minnesota Statutes 2006, section 89.001, is amended by adding a subdivision
3.26 to read:

3.27 Subd. 16. **Shade tree pest.** "Shade tree pest" means any vertebrate or invertebrate
3.28 animal, plant pathogen, or plant that is determined by the commissioner to be harmful,
3.29 injurious, or destructive to shade trees or community forests.

3.30 Sec. 11. Minnesota Statutes 2006, section 89.001, is amended by adding a subdivision
3.31 to read:

4.1 Subd. 17. **Community forest.** "Community forest" has the meaning given under
4.2 section 88.01, subdivision 27.

4.3 Sec. 12. Minnesota Statutes 2006, section 89.001, is amended by adding a subdivision
4.4 to read:

4.5 Subd. 18. **Shade tree.** "Shade tree" means a woody perennial grown primarily
4.6 for aesthetic or environmental purposes.

4.7 Sec. 13. Minnesota Statutes 2006, section 89.01, subdivision 1, is amended to read:

4.8 Subdivision 1. **Best methods.** The commissioner shall ascertain and observe the
4.9 best methods of reforesting cutover and denuded lands, foresting waste lands, ~~preventing~~
4.10 ~~destruction~~ minimizing loss or damage of forests and lands forest resources by fire, forest
4.11 pests, or shade tree pests, administering forests on forestry principles, encouraging private
4.12 owners to preserve and grow trees or timber for commercial or other purposes, and
4.13 conserving the forests around the head waters of streams and on the watersheds of the state.

4.14 Sec. 14. Minnesota Statutes 2006, section 89.01, subdivision 2, is amended to read:

4.15 Subd. 2. **General duties.** The commissioner shall execute all rules pertaining
4.16 to forestry and forest protection within the jurisdiction of the state; have charge of the
4.17 work of protecting all forests and lands from fire, forest pests, and shade tree pests;
4.18 shall investigate the origin of all forest fires; and prosecute all violators as provided by
4.19 law; shall prepare and print for public distribution an abstract of the forest fire laws of
4.20 Minnesota, together with such rules as may be formulated.

4.21 The commissioner shall prepare printed notices calling attention to the dangers from
4.22 forest fires and cause them to be posted in conspicuous places.

4.23 Sec. 15. Minnesota Statutes 2006, section 89.01, subdivision 4, is amended to read:

4.24 Subd. 4. **Forest plans.** The commissioner shall cooperate with the several
4.25 departments of the state and federal governments and with counties, towns, municipalities,
4.26 corporations, or individuals in the preparation of plans for forest protection; and
4.27 management; and planting or replacement of trees; in wood lots; and community forests
4.28 or on timber tracts, using such influence as time will permit toward the establishment of
4.29 scientific forestry principles in the management, protection, and promotion of the forest
4.30 resources of the state.

4.31 Sec. 16. Minnesota Statutes 2006, section 89.51, subdivision 1, is amended to read:

5.1 Subdivision 1. **Applicability.** For the purposes of sections 89.51 to ~~89.61~~ 89.64 the
5.2 terms described in this section have the meanings ascribed to them.

5.3 Sec. 17. Minnesota Statutes 2006, section 89.51, subdivision 6, is amended to read:

5.4 Subd. 6. **Infestation.** "Infestation;" includes actual, potential, incipient, or
5.5 ~~emergency~~ emergent infestation or infection by forest pests or shade tree pests.

5.6 Sec. 18. Minnesota Statutes 2006, section 89.51, subdivision 9, is amended to read:

5.7 Subd. 9. **Forest land or forest.** "Forest land" or "forest;" means land on which
5.8 occurs a stand or potential stand of trees valuable for timber products, watershed or
5.9 wildlife protection, recreational uses, community forest benefits, or other purposes, and
5.10 shall include lands owned or controlled by the state of Minnesota.

5.11 Sec. 19. Minnesota Statutes 2006, section 89.52, is amended to read:

5.12 **89.52 SURVEYS, INVESTIGATIONS.**

5.13 The commissioner shall make surveys and investigations to determine the presence
5.14 of infestations of forest pests or shade tree pests. For this purpose, duly designated
5.15 representatives of the commissioner may enter at reasonable times on public and private
5.16 lands ~~for the purpose of conducting such~~ to conduct the surveys and investigations.

