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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-NINTH SESSION

H. F. No. **536**

02/02/2015 Authored by Hamilton; Poppe; Anderson, P.; Metsa; Kresha and others
The bill was read for the first time and referred to the Committee on Agriculture Policy
02/23/2015 Adoption of Report: Amended and re-referred to the Committee on Agriculture Finance

1.1 A bill for an act
1.2 relating to agriculture; creating an advanced biofuel production incentive
1.3 program; establishing a renewable chemical production incentive program;
1.4 establishing a biomass production incentive program; appropriating money;
1.5 proposing coding for new law in Minnesota Statutes, chapter 41A.

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

1.7 Section 1. **[41A.13] DEFINITIONS.**

1.8 (a) For the purposes of sections 41A.13 to 41A.17, the terms defined in this section
1.9 have the meanings given them.

1.10 (b) "Advanced biofuels" has the meaning given in section 239.051, subdivision 1a.

1.11 (c) "Biomass thermal production" means the generation of energy for commercial
1.12 heat or industrial process heat from a cellulosic material or other material composed of
1.13 forestry or agricultural feedstocks for a new or expanding capacity facility or a facility that
1.14 is displacing existing use of fossil fuel after the effective date of this section.

1.15 (d) "Cellulosic biomass" means material primarily made up of cellulose,
1.16 hemicellulose, or lignin, or a combination of those ingredients.

1.17 (e) "Cellulosic sugar" means sugar derived from cellulosic biomass from agricultural
1.18 or forestry resources.

1.19 (f) "Commissioner" means the commissioner of agriculture.

1.20 (g) "Cover crops" means grasses, legumes, forbs, or other herbaceous plants that are
1.21 known to be noninvasive and not listed as a noxious weed in Minnesota and that are either
1.22 interseeded into living cash crops or planted on agricultural fields during fallow periods
1.23 for seasonal cover and conservation purposes.

1.24 (h) "MMbtu" means one million British thermal units.

2.1 (i) "Perennial crops" means agriculturally produced plants that are known to be
2.2 noninvasive and not listed as a noxious weed in Minnesota and that have a life cycle of at
2.3 least three years at the location where the plants are being cultivated. Biomass from alfalfa
2.4 produced in a two-year rotation shall be considered a perennial crop.

2.5 (j) "Renewable chemical" means a chemical with biobased content as defined in
2.6 section 41A.105, subdivision 1a.

2.7 **Sec. 2. [41A.14] ADVANCED BIOFUEL PRODUCTION INCENTIVE.**

2.8 (a) A facility eligible for payment under this program must source at least 80 percent
2.9 raw materials from Minnesota. If a facility is sited 50 miles or less from the state border,
2.10 raw materials may be sourced from within a 100-mile radius. Raw materials must be from
2.11 agricultural or forestry sources or from solid waste. The production facility must be
2.12 located in Minnesota, must begin production at a specific location by June 30, 2025, and
2.13 must not begin operation above 95,000 MMbtu of annual biofuel production before July 1,
2.14 2015. Eligible facilities include existing companies and facilities that are adding additional
2.15 advanced biofuel production capacity, as well as new companies and facilities. Production
2.16 of conventional corn ethanol and conventional biodiesel is not eligible. Advanced biofuel
2.17 facilities must produce at least 95,000 MMbtu a year to be eligible for the program.

2.18 (b) The commissioner shall make payments to eligible producers of advanced
2.19 biofuel. For the purpose of this section, an entity that holds a controlling interest in more
2.20 than one advanced biofuel facility is considered a single eligible producer. The amount
2.21 of the payment for each eligible producer's annual production is \$2.1053 per MMbtu
2.22 for advanced biofuel production from cellulosic biomass, and \$1.053 per MMbtu for
2.23 advanced biofuel production from sugar or starch at a specific location for ten years after
2.24 the start of production. An eligible facility producing advanced biofuel using agricultural
2.25 cellulosic biomass is eligible for a 20 percent bonus payment for each MMbtu produced
2.26 from agricultural biomass that is derived from perennial crops, or from acres where cover
2.27 crops are used. All forestry-derived cellulosic biomass must be produced using Minnesota
2.28 state biomass harvesting guidelines or the equivalent. All biomass from brushlands
2.29 must be produced using Minnesota brushland harvesting biomass harvest guidelines or
2.30 the equivalent. Forestry-derived cellulosic biomass that come from land parcels greater
2.31 than 160 acres must be certified by the Forest Stewardship Council, Sustainable Forestry
2.32 Initiative, or American Tree Farm System. Uncertified land from parcels of 160 acres or
2.33 less and federal land must be harvested by a Minnesota-certified master logger or the
2.34 equivalent and have a forest stewardship plan.

3.1 (c) An eligible producer who utilizes agricultural cellulosic biomass must submit a
3.2 responsible biomass sourcing plan to the commissioner prior to applying for payments
3.3 under this section. The plan must:

3.4 (1) provide a detailed explanation for how agricultural cellulosic biomass will be
3.5 produced and managed in a way that preserves soil quality, does not increase soil and
3.6 nutrient runoff, avoids introduction of harmful invasive species, limits negative impacts
3.7 on wildlife habitat, and reduces greenhouse gas emissions;

3.8 (2) include the producer's approach to verifying that biomass suppliers are following
3.9 the plan;

3.10 (3) discuss how new technologies and practices that are not yet commercially viable
3.11 may be encouraged and adopted during the life of the facility, and how the producer will
3.12 encourage continuous improvement during the life of the project; and

3.13 (4) include specific numeric goals and timelines for making progress.

3.14 (d) An eligible producer who utilizes agricultural cellulosic biomass and receives
3.15 payments under this section shall submit an annual report on the producer's responsible
3.16 biomass sourcing plan to the commissioner by January 15 each year. The report must
3.17 include data on progress made by the producer in meeting specific goals laid out in the
3.18 plan. The commissioner shall make the report publicly available. The commissioner
3.19 shall perform an annual review of submitted reports and is authorized to make a
3.20 determination that the producer is not following the plan based on the reports submitted.
3.21 The commissioner may take appropriate steps, including reducing or ceasing payments
3.22 until the producer is in compliance with the plan.

3.23 (e) No payments shall be made for advanced biofuel production that occurs after
3.24 June 30, 2035, for those eligible biofuel producers under paragraph (b). An eligible
3.25 producer of advanced biofuel shall not transfer the producer's eligibility for payments
3.26 under this section to an advanced biofuel facility at a different location.

3.27 (f) Total payments under this section to an eligible biofuel producer in a fiscal year
3.28 may not exceed the amount necessary for 2,850,000 MMbtu of biofuel production. Total
3.29 payments under this section to all eligible biofuel producers in a fiscal year may not
3.30 exceed the amount necessary for 17,100,000 MMbtu of biofuel production.

3.31 (g) By the last day of October, January, April, and July, each eligible biofuel producer
3.32 shall file a claim for payment for advanced biofuel production during the preceding three
3.33 calendar months. An eligible biofuel producer that files a claim under this paragraph shall
3.34 include a statement of the eligible biofuel producer's total advanced biofuel production in
3.35 Minnesota during the quarter covered by the claim. For each claim and statement of total
3.36 advanced biofuel production filed under this paragraph, the volume of advanced biofuel

4.1 production must be examined by an independent certified public accountant licensed under
4.2 chapter 326A, in accordance with Statements on Standards for Attestation Engagements
4.3 established by the American Institute of Certified Public Accountants.

4.4 (h) Payments must be made November 15, February 15, May 15, and August 15.
4.5 A separate payment must be made for each claim filed.

4.6 (i) Any producer that ceases production for any reason is ineligible to receive
4.7 payments under the program until they begin producing again.

4.8 (j) Renewable chemical production for which payment has been received under
4.9 section 41A.15, and biomass thermal production for which payment has been received
4.10 under section 41A.16, is not eligible for payment under this section.

4.11 **Sec. 3. [41A.15] RENEWABLE CHEMICAL PRODUCTION INCENTIVE.**

4.12 (a) A facility eligible for payment under this program must source at least 80
4.13 percent biobased content, as defined in section 41A.105, subdivision 1a, clause (1),
4.14 from Minnesota. If a facility is sited 50 miles or less from the state border, biobased
4.15 content must be sourced from within a 100-mile radius. Biobased content must be from
4.16 agricultural or forestry sources or from solid waste. The production facility must be
4.17 located in Minnesota, must begin production at a specific location by June 30, 2025, and
4.18 must not begin production of 3,000,000 pounds of chemicals annually before January
4.19 1, 2015. Eligible facilities include existing companies and facilities that are adding
4.20 additional production capacity, as well as new companies and facilities. Renewable
4.21 chemical facilities must produce at least 3,000,000 pounds per year to be eligible for the
4.22 program. Renewable chemicals produced through processes that are fully commercial
4.23 before January 1, 2000, are not eligible.

4.24 (b) The commissioner shall make payments to eligible producers of renewable
4.25 chemicals located in the state. For the purpose of this subdivision, an entity that holds a
4.26 controlling interest in more than one renewable chemical production facility is considered a
4.27 single eligible producer. The amount of the payment for each producer's annual production
4.28 is \$0.03 per pound of sugar-derived renewable chemical, \$0.03 per pound of cellulosic
4.29 sugar, and \$0.06 per pound of cellulosic-derived renewable chemical produced at a specific
4.30 location for ten years after the start of production. All forestry-derived cellulosic biomass
4.31 must be produced using Minnesota state biomass harvesting guidelines or the equivalent.
4.32 All cellulosic biomass from brushlands must be produced using Minnesota brushland
4.33 harvesting biomass harvest guidelines or the equivalent. Forestry-derived cellulosic
4.34 biomass that come from land parcels greater than 160 acres must be certified by the Forest
4.35 Stewardship Council, Sustainable Forestry Initiative, or American Tree Farm System.

5.1 Uncertified land from parcels of 160 acres or less and federal land must be harvested by a
5.2 Minnesota-certified master logger or the equivalent and have a forest stewardship plan.
5.3 An eligible facility producing renewable chemicals using agricultural cellulosic biomass
5.4 is eligible for a 20 percent bonus payment for each MMbtu produced from agricultural
5.5 biomass that is derived from perennial crops or from acres where cover crops are used.

5.6 (c) An eligible producer who utilizes agricultural cellulosic biomass must submit a
5.7 responsible biomass sourcing plan to the commissioner prior to applying for payments
5.8 under this section. The plan must:

5.9 (1) provide a detailed explanation for how agricultural cellulosic biomass will be
5.10 produced and managed in a way that preserves soil quality, does not increase soil and
5.11 nutrient runoff, avoids introduction of harmful invasive species, limits negative impacts
5.12 on wildlife habitat, and reduces greenhouse gas emissions;

5.13 (2) include the producer's approach to verifying that biomass suppliers are following
5.14 the plan;

5.15 (3) discuss how new technologies and practices that are not yet commercially viable
5.16 may be encouraged and adopted during the life of the facility, and how the producer will
5.17 encourage continuous improvement during the life of the project; and

5.18 (4) include specific numeric goals and timelines for making progress.

5.19 (d) An eligible producer who utilizes agricultural cellulosic biomass and receives
5.20 payments under this section shall submit an annual report on the producer's responsible
5.21 biomass sourcing plan to the commissioner by January 15 each year. The report must
5.22 include data on progress made by the producer in meeting specific goals laid out in the
5.23 plan. The commissioner shall make the report publicly available. The commissioner
5.24 shall perform an annual review of submitted reports and is authorized to make a
5.25 determination that the producer is not following the plan based on the reports submitted.
5.26 The commissioner may take appropriate steps, including reducing or ceasing payments
5.27 until the producer is in compliance with the plan.

5.28 (e) No payments shall be made for renewable chemical production that occurs after
5.29 June 30, 2035, for those eligible renewable chemical producers under paragraph (b). An
5.30 eligible producer of renewable chemicals shall not transfer the producer's eligibility for
5.31 payments under this section to a renewable chemical facility at a different location.

5.32 (f) Total payments under this section to an eligible renewable chemical producer in
5.33 a fiscal year may not exceed the amount necessary for 99,999,999 pounds of renewable
5.34 chemical production. Total payments under this section to all eligible renewable chemical
5.35 producers in a fiscal year may not exceed the amount necessary for 599,999,999 pounds of
5.36 renewable chemical production.

6.1 (g) By the last day of October, January, April, and July, each eligible renewable
6.2 chemical producer shall file a claim for payment for renewable chemical production
6.3 during the preceding three calendar months. An eligible renewable chemical producer
6.4 that files a claim under this paragraph shall include a statement of the eligible producer's
6.5 total renewable chemical production in Minnesota during the quarter covered by the
6.6 claim. For each claim and statement of total renewable chemical production filed under
6.7 this paragraph, the volume of renewable chemical production must be examined by an
6.8 independent certified public accountant licensed under chapter 326A, in accordance
6.9 with Statements on Standards for Attestation Engagements established by the American
6.10 Institute of Certified Public Accountants.

6.11 (h) Payments must be made November 15, February 15, May 15, and August 15.
6.12 A separate payment must be made for each claim filed.

6.13 (i) Any producer that ceases production for any reason is ineligible to receive
6.14 payments under the program until they begin producing again.

6.15 (j) Advanced biofuel production for which payment has been received under section
6.16 41A.14, and biomass thermal production for which payment has been received under
6.17 section 41A.16, is not eligible for payment under this section.

6.18 **Sec. 4. [41A.16] BIOMASS THERMAL PRODUCTION INCENTIVE.**

6.19 (a) A facility eligible for payment under this program must source at least 80 percent
6.20 raw materials from Minnesota. If a facility is sited 50 miles or less from the state border,
6.21 raw materials should be sourced from within a 100-mile radius. Raw materials must be
6.22 from agricultural or forestry sources. The production facility must be located in Minnesota
6.23 and must not begin before July 1, 2015. Eligible facilities include existing companies and
6.24 facilities that are adding additional production capacity, as well as new companies and
6.25 facilities. Biomass thermal production facilities must produce at least 1,000 MMbtu per
6.26 year to be eligible for the program.

6.27 (b) The commissioner shall make payments to eligible producers of biomass thermal
6.28 located in the state that have begun production at a specific location by June 30, 2025.
6.29 For the purpose of this subdivision, an entity that holds a controlling interest in more than
6.30 one biomass thermal production facility is considered a single eligible producer. The
6.31 amount of the payment for each producer's annual production is \$5.00 per MMbtu of
6.32 biomass thermal production produced at a specific location for ten years after the start of
6.33 production. All forestry-derived cellulosic biomass must be produced using Minnesota
6.34 state biomass harvesting guidelines or the equivalent. All biomass from brushland must
6.35 be produced using Minnesota brushland harvesting biomass guidelines or the equivalent.

7.1 Forestry-derived cellulosic biomass that come from land parcels greater than 160 acres
7.2 must be certified by the Forest Stewardship Council, the Sustainable Forestry Initiative,
7.3 or American Tree Farm. Uncertified land from parcels of 160 acres or less and federal
7.4 land must be harvested by a Minnesota-certified master logger or the equivalent and
7.5 have a forest stewardship plan. An eligible facility producing biomass thermal using
7.6 agricultural cellulosic biomass is eligible for a 20 percent bonus payment for each MMbtu
7.7 produced from agricultural biomass that is derived from perennial crops or from acres
7.8 where cover crops are used.

7.9 (c) An eligible producer who utilizes agricultural cellulosic biomass must submit a
7.10 responsible biomass sourcing plan to the commissioner prior to applying for payments
7.11 under this section. The plan must:

7.12 (1) provide a detailed explanation for how agricultural cellulosic biomass will be
7.13 produced and managed in a way that preserves soil quality, does not increase soil and
7.14 nutrient runoff, avoids introduction of harmful invasive species, limits negative impacts
7.15 on wildlife habitat, and reduces greenhouse gas emissions;

7.16 (2) include the producer's approach to verifying that biomass suppliers are following
7.17 the plan;

7.18 (3) discuss how new technologies and practices that are not yet commercially viable
7.19 may be encouraged and adopted during the life of the facility, and how the producer will
7.20 encourage continuous improvement during the life of the project; and

7.21 (4) include specific numeric goals and timelines for making progress.

7.22 (d) An eligible producer who utilizes agricultural cellulosic biomass and receives
7.23 payments under this section shall submit an annual report on the producer's responsible
7.24 biomass sourcing plan to the commissioner by January 15 each year. The report must
7.25 include data on progress made by the producer in meeting specific goals laid out in the
7.26 plan. The commissioner shall make the report publicly available. The commissioner
7.27 shall perform an annual review of submitted reports and is authorized to make a
7.28 determination that the producer is not following the plan based on the reports submitted.
7.29 The commissioner may take appropriate steps, including reducing or ceasing payments
7.30 until the producer is in compliance with the plan.

7.31 (e) No payments shall be made for biomass thermal production that occurs after June
7.32 30, 2035, for those eligible biomass thermal producers under paragraph (b). A producer of
7.33 biomass thermal production shall not transfer the producer's eligibility for payments under
7.34 this section to a biomass thermal production facility at a different location.

7.35 (f) Total payments under this section to an eligible thermal producer in a fiscal year
7.36 may not exceed the amount necessary for 30,000 MMbtu of thermal production. Total

8.1 payments under this section to all eligible thermal producers in a fiscal year may not
8.2 exceed the amount necessary for 150,000 MMbtu of total thermal production.

8.3 (g) An eligible facility may blend a cellulosic feedstock with other fuels in the
8.4 biomass thermal production facility, but only the percentage attributable to cellulosic
8.5 material listed is eligible to receive the producer payment.

8.6 (h) By the last day of October, January, April, and July, each producer shall file a
8.7 claim for payment for biomass thermal production during the preceding three calendar
8.8 months. A producer that files a claim under this paragraph shall include a statement of
8.9 the producer's total biomass thermal production in Minnesota during the quarter covered
8.10 by the claim. For each claim and statement of total biomass thermal production filed
8.11 under this paragraph, the volume of biomass thermal production must be examined by
8.12 an independent certified public accountant licensed under chapter 326A, in accordance
8.13 with Statements on Standards for Attestation Engagements established by the American
8.14 Institute of Certified Public Accountants.

8.15 (i) Payments shall be made November 15, February 15, May 15, and August 15. A
8.16 separate payment shall be made for each claim filed.

8.17 (j) Biofuel production for which payment has been received under section 41A.14,
8.18 and renewable chemical production for which payment has been received under section
8.19 41A.15, is not eligible for payment under this section.

8.20 **Sec. 5. [41A.17] REPORT; INCENTIVE PROGRAMS.**

8.21 By January 15 each year, the commissioner shall report on the incentive programs
8.22 under Minnesota Statutes, sections 41A.14, 41A.15, and 41A.16, to the legislative policy
8.23 and finance committees with primary jurisdiction over environment and agriculture. The
8.24 report shall include information on production and expenditures for incentives under
8.25 the programs.

8.26 **Sec. 6. APPROPRIATION.**

8.27 \$2,500,000 in fiscal year 2016 and \$2,500,000 in fiscal year 2017 are appropriated
8.28 from the general fund to the commissioner of agriculture for incentive payments under
8.29 Minnesota Statutes, sections 41A.14, 41A.15, and 41A.16. If the appropriation exceeds
8.30 the total amount for which all producers are eligible in a fiscal year, the balance of the
8.31 appropriation is available to the commissioner for the agricultural growth, research, and
8.32 innovation program under Minnesota Statutes, section 41A.12, for NextGen energy grants.
8.33 These appropriations do not cancel and are available until spent. Up to 4.5 percent of the
8.34 appropriation may be used for administration of the incentive payments.