

CHAPTER 1184**SOIL AND WATER CONSERVATION – FINANCIAL INCENTIVES***H.F. 2343*

AN ACT relating to soil and water conservation by providing for financial incentives.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 99E.34, subsection 2, paragraphs a and b, Code Supplement 1991, are amended to read as follows:

a. Sixty-two and four-tenths percent to the soil conservation division of the department of agriculture and land stewardship to provide state soil and water conservation ~~cost-sharing funds cost-share moneys~~ pursuant to ~~sections 467A.42 through 467A.75~~ division V of chapter 467A.

b. Eighteen and eight-tenths percent to the water protection fund created in section 467F.4, to be used for filter strips and waterways projects. The governing body of each soil and water conservation district shall identify those critical areas within the district where permanent grass and buffer zones would mitigate the effects of concentrated runoff on surface water quality. The governing body shall notify the landowners of ~~those~~ the critical areas and provide the landowners with recommendations to establish ~~these~~ permanent grass and buffer zones, including any erosion control structures that may be appropriate, to mitigate the effects of concentrated runoff on surface water quality. In providing ~~this~~ the notification and ~~these~~ recommendations, the governing body shall also inform the landowners that the establishment of these zones along with any erosion control structures may be eligible for financial assistance under the incentive programs within the water protection fund pursuant to section 467F.4 and may also qualify for ~~cost-sharing funds cost-share moneys~~ pursuant to ~~section 467A.48~~ division V of chapter 467A.

Sec. 2. Section 467A.42, unnumbered paragraph 1, Code 1991, is amended to read as follows:

In addition to the definitions established by section 467A.3, as used in ~~sections 467A.43 to 467A.53 and sections 467A.61 to 467A.66~~ this division, unless the context otherwise requires:

Sec. 3. Section 467A.42, Code 1991, is amended by adding the following new subsections:

NEW SUBSECTION. 9. "Cost-share" or "cost-sharing" means a contribution of money made by the state in order to pay a percentage of the costs related to the establishment of voluntary or mandatory practices as provided under this chapter, including but not limited to soil and water conservation practices and erosion control practices.

NEW SUBSECTION. 10. "Forest" means stands of native or introduced trees containing at least two hundred trees per acre and located on privately owned land. However, a stand of fruit trees is not a forest.

NEW SUBSECTION. 11. "Professional forester" means a forestry graduate of an institution of higher learning, who has a minimum of two years of forest management experience.

NEW SUBSECTION. 12. "State forester" means a person employed by the department of natural resources as required by section 107.13.

Sec. 4. Section 467A.43, Code 1991, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. A landowner shall not be liable for a claim based upon or arising out of a claim of negligent design or specification, negligent adoption of design or specification, or negligent installation, construction, or reconstruction of a soil and water construction practice or an erosion control practice that was installed, constructed, or reconstructed in accordance with generally recognized engineering or safety standards, criteria, or design theory in existence at the time of the installation, construction, or reconstruction. A soil and water conservation practice or an erosion control practice installed, constructed, or reconstructed in compliance with rules adopted by the division and currently in effect shall be deemed to be installed, constructed, or reconstructed according to generally recognized

engineering or safety standards, criteria, or design theory in existence at the time of the installation, construction, or reconstruction. A claim shall not be allowed for failure to upgrade, improve, or alter any aspect of an existing soil and water conservation practice or erosion control practice to a new, changed, or altered design standard. This section does not apply to a claim based on a failure of a landowner to upgrade, improve, or alter a soil and water conservation practice or erosion control practice in violation of law. This section does not apply to claims based upon gross negligence.

Sec. 5. Section 467A.48, subsections 1 and 2, Code Supplement 1991, are amended to read as follows:

1. a. An owner or occupant of land in this state is not required to establish any new permanent or temporary soil and water conservation practice unless ~~public or other cost-sharing funds cost-share or other public moneys~~ have been specifically approved for that land and actually made available to the owner or occupant pursuant to section 467A.74.

b. ~~The owner or occupant of land is eligible to receive state cost-sharing funds to establish a permanent grass and buffer zone, including an erosion control structure or an erosion control practice to mitigate the effects of concentrated runoff on surface water quality.~~

c. ~~Except as otherwise provided in this chapter, the amount of cost-sharing funds made available shall not exceed fifty percent of the estimated cost as established by the commissioners of a permanent soil and water conservation practice, or fifty percent of the actual cost, whichever is less, or an amount set by the committee for a temporary soil and water conservation practice, except as otherwise provided by law with respect to land classified as agricultural land under conservation cover.~~

~~The amount of cost-sharing funds made available to establish a permanent grass and buffer zone may be up to one hundred percent of the estimated cost as established by the commissioners or one hundred percent of the actual cost, whichever is less.~~

~~The commissioners shall establish the estimated cost of permanent soil and water conservation practices in the district based upon one and two-tenths of the average cost of the practices installed in the district during the previous year. The average costs shall be reviewed and approved by the commissioners each calendar year.~~