5.17 Sec. 20. Minnesota Statutes 2006, section 89.53, is amended to read:

5.18 **89.53 CONTROL OF FOREST PESTS AND SHADE TREE PESTS.**

5.19 Subdivision 1. **Commissioner's duties; notice of control measures.** Whenever the
5.20 commissioner finds that an area in the state is infested or threatened to be infested with
5.21 forest pests or shade tree pests, the commissioner shall determine whether measures of
5.22 control are needed ~~and are available~~, what control measures are to be applied, and the area
5.23 over which the control measures shall be applied. The commissioner shall prescribe
5.24 a proposed zone of infestation covering the area in which control measures are to be
5.25 applied and shall publish notice of the proposal once a week, for two successive weeks
5.26 in a newspaper having a general circulation in each county located in whole or in part
5.27 in the proposed zone of infestation. Prescribing zones of infestation ~~is~~ and prescribing
5.28 measures of control are exempt from the rulemaking provisions of chapter 14 and section
5.29 14.386 does not apply.

5.30 Subd. 2. **Notice requirements; public comment.** The notice shall include a
5.31 description of the boundaries of the proposed zone of infestation, the control measures
5.32 to be applied, and a time and place where municipalities and owners of forest lands or

6.1 shade trees in the zone may show cause orally or in writing why the zone and control
6.2 measures should or should not be established. The commissioner shall consider any
6.3 statements received in determining whether the zone shall be established and the control
6.4 measures applied.

6.5 Subd. 3. **Experimental programs.** The commissioner may establish experimental
6.6 programs for the control of forest pests or shade tree pests and for municipal reforestation.

6.7 Sec. 21. Minnesota Statutes 2006, section 89.54, is amended to read:

6.8 **89.54 ZONES OF INFESTATION, ESTABLISHMENT.**

6.9 Upon the decision by the commissioner that the establishment of a zone of
6.10 infestation is necessary, the commissioner shall make a written order establishing ~~said~~
6.11 the zone, and upon making ~~said the~~ order, ~~said the~~ zone shall be established. Notice of the
6.12 establishment of the zone shall thereupon be published in a newspaper having a general
6.13 circulation in each county located in whole or in part in the proposed zone and posted on
6.14 the Department of Natural Resources Web site.

6.15 Sec. 22. Minnesota Statutes 2006, section 89.55, is amended to read:

6.16 **89.55 INFESTATION CONTROL, COSTS.**

6.17 Upon the establishment of the zone of infestation, the commissioner may apply
6.18 measures of infestation prevention and control on public and private forest and other
6.19 lands within such zone and to any trees, ~~timber~~, plants ~~or shrubs thereon~~, wood or wood
6.20 products, or contaminated soil harboring or which may harbor the forest pests or shade
6.21 tree pests. For this purpose, the duly authorized representatives of the commissioner
6.22 are authorized to enter upon any lands, public or private within ~~such the~~ zone. The
6.23 commissioner may enter into agreements with owners of the lands in the zone covering
6.24 the control work on their lands, and fixing the pro rata basis on which the cost of ~~such the~~
6.25 work will be shared between the commissioner and ~~said the~~ owner.

6.26 Sec. 23. Minnesota Statutes 2006, section 89.56, subdivision 1, is amended to read:

6.27 Subdivision 1. **Statement of expenses; cost to owners.** At the end of each fiscal
6.28 year and upon completion of the infestation control measures in any zone of infestation,
6.29 the commissioner shall prepare a certified statement of expenses incurred in carrying
6.30 out ~~such the~~ measures, including expenses of owners covered by agreements entered
6.31 into pursuant to section 89.55. The statement shall show the amount ~~which that~~ the
6.32 commissioner determines to be ~~its the commissioner's~~ share of the expenses. The share of
6.33 the commissioner may include funds and the value of other contributions made available

7.1 by the federal government and other cooperators. The balance of ~~such the~~ costs shall
 7.2 constitute a charge on an acreage basis as provided herein against the owners of lands in
 7.3 the zone containing trees ~~valuable or potentially valuable for commercial timber purposes~~
 7.4 ~~and~~ affected or likely to be affected by the forest pests or shade tree pests for which control
 7.5 measures were conducted. In fixing the rates at which charges shall be made against each
 7.6 owner, the commissioner shall consider the present commercial value of the trees on the
 7.7 land, the present and potential benefits to ~~such the~~ owner from the application of the
 7.8 control measures, ~~and~~ the cost of applying ~~such the~~ measures to the land, and such other
 7.9 factors as in the discretion of the commissioner will enable determination of an equitable
 7.10 distribution of the cost to all ~~such~~ owners. No charge shall be made against owners to the
 7.11 extent that they have individually or as members of a cooperative association contributed
 7.12 funds, supplies, or services pursuant to agreement under this section.

7.13 Sec. 24. Minnesota Statutes 2006, section 89.56, subdivision 3, is amended to read:

7.14 Subd. 3. **Collection.** The unpaid charges assessed under sections 89.51 to ~~89.61~~
 7.15 89.64 and the actions of the commissioner on any protests filed pursuant to subdivision 2,
 7.16 shall be reported to the tax levying authority for the county in which the lands for which
 7.17 the charges are assessed are situated and shall be made a public record. Any charges
 7.18 finally determined to be due shall become a special assessment and shall be payable
 7.19 in the same manner and with the same interest and penalty charges and with the same
 7.20 procedure for collection as apply to ad valorem property taxes. Upon collection of the
 7.21 charges, the county treasurer shall forthwith cause the amounts thereof to be paid to the
 7.22 forest pest and shade tree pest control fund account created by section 89.58. Any unpaid
 7.23 charge or lien against the lands shall not be affected by the sale thereof or by dissolution
 7.24 of the zone of infestation.

7.25 Sec. 25. Minnesota Statutes 2006, section 89.57, is amended to read:

7.26 **89.57 DISSOLUTION OF ZONE INFESTATION.**

7.27 Whenever the commissioner shall determine that forest pest or shade tree pest
 7.28 control work within an established zone of infestation is no longer necessary or feasible,
 7.29 the commissioner shall dissolve the zone.

7.30 Sec. 26. Minnesota Statutes 2006, section 89.58, is amended to read:

7.31 **89.58 FOREST PEST AND SHADE TREE PEST CONTROL ACCOUNT.**

7.32 All money collected under the provisions of sections 89.51 to ~~89.61~~ 89.64, together
 7.33 with such money as may be appropriated by the legislature or allocated by the Legislative

8.1 Advisory Commission for the purposes of sections 89.51 to ~~89.61~~ 89.64, and such money
8.2 as may be contributed or paid by the federal government, or any other public or private
8.3 agency, organization or individual, shall be deposited in the state treasury, to the credit
8.4 of the forest pest and shade tree pest control account, which account is hereby created,
8.5 and any moneys therein are appropriated to the commissioner for use in carrying out the
8.6 purposes ~~hereof~~ of sections 89.51 to 89.64.

8.7 Sec. 27. Minnesota Statutes 2006, section 89.59, is amended to read:

8.8 **89.59 COOPERATION.**

8.9 The commissioner may cooperate with the United States or agencies thereof, other
8.10 agencies of the state, county or municipal governments, agencies of neighboring states, or
8.11 other public or private organizations or individuals and may accept such funds, equipment,
8.12 supplies, or services from cooperators and others as ~~it~~ the commissioner may provide in
8.13 agreements with the United States or its agencies for matching of federal funds as required
8.14 under laws of the United States relating to forest pests and shade tree pests.

8.15 Sec. 28. Minnesota Statutes 2006, section 89.60, is amended to read:

8.16 **89.60 DUTIES, RULES; COMMISSIONER.**

8.17 The commissioner is authorized to employ personnel in accordance with the laws of
8.18 this state, to procure necessary equipment, supplies, and service, to enter into contracts, to
8.19 provide funds to any agency of the United States for work or services under sections 89.51
8.20 to ~~89.61~~ 89.64, and to designate or appoint, as ~~its~~ the commissioner's representatives,
8.21 employees of ~~its~~ cooperators, including employees of the United States or any agency
8.22 thereof. The commissioner may prescribe rules for carrying out the purposes ~~hereof~~
8.23 of this section.

8.24 Sec. 29. Minnesota Statutes 2006, section 89.61, is amended to read:

8.25 **89.61 ACT SUPPLEMENTAL.**

8.26 Provisions of sections 89.51 to ~~89.61~~ 89.64 are supplementary to and not to be
8.27 construed to repeal existing legislation.

8.28 Sec. 30. **[89.62] SHADE TREE PEST CONTROL; GRANT PROGRAM.**

8.29 Subdivision 1. Grants. The commissioner may make grants to aid in the control of
8.30 a shade tree pest. To be eligible, a grantee must have a pest control program approved
8.31 by the commissioner that:

9.1 (1) defines tree ownership and who is responsible for the costs associated with
9.2 control measures;

9.3 (2) defines the zone of infestation within which the control measures are to be
9.4 applied;

9.5 (3) includes a tree inspector certified under section 89.63 and having the authority to
9.6 enter and inspect private lands;

9.7 (4) has the means to enforce measures needed to limit the spread of shade tree
9.8 pests; and

9.9 (5) provides that grant money received will be deposited in a separate fund to be
9.10 spent only for the purposes authorized by this section.

9.11 Subd. 2. **Grant eligibility.** The following are eligible for grants under this section:

9.12 (1) a home rule charter or statutory city or a town that exercises municipal powers
9.13 under section 368.01 or any general or special law;

9.14 (2) a special park district organized under chapter 398;

9.15 (3) a special-purpose park and recreation board;

9.16 (4) a soil and water conservation district;

9.17 (5) a county; or

9.18 (6) any other organization with the legal authority to enter into contractual
9.19 agreements.

9.20 Subd. 3. **Rules; applicability to municipalities.** The rules and procedures adopted
9.21 under this chapter by the commissioner apply in a municipality unless the municipality
9.22 adopts an ordinance determined by the commissioner to be more stringent than the rules
9.23 and procedures of the commissioner. The rules and procedures of the commissioner or
9.24 the municipality apply to all state agencies, special purpose districts, and metropolitan
9.25 commissions as defined in section 473.121, subdivision 5a, that own or control land
9.26 adjacent to or within a zone of infestation.

9.27 **Sec. 31. [89.63] CERTIFICATION OF TREE INSPECTORS.**

9.28 (a) The governing body of a municipality may appoint a qualified tree inspector.
9.29 Two or more municipalities may jointly appoint a tree inspector for the purpose of
9.30 administering their respective pest control programs.

9.31 (b) Upon a determination by the commissioner that a candidate for the position
9.32 of tree inspector is qualified, the commissioner shall issue a certificate of qualification
9.33 to the tree inspector. The certificate is valid for one year. A person certified as a tree
9.34 inspector by the commissioner may enter and inspect any public or private property that
9.35 might harbor forest pests or shade tree pests. The commissioner shall offer an annual tree

10.1 inspector certification workshop, upon completion of which participants are qualified
 10.2 as tree inspectors.

10.3 (c) The commissioner may suspend and, upon notice and hearing, decertify a
 10.4 tree inspector if the tree inspector fails to act competently or in the public interest in
 10.5 the performance of duties.

