

House Research Act Summary

CHAPTER: 128

SESSION: 2003 Regular Session

TOPIC: Omnibus Agriculture, Environment, and Jobs Finance Bill (Ag articles only)

Date: May 21, 2003

Analyst: Sam Rankin, 651-296-5047

This publication can be made available in alternative formats upon request. Please call 651-296-6753 (voice); or the Minnesota State Relay Service at 1-800-627-3529 (TTY) for assistance. Summaries are also available on our website at: www.house.mn/hrd.

Overview

Articles 3 to 8 of Chapter 128, as passed by the House and Senate on May 19, 2003, provide funding for programs of the department of agriculture, the board of animal health, and the Agricultural utilization research institute. These articles also contain appropriations for the ethanol producer payment program and aid for county fairs.

Section

Article 3: Agriculture and Rural Development

- 1** **Agriculture and rural development appropriations.** Summarizes total appropriations in fiscal year 2004 of \$46,784,000 and in FY 2005 of \$45,150,000.
- 2** **Department of agriculture.**

Subd. 1. Total department appropriation. \$42,181,000 and \$40,547,000.

Subd. 2. Protection services. \$9,138,000 and \$9,138,000.

Subd. 3. Marketing and development. \$5,256,000 and \$5,256,000. Of this total, \$71,000 each year is designated for the Minnesota grown matching account. \$80,000 each year is for sustainable agriculture demonstration projects.

The funding for county fairs is restored and shifted slightly. Fairs did not receive the annual payment scheduled for March, 2003 (in reimbursement for prizes awarded in August, 2002) because of unallotment. Beginning in fiscal year 2004, payments are to be made not later than July 15th for prizes awarded in the previous calendar year.

The commissioner of agriculture is instructed to fund the Ag in the Classroom program at the base level (\$102,000/yr) until a new private sector or public sector home can be found for it.

Subd. 4. Ethanol development. \$22,962,000 and \$21,428,000 is for ethanol producer payments. In fiscal years 2004 through 2007 ethanol producer payments for eligible scheduled production will be disbursed at the rate of \$0.13 per gallon. Any additional appropriation may be used for making ethanol deficiency payments and thereafter for funding value-added agriculture programs.

Subd. 5. Administration and financial assistance. \$4,825,000 and \$4,725,000. Of this amount \$1,005,000 each year is for dairy profitability grants. \$50,000 each year is to the northern crops institute. \$100,000 in fiscal year 2004 is for predesign and design of the agriculture and food sciences academy.

3 Board of animal health. The general fund appropriation is \$2,803,000 each year. Of this amount, \$200,000 each year is for Johne's disease research and control, \$80,000 each year is for avian pneumovirus disease, and \$400,000 each year is for inspections of cervidae herds.

4 Agricultural utilization research institute. \$1,800,000 each year is to fund the activities of AURI. Of this amount, \$200,000 each year is for research on ways to reduce pesticide use, and at least 50 percent of the pesticide research money must be used for field crop research.

5 Definitions.

Subd. 1. Cervidae. Clarifies the definition of cervidae to include all members of the cervid family and names several species.

Subd. 2. Farmed cervidae. Amends the existing definition of farmed cervidae so that it will include all cervid animals raised in confinement for any purpose.

Subd. 3. Owner. This definition remains unchanged.

Subd. 4. Herd. This new definition establishes the common (herd) relationship.

6 Slaughter of farmed cervidae. Allows the slaughter of cervidae to be inspected under either the state meat inspection program or the federal inspection program.

7 Fencing. Increases the standards for fencing of cervidae herds and requires that fences built to lower standards in years past must be brought up to new 96-inch standard by January 1, 2004.

8 Disease control programs. The headnote on this section is changed to more accurately reflect the purpose of board of animal health rules for management of farmed cervidae.

9 Farmed cervidae identification. A change to current law will require that after January 1, 2004, the identification tag of each farmed cervidae animal must be visible from a distance of 50 yards and the identification must be applied to all animals by December 31 of the year of birth or before the animal is moved from the birth premises.

10 Inspection. The division of authority for inspection of farmed cervidae is more clearly delineated between the commissioner of agriculture, the board of animal health, and the commissioner of natural resources. Specific authority to inspect "farmed cervidae facilities" is added. A new inspection fee is imposed - \$10 per animal with a maximum of \$100 per herd.

11 Cervidae inspection account. Creates the cervidae inspection account in the state treasury. Fees are deposited in the account and the board of animal health uses money in the account for enforcement expenses.

- 12 **Mandatory registration.** New language requires that as of January 1, 2004, no person may possess live cervidae in Minnesota unless the person is registered with the board of animal health. Illegally possessed cervidae can be seized and destroyed by the commissioner of natural resources.
- 13 **Mandatory surveillance for chronic wasting disease.** New language that will become effective January 1, 2004, requires that each farmed cervidae herd must be inventoried by a veterinarian every 12 months; movement of farmed cervidae from one location to another must be reported to the board of animal health within 14 days after the move; and all farmed cervidae over 16 months old must be tested for CWD upon slaughter or if they die.
- 14 **Control or eradication of noxious weeds.** Removes the commissioner of agriculture from noxious weed inspection and eradication programs. Makes the commissioner of natural resources responsible for control of purple loosestrife.
- 15 **Authorized agents.** Turns weed control over to county agricultural inspectors, at the option of the county.
- 16 **Entry upon land.** Removes officers of the department of agriculture from the list of those with authority to enter public or private land to look for weeds.
- 17 **Order for control or eradication of noxious weeds.** Eliminates the commissioner as one who can order the control of noxious weeds.
- 18 **Initial training for control or eradication of noxious weeds.** Reduces the commissioner's responsibility for noxious weed education to "initial" training only.
- 19 **Injunction.** Deletes the commissioner and adds the county agricultural inspector as authorized to apply to a court for enforcement of weed laws.
- 20 **Prosecution.** Deletes the commissioner and adds the county agricultural inspector as authorized to apply to a court for enforcement of weed laws.
- 21 **Local weed inspectors.** Removes duties of local weed inspectors as they concern attendance at meetings with the commissioner.
- 22 **Nonperformance by inspectors; reimbursement for expenses.** Deletes the commissioner and adds the county agricultural inspector as the party responsible for ensuring that inspectors perform duties as noxious weed inspectors.
- 23 **Court appeal of costs; petition.** Deletes the commissioner when dealing with an appeal by a landowner for the costs for weed control.
- 24 **Unlawful acts.** Deletes the commissioner as one whose weed control duties cannot be hindered or obstructed.
- 25 **Prevention and monitoring of groundwater contamination.** Allows the commissioner of agriculture to monitor private water wells throughout the state for the presence of agricultural or industrial chemicals. The identity of the land owner must not be disclosed, and the owner or user of a tested well must be given access to the test results.
- 26 **Pesticide registration application fee.** Removes an annual transfer of \$600,000 of fees collected for registration of pesticides to the waste pesticide account. New language requires the commissioner to spend \$300,000 per fiscal year from the pesticide regulatory account for purposes of the waste pesticide collection program.
- 27 **Access to pesticide application information.** Authorizes the department of agriculture to release available information on pesticide applications to a doctor or veterinarian for diagnosis or treatment of a patient under the care of the physician or veterinarian. The information becomes part of the confidential patient record.
- 28 **Fees for food handlers.** Fees are increased for various classes of food handlers, brokers, and processors, based on annual gross sales. The number of size categories is expanded and fee increases are weighted to the largest food handlers.
- 29 **Violations; prohibited acts.** Increases fees for reinspections of food handlers.

- 30 **Annual fee; exceptions.** Increases fees for vending machine operators.
- 31 **Grade A inspection fees.** Increases fees for reinspections on dairy farms and eliminates a goal of maintaining the user fee for inspections at no more than 40 percent of the department's actual average cost for inspections.
- 32 **Manufacturing grade farm certification.** Increases reinspection fees on manufacturing grade farms and eliminates a cap at 40 percent of the department's actual inspection costs.
- 33 **Processor assessment.** Clarifies the authority of the commissioner to set processor assessments within the range of five cents and nine cents per hundredweight of milk. Establishes the rate on July 1, 2003, at seven cents and limits changes thereafter to no more than one cent per year.
- 34 **Cervidae import restrictions.** Makes permanent a ban on the import of cervids from a herd infected with or exposed to chronic wasting disease.
- 35 **County and district agricultural societies; aid distribution; conditions.** Amends current language providing state aid payments to county and district agricultural societies and associations. Requires the commissioner to disburse aid by July 15 of the calendar year following the annual fair.
- 36 **County fair certification for aid; commissioner of agriculture.** Adjusts the timeline for a county agricultural society to file post-fair reports to conform with the new (shifted) payment schedule in section 35.
- 37 **Ethanol development; definitions.** Updates definitions in the ethanol producer payment program.
- 38 **Payments; ethanol producers.** Amends the ethanol producer payment schedule by restoring the target payment rate to \$0.20 per gallon. Requires disclosure of the ownership of each producer applicant. Requires at least 40 percent farmer ownership to retain eligibility for payments. Eliminates an expired program that provided direct payment for electricity generated at an ethanol plant by the burning of biomass. Instructs the commissioner to make up any deficiency in payments during earlier quarters when appropriated money was insufficient to make full, timely payment to all producers. Waives the normal quarterly and annual payment caps for deficiency payments.
- 39 **Notice of application for livestock feedlot permit.** Amends existing language to require that the notice to neighbors within 5,000 feet must be delivered not less than 20 business days before the permit is issued by the pollution control agency or a county feedlot officer. Requires the agency or the county to verify that the notice was provided before issuing a permit.
- 40 **Environmental impact statements; environmental assessment worksheets.** Amends the current statutory process for determining if an EAW or an EIS is needed by stipulating that an EAW cannot be required for a new animal feedlot with a capacity of less than 1,000 animal units (or an expansion that brings the feedlot up to 1,000 AU) if the application includes a written commitment by the proposer to design, construct, and operate the facility in compliance with Minnesota pollution control agency feedlot rules (7020 rules). A public meeting for citizen input must be held at least 10 days before the permit is issued unless another meeting has already been held.
- 41 **Establishment; agricultural utilization research institute.** Changes some of the duties and goals of the AURI.
- 42 **Board of directors.** Adjusts membership on the AURI board to include legislators from the agriculture finance committees (instead of policy committees). Appointed members are limited to a maximum of two three-year terms. Compensation for board members is brought into conformity with other state board and task force members.
- 43 **Duties.** The specific duties and role of AURI are clarified and broadened in areas of policy development and technical assistance, but restricted somewhat in areas of direct

financial involvement. AURI is required to report annually to the legislature.

44 **Wind-electric production credit.** Broadens current language that limits eligibility for production credits for electricity generated by small wind electric systems to “natural persons” owners. The change will provide eligibility for the \$0.015 per KWH incentive payment to anyone not prohibited from owning farmland under Minnesota’s corporate farm law.

45 **Tax code; Class 2 property.** Amends existing tax code to remove a reference to repealed sections.

46 **Feedlot environmental review study; report.** Requires the environmental quality board to study and report on issues of citizen participation in the feedlot permitting processing law changes.

47 **Repealer.** Repeals the authority for beaver damage control grants, certain provisions of the pesticide regulatory account, the prohibition on holding a circus during State Fair dates, and obsolete provisions of the ethanol producer payment program.

Article 4: Plant Protection and Export Certification (New Chapter 18G)

1 **Plant protection; powers of the commissioner.** Articulates the authority of the commissioner of agriculture to regulate and prevent the introduction or establishment of plant pests of concern to Minnesota agriculture, forestry, or horticulture. The commissioner is authorized to employ technical employees as necessary to fulfill these duties.

2 **Definitions.** Terms are defined, including, among others: biological control agent; certificate; emergency regulation; eradication; exotic species; harmful plant pest; invasive species; owner; permit; pest; phytosanitary (or export) certificate; plant pest; public nuisance; quarantine; and significant damage.

3 **Powers and duties of the commissioner.** Authorizes the commissioner to enter or inspect public or private places that may contain plant pests. Provides for the adoption of rules. Allows the commissioner to quarantine plants or materials capable of carrying plant pests. Any unrecovered costs for measures needed to eliminate the danger from the spread of plant pests can be charged against the county where the property is located. The county then has a lien against the land involved.

4 **Eradication, control, and abatement of nuisances; issuing control orders.** Declares that any premises, vehicle, or other place or article that is infested with a dangerous plant pest is a nuisance and must be abated. A person must not maintain a public nuisance. To control a plant pest nuisance the commissioner may issue a control order.

5 **Discovery of plant pests; official marking of infested or infected articles.** The commissioner is given specific authority to identify any plants, infested areas, materials, or articles known or suspected to be infected or infested with a plant pest. The commissioner must prescribe control measures and a timeline to mitigate the pest.

6 **Establishment of quarantine restrictions.** Authorizes the commissioner to establish a quarantine restricting the production, movement, or existence of plants or other articles to prevent the spread of a plant pest. Control measures may include a stop-sale notice or an emergency quarantine. The commissioner may enter agreements with other governmental units to assist in the enforcement of a federal quarantine. The commissioner may also quarantine a plant pest within part or all of the state, and/or impose a quarantine on the import of materials from other states that may contain plant pests. Shipment of articles to or through quarantine areas is regulated. In a case of imminent threat from a plant pest, the commissioner may impose an emergency quarantine until a state quarantine can be implemented. A quarantine may be repealed when its purpose has been accomplished.

7 **Tree care and tree trimming company registry.** Identifies the value of having tree care

specialists involved in the control of exotic forest pests. Sets up a mandatory registry of all persons and companies that provide tree care or tree trimming services in the state. The commissioner must provide information on regulated forest pest infestations to registered tree care companies.

- 8 **Shipment of plant pests and biological control agents.** Prohibits the introduction or release in Minnesota of organisms that may be plant pests except under permit from the commissioner. Also prohibits the sale or transport of any plant pest or biological control agent without a permit from USDA or a state agency.
- 9 **Export certification, inspections, certificates, permits, and fees.** Articulates the need for continued access to domestic and foreign markets that can be accomplished through phytosanitary inspection and certification services. Authorizes the commissioner to enter into cooperative agreements with state and federal agencies to administer the export certification program. Specifies how the commissioner is to conduct inspections and issue export certificates. Provides fees for the inspection and certification service. Lists circumstances in which an export certification can be denied.
- 10 **Cooperation with other jurisdictions.** The commissioner is given authority to make agreements with a wide range of organizations to adopt plans for the detection and control of plant pests.
- 11 **Invasive species management and investigation.** The commissioner is instructed to conduct research to prevent the spread of invasive species and plant pests in the state. A coordinated statewide program will prevent the introduction and spread of plant species and terrestrial invasive species. Specific elements of the detection and prevention plan are detailed. The commissioner must report annually to legislative committees on plans, efforts, and goals for pest control.
- 12 **Local pest control.** Any local governmental unit is allowed to establish and fund a program to control pests. Taxes may be levied by the local government unit to pay for the program. Penalties would accrue to anyone who obstructs the local program for pest control. Officers and employees could be hired to provide for disease control.
- 13 **Mosquito abatement.** A local governmental unit may engage in mosquito abatement program if five percent of property owners (or 250 owners) petition and voters elect to establish the program. Procedures are spelled out for discontinuing such a program. Duties of the commissioner, and provisions for paying for the program, are detailed. [Many of these provisions are similar to existing law.]
- 14 **Shade tree pest and disease control.** A re-write of existing law authorizes the establishment of a municipal tree inspection and disease control program.

Article 5: Nursery Law (New Chapter 18H)

- 1 **Definitions.** Some 33 terms and phrases related to the nursery business are defined.
- 2 **Powers and duties of the commissioner.** Allows the commissioner to hire qualified employees for nursery law enforcement. Provides for entry and inspection of public and private places where there may be plant pests. Allows the commissioner to issue stop-sale and quarantine orders. Provides for collection of unpaid costs from a county. The county can then levy an assessment on the property.
- 3 **Adoption of rules.** Allows for adoption of rules, and retains the continuing effectiveness of current rules until they are superseded by new rules.
- 4 **Nursery certificate requirements.** Prohibits the sale or distribution of nursery stock without obtaining the appropriate nursery stock certificate from the commissioner. Procedures are established for application, eligibility, display, and use of the certificate.
- 5 **Exempt nursery sales.** Nonprofit charitable, educational, or religious organizations that obtain nursery stock from a certified nursery dealer may sell nursery stock without a

certificate. Likewise, an uncertified organization may sell up to \$2,000 worth per year of nursery stock to hobbyists.

6 **Fee schedule.** Establishes fees for various certificates including growers of different sizes, dealers with a range of dollar volumes, etc.

7 **Local sales and miscellaneous.** The commissioner is authorized to provide other services to the nursery industry upon request, and to charge appropriate fees for the services.

8 **Nursery inspections required.** All Minnesota-grown nursery stock sites must be inspected at least annually by the commissioner, and imported nursery stock must have been inspected by an appropriate state or federal agency during the previous 12 months and found free from quarantine and regulated pests. Procedures are articulated for the issuance of “withdrawal-from-distribution” orders.

9 **Storage of nursery stock.** Nursery stock must be kept and displayed under adequate conditions.

10 **Nursery stock standards.** Standards and grades of nursery stock are those established by the nursery and landscape association.

11 **Damaged, diseased, infested, or misrepresented stock.** Unhealthy or pest-infested nursery stock must not be distributed or offered in a way that deceives the prospective purchaser.

12 **Shipment of nursery stock into Minnesota.** Imported plants, plant materials, or nursery stock must be labeled as to consignor and consignee. Proof of inspection must accompany the shipment. Uninspected stock imported from a foreign country must remain unopened until inspected and released by the commissioner. Provision is made for reciprocal agreements with other states.