2. ~~The committee shall review these requirements once each year, and may authorize soil and water conservation district commissioners to make the mandatory establishment of any specified soil and water conservation practice in any particular case conditional on a higher proportion of public cost-sharing than is required by this section. When the commissioners have been so authorized, they shall, in determining the amount of cost-sharing for establishment of a specified soil and water conservation practice to comply with an administrative order issued pursuant to section 467A.47, consider the extent to which the practice will contribute benefits to the public in relation to the benefits that will accrue to the individual owner or occupant of the land on which the practice is to be established. Evidence that an application for public or other cost-sharing funds cost-share or other public moneys, from a source or sources having authority to pay a portion of the cost of work needed to comply with an administrative order issued pursuant to section 467A.47, has been submitted to the proper officer or agency constitutes commencement of the work within the meaning of sections 467A.43 through 467A.53.~~

Sec. 6. NEW SECTION. 467A.70 ESTABLISHMENT AND PURPOSE.

Financial incentive programs are established within the division in order to protect the long-term productivity of the soil and water resources of the state from erosion and sediment damage, and to encourage the adoption of farm management and agricultural practices which are consistent with the capability of the land to sustain agriculture and preserve this state's natural resources.

Sec. 7. NEW SECTION. 467A.72 ADMINISTRATION.

1. Financial incentives provided under this chapter shall be administered by the division. The incentives shall be supported with funds appropriated by the general assembly, and moneys available to or obtained by the division or the committee from public or private sources, including

but not limited to the United States, other states, or private organizations. The division shall adopt all rules consistent with chapter 17A necessary to carry out the purpose of this division as provided in section 467A.70.

2. The commissioners of a district shall, to the extent funding is available, contract with the owner or occupant of land within the district applying to establish soil and water conservation practices as provided in this chapter. Under the agreement, the owner or occupant shall receive financial incentives to establish permanent soil and water conservation practices and management practices, in consideration for promising to maintain the practices according to rules adopted by the division.

Sec. 8. NEW SECTION. 467A.73 VOLUNTARY ESTABLISHMENT OF SOIL AND WATER CONSERVATION PRACTICES.

1. The division shall establish voluntary financial incentive programs which shall provide for the following:

a. The allocation of cost-share moneys as financial incentives provided for the purpose of establishing permanent soil and water conservation practices, including but not limited to terraces, diversions, grade stabilization structures, grassed waterways, and critical area planting. The financial incentives shall not exceed fifty percent of the estimated cost of establishing the practices, or fifty percent of the actual cost, whichever is less.

b. The allocation of moneys as financial incentives provided for the purpose of establishing management practices, including but not limited to no-till planting, ridge-till planting, contouring, and contour strip-cropping. The division shall by rule establish limits on the amount of incentives which shall be authorized for payment to landowners upon establishment of the practice.

c. The allocation of cost-share moneys as financial incentives provided to establish practices to protect watersheds above publicly owned lakes of the state from soil erosion and sediment. The financial incentives shall be awarded to watersheds which are of the highest importance based on soil loss as established by the natural resource commission pursuant to section 107.33A. The financial incentives shall not exceed seventy-five percent of the estimated cost of establishing the practices as determined by the commissioners or seventy-five percent of the actual cost of establishing the practices, whichever is less.

d. The allocation of cost-share moneys as financial incentives to establish permanent grass and buffer zones, including an erosion control structure or an erosion control practice to mitigate the effects of concentrated runoff on surface water quality. The financial incentives shall not exceed one hundred percent of the estimated cost of establishing a zone, as determined by the commissioners, or one hundred percent of the actual cost of establishing the zone, whichever is less.

2. The commissioners of a district may establish voluntary financial incentive programs which shall provide for the following:

a. The allocation of cost-share moneys under a special agreement with owners of land in the district who promise to adopt a watershed conservation plan as provided by rules which shall be adopted by the division. The watershed conservation plan shall be in conjunction with the district soil and water resource conservation plan provided under section 467A.7. The funding agreement must provide for the funding of a project which shall include at least five hundred acres of agricultural land which constitutes at least seventy-five percent of the agricultural land located within a watershed. The financial incentives shall not exceed sixty percent of the estimated cost of the project as determined by the commissioners or sixty percent of the actual cost, whichever is less.

b. The allocation of cost-share moneys as financial incentives to encourage summer construction of permanent soil and water conservation practices. The practices must be constructed on or after June 1 but not later than August 15. The commissioners may also provide for the payment of moneys on a prorated basis to compensate persons for the production loss on an area disturbed by construction, according to rules which shall be adopted by the division. The commissioners shall not allocate cost-share moneys to support summer construction during a fiscal year in which applications for cost-share moneys required to establish permanent soil

and water conservation practices, other than established by summer construction, equal the total amount available to support the nonsummer construction practices. The financial incentives shall not exceed sixty percent of the estimated cost of establishing the practice as determined by the commissioners, or sixty percent of the actual cost of establishing the practice, whichever is less.