10.6 Sec. 32. **[89.64] EXEMPTIONS.**

10.7 This chapter does not supersede the authority of the Department of Agriculture
 10.8 under chapter 18G.

10.9 Sec. 33. Minnesota Statutes 2006, section 97A.205, is amended to read:

10.10 **97A.205 ENFORCEMENT OFFICER POWERS.**

10.11 An enforcement officer is authorized to:

10.12 (1) execute and serve court issued warrants and processes relating to wild animals,
 10.13 wild rice, public waters, water pollution, conservation, and use of water, in the same
 10.14 manner as a sheriff;

10.15 (2) enter any land to carry out the duties and functions of the division;

10.16 (3) make investigations of violations of the game and fish laws;

10.17 (4) take an affidavit, if it aids an investigation;

10.18 (5) arrest, without a warrant, a person who is detected in the actual violation of the
 10.19 game and fish laws, a provision of chapters 84, 84A, 84D, 85, 86A, 88 to 97C, 103E,
 10.20 103F, 103G, sections 86B.001 to 86B.815, 89.51 to ~~89.61~~ 89.64; or 609.66, subdivision 1,
 10.21 clauses (1), (2), (5), and (7); and 609.68; and

10.22 (6) take an arrested person before a court in the county where the offense was
 10.23 committed and make a complaint.

10.24 Nothing in this section grants an enforcement officer any greater powers than other
 10.25 licensed peace officers.

10.26 Sec. 34. **FOREST PROTECTION PLAN.**

10.27 Subdivision 1. **Task force plan.** (a) The Forest Resources Council shall create a task
 10.28 force to develop a plan to prepare the state for early detection, appropriate response, and
 10.29 educating the public regarding invasive pests that threaten the tree cover of Minnesota. The
 10.30 task force also may give advice on how to best promote forest diversity and the planting of
 10.31 trees to address environmental challenges with the state. The plan must address:

11.1 (1) current efforts to address forest pests, what geographic areas and property types
11.2 have regular and active monitoring of forest pests, and gaps in the adequacy of the current
11.3 oversight and detection system;

11.4 (2) how the state may establish a flexible, yet comprehensive, system of tree
11.5 monitoring in that trees in all areas of Minnesota be covered by active early pest detection
11.6 efforts. In analyzing this, the task force shall consider possible roles for certified tree
11.7 inspectors, volunteers, and state and local government;

11.8 (3) current storm damage response and how that might be improved for forest health
11.9 and to minimize vulnerability to pest infection;

11.10 (4) the adequacy of the current response plan, the clarity of state and local roles and
11.11 responsibility, emergency communication plans, and the availability of needed funding for
11.12 pest outbreak response and how to scale it up should a major outbreak be detected;

11.13 (5) recommendations for clear delineation of state and local roles in notifying
11.14 property owners and enforcing remediation actions;

11.15 (6) the best approach to broad public education on the threats of new invasive tree
11.16 pests, the expected response to an outbreak, the value of trees to our environment, and the
11.17 promotion of a more diversified tree cover statewide; and

11.18 (7) an assessment of funding needs and options for the above activities and possible
11.19 funding approaches to promote the planting of a more diverse tree cover, along with
11.20 assisting in the costs of tree removal and replacement for public entities and property
11.21 owners.

11.22 (b) A report and recommendations to the legislative committees with jurisdiction
11.23 over natural resources and to the Legislative-Citizen Commission on Minnesota Resources
11.24 shall be due on December 15, 2007.

11.25 Subd. 2. **Task force creation.** The chair of the Forest Resources Council and the
11.26 commissioners of agriculture and natural resources shall jointly appoint the members of
11.27 the task force, which shall include up to 15 members with representatives of the University
11.28 of Minnesota; city, township, and county associations; commercial timber and forest
11.29 industries of varying size; nursery and landscape architecture; arborists and certified tree
11.30 inspectors; nonprofit organizations engaged in tree advocacy, planting, and education; a
11.31 master gardener; the Minnesota Shade Tree Advisory Council; and a tribal representative
11.32 recommended by the Indian Affairs Council.

11.33 Representatives of the Departments of Agriculture and Natural Resources shall serve
11.34 as ex-officio members and assist the task force in its work.

11.35 Sec. 35. **APPROPRIATION.**

- 12.1 \$..... is appropriated to the Forest Resources Council for the purposes of section 34.
- 12.2 Sec. 36. **REPEALER.**
- 12.3 Minnesota Statutes 2006, sections 18G.16; and 89.51, subdivision 8, are repealed.

18G.16 SHADE TREE PEST AND DISEASE CONTROL.

Subdivision 1. **Definitions.** (a) The definitions in this subdivision apply to this section.

(b) "Metropolitan area" means the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington.

(c) "Municipality" means a home rule charter or statutory city or a town located in the metropolitan area that exercises municipal powers under section 368.01 or any general or special law; a special park district organized under chapter 398; a special-purpose park and recreation board organized under the city charter of a city of the first class located in the metropolitan area; a county in the metropolitan area for the purposes of county-owned property or any portion of a county located outside the geographic boundaries of a city or a town exercising municipal powers; and a municipality or county located outside the metropolitan area with an approved disease control program.

(d) "Shade tree pest" means pests or pathogens affecting the growth and life of shade trees.

(e) "Wood utilization or disposal system" means facilities, equipment, or systems used for the removal and disposal of diseased or pest-infested shade trees, including collection, transportation, processing, or storage of wood and assisting in the recovery of materials or energy from wood.

(f) "Approved pest control program" means a municipal plan approved by the commissioner to control or eradicate a shade tree pest.

(g) "Pest control area" means an area approved by the commissioner within which a municipality will conduct an approved pest control program.

(h) "Sanitation" means the identification, inspection, disruption of a common root system, girdling, trimming, removal, and disposal of dead, pest-infested, or diseased wood of shade trees, including subsidies for trees removed pursuant to subdivision 4, on public or private property within a disease control area.

(i) "Reforestation" means the replacement of shade trees removed from public property and the planting of a tree as part of a municipal disease control program. For purposes of this paragraph, "public property" includes private property within five feet of the boulevard or street terrace in a city that enacted an ordinance on or before January 1, 1977, that prohibits or requires a permit for the planting of trees in the public right-of-way.

(j) "Shade tree" means a woody perennial grown primarily for aesthetic or environmental purposes.

Subd. 2. **Commissioner to adopt rules.** The commissioner may adopt rules relating to shade tree pest and disease control in any municipality. The rules must prescribe control measures to be used to prevent the spread of shade tree pests and diseases and must include the following:

- (1) a definition of shade tree;
- (2) qualifications for tree inspectors;
- (3) methods of identifying diseased or pest-infested shade trees;
- (4) procedures for giving reasonable notice of inspection of private real property;
- (5) measures for the removal of any shade tree which may contribute to the spread of shade tree pests or disease and for reforestation of pest or disease control areas;
- (6) approved methods of treatment of shade trees;
- (7) criteria for priority designation areas in an approved pest or disease control program;

and

(8) any other matters determined necessary by the commissioner to prevent the spread of shade tree pests or disease and enforce this section.

Subd. 3. **Diagnostic laboratory.** The commissioner shall operate a diagnostic laboratory for culturing diseased or pest-infested trees for positive identification of diseased or pest-infested shade trees.

Subd. 4. **Cooperation by university.** The University of Minnesota College of Natural Resources shall cooperate with the department in control of shade tree disease, pests, and disorders and management of shade tree populations. The College of Natural Resources shall cooperate with the department to conduct tree inspector certification and recertification workshops for certified tree inspectors. The College of Natural Resources shall also conduct research into means for identifying diseased or pest-infested shade trees, develop and evaluate control measures, and develop means for disposing of and using diseased or pest-infested shade trees.

Subd. 5. **Experimental programs.** The commissioner may establish experimental programs for sanitation or treatment of shade tree diseases and for research into tree varieties most suitable for municipal reforestation. The research must include considerations of disease resistance, energy conservation, and other factors considered appropriate. The commissioner may

APPENDIX

Repealed Minnesota Statutes: H1183-2

make grants to municipalities or enter into contracts with municipalities, nurseries, colleges, universities, or state or federal agencies in connection with experimental shade tree programs including research to assist municipalities in establishing priority designation areas for shade tree pest control and energy conservation.

Subd. 6. **Removal of diseased or pest-infested trees.** After reasonable notice of inspection, an owner of real property containing a shade tree that is diseased, infested, or may contribute to the spread of pests or disease, must remove or treat the tree within the period of time and in the manner established by the commissioner. Trees that are not removed in compliance with the commissioner's rules must be declared a public nuisance and removed or treated by approved methods by the municipality, which may assess all or part of the expense, limited to the lowest contract rates available that include wage levels which meet Minnesota minimum wage standards, to the property and the expense becomes a lien on the property. A municipality may assess not more than 50 percent of the expense of treating with an approved method or removing diseased or pest-infested shade trees located on street terraces or boulevards to the abutting properties and the assessment becomes a lien on the property.

Subd. 7. **Rules; applicability to municipalities.** The rules of the commissioner apply in a municipality unless the municipality adopts an ordinance determined by the commissioner to be more stringent than the rules of the commissioner. The rules of the commissioner or the municipality apply to all state agencies, special purpose districts, and metropolitan commissions as defined in section 473.121, subdivision 5a, that own or control land adjacent to or within a shade tree pest control area.

Subd. 8. **Grants to municipalities.** (a) The commissioner may, in the name of the state and within the limit of appropriations provided, make a grant to a municipality with an approved pest control program for the partial funding of municipal sanitation and reforestation programs to replace trees lost to pest, disease, or natural disaster. The commissioner may make a grant to a home rule charter or statutory city, a special purpose park and recreation board organized under a charter of a city of the first class, a nonprofit corporation serving a city of the first class, or a county having an approved disease control program for the acquisition or implementation of a wood use or disposal system.

(b) The commissioner shall adopt rules for the administration of grants under this subdivision. The rules must contain:

- (1) procedures for grant applications;
- (2) conditions and procedures for the administration of grants;
- (3) criteria of eligibility for grants including, but not limited to, those specified in this subdivision; and

(4) other matters the commissioner may find necessary to the proper administration of the grant program.

(c) Grants for wood utilization and disposal systems made by the commissioner under this subdivision must not exceed 50 percent of the total cost of the system. Grants for sanitation and reforestation must be combined into one grant program. Grants to a municipality for sanitation must not exceed 50 percent of sanitation costs approved by the commissioner including any amount of sanitation costs paid by special assessments, ad valorem taxes, federal grants, or other funds. A municipality must not specially assess a property owner an amount greater than the amount of the tree's sanitation cost minus the amount of the tree's sanitation cost reimbursed by the commissioner. Grants to municipalities for reforestation must not exceed 50 percent of the wholesale cost of the trees planted under the reforestation program; provided that a reforestation grant to a county may include 90 percent of the cost of the first 50 trees planted on public property in a town not included in the definition of municipality in subdivision 1 and with less than 1,000 population when the town applies to the county. Reforestation grants to towns and home rule charter or statutory cities of less than 4,000 population with an approved pest control program may include 90 percent of the cost of the first 50 trees planted on public property. The governing body of a municipality that receives a reforestation grant under this section must appoint up to seven residents of the municipality or designate an existing municipal board or committee to serve as a reforestation advisory committee to advise the governing body of the municipality in the administration of the reforestation program. For the purpose of this subdivision, "cost" does not include the value of a gift or dedication of trees required by a municipal ordinance but does include documented "in-kind" services or voluntary work for municipalities with a population of less than 1,000 according to the most recent federal census.

(d) Based upon estimates submitted by the municipality to the commissioner, which state the estimated costs of sanitation and reforestation in the succeeding quarter under an approved program, the commissioner shall direct quarterly advance payments to be made by the state to the municipality commencing April 1. The commissioner shall direct adjustment of any overestimate

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in a succeeding quarter. A municipality may elect to receive the proceeds of its sanitation and reforestation grants on a periodic cost reimbursement basis.

(e) A home rule charter or statutory city, county outside the metropolitan area, or any municipality, as defined in subdivision 1, may submit an application for a grant authorized by this subdivision concurrently with its request for approval of a pest control program.

(f) The commissioner shall not make grants for sanitation and reforestation or wood utilization and disposal systems in excess of 67 percent of the amounts appropriated for those purposes to the municipalities located within the metropolitan area, as defined in subdivision 1.

Subd. 9. Subsidies to certain owners. A municipality may provide subsidies to nonprofit organizations, to owners of private residential property of five acres or less, to owners of property used for a homestead of more than five acres but less than 20 acres, and to nonprofit cemeteries for the approved treatment or removal of diseased or pest-infested shade trees.

Notwithstanding any law to the contrary, an owner of property on which shade trees are located may contract with a municipality to provide protection against the cost of approved treatment or removal of diseased or pest-infested shade trees or shade trees that will contribute to the spread of shade tree diseases or pest infestations. Under the contract, the municipality must pay for the removal or approved treatment under terms and conditions determined by its governing body.

Subd. 10. Tree inspector. (a) The governing body of each municipality may appoint a qualified tree inspector. In accordance with section 471.59, two or more municipalities may jointly appoint a tree inspector for the purpose of administering the rules or ordinances in their communities. If a municipality has not appointed a tree inspector by January 1 in any year, the commissioner may assign a qualified employee of the Department of Agriculture to perform the duties of the tree inspector. The expense of a tree inspector appointed by the commissioner must be paid by the municipality. If an employee of the Department of Agriculture performs those duties, the expense must be billed to the municipality and paid into the state treasury and credited to the nursery and phytosanitary account.

(b) Upon a determination by the commissioner that a candidate for the position of tree inspector is qualified, the commissioner shall issue a certificate of qualification to the tree inspector. The certificate is valid for one year. A person certified as a tree inspector by the commissioner is authorized upon prior notification to enter and inspect any public or private property that might harbor diseased or infested shade trees.

(c) The commissioner may, upon notice and hearing, decertify a tree inspector if it appears that the tree inspector has failed to act competently or in the public interest in the performance of duties. Notice must be provided and a hearing conducted according to the provisions of chapter 14 governing contested case proceedings. Nothing in this paragraph limits or otherwise affects the authority of a municipality to dismiss or suspend a tree inspector in its discretion.

Subd. 11. Financing. (a) A municipality may collect the amount assessed against the property under subdivision 1 as a special assessment and may issue obligations as provided in section 429.101, subdivision 1. The municipality may, at its option, make any assessment levied payable with interest in installments not to exceed five years from the date of the assessment.

(b) After a contract for the sanitation or approved treatment of trees on private property has been approved or the work begun, the municipality may issue obligations to defray the expense of the work financed by special assessments imposed upon private property. Section 429.091 applies to those obligations with the following modifications:

- (1) the obligations must be payable not more than five years from the date of issuance; and
- (2) no election is required.

The certificates must not be included in the net debt of the issuing municipality.

Subd. 12. Deposit of proceeds in separate fund. Proceeds of taxes, assessments, and interest collected under this section, bonds or certificates of indebtedness issued under subdivision 10, and grants received under subdivision 7 must be deposited in the municipal treasury in a separate fund and spent only for the purposes authorized by this section.

Subd. 13. Wood use. The Departments of Agriculture and Natural Resources, after consultation with the Minnesota Shade Tree Advisory Committee, may investigate, evaluate, and make recommendations to the legislature concerning the potential uses of wood from community trees removed due to disease or other disorders. These recommendations shall include maximum resource recovery through recycling, use as an alternative energy source, or use in construction or the manufacture of new products.

Subd. 14. Municipal option to participate in program. The term "municipality" shall include only those municipalities which have informed the commissioner of their intent to continue an approved pest control program. Any municipality desiring to participate in the grants-in-aid for the partial funding of municipal sanitation and reforestation programs must

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notify the commissioner in writing before the beginning of the calendar year in which it wants to participate and must have an approved pest control program during any year in which it receives grants-in-aid. Notwithstanding the provisions of any law to the contrary, no municipality shall be required to have an approved disease control program after December 31, 1981.

Subd. 15. **Certain species not subject to chapter 18G.** Chapter 18G does not apply to exotic aquatic plants and wild animal species regulated under chapter 84D.

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Subd. 8. **Forest pest.** Forest pest, means any vertebrate or invertebrate animal or plant pathogen which is determined by the commissioner to be harmful, injurious or destructive to forests or timber.