13 **Labeling and advertising of nursery stock.** All nursery stock labeled or advertised for sale must include only accurate information.

14 **Violations.** This section establishes activities subject to regulatory action and control, and provides possible defenses and remedies.

15 **Political subdivision ordinances.** Preempts local government ordinances or resolutions that conflict with state nursery law.

16 **Nursery and phytosanitary account.** Creates the new account in the state treasury.

17 **Conservation of certain wildflowers.** Certain wildflowers cannot legally be collected from public or private property without a permit. Other wildflowers can be transplanted to another private property (but not sold or offered for sale) only with written permission of the owner of the source property.

Article 6: Inspection and Enforcement (New Chapter 18J)

1 **Definitions.** Establishes the applicability of terms listed in the definitions section.

2 **Duties of the commissioner.** Delegates administration and enforcement to the commissioner of agriculture.

3 **Civil liability.** An employer is civilly liable for violations by an employee.

4 **Inspection, sampling, analysis.** Allows the commissioner access to sites that contain seeds, plants, or other objects regulated by the commissioner.

5 **Enforcement.** Details violations and enforcement options for civil or criminal enforcement.

6 **False statement or record.** Forbids knowingly making a false statement, record, or other information as part of a regulated activity.

7 **Administrative action.** Details administrative remedies and other enforcement options available to the commissioner.

8 **Appeals of commissioner’s orders.** Provides an avenue for appeal and review of

administrative orders.

9 **Crediting of penalties, fees, and costs.** Provides for the correct deposit and allocation of penalties and fees collected under these chapters.

10 **Civil penalties.** Limits civil penalties to \$7,500 per day of violation. Otherwise, speaks to the range of available civil remedies.

11 **Criminal penalties.** Specifies various levels of violation and penalty, including a gross misdemeanor for a violation that endangers humans or is a violation with knowledge.

Article 7: Conforming Repealers

1 **Repealer.** Lists sections of Minnesota Statutes, chapter 18, repealed by the recodification of plant protection law, nursery law, seed law, and inspection and enforcement law.

Article 8: Seed Law

1 **Definition; dormant.** Defines the term dormant for purposes of Minnesota seed law.

2 **Definition; flower seed.** The existing definition of flower seed is amended to exclude native or introduced wildflowers.

3 **Definition; hard seed.** A new definition is added for hard seed.

4 **Definition; inert matter.** A new definition is added for inert matter.

5 **Definition; native wildflower.** A new definition is added for native wildflower, including the requirement that it must be indigenous to Minnesota or designated by the commissioner.

6 **Definition; origin.** A new definition is added for origin as it relates to trees and agricultural and vegetable seed.

7 **Definition; other crop seed.** A new definition is added for other crop seed.

8 **Definition; person.** A new definition is added for person.

9 **Label requirements; agricultural, vegetable, flower, or wildflower seeds.** Amends existing statute by expanding the list of seeds [to include wildflower seeds] that must be plainly labeled when offered for sale. The required content of the label is also amended to improve conformity with the recommended uniform state seed law.

10 **Label content.** Clarifies the required content of a label used on tree or shrub seed.

11 **Records.** Adds wildflower seed to the list of seeds for which records must be retained for at least three years.

12 **Rules (and enforcement).** Amends authority for the commissioner to adopt rules and states that a violation of a rule is a violation of the chapter of statute.

13 **Sampling export seed.** Adds wildflower seeds to the list of seeds that the commissioner may sample before export.

14 **Unlawful acts.** Expands the list of seeds covered by germination tests to include wildflower seeds.

15 **Penalties not to apply.** Deletes penalties applied specifically to violations of seed law and allows enforcement to fall under the general enforcement powers of the commissioner under the new chapter 18J (article 6).

16 **Permits; issuance and revocation.** Wildflower seeds are added to the list of seeds that must be labeled. Size categories [annual quantity labeled] are established for seed labelers.

17 **Exemptions.** Deletes a provision of current law that exempted some labelers of less than 50,000 pounds of seed per year from the state permit requirement.

18 **Minnesota seed law fees.** Authorizes the commissioner to sample seed for export to other countries and sets fees for this service.

19 **Fees.** Adjusts the dates for registering new and existing hybrid seed field corn varieties.

20 **Transfer of money.** Certain obsolete and duplicated language is deleted from this

section. The percent of total revenue from hybrid seed field corn registrations that is turned over to the agricultural experiment station is decreased from 80 percent to 60 percent.

21 **Brand name registration.** Removes the specific fee for registering a variety to be sold by brand name.

22 **Repealer.** Portions of seed law updated in this article are repealed.