3. a. The division may reimburse private landowners for a portion of the cost of fencing materials and installation for permanent fence used to protect forest land from domestic livestock grazing, if the division determines that the grazing has caused excessive soil loss. For purposes of this subsection, forests shall be considered as agricultural land eligible for cost-share moneys. The total expenditure of reimbursement moneys shall not exceed fifty percent of the total landowner expenditures. Expenditures for boundary and road fence construction and for repair and replacement of existing fences are not eligible for reimbursement unless the complete fence is replaced.

b. A landowner shall sign an agreement with the division as a condition for receiving cost-share moneys. The agreement shall provide that the landowner shall maintain the fence for a minimum of ten years and shall follow written professional forester recommendations relating to land protected by fencing. The recommendations must be approved by the state forester or the forester's designee.

c. A landowner who violates the maintenance agreement shall maintain, repair, or reconstruct the damaged fence, or shall pay the division an amount equal to the amount of cost-share moneys reimbursed.

d. The division shall adopt rules to administer this subsection, including rules relating to procedures required to receive reimbursement, and eligibility requirements such as the minimum forest acreage required, and the maximum reimbursement amount allowed.

Sec. 9. NEW SECTION. 467A.74 MANDATORY ESTABLISHMENT OF SOIL AND WATER CONSERVATION PRACTICES.

1. The commissioners shall allocate cost-share moneys to establish mandatory soil and water conservation practices, as provided in sections 467A.43 through 467A.53, according to the following requirements:

a. The financial incentives shall not exceed more than fifty percent of the estimated cost of establishing the practices as determined by the commissioners, or fifty percent of the actual cost of establishing the practices, whichever is less. However, the commissioners may allocate an amount determined by the division for management of soil and water conservation practices, except as otherwise provided regarding land classified as agricultural land under conservation cover.

b. The commissioners shall establish the estimated cost of the permanent soil and water conservation practices in the district based upon one and two-tenths of the average cost of the practices installed in the district during the previous year. The average costs shall be reviewed and approved by the commissioners each year.

2. The committee shall review requirements of this section once each year. The division may authorize commissioners in districts to condition the establishment of a mandatory soil and water conservation practice in a specific case on a higher proportion of public cost-sharing than is required by this section. The commissioners shall determine the amount of cost-sharing moneys allocated to establish a specific soil and water conservation practice in accordance with an administrative order issued pursuant to section 467A.47 by considering the extent to which the practice will contribute benefits to the individual owner or occupant of the land on which the practice is to be established.

Sec. 10. Section 467A.75 is repealed.

Sec. 11. CODE EDITOR.

1. The Code editor shall codify sections 467A.42 through 467A.64 and section 467A.66, as amended by this Act, as part 1 of division V, and may title the part as "Duties and Obligations". The Code editor shall codify section 467A.70 and subsequent sections of chapter 467A, as enacted in this Act, as part 2 of division V, and may title the part as "Financial Incentives".

2. The Code editor shall title section 467A.48 "Mandatory Establishment of Soil and Water Conservation Practices".

3. The Code editor is directed to transfer section 467A.65, relating to agricultural land under conservation cover, into chapter 467A, division V, part 2, as created in this Act, and change internal references as necessary.

Approved April 29, 1992

CHAPTER 1185

POLITICAL SUBDIVISIONS — BANKRUPTCY

H.F. 2372

AN ACT permitting a political subdivision to become a debtor under chapter 9 of the federal bankruptcy code under certain circumstances.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. NEW SECTION. 76.16A DEBTOR STATUS PERMITTED — CIRCUMSTANCES.

A city, county, or other political subdivision may become a debtor under chapter 9 of the federal Bankruptcy Code, 11 U.S.C. § 901 et seq., if it is rendered insolvent, as defined in 11 U.S.C. § 101(32)(c), as a result of a debt involuntarily incurred. As used herein, "debt" means an obligation to pay money, other than pursuant to a valid and binding collective bargaining agreement or previously authorized bond issue, as to which the governing body of the city, county, or other political subdivision has made a specific finding set forth in a duly adopted resolution of each of the following:

1. That all or a portion of such obligation will not be paid from available insurance proceeds and must be paid from an increase in general tax levy.

2. That such increase in the general tax levy will result in a severe, adverse impact on the ability of the city, county, or political subdivision to exercise the powers granted to it under applicable law, including without limitation providing necessary services and promoting economic development.

3. That as a result of such obligation, the city, county, or other political subdivision is unable to pay its debts as they become due.

4. That the debt is not an obligation to pay money to a city, county, entity organized pursuant to chapter 28E, or other political subdivision.

Approved April 29, 1992

CHAPTER 1186

UNLAWFUL COMMERCIALIZATION OF WILDLIFE

H.F. 2382

AN ACT relating to the purchase or sale of wild animals illegally taken, transported, or possessed by a person, and subjecting violators to a criminal and a civil penalty.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 109.1, Code 1991, is amended by adding the following new subsections: