A bill for an act

relating to state government; environment, natural resources, and energy finance; appropriating money for environment and natural resources; authorizing sale of gift cards and certificates; establishing composting competitive grant program; modifying regulation of storm water discharges; modifying waste management reporting requirements and creating a work group; requiring nonresident all-terrain vehicle state trail pass; modifying horse trail and state park pass requirements; requiring disclosure of certain chemicals in children's products by manufacturers; requiring plastic yard waste bags to be compostable and establishing labeling standards; authorizing uses of the Hennepin County solid and hazardous waste fund; modifying greenhouse gas emissions provisions and requiring a registry; establishing and authorizing fees; providing for disposition of certain fees; modifying and establishing assessments for certain regulatory expenses; providing for fish consumption advisories in different languages; limiting use of certain funds; requiring reports; appropriating money to Department of Commerce and Public Utilities Commission to finance activities related to commerce and energy; modifying provisions related to Telecommunications Access Minnesota assessments, insurance audits, insurers and insurance products, certain financial institutions, regulated activities related to certain mortgage transactions and professionals, and debt management and debt settlement services; providing penalties and remedies; appropriating and allocating federal stimulus money for various energy programs; amending Minnesota Statutes 2008, sections 45.011, subdivision 1; 45.027, subdivision 1; 46.04, subdivision 1; 46.05; 46.131, subdivision 2; 47.58, subdivision 1; 47.60, subdivisions 1, 3, 6; 48.21; 58.05, subdivision 3; 58.06, subdivision 2; 58.126; 58.13, subdivision 1; 60A.124; 60A.14, subdivision 1; 60B.03, subdivision 15; 60L.02, subdivision 3; 61B.19, subdivision 4; 61B.28, subdivisions 4, 8; 67A.01; 67A.06; 67A.07; 67A.14, subdivisions 1, 7; 67A.18, subdivision 1; 84.0835, subdivision 3; 84.415, subdivision 5, by adding a subdivision; 84.63; 84.631; 84.632; 84.788, subdivision 3; 84.922, subdivision 1a; 85.015, subdivision 1b; 85.053, subdivision 10; 85.46, subdivisions 3, 4, 7; 93.481, subdivisions 1, 3, 5, 7; 97A.075, subdivision 1; 103G.301, subdivisions 2, 3; 115.03, subdivision 5c; 115.073; 115.56, subdivision 4; 115.77, subdivision 1; 115A.1314, subdivision 2; 115A.557, subdivision 3; 115A.931; 116.07, subdivision 4d; 116.41, subdivision 2; 116C.834, subdivision 1; 116D.045; 216B.62, subdivisions 3, 4, 5, by adding a subdivision; 216H.10, subdivision 7; 216H.11; 325E.311, subdivision 6; 332A.02, subdivisions 5, 8, 9, 10, 13, by adding a subdivision; 332A.04, subdivision 6; 332A.08; 332A.10; 332A.11, subdivision 2; 332A.14; Laws 2002, chapter 220, article 8, section 15; Laws 2007, chapter 57, article 1, section

4, subdivision 2; Laws 2008, chapter 363, article 5, section 4, subdivision 7; proposing coding for new law in Minnesota Statutes, chapters 60A; 61A; 67A; 84; 93; 115A; 116; 216H; 325E; 383B; proposing coding for new law as Minnesota Statutes, chapter 332B; repealing Minnesota Statutes 2008, sections 60A.129; 61B.19, subdivision 6; 67A.14, subdivision 5; 67A.17; 67A.19; Laws 2008, chapter 363, article 5, section 30; Minnesota Rules, parts 2675.2180; 2675.7100; 2675.7110; 2675.7120; 2675.7130; 2675.7140.

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

ARTICLE 1
ENVIRONMENT AND NATURAL RESOURCES FINANCE

Section 1. **SUMMARY OF APPROPRIATIONS.**

The amounts shown in this section summarize direct appropriations, by fund, made in this act.

	2010	2011	Total
General	$ 115,234,000	$ 114,459,000	$ 229,693,000
State Government Special Revenue	48,000	48,000	96,000
Environmental	70,644,000	70,904,000	141,548,000
Natural Resources	81,408,000	80,308,000	161,716,000
Game and Fish	93,942,000	93,792,000	187,734,000
Remediation	11,186,000	11,186,000	22,372,000
Permanent School	200,000	200,000	400,000
Total	**$ 372,662,000**	**$ 370,897,000**	**$ 743,559,000**

Sec. 2. **ENVIRONMENT AND NATURAL RESOURCES APPROPRIATIONS.**

The sums shown in the columns marked "Appropriations" are appropriated to the agencies and for the purposes specified in this act. The appropriations are from the general fund, or another named fund, and are available for the fiscal years indicated for each purpose. The figures "2010" and "2011" used in this act mean that the appropriations listed under them are available for the fiscal year ending June 30, 2010, or June 30, 2011, respectively. "The first year" is fiscal year 2010. "The second year" is fiscal year 2011. "The biennium" is fiscal years 2010 and 2011. Appropriations for the fiscal year ending June 30, 2009, are effective the day following final enactment.

	APPROPRIATIONS Available for the Year Ending June 30	
	2010	**2011**
Sec. 3. **POLLUTION CONTROL AGENCY**		
Subdivision 1. **Total Appropriation**	**$ 92,369,000**	**$ 92,129,000**

Appropriations by Fund		
	2010	2011
General	10,591,000	10,091,000
State Government Special Revenue	48,000	48,000
Environmental	70,644,000	70,904,000
Remediation	11,086,000	11,086,000

The amounts that may be spent for each purpose are specified in the following subdivisions.

The commissioner shall require the chief financial officer or other financial staff to display the agency's budget on the agency's Web site in a manner that will allow citizens to easily understand the value they are getting for their money. The agency must have an air permit and regulatory account, water permit and regulatory account, and solid waste permit and regulatory account to track revenues and expenses.

The proposed rules increasing permit fees first noticed on June 16, 2008, are effective July 1, 2009. The agency shall adopt amended permit fee rules incorporating these permit fee increases under Minnesota Statutes, section 14.389. The commissioner shall begin collecting the increased permit fees on July 1, 2009, even if the rule adoption process has not been completed. Notwithstanding Minnesota Statutes, section 14.18, subdivision 2, the increased permit fees reflecting the permit fee increases in this section and the rule amendments incorporating those permit fee increases do not require further legislative approval.

The commissioner shall adopt and implement rules in compliance with Minnesota Statutes, section 116.07, subdivision 4d, so that fees are collected beginning January 1, 2011.

A recipient of a grant funded by an appropriation under this section shall display on its Web site detailed information on the expenditure of the grant funds, and measurable outcomes as a result of the expenditure of funds, and submit this information to the agency by June 30 each year. A recipient without an active Web site shall report to the agency by June 30 each year detailed information on the expenditure of the grant funds, and measurable outcomes as a result of the expenditure of funds. The commissioner shall display the information received by recipients under this paragraph on the agency's Web site.

Subd. 2. **Water** 33,752,000 33,252,000

Appropriations by Fund		
General	7,583,000	7,083,000
State Government Special Revenue	48,000	48,000
Environmental	26,121,000	26,121,000

$1,498,000 the first year and $1,498,000 the second year are for the clean water partnership program. Priority shall be given to projects preventing impairments and degradation of lakes, rivers, streams, and groundwater according to Minnesota Statutes, section 114D.20, subdivision 2, clause (4). Funds from this appropriation may not be used to purchase or use pesticides suspected of being endocrine disruptors. To the extent possible, any restoration conducted with money from this appropriation must plant vegetation or sow seed only of ecotypes native to Minnesota, and preferably of the local ecotype, using a high diversity of species originating from as close to the restoration site as possible, and protect existing native prairies from genetic contamination. Any balance remaining in the first year does not cancel and is available for the second year.

$2,324,000 the first year and $2,324,000 the second year must be distributed as grants to delegated counties to administer the county feedlot program. Distribution of funds must be as provided in Laws 2005, First Special Session chapter 1, article 2, section 2, subdivision 2. The commissioner, in consultation with the Minnesota Association of County Feedlot Officers executive team, may use up to five percent of the annual appropriation for initiatives that will reduce feedlot-related pollution hazards. Any money remaining after the first year is available for the second year.

$335,000 the first year and $335,000 the second year are for community technical assistance and education, including grants and technical assistance to communities for local and basinwide water quality protection.

$550,000 the first year and $550,000 the second year are for challenge grants to counties for subsurface sewage treatment system (SSTS) inventories that will determine the number of systems that are failing or that pose an imminent health threat and are located on riparian land or a lake or near wetlands or other sensitive waters. Counties must provide a nonstate match of at least 50 percent that may be in cash or in kind. The commissioner shall, by county, report: the number of systems evaluated, the number of systems determined to be failing or that pose an imminent health threat located on riparian land or a lake or near wetlands or other sensitive waters, the number replaced or soon to be replaced, and the gallons of sewage that are prevented from threatening waters. The commissioner shall develop recommendations and a plan for directly or indirectly inspecting and providing an inventory for all subsurface sewage treatment systems and submit a report to the chairs of the legislative committees having primary jurisdiction over environment and natural resources policy and finance no later than September 15, 2010. Direct inspection methods shall include field verification of each SSTS on riparian land or a lake or near wetlands or other sensitive waters to determine the owner, location, and which systems are failing or are an imminent health threat. A direct inspection shall not be conducted without written permission from the property owner. Indirect inspection methods may include census-type data collection to determine the owner and location of each SSTS in the remaining portion of each county. An SSTS with a valid certificate of compliance may be considered inventoried without further work.

$405,000 the first year and $405,000 the second year are for subsurface sewage treatment system (SSTS) administration and grants. Of this amount, $86,000 each year is for assistance to counties through grants for SSTS program administration. Any unexpended balance in the first year does not cancel but is available in the second year.

$740,000 the first year and $740,000 the second year are from the environmental fund to address the need for continued increased activity in the areas of new technology review, technical assistance for local governments, and enforcement under Minnesota Statutes, sections 115.55 to 115.58, and to complete the requirements of Laws 2003, chapter 128, article 1, section 165. Of this amount, $48,000 each year is for administration of individual septic tank fees, as provided in this article.

$100,000 the first year and the $100,000 second year are for a grant to the Red River Watershed Management Board to enhance and expand existing river watch activities in the Red River of the North and shall enhance student understanding of the causes of flooding, flood prevention, and the impacts of flood waters on land and water resources. The Red River Watershed Management Board shall provide a report that includes formal evaluation results from the river watch program to the commissioners of education and the Pollution Control Agency and to the legislative committees with jurisdiction over the environment and natural resources policy and finance and K-12 policy and finance by February 15, 2011.

$7,540,000 the first year and $7,540,000 the second year are from the environmental fund for completion of 20 percent of the needed statewide assessments of surface water quality and trends.

$500,000 the first year is to develop minimal impact design standards for urban storm water runoff. This is a onetime appropriation and is available until June 30, 2011. The commissioner shall report to the chairs and ranking minority members of the legislative committees and divisions having primary jurisdiction over environment and natural resources policy and finance no later than January 12, 2011, regarding the expenditure of this appropriation.

By October 1 each year, the commissioner shall report to the chairs of the legislative committees having primary jurisdiction over environment and natural resources policy and finance on the effectiveness of enforcement actions in the previous fiscal year in preventing water pollution.

Notwithstanding Minnesota Statutes, section 16A.28, the appropriations encumbered on or before June 30, 2011, as grants or contracts for clean water partnership, SSTS's, surface water and groundwater assessments, total maximum daily loads, stormwater, and local basinwide water quality protection in this subdivision are available until June 30, 2013.

Subd. 3. **Air**	11,871,000	12,131,000

Appropriations by Fund

	2010	2011
Environmental	11,871,000	12,131,000

Up to $150,000 the first year and $150,000 the second year may be transferred from the environmental fund to the small business environmental improvement loan account established in Minnesota Statutes, section 116.993.

$200,000 the first year and $200,000 the second year are from the environmental fund for a monitoring program under Minnesota Statutes, section 116.454.

$125,000 the first year and $125,000 the second year are from the environmental fund for monitoring ambient air for hazardous pollutants in the metropolitan area.

An agency report on the level of fine particulate matter in Minnesota's air must compare measured levels with a 24-hour PM 2.5 standard of 13 to 14 micrograms per cubic meter and an annual PM 2.5 standard of 30 to 35 micrograms per cubic meter, as recommended by the Particulate Matter Review Panel of the Environmental Protection Agency's Clean Air Scientific Advisory Committee in its June 2005 report, EPA's Review of the National Ambient Air Quality Standards for Particulate Matter (Second Draft PM Staff Paper, January 2005).

Subd. 4. **Land** 18,502,000 18,502,000

Appropriations by Fund

General	500,000	500,000

Environmental	6,916,000	6,916,000
Remediation	11,086,000	11,086,000

All money for environmental response, compensation, and compliance in the remediation fund not otherwise appropriated is appropriated to the commissioners of the Pollution Control Agency and agriculture for purposes of Minnesota Statutes, section 115B.20, subdivision 2, clauses (1), (2), (3), (6), and (7). At the beginning of each fiscal year, the two commissioners shall jointly submit an annual spending plan to the commissioner of finance that maximizes the utilization of resources and appropriately allocates the money between the two departments. This appropriation is available until June 20, 2011.

$3,616,000 the first year and $3,616,000 the second year are from the petroleum tank fund to be transferred to the remediation fund for purposes of the leaking underground storage tank program to protect the land.

$252,000 the first year and $252,000 the second year are from the remediation fund to be transferred to the Department of Health for private water supply monitoring and health assessment costs in areas contaminated by unpermitted mixed municipal solid waste disposal facilities and drinking water advisories and public information activities for areas contaminated by hazardous releases.

$500,000 each year is for environmental health tracking and biomonitoring of a representative sample of the population including indigenous people and people of color. Of this amount, $450,000 each year is for transfer to the Department of Health.

Subd. 5. **Environmental Assistance and Cross-Media**			26,850,000	26,850,000

Appropriations by Fund		
General	1,114,000	1,114,000
Environmental	25,736,000	25,736,000

$14,500,000 each year is from the environmental fund for SCORE block grants to counties.

$500,000 the first year and $500,000 the second year are from the environmental fund for composting grants under Minnesota Statutes, section 115A.559, and are available until June 30, 2011. This amount is added to the agency base.

$245,000 the first year and $245,000 the second year are from the environmental fund for the toxic chemical in children's products activity. Up to $133,000 of the amount each year may be transferred to the commissioner of health. This is a onetime appropriation.

Any unencumbered grant and loan balances in the first year do not cancel but are available for grants and loans in the second year.

All money deposited in the environmental fund for the metropolitan solid waste landfill fee in accordance with Minnesota Statutes, section 473.843, and not otherwise appropriated, is appropriated for the purposes of Minnesota Statutes, section 115B.39.

Notwithstanding Minnesota Statutes, section 16A.28, the appropriations encumbered on or before June 30, 2011, as contracts or grants for surface water and groundwater assessments; environmental assistance awarded under Minnesota Statutes, section 115A.0716; technical and research assistance under Minnesota Statutes, section 115A.152; technical assistance under Minnesota Statutes, section 115A.52; and pollution prevention assistance under Minnesota Statutes, section 115D.04, are available until June 30, 2013.

Before the governor makes budget recommendations to the legislature in 2011, the commissioner must report on revenues received and expenditures made under Minnesota Statutes, section 115A.1314, subdivision 2, during fiscal years 2010 and 2011 to determine if fees collected are covering the costs of the program.

Subd. 6. **Administrative Support**	1,394,000	1,394,000

The commissioner may transfer money from the environmental fund to the remediation fund as necessary for the purposes of the remediation fund under Minnesota Statutes, section 116.155, subdivision 2.

Sec. 4. **NATURAL RESOURCES**

Subdivision 1. **Total Appropriation**	**$ 246,432,000**	**$ 245,182,000**

Appropriations by Fund

	2010	2011
General	75,980,000	75,980,000
Natural Resources	76,210,000	75,110,000
Game and Fish	93,942,000	93,792,000
Remediation	100,000	100,000
Permanent School	200,000	200,000

The amounts that may be spent for each purpose are specified in the following subdivisions.

To the extent possible, any restoration conducted with money appropriated in this section must plant vegetation or sow seed only of ecotypes native to Minnesota, and preferably of the local ecotype, using a high diversity of species originating from as close to the restoration site as possible, and protect existing native prairies from genetic contamination.

A recipient of a grant funded by an appropriation under this section shall display on its Web site detailed information on the expenditure of the grant funds, and measurable outcomes as a result of the expenditure of funds, and submit this information to the department by June 30 each year. A recipient without an active Web site shall report to the department by June 30 each year detailed information on the expenditure of the grant funds, and measurable outcomes as a result of the expenditure of funds. The commissioner shall display the information received by recipients under this paragraph on the department's Web site.

The commissioner shall require the chief financial officer or other financial staff to display the department's budget on the department's Web site in a manner that will allow citizens to easily understand the value they are getting for their money.

Subd. 2. **Land and Mineral Resources Management**	10,398,000	10,398,000

Appropriations by Fund

General	3,351,000	3,351,000
Natural Resources	5,461,000	5,461,000

Game and Fish	1,386,000	1,386,000
Permanent School	200,000	200,000

$1,202,000 the first year and $1,202,000 the second year are from the mining administration account in the natural resources fund to cover the costs associated with issuing mining permits.

$612,000 each year is from the dedicated receipts account in the natural resources fund to cover the costs associated with issuing licenses for land and water crossings and road easements.

$351,000 the first year and $351,000 the second year are for iron ore cooperative research. Of this amount, $200,000 each year is from the minerals management account in the natural resources fund. $175,500 the first year and $175,500 the second year are available only as matched by $1 of nonstate money for each $1 of state money. The match may be cash or in-kind.

$86,000 the first year and $86,000 the second year are for minerals cooperative environmental research, of which $43,000 the first year and $43,000 the second year are available only as matched by $1 of nonstate money for each $1 of state money. The match may be cash or in-kind.

$2,696,000 the first year and $2,696,000 the second year are from the minerals management account in the natural resources fund for use as provided in Minnesota Statutes, section 93.2236, paragraph (c), for mineral resource management, projects to enhance future mineral income, and projects to promote new mineral resource opportunities.

$200,000 the first year and $200,000 the second year are from the state forest suspense account in the permanent school fund to accelerate land exchanges, land sales, and commercial leasing of school trust lands and to identify, evaluate, and lease construction aggregate located on school trust lands. This appropriation is to be used for securing maximum long-term economic return from the school trust lands consistent with fiduciary responsibilities and sound natural resources conservation and management principles.

Subd. 3. **Water Resources Management**	11,772,000	11,772,000

Appropriations by Fund		
General	11,492,000	11,492,000
Natural Resources	280,000	280,000

$11,109,000 the first year and $11,109,000 the second year are for:

(1) public waters protection by managing and regulating activities through floodplain management, shoreland management, public waters permitting, and outreach and education;

(2) water supply management by ensuring appropriate sources of water are available for current and future generations through water appropriation permitting, public water supply planning, and water use reporting; and

(3) hydrologic information that supports decision making by providing technical services through technical surface water and groundwater studies, dam safety and

maintenance, regional hydrogeologic assessments, lake level monitoring, stream flow monitoring, ground water monitoring, surveying, climatology, and environmental review.

By January 15, 2010, the commissioner shall submit a report evaluating and recommending options to provide for the long-term protection of the state's surface water and groundwater resources and the funding of programs to provide this protection.

$280,000 the first year and $280,000 the second year are for grants for up to 50 percent of the cost of implementation of the Red River mediation agreement. The commissioner shall submit a report to the chairs of the legislative committees having primary jurisdiction over environment and natural resources policy and finance on the accomplishments achieved with the grants by January 15, 2012.

$103,000 the first year and $103,000 the second year are to assist the Red River Watershed Management Board and watershed districts in constructing flood protection farmstead ring levees in the Red River watershed. If the appropriation for either year is insufficient, the appropriation for the other year is available for it.

By October 1, 2009, the commissioner shall develop a plan for the development of an adequate groundwater level monitoring network of wells in the 11-county metropolitan area. The commissioner, working with the Metropolitan Council, the Department of Homeland Security, and the commissioner of the Pollution Control Agency, shall design the network so that the wells can be used to identify threats to groundwater quality and institute practices to protect the groundwater from degradation. The network must be sufficient to ensure that water use in the metropolitan area does not harm ecosystems, degrade water quality, or compromise the ability of future generations to meet their own needs. The plan should include recommendations on the necessary payment rates for users of the system expressed in cents per gallon for well drilling, operation, and maintenance.

Subd. 4. **Forest Management**			39,359,000	38,259,000
Appropriations by Fund				
General	25,952,000	25,952,000		
Natural Resources	12,193,000	11,093,000		
Game and Fish	1,214,000	1,214,000		

$2,000,000 each year is to maintain forest management operations. This is a onetime appropriation.

$500,000 the first year and $500,000 the second year are reductions in the private forest landowner assistance program.

$950,000 the first year and $950,000 the second year are from the heritage enhancement account in the game and fish fund to maintain and expand the ecological classification system program on state forest lands and prevent the introduction and spread of invasive species on state lands. This is a onetime appropriation.

$7,217,000 the first year and $7,217,000 the second year are for prevention, presuppression, and suppression costs of emergency firefighting and other costs incurred under Minnesota Statutes, section 88.12. If the appropriation for either year is insufficient to cover all costs of presuppression and suppression, the amount necessary to pay for these costs during the biennium is appropriated from the general fund.

By November 15 of each year, the commissioner of natural resources shall submit a report to the chairs of the house and senate committees and divisions having jurisdiction over environment and natural resources finance, identifying all firefighting costs incurred and reimbursements received in the prior fiscal year. These appropriations may not be transferred. Any reimbursement of firefighting expenditures made to the commissioner from any source other than federal mobilizations shall be deposited into the general fund.

$12,193,000 the first year and $11,093,000 the second year are from the forest management investment account in the natural resources fund for only the purposes specified in Minnesota Statutes, section 89.039, subdivision 2.

$780,000 the first year and $780,000 the second year are for the Forest Resources Council for implementation of the Sustainable Forest Resources Act.

Subd. 5. **Parks and Trails Management**	68,522,000	68,522,000

Appropriations by Fund		
General	23,207,000	23,207,000
Natural Resources	43,121,000	43,121,000
Game and Fish	2,194,000	2,194,000

$1,400,000 the first year and $1,400,000 the second year are from the water recreation account in the natural resources fund for enhancing public water access facilities. Of this amount, $100,000 is a onetime appropriation to provide downloadable GPS coordinates and river gauge data interpretation. The base appropriation is $1,300,000.

The appropriation in Laws 2003, chapter 128, article 1, section 5, subdivision 6, from the water recreation account in the natural resources fund for a cooperative project with the United States Army Corps of Engineers to develop the Mississippi Whitewater Park is available until June 30, 2011. The project must be designed to prevent the spread of aquatic invasive species.

$3,996,000 the first year and $3,996,000 the second year are from the natural resources fund for state park and recreation area operations. This appropriation is from the revenue deposited in the natural resources fund under Minnesota Statutes, section 297A.94, paragraph (e), clause (2).

$8,424,000 the first year and $8,424,000 the second year are from the snowmobile trails and enforcement account in the natural resources fund for the snowmobile grants-in-aid program. This additional money may be used for new grant-in-aid trails. Any unencumbered balance does not cancel at the end of the first year and is available for the second year.

$400,000 the first year and $400,000 the second year are from the snowmobile account in the natural resources fund for operation and maintenance of state trails and increased oversight and training for the grant-in-aid program. This is a onetime appropriation.

$1,360,000 the first year and $1,360,000 the second year are from the natural resources fund for the off-highway vehicle grants-in-aid program. Of this amount, $1,110,000 each year is from the all-terrain vehicle account; $150,000 each year is from the off-highway motorcycle account; and $100,000 each year is from the off-road vehicle account. Any unencumbered balance does not cancel at the end of the first year and is available for the second year.

$760,000 the first year and $760,000 the second year are from the natural resources fund for state trail operations. This appropriation is from the revenue deposited in the natural resources fund under Minnesota Statutes, section 297A.94, paragraph (e), clause (2).

Subd. 6. **Fish and Wildlife Management**	68,557,000	68,407,000

Appropriations by Fund		
General	2,323,000	2,323,000
Natural Resources	2,096,000	2,096,000
Game and Fish	64,138,000	63,988,000

$220,000 the first year and $220,000 the second year are from the nongame wildlife account in the natural resources fund for gray wolf management and research.

$285,000 the first year and $285,000 the second year are from the walleye stamp account in the game and fish fund for the purposes specified under Minnesota Statutes, section 97A.075, subdivision 6.

$600,000 the first year and $600,000 the second year are to accelerate wildlife health programs. This is a onetime appropriation.

$1,860,000 the first year and $1,860,000 the second year are from the wildlife acquisition surcharge account for only the purposes specified in Minnesota Statutes, section 97A.071, subdivision 2a. This appropriation is available until spent.

$8,167,000 the first year and $8,167,000 the second year are from the heritage enhancement account in the game and fish fund only for activities specified in Minnesota Statutes, section 297A.94, paragraph (e), clause (1). Of this amount, at least 80 percent must be used to purchase or restore land, and of this, over half must be used for restoration. Notwithstanding Minnesota Statutes, section 297A.94, five percent of this appropriation may be used for expanding hunter and angler recruitment and retention. This appropriation may be used to leverage other funds and to provide fish and wildlife technical assistance for shallow lake management and restoration and stream and lake shoreland and habitat improvement and maintenance on private lands.

Notwithstanding Minnesota Statutes, section 84.943, $13,000 the first year and $13,000 the second year from the critical habitat private sector matching account may be used to publicize the critical habitat license plate match program.

$830,000 the first year and $830,000 the second year are from the trout and salmon management account for only the purposes specified in Minnesota Statutes, section 97A.075, subdivision 3.

$1,553,000 the first year and $1,553,000 the second year are from the deer habitat improvement account for only the purposes specified in Minnesota Statutes, section 97A.075, subdivision 1, paragraph (b).

$890,000 the first year and $890,000 the second year are from the deer and bear management account for only the purposes specified in Minnesota Statutes, section 97A.075, subdivision 1, paragraph (c).

$700,000 the first year and $700,000 the second year are from the waterfowl habitat improvement account for only the purposes specified in Minnesota Statutes, section 97A.075, subdivision 2.

$925,000 the first year and $925,000 the second year are from the pheasant habitat improvement account for only the purposes specified in Minnesota Statutes, section 97A.075, subdivision 4.

$192,000 the first year and $192,000 the second year are from the wild turkey management account for only the purposes specified in Minnesota Statutes, section

97A.075, subdivision 5. Of this amount, $8,000 the first year and $8,000 the second year are appropriated from the game and fish fund for transfer to the wild turkey management account for purposes specified in Minnesota Statutes, section 97A.075, subdivision 5.

Notwithstanding Minnesota Statutes, section 16A.28, the appropriations encumbered under contract on or before June 30, 2011, for aquatic restoration grants and wildlife habitat grants are available until June 30, 2012.

Subd. 7. **Ecological Services**			14,475,000	14,475,000
Appropriations by Fund				
General	6,530,000	6,530,000		
Natural Resources	3,994,000	3,994,000		
Game and Fish	3,951,000	3,951,000		

$1,223,000 the first year and $1,223,000 the second year are from the nongame wildlife management account in the natural resources fund for the purpose of nongame wildlife management. Notwithstanding Minnesota Statutes, section 290.431, $100,000 the first year and $100,000 the second year may be used for nongame information, education, and promotion.

$1,636,000 the first year and $1,636,000 the second year are from the heritage enhancement account in the game and fish fund for only the purposes specified in Minnesota Statutes, section 297A.94, paragraph (e), clause (1).

$2,142,000 the first year and $2,142,000 the second year are from the invasive species account and $500,000 each year is appropriated from the game and fish fund to the invasive species account for management, public awareness, assessment and monitoring research, law enforcement, and water access inspection to prevent the spread of invasive species; management of invasive plants in public waters; and management of terrestrial invasive species on state-administered lands. Funds from this appropriation may not be used to purchase or use pesticides suspected of being endocrine disruptors.

Subd. 8. **Enforcement**			31,519,000	31,519,000

Appropriations by Fund		
General	2,918,000	2,918,000
Natural Resources	8,531,000	8,531,000
Game and Fish	19,970,000	19,970,000
Remediation	100,000	100,000

$1,082,000 the first year and $1,082,000 the second year are from the water recreation account in the natural resources fund for grants to counties for boat and water safety.

$315,000 the first year and $315,000 the second year are from the snowmobile trails and enforcement account in the natural resources fund for grants to local law enforcement agencies for snowmobile enforcement activities.

$1,164,000 the first year and $1,164,000 the second year are from the heritage enhancement account in the game and fish fund for only the purposes specified in Minnesota Statutes, section 297A.94, paragraph (e), clause (1).

$510,000 the first year and $510,000 the second year are from the natural resources fund for grants to county law enforcement agencies for off-highway vehicle enforcement and public education activities based on off-highway vehicle use in the county. Of this amount, $498,000 each year is from the all-terrain vehicle account; $11,000 each year is from the off-highway motorcycle account; and $1,000 each year is from the off-road vehicle account. The county enforcement agencies may use money received under this appropriation to make grants to other local enforcement agencies within the county that have a high concentration of off-highway vehicle use. Of this appropriation, $25,000 each year is for administration of these grants.

Subd. 9. **Operations Support**	1,830,000	1,830,000

Appropriations by Fund		
General	207,000	207,000
Natural Resources	534,000	534,000
Game and Fish	1,089,000	1,089,000

The commissioner may redirect the general fund reduction of $1,933,000 in fiscal year 2010 and $1,933,000 in fiscal year 2011, to other subdivisions of this section. No grants may be reduced. The commissioner shall report by October 1, 2011, to the chairs of the legislative committees having primary jurisdiction over environment and natural resources policy and finance regarding any redirection and what department outcomes were affected by the redirection.

$320,000 the first year and $320,000 the second year are from the natural resources fund for grants to be divided equally between the city of St. Paul for the Como Zoo and Conservatory and the city of Duluth for the Duluth Zoo. This appropriation is from the revenue deposited to the fund under Minnesota Statutes, section 297A.94, paragraph (e), clause (5).

Sec. 5. **BOARD OF WATER AND SOIL RESOURCES**	**$**	**16,493,000**	**$**	**16,218,000**

$3,856,000 the first year and $3,856,000 the second year are for natural resources block grants to local governments. The board may reduce the amount of the natural resources block grant to a county by an amount equal to any reduction in the county's general services allocation to a soil and water conservation district from the county's previous year allocation when the board determines that the reduction was disproportionate. Grants must be matched with a combination of local cash or in-kind contributions. The base grant portion related to water planning must be matched by an amount as specified by Minnesota Statutes, section 103B.3369.

$3,506,000 the first year and $3,506,000 the second year are for grants requested by soil and water conservation districts for general purposes, nonpoint engineering, and implementation of the reinvest in Minnesota conservation reserve program. Upon approval of the board, expenditures may be made from these appropriations for supplies and services benefiting soil and water conservation districts. Any district requesting a grant under this paragraph shall maintain a Web page that publishes, at a minimum, its annual plan, annual report, annual audit, and annual budget, including membership dues and meeting notices and minutes.

$500,000 the first year and $500,00 the second year are for feedlot water quality grants for feedlots under 300 animal units where there are impaired waters.

$1,169,000 the first year and $1,169,000 the second year are for grants to soil and water conservation districts for cost-sharing contracts for erosion control and related water quality management.

$1,200,000 the first year and $1,200,000 the second year are for grants for cost sharing contracts to establish and maintain vegetation buffers and restored native prairie.

$200,000 the first year and $200,000 the second year are available for county cooperative weed management programs and to restore native plants in selected invasive species management sites by providing local native seeds and plants to landowners for implementation. This appropriation is available until expended. If the appropriation in either year is insufficient, the appropriation in the other year is available for it. Any unencumbered balance in the board's program of grants does not cancel at the end of the first year and is available for the second year for the same grant program.

Notwithstanding Minnesota Statutes, section 103C.501, a balance in the board's cost-share program is available for $150,000 each year for evaluating and reporting on performance, financial, and activity information of local water management entities as provided for in Minnesota Statutes, section 103B.102. Notwithstanding Minnesota Statutes, section 103C.501, the board may shift cost-share funds in this section and may adjust the technical and administrative assistance portion of the grant funds to leverage federal or other nonstate funds or to address high-priority needs identified in local water management plans.

$500,000 the first year and $500,000 the second year are for implementation and enforcement of the Wetland Conservation Act. The board must make available information about these activities on the board's Web site.

$60,000 each year is for staff to monitor and enforce wetland replacement, wetland bank sites, and the Wetland Conservation Act. The board must include in its biennial report to the legislature information on all state and local units of government, including special purpose districts and impacts on wetlands in the state. This information must be made available on the board's Web site.

$340,000 the first year and $340,000 the second year are for cost-share grants to local governments for public drainage records modernization.

$212,000 in each year is to provide assistance to local drainage management officials and for the costs of the Drainage Work Group.

$90,000 the first year and $90,000 the second year are for a grant to the Red River Basin Commission for water quality and floodplain management, including administration of programs. The commission shall submit a report to the chairs of the legislative committees having primary jurisdiction over environment and natural resources policy and finance on the accomplishments achieved with this appropriation by January 15, 2012. If the appropriation in either year is insufficient, the appropriation in the other year is available for it.

$90,000 each year is to the Minnesota River Basin Joint Powers Board, also known as the Minnesota River Board, for operating expenses to measure and report the results of projects in the 12 major watersheds within the Minnesota River basin. This amount may be matched by nonstate funds. The board shall submit a report to the chairs of the legislative committees with jurisdiction over environment and natural resources policy and finance on a plan to transition to self-sufficiency.

$136,000 the first year and $136,000 the second year are for a grant to Area II, Minnesota River Basin Projects, for floodplain management, including administration of programs.

The appropriations for grants in this section are available until expended. If an appropriation for grants in either year is insufficient, the appropriation in the other year is available for it.

To the extent possible, any restoration conducted with money appropriated in this section must plant vegetation or sow seed only of ecotypes native to Minnesota, and preferably of the local ecotype, using a high diversity of species originating from as close to the restoration site as possible, and protect existing native prairies from genetic contamination.

A recipient of a grant funded by an appropriation under this section shall display on its Web site detailed information on the expenditure of the grant funds, and measurable outcomes as a result of the expenditure of funds, and submit this information to the board by June 30 each year. A recipient without an active Web site shall report to the board by June 30 each year detailed information on the expenditure of the grant funds, and measurable outcomes as a result of the expenditure of funds. The board shall display the information received by recipients under this paragraph on the board's Web site.

The board shall require the chief financial officer or other financial staff to display the board's budget on the board's Web site in a manner that will allow citizens to easily understand the value they are getting for their money.

Sec. 6. **METROPOLITAN COUNCIL** **$ 8,377,000 $ 8,377,000**

Appropriations by Fund

	2010	2011
General	3,807,000	3,807,000
Natural Resources	4,570,000	4,570,000

$3,807,000 the first year and $3,807,000 the second year are for metropolitan area regional parks operation and maintenance according to Minnesota Statutes, section 473.351.

$4,570,000 the first year and $4,570,000 the second year are from the natural resources fund for metropolitan area regional parks and trails maintenance and operations. This appropriation is from the revenue deposited in the natural resources fund under Minnesota Statutes, section 297A.94, paragraph (e), clause (3).

Sec. 7. **MINNESOTA CONSERVATION CORPS**	**$**	**965,000**	**$**	**965,000**

Appropriations by Fund

	2010	2011
General	475,000	475,000
Natural Resources	490,000	490,000

The Minnesota Conservation Corps may receive money appropriated from the natural resources fund under this section only as provided in an agreement with the commissioner of natural resources.

Sec. 8. **ZOOLOGICAL BOARD**	**$**	**6,839,000**	**$**	**6,839,000**

Appropriations by Fund

	2010	2011
General	6,701,000	6,701,000
Natural Resources	138,000	138,000

$138,000 the first year and $138,000 the second year are from the natural resources fund from the revenue deposited under Minnesota Statutes, section 297A.94, paragraph (e), clause (5).

Sec. 9. **SCIENCE MUSEUM OF MINNESOTA**	**$**	**1,187,000**	**$**	**1,187,000**

Sec. 10. Minnesota Statutes 2008, section 84.0835, subdivision 3, is amended to read:

Subd. 3. **Citation authority.** Employees designated by the commissioner under subdivision 1 may issue citations, as specifically authorized under this subdivision, for violations of:

(1) sections 85.052, subdivision 3 (payment of camping fees in state parks), 85.45, subdivision 1 (cross-country ski pass), ~~and~~ 85.46 (horse trail pass), and 84.9275 (nonresident all-terrain vehicle state trail pass);

(2) rules relating to hours and days of operation, restricted areas, noise, fireworks, environmental protection, fires and refuse, pets, picnicking, camping and dispersed camping, nonmotorized uses, construction of unauthorized permanent trails, mooring of boats, fish cleaning, swimming, storage and abandonment of personal property, structures and stands, animal trespass, state park individual and group motor vehicle permits, licensed motor vehicles, designated roads, and snowmobile operation off trails;

(3) rules relating to off-highway vehicle registration, display of registration numbers, required equipment, operation restrictions, off-trail use for hunting and trapping, and operation in lakes, rivers, and streams;

(4) rules relating to off-highway vehicle and snowmobile operation causing damage or in closed areas within the Richard J. Dorer Memorial Hardwood State Forest;

(5) rules relating to parking, snow removal, and damage on state forest roads; and

(6) rules relating to controlled hunting zones on major wildlife management units.

EFFECTIVE DATE. This section is effective January 1, 2010.

Sec. 11. **[84.0854] GIFT CARD AND CERTIFICATE SALES; RECEIPTS; TRANSFERS; APPROPRIATION.**

Subdivision 1. **Sales authorized; gift cards and certificates.** The commissioner may sell gift cards and certificates that can be used to purchase licenses, permits, products, or services sold by the commissioner. Gift cards and certificates are valid until they are redeemed. The commissioner may advertise the availability of this program and items offered for sale under this section.

Subd. 2. **Receipts; disposition.** Proceeds of gift card and certificate sales shall be deposited in an account in the special revenue fund. When gift cards or certificates are redeemed, funds shall be transferred to the appropriate account or fund based on the license, permit, product, or service purchased. Money in the gift card and certificate account shall accrue interest, which shall be credited to the account. Interest on funds in the account is appropriated to the commissioner to help cover the cost of administering the gift card and certificate program. Money from gift cards and certificates sold but unredeemed after three years shall be transferred to the various accounts and funds receiving revenue from purchases of licenses, permits, products, or services purchased with gift card or certificate redemptions in the last two fiscal years. Funds shall be distributed based on the dollar value of cards redeemed for the various licenses, permits, products, or services on a pro rata basis.

Subd. 3. **Exemption from rulemaking.** This section is not subject to the rulemaking provisions of chapter 14 and section 14.386 does not apply.

Sec. 12. Minnesota Statutes 2008, section 84.415, subdivision 5, is amended to read:

Subd. 5. ~~**Fee**~~ **Fees; disposition.** (a) In the event the construction of such lines causes damage to timber or other property of the state on or along the same, the license or permit shall also provide for payment to the commissioner of finance of the amount thereof as may be determined by the commissioner.

(b) The application fee specified in Minnesota Rules, chapter 6135, is credited to the general fund.

~~All money received under such licenses or permits~~ (c) The utility crossing fees specified in Minnesota Rules, chapter 6135, shall be credited to the fund to which other income or proceeds of sale from such land would be credited, if provision therefor be made by law, otherwise to the general fund.

(d) Money received under subdivision 6 must be deposited in the land management account in the natural resources fund. Money in the land management account of the natural resources fund is appropriated to the commissioner of natural resources to cover the costs incurred for issuing and monitoring utility licenses.

Sec. 13. Minnesota Statutes 2008, section 84.415, is amended by adding a subdivision to read:

Subd. 6. **Supplemental application fee and monitoring fee.** (a) In addition to the application fee and utility crossing fees specified in Minnesota Rules, chapter 6135, the commissioner of natural resources shall assess the applicant for a utility license the following fees:

(1) a supplemental application fee of $1,500 for a public water crossing license and a supplemental application fee of $4,500 for a public lands crossing license, to cover reasonable costs for reviewing the application and preparing the license; and

(2) a monitoring fee to cover the projected reasonable costs for monitoring the construction of the utility line and preparing special terms and conditions of the license

to ensure proper construction. The commissioner must give the applicant an estimate of the monitoring fee before the applicant submits the fee.

(b) The applicant shall pay fees under this subdivision to the commissioner of natural resources. The commissioner shall not issue the license until the applicant has paid all fees in full.

(c) Upon completion of construction, the commissioner shall refund any remaining balance left between the fee assessed for monitoring and the amount used by the commissioner in monitoring the construction of the utility line. The commissioner shall not return the application fees, even if the application is withdrawn or denied.

Sec. 14. Minnesota Statutes 2008, section 84.63, is amended to read:

84.63 CONVEYANCE OF INTERESTS IN LANDS TO STATE AND FEDERAL GOVERNMENTS.

(a) Notwithstanding any existing law to the contrary, the commissioner of natural resources is hereby authorized on behalf of the state to convey to the United States or to the state of Minnesota or any of its subdivisions, upon state-owned lands under the administration of the commissioner of natural resources, permanent or temporary easements for specified periods or otherwise for trails, highways, roads including limitation of right of access from the lands to adjacent highways and roads, flowage for development of fish and game resources, stream protection, flood control, and necessary appurtenances thereto, such conveyances to be made upon such terms and conditions including provision for reversion in the event of non-user as the commissioner of natural resources may determine.

(b) In addition to the fee for the market value of the easement, the commissioner of natural resources shall assess the applicant the following fees:

(1) an application fee of $2,000 to cover reasonable costs for reviewing the application and preparing the easement; and

(2) a monitoring fee to cover the projected reasonable costs for monitoring the construction of the easement and preparing special terms and conditions for the easement. The commissioner must give the applicant an estimate of the monitoring fee before the applicant submits the fee.

(c) The applicant shall pay these fees to the commissioner of natural resources. The commissioner shall not issue the easement until the applicant has paid in full the application fee, the monitoring fee, and the market value payment for the easement.

(d) Upon completion of construction, the commissioner shall refund any remaining balance left between the monitoring fee assessed and the amount used by the commissioner in monitoring the construction of the easement. The commissioner shall not return the application fee, even if the application is withdrawn or denied.

(e) Money received under paragraph (b) must be deposited in the land management account in the natural resources fund. Money in the land management account of the natural resources fund is appropriated to the commissioner of natural resources to cover the reasonable costs incurred for issuing and monitoring easements.

Sec. 15. Minnesota Statutes 2008, section 84.631, is amended to read:

84.631 ROAD EASEMENTS ACROSS STATE LANDS.

(a) Except as provided in section 85.015, subdivision 1b, the commissioner, on behalf of the state, may convey a road easement across state land under the commissioner's jurisdiction other than school trust land, to a private person requesting an easement for access to property owned by the person only if the following requirements are met: (1) there are no reasonable alternatives to obtain access to the property; and (2) the exercise of the easement will not cause significant adverse environmental or natural resource management impacts.

(b) The commissioner shall:

(1) require the applicant to pay the market value of the easement;

(2) provide that the easement reverts to the state in the event of nonuse; and

(3) impose other terms and conditions of use as necessary and appropriate under the circumstances.

(c) An applicant shall submit ~~a~~ an application fee of ~~up to~~ $2,000 with each application for a road easement across state land. ~~The commissioner must give the applicant an estimate of the costs of the road easement before the applicant submits the fee.~~ The application fee is nonrefundable, even if the application is withdrawn or denied.

(d) In addition to the payment for the market value of the easement and the application fee, the commissioner of natural resources shall assess the applicant a monitoring fee to cover the projected reasonable costs for monitoring the construction of the easement and preparing special terms and conditions for the easement. The commissioner must give the applicant an estimate of the monitoring fee before the applicant submits the fee. The applicant shall pay the application and monitoring fees to the commissioner of natural resources. The commissioner shall not issue the easement until the applicant has paid in full the application fee, the monitoring fee, and the market value payment for the easement.

(e) Upon completion of construction, the commissioner shall refund any remaining balance left between the monitoring fee assessed and the amount used by the commissioner in monitoring the construction of the easement.

(f) Fees collected under ~~paragraph~~ paragraphs (c) and (d) must be deposited in the land management account in the natural resources fund. Money in the land management account of the natural resources fund is appropriated to the commissioner of natural resources to cover the reasonable costs incurred under this section.

Sec. 16. Minnesota Statutes 2008, section 84.632, is amended to read:

84.632 CONVEYANCE OF UNNEEDED STATE EASEMENTS.

(a) Notwithstanding section 92.45, the commissioner of natural resources may, in the name of the state, release all or part of an easement acquired by the state upon application of a landowner whose property is burdened with the easement if the easement is not needed for state purposes.

(b) All or part of an easement may be released by payment of ~~consideration of not less than $500, to be determined by the commissioner~~ the market value of the easement. The release must be in a form approved by the attorney general.

(c) Money received ~~for release of the easement~~ under paragraph (b) must be credited to the account from which money was expended for purchase of the easement. If there is no specific account, the money must be credited to the land acquisition account established in section 94.165.

(d) In addition to payment under paragraph (b), the commissioner of natural resources shall assess a landowner who applies for a release under this section an application fee of $2,000 for reviewing the application and preparing the release of easement. The applicant shall pay the application fee to the commissioner of natural resources. The commissioner shall not issue the release of easement until the applicant has paid the application fee in full. The commissioner shall not return the application fee, even if the application is withdrawn or denied.

(e) Money received under paragraph (d) must be deposited in the land management account in the natural resources fund. Money in the land management account of the natural resources fund is appropriated to the commissioner of natural resources to cover the reasonable costs incurred under this section.

Sec. 17. Minnesota Statutes 2008, section 84.788, subdivision 3, is amended to read:

Subd. 3. **Application; issuance; reports.** (a) Application for registration or continued registration must be made to the commissioner or an authorized deputy registrar of motor vehicles in a form prescribed by the commissioner. The form must state the name and address of every owner of the off-highway motorcycle.

(b) A person who purchases from a retail dealer an off-highway motorcycle shall make application for registration to the dealer at the point of sale. The dealer shall issue a dealer temporary 21-day registration permit to each purchaser who applies to the dealer for registration. The dealer shall submit the completed registration applications and fees to the deputy registrar at least once each week. No fee may be charged by a dealer to a purchaser for providing the temporary permit.

(c) Upon receipt of the application and the appropriate fee, the commissioner or deputy registrar shall issue to the applicant, or provide to the dealer, an assigned registration number or a commissioner or deputy registrar temporary 21-day permit. Once issued, the registration number must be affixed to the motorcycle according to paragraph (f). A dealer subject to paragraph (b) shall provide the registration materials or temporary permit to the purchaser within the 21-day temporary permit period.

(d) The commissioner shall develop a registration system to register vehicles under this section. A deputy registrar of motor vehicles acting under section 168.33, is also a deputy registrar of off-highway motorcycles. The commissioner of natural resources in agreement with the commissioner of public safety may prescribe the accounting and procedural requirements necessary to ensure efficient handling of registrations and registration fees. Deputy registrars shall strictly comply with the accounting and procedural requirements.

(e) In addition to other fees prescribed by law, a filing fee of $4.50 is charged for each off-highway motorcycle registration renewal, duplicate or replacement registration card, and replacement decal and a filing fee of $7 is charged for each off-highway motorcycle registration and registration transfer issued by:

(1) a deputy registrar and must be deposited in the treasury of the jurisdiction where the deputy is appointed, or kept if the deputy is not a public official; or

(2) the commissioner and must be deposited in the state treasury and credited to the off-highway motorcycle account.

(f) Unless exempted in paragraph (g), the owner of an off-highway motorcycle must display a registration decal issued by the commissioner. If the motorcycle is licensed as a motor vehicle, a registration decal must be affixed on the upper left corner of the rear license plate. If the motorcycle is not licensed as a motor vehicle, the decal must be attached on the side of the motorcycle and may be attached to the fork tube. The decal must be attached in a manner so that it is visible while a rider is on the motorcycle. The issued decals must be of a size to work within the constraints of the electronic licensing system, not to exceed three inches high and three inches wide.

(g) Display of a registration decal is not required for an off-highway motorcycle:

(1) while being operated on private property; or

(2) while competing in a closed-course competition event.

(h) Registration decals for vehicles under this section or any other vehicle registered by the Department of Natural Resources must be manufactured in Minnesota.

Sec. 18. Minnesota Statutes 2008, section 84.922, subdivision 1a, is amended to read:

Subd. 1a. **Exemptions.** All-terrain vehicles exempt from registration are:

(1) vehicles owned and used by the United States, the state, another state, or a political subdivision;

(2) vehicles registered in another state or country that have not been in this state for more than 30 consecutive days;

(3) vehicles that:

(i) are owned by a resident of another state or country that does not require registration of all-terrain vehicles;

(ii) have not been in this state for more than 30 consecutive days; and

(iii) are operated on state and grant-in-aid trails by a nonresident possessing a nonresident all-terrain vehicle state trail pass;

~~(3)~~ (4) vehicles used exclusively in organized track racing events; and

~~(4)~~ (5) vehicles that are 25 years old or older and were originally produced as a separate identifiable make by a manufacturer.

EFFECTIVE DATE. This section is effective January 1, 2010.

Sec. 19. **[84.9275] NONRESIDENT ALL-TERRAIN VEHICLE STATE TRAIL PASS.**

Subdivision 1. **Pass required; fee.** (a) A nonresident may not operate an all-terrain vehicle on a state or grant-in-aid all-terrain vehicle trail unless the operator carries a valid nonresident all-terrain vehicle state trail pass in immediate possession. The pass must be available for inspection by a peace officer, a conservation officer, or an employee designated under section 84.0835.

(b) The commissioner of natural resources shall issue a pass upon application and payment of a $20 fee. The pass is valid from January 1 through December 31. Fees collected under this section, except for the issuing fee for licensing agents, shall be deposited in the state treasury and credited to the all-terrain vehicle account in the natural resources fund and, except for the electronic licensing system commission established by the commissioner under section 84.027, subdivision 15, must be used for grants-in-aid to counties and municipalities for all-terrain vehicle organizations to construct and maintain all-terrain vehicle trails and use areas.

(c) A nonresident all-terrain vehicle state trail pass is not required for:

(1) an all-terrain vehicle that is owned and used by the United States, another state, or a political subdivision thereof that is exempt from registration under section 84.922, subdivision 1a; or

(2) a person operating an all-terrain vehicle only on the portion of a trail that is owned by the person or the person's spouse, child, or parent.

Subd. 2. **License agents.** The commissioner may appoint agents to issue and sell nonresident all-terrain vehicle state trail passes. The commissioner may revoke the appointment of an agent at any time. The commissioner may adopt additional rules as provided in section 97A.485, subdivision 11. An agent shall observe all rules adopted by the commissioner for accounting and handling of passes pursuant to section 97A.485, subdivision 11. An agent shall promptly deposit and remit all money received from the sale of the passes, exclusive of the issuing fee, to the commissioner.

Subd. 3. **Issuance of passes.** The commissioner and agents shall issue and sell nonresident all-terrain vehicle state trail passes. The commissioner shall also make the passes available through the electronic licensing system established under section 84.027, subdivision 15.

Subd. 4. **Agent's fee.** In addition to the fee for a pass, an issuing fee of $1 per pass shall be charged. The issuing fee may be retained by the seller of the pass. Issuing fees for passes issued by the commissioner shall be deposited in the all-terrain vehicle account in the natural resources fund and retained for the operation of the electronic licensing system.

Subd. 5. **Duplicate passes.** The commissioner and agents shall issue a duplicate pass to persons whose pass is lost or destroyed using the process established under section 97A.405, subdivision 3, and rules adopted thereunder. The fee for a duplicate nonresident all-terrain vehicle state trail pass is $2, with an issuing fee of 50 cents.

EFFECTIVE DATE. This section is effective January 1, 2010.

Sec. 20. Minnesota Statutes 2008, section 85.015, subdivision 1b, is amended to read:

Subd. 1b. **Easements for ingress and egress.** (a) Notwithstanding section 16A.695, when a trail is established under this section, a private property owner who has a preexisting right of ingress and egress over the trail right-of-way is granted~~, without charge,~~ a permanent easement for ingress and egress purposes only. The easement is limited to the preexisting crossing and reverts to the state upon abandonment. Nothing in this subdivision is intended to diminish or alter any written or recorded easement that existed before the state acquired the land for the trail.

(b) The commissioner of natural resources shall assess the applicant an application fee of $2,000 for reviewing the application and preparing the easement. The applicant shall pay the application fee to the commissioner of natural resources. The commissioner shall not issue the easement until the applicant has paid the application fee in full. The commissioner shall not return the application fee, even if the application is withdrawn or denied.

(c) Money received under paragraph (b) must be deposited in the land management account in the natural resources fund. Money in the land management account of the natural resources fund is appropriated to the commissioner of natural resources to cover the reasonable costs incurred under this section.

Sec. 21. Minnesota Statutes 2008, section 85.053, subdivision 10, is amended to read:

Subd. 10. **Free entrance; totally and permanently disabled veterans.** The commissioner shall issue an annual park permit for no charge ~~for~~ to any veteran with a total and permanent service-connected disability, as determined by the United States Department of Veterans Affairs, who presents each year a copy of their determination letter to a park attendant or commissioner's designee. For the purposes of this section, "veteran" ~~with a total and permanent service-connected disability" means a resident who has a total and permanent service-connected disability as adjudicated by the United States Veterans Administration or by the retirement board of one of the several branches of the armed forces~~ has the meaning given in section 197.447.

EFFECTIVE DATE. This section is effective July 1, 2009, for state park permits issued on or after that date.

Sec. 22. Minnesota Statutes 2008, section 85.46, subdivision 3, is amended to read:

Subd. 3. **Issuance.** The commissioner of natural resources and agents shall issue and sell horse trail passes. The pass shall include the applicant's signature and other information deemed necessary by the commissioner. To be valid, a daily or annual pass must be signed by the person riding, leading, or driving the horse, and a commercial annual pass must be signed by the owner of the commercial trail riding facility.

EFFECTIVE DATE. This section is effective January 1, 2010.

Sec. 23. Minnesota Statutes 2008, section 85.46, subdivision 4, is amended to read:

Subd. 4. **Pass fees.** (a) The fee for an annual horse trail pass is $20 for an individual 16 years of age and over. The fee shall be collected at the time the pass is purchased. Annual passes are valid for one year beginning January 1 and ending December 31.

(b) The fee for a daily horse trail pass is $4 for an individual 16 years of age and over. The fee shall be collected at the time the pass is purchased. The daily pass is valid only for the date designated on the pass form.

(c) The fee for a commercial annual horse trail pass is $200 and includes issuance of 15 passes. Additional or individual commercial annual horse trail passes may be purchased by the commercial trail riding facility owner at a fee of $20 each. Commercial annual horse trail passes are valid for one year beginning January 1 and ending December 31 and may be affixed to the horse tack, saddle, or person. Commercial annual horse trail passes are not transferable. For the purposes of this section, a "commercial trail riding facility" is an operation where horses are used for riding instruction or other equestrian activities for hire.

EFFECTIVE DATE. This section is effective January 1, 2010.

Sec. 24. Minnesota Statutes 2008, section 85.46, subdivision 7, is amended to read:

Subd. 7. **Duplicate horse trail passes.** The commissioner of natural resources and agents shall issue a duplicate pass to a person or commercial trail riding facility owner whose pass is lost or destroyed using the process established under section 97A.405, subdivision 3, and rules adopted thereunder. The fee for a duplicate horse trail pass is $2, with an issuing fee of 50 cents.

EFFECTIVE DATE. This section is effective January 1, 2010.

Sec. 25. Minnesota Statutes 2008, section 93.481, subdivision 1, is amended to read:

Subdivision 1. **Prohibition against mining without permit; application for permit.** Except as provided in this subdivision, after June 30, 1975, no person shall engage in or carry out a mining operation for metallic minerals within the state unless the person has first obtained a permit to mine from the commissioner. Any person engaging in or carrying out a mining operation as of the effective date of the rules ~~promulgated~~ adopted under section 93.47 shall apply for a permit to mine within 180 days after the effective date of such rules. Any such existing mining operation may continue during the pendency of the application for the permit to mine. The person applying for a permit shall apply on forms prescribed by the commissioner and shall submit such information as the commissioner may require, including but not limited to the following:

~~(a)~~ (1) a proposed plan for the reclamation or restoration, or both, of any mining area affected by mining operations to be conducted on and after the date on which permits are required for mining under this section;

~~(b)~~ (2) a certificate issued by an insurance company authorized to do business in the United States that the applicant has a public liability insurance policy in force for the mining operation for which the permit is sought, or evidence that the applicant has satisfied other state or federal self-insurance requirements, to provide personal injury and property damage protection in an amount adequate to compensate any persons who might be damaged as a result of the mining operation or any reclamation or restoration operations connected with the mining operation;

(3) an application fee of:

(i) $25,000 for a permit to mine for a taconite mining operation;

(ii) $50,000 for a permit to mine for a nonferrous metallic minerals operation;

(iii) $10,000 for a permit to mine for a scram mining operation; or

(iv) $5,000 for a permit to mine for a peat operation;

~~(c)~~ (4) a bond which may be required pursuant to section 93.49; and

~~(d)~~ (5) a copy of the applicant's advertisement of the ownership, location, and boundaries of the proposed mining area and reclamation or restoration operations, which advertisement shall be published in a legal newspaper in the locality of the proposed site at least once a week for four successive weeks before the application is filed, except that if the application is for a permit to conduct lean ore stockpile removal the advertisement need be published only once.

Sec. 26. Minnesota Statutes 2008, section 93.481, subdivision 3, is amended to read:

Subd. 3. **Term of permit; amendment.** A permit issued by the commissioner pursuant to this section shall be granted for the term determined necessary by the commissioner for the completion of the proposed mining operation, including reclamation or restoration. A permit may be amended upon written application to the commissioner. A permit amendment application fee must be submitted with the written application. The permit amendment application fee is ten percent of the amount provided for in subdivision 1, clause (3), for an application for the applicable permit to mine. If the commissioner determines that the proposed amendment constitutes a substantial change to the permit, the person applying for the amendment shall publish notice in the same manner as for a new permit, and a hearing shall be held if written objections are received in the same manner as for a new permit. An amendment may be granted by the commissioner if the commissioner determines that lawful requirements have been met.

Sec. 27. Minnesota Statutes 2008, section 93.481, subdivision 5, is amended to read:

Subd. 5. **Assignment.** A permit may not be assigned or otherwise transferred without the written approval of the commissioner. A permit assignment application fee must be submitted with the written application. The permit assignment application fee is ten percent of the amount provided for in subdivision 1, clause (3), for an application for the applicable permit to mine.

Sec. 28. Minnesota Statutes 2008, section 93.481, subdivision 7, is amended to read:

Subd. 7. **Mining administration account.** The mining administration account is established as an account in the natural resources fund. ~~Ferrous mining administrative~~ Fees charged to owners, operators, or managers of mines under sections 93.481 and 93.482 shall be credited to the account and may be appropriated to the commissioner to cover the costs of providing and monitoring permits to mine ~~ferrous metals under this section~~. Interest accruing from investment of the account remains with the account until appropriated.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 29. **[93.482] RECLAMATION FEES.**

Subdivision 1. **Annual permit to mine fee.** (a) The commissioner shall charge every person holding a permit to mine an annual permit fee. The fee is payable to the commissioner by June 30 of each year, beginning in 2009.

(b) The annual permit to mine fee for a taconite mining operation is $60,000 if the operation had production within the past calendar year to the year in which payment is due and $30,000 if there has been no production within the past calendar year.

(c) The annual permit to mine fee for a nonferrous metallic minerals mining operation is $75,000 if the operation had production within the past calendar year to the year in which payment is due and $37,500 if there has been no production within the past calendar year.

(d) The annual permit to mine fee for a scram mining operation is $5,000 if the operation had production within the past calendar year to the year in which payment is due and $2,500 if there has been no production within the past calendar year.

(e) The annual permit to mine fee for a peat mining operation is $1,000 if the operation had production within the past calendar year to the year in which payment is due and $500 if there has been no production within the past calendar year.

Subd. 2. **Supplemental application fee for taconite and nonferrous metallic minerals mining operation.** (a) In addition to the application fee specified in section 93.481, the commissioner shall assess a person submitting an application for a permit to mine for a taconite or a nonferrous metallic minerals mining operation the reasonable costs for reviewing the application and preparing the permit to mine. For nonferrous metallic minerals mining, the commissioner shall assess reasonable costs for monitoring construction of the mining facilities.

(b) The commissioner must give the applicant an estimate of the supplemental application fee under this subdivision. The estimate must include a brief description of the tasks to be performed and the estimated cost of each task. The application fee under section 93.481 shall be subtracted from the estimate of costs to determine the supplemental application fee.

(c) The applicant and the commissioner shall enter into a written agreement to cover the estimated costs to be incurred by the commissioner.

(d) The commissioner shall not issue the permit to mine until the applicant has paid all fees in full. Upon completion of construction of a nonferrous metallic minerals facility, the commissioner shall refund any remaining balance between the fee assessed for monitoring construction and the amount used by the commissioner in monitoring construction of the mining facilities.

Subd. 3. **Reclamation fee on taconite iron ore produced.** (a) For the purposes of this subdivision:

(1) "fee owner" means a person having any right, title, or interest in any minerals or mineral rights in this state from which taconite iron ore is mined. Fee owner does not include the United States, the state, or the University of Minnesota;

(2) "taconite iron ore" means a ferruginous chert or ferruginous slate in the form of compact siliceous rock, in which the iron oxide is so finely disseminated that substantially all of the iron bearing particles of merchantable grade are smaller than 20 mesh; and

(3) "ton" means a gross ton of 2,240 pounds.

(b) A fee owner is subject to a reclamation fee of $.0075 per ton of taconite iron ore mined from the minerals or mineral rights owned by the fee owner.

(c) The fee owner shall make payment to the commissioner no later than January 20 of each calendar year for ore removed during the previous calendar year. The fee owner is liable for the payment of the reclamation fee. The fee owner may enter into an agreement with the mining operator to make the payment on their behalf from royalties due and owing or other financial terms.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 30. Minnesota Statutes 2008, section 97A.075, subdivision 1, is amended to read:

Subdivision 1. **Deer, bear, and lifetime licenses.** (a) For purposes of this subdivision, "deer license" means a license issued under section 97A.475, subdivisions 2, clauses (5), (6), (7), (11), (13), (15), (16), and (17), and 3, clauses (2), (3), (4), (9), (11), (12), and (13), and licenses issued under section 97B.301, subdivision 4.

(b) $2 from each annual deer license and $2 annually from the lifetime fish and wildlife trust fund, established in section 97A.4742, for each license issued under section 97A.473, subdivision 4, shall be credited to the deer management account and shall be used for deer habitat improvement or deer management programs.

(c) $1 from each annual deer license and each bear license and $1 annually from the lifetime fish and wildlife trust fund, established in section 97A.4742, for each license issued under section 97A.473, subdivision 4, shall be credited to the deer and bear management account and shall be used for deer and bear management programs, including a computerized licensing system.

(d) Fifty cents from each deer license is credited to the emergency deer feeding and wild cervidae health management account and is appropriated for emergency deer feeding and wild cervidae health management. Money appropriated for emergency deer feeding and wild cervidae health management is available until expended. ~~When the unencumbered balance in the appropriation for emergency deer feeding and wild cervidae health management at the end of a fiscal year exceeds $2,500,000 for the first time, $750,000 is canceled to the unappropriated balance of the game and fish fund.~~ The commissioner must inform the legislative chairs of the natural resources finance committees every two years on how the money for emergency deer feeding and wild cervidae health management has been spent.

~~Thereafter,~~ When the unencumbered balance in the appropriation for emergency deer feeding and wild cervidae health management exceeds $2,500,000 at the end of a fiscal year, the unencumbered balance in excess of $2,500,000 is canceled and available for deer and bear management programs and computerized licensing.

Sec. 31. Minnesota Statutes 2008, section 103G.301, subdivision 2, is amended to read:

Subd. 2. **Permit application fees.** (a) A permit application fee to defray the costs of receiving, recording, and processing the application must be paid for a permit authorized under this chapter and for each request to amend or transfer an existing permit. <u>Fees established under this subdivision, unless specified in paragraph (c), shall be compliant with section 16A.1285.</u>

(b) ~~The fee for a project appropriating~~ Proposed projects that require water in excess of 100 million gallons per year must be assessed fees to recover the ~~reasonable~~ costs ~~of preparing and processing the permit, including costs~~ incurred to evaluate the project and the costs incurred for environmental review. Fees collected under this paragraph must be credited to an account in the natural resources fund and are appropriated to the commissioner ~~for fiscal years 2008 and 2009~~.

(c) The fee to apply for a permit to appropriate water, ~~other than a permit subject to the~~ in addition to any fee under paragraph (b); a permit to construct or repair a dam that is subject to dam safety inspection; or a state general permit ~~or to apply for the state water bank program~~ is $150. The application fee for a permit to work in public waters or to divert waters for mining must be at least $150, but not more than $1,000~~, according to a schedule of fees adopted under section 16A.1285~~.

Sec. 32. Minnesota Statutes 2008, section 103G.301, subdivision 3, is amended to read:

Subd. 3. **Field inspection fees.** (a) In addition to the application fee, the commissioner may charge a field inspection fee for:

(1) projects requiring a mandatory environmental assessment under chapter 116D;

(2) projects undertaken without a required permit or application; and

(3) projects undertaken in excess of limitations established in an issued permit.

(b) The fee must be at least $100 but not more than actual inspection costs.

(c) The fee is to cover actual costs related to a permit applied for under this chapter or for a project undertaken without proper authorization.

(d) The commissioner shall establish a schedule of field inspection fees under section 16A.1285. The schedule must include actual costs related to field inspection, including investigations of the area affected by the proposed activity, analysis of the proposed activity, consultant services, and subsequent monitoring, if any, of the activity authorized by the permit. Fees collected under this subdivision must be credited to an account in the natural resources fund and are appropriated to the commissioner.

Sec. 33. Minnesota Statutes 2008, section 115.03, subdivision 5c, is amended to read:

Subd. 5c. **Regulation of storm water discharges.** (a) The agency may issue a general permit to any category or subcategory of point source storm water discharges that it deems administratively reasonable and efficient without making any findings under agency rules. Nothing in this subdivision precludes the agency from requiring an individual permit for a point source storm water discharge if the agency finds that it is appropriate under applicable legal or regulatory standards.

(b) Pursuant to this paragraph, the legislature authorizes the agency to adopt and enforce rules regulating point source storm water discharges. No further legislative approval is required under any other legal or statutory provision whether enacted before or after May 29, 2003.

(c) The agency may develop performance standards, design standards, or other tools to enable and promote the implementation of low-impact development and other storm water management techniques. For the purposes of this section, "low-impact development" means an approach to storm water management that mimics a site's natural hydrology as the landscape is developed. Using the low-impact development approach, storm water is managed on-site and the rate and volume of predevelopment storm water reaching receiving waters is unchanged. The calculation of predevelopment hydrology is based on native soil and vegetation.

Sec. 34. Minnesota Statutes 2008, section 115.073, is amended to read:

115.073 ENFORCEMENT FUNDING.

Except as provided in section 115C.05, all money recovered by the state under this chapter and chapters 115A and 116, including civil penalties and money paid under an agreement, stipulation, or settlement, excluding money paid for past due fees or taxes, ~~up to the amount appropriated for implementation of Laws 1991, chapter 347,~~ must be deposited in the state treasury and credited to the environmental fund.

Sec. 35. Minnesota Statutes 2008, section 115.56, subdivision 4, is amended to read:

Subd. 4. **License fee.** The fee for a license required under subdivision 2 is ~~$100~~ $200 per year. Revenue from the fees must be credited to the environmental fund and is exempt from section 16A.1285.

Sec. 36. Minnesota Statutes 2008, section 115.77, subdivision 1, is amended to read:

Subdivision 1. **Fees ~~established~~.** The ~~following fees are established for the purposes indicated:~~ agency shall collect fees in amounts necessary, but no greater than the amounts necessary, to cover the reasonable costs of reviewing applications and issuing certifications.

~~(1) application for examination, $32;~~

~~(2) issuance of certificate, $23;~~

~~(3) reexamination resulting from failure to pass an examination, $32;~~

~~(4) renewal of certificate, $23;~~

~~(5) replacement certificate, $10; and~~

~~(6) reinstatement or reciprocity certificate, $40.~~

Sec. 37. Minnesota Statutes 2008, section 115A.1314, subdivision 2, is amended to read:

Subd. 2. **Creation of account; appropriations.** (a) The electronic waste account is established in the environmental fund. The commissioner of revenue must deposit receipts from the fee established in subdivision 1 in the account. Any interest earned on the account must be credited to the account. Money from other sources may be credited to the account. Beginning in the second program year and continuing each program year thereafter, as of the last day of each program year, the commissioner ~~of revenue~~ shall determine the total amount of the variable fees that were collected. ~~By July 15, 2009, and each July 15 thereafter, the commissioner of the Pollution Control Agency shall inform the commissioner of revenue of the amount necessary to operate the program in the new program year.~~ To the extent that the total fees collected by the commissioner ~~of revenue~~ in connection with this section exceed the amount the commissioner ~~of the Pollution Control Agency~~ determines necessary to operate the program for the new program year, the commissioner ~~of revenue~~ shall refund on a pro rata basis, to all manufacturers who paid any fees for the previous program year, the amount of fees collected by the commissioner ~~of revenue~~ in excess of the amount necessary to operate the program for the new program year. No individual refund is required of amounts of $100 or less for a fiscal year. Manufacturers who report collections less than 50 percent of their obligation for the previous program year are not eligible for a refund. ~~Amounts not refunded pursuant to this paragraph shall remain in the account. The commissioner of revenue shall issue refunds by August 10. In lieu of issuing a refund, the commissioner of revenue may grant credit against a manufacturer's variable fee due by September 1.~~

(b) Until June 30, ~~2009~~ <u>2011</u>, money in the account is annually appropriated to the Pollution Control Agency:

(1) for the purpose of implementing sections 115A.1312 to 115A.1330, including transfer to the commissioner of revenue to carry out the department's duties under section 115A.1320, subdivision 2, and transfer to the commissioner of administration for responsibilities under section 115A.1324; and

(2) to the commissioner of the Pollution Control Agency to be distributed on a competitive basis through contracts with counties outside the 11-county metropolitan area, as defined in paragraph (c), and with private entities that collect for recycling covered electronic devices in counties outside the 11-county metropolitan area, where the collection and recycling is consistent with the respective county's solid waste plan, for

the purpose of carrying out the activities under sections 115A.1312 to 115A.1330. In awarding competitive grants under this clause, the commissioner must give preference to counties and private entities that are working cooperatively with manufacturers to help them meet their recycling obligations under section 115A.1318, subdivision 1.

(c) The 11-county metropolitan area consists of the counties of Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Sherburne, Washington, and Wright.

Sec. 38. Minnesota Statutes 2008, section 115A.557, subdivision 3, is amended to read:

Subd. 3. **Eligibility to receive money.** (a) To be eligible to receive money distributed by the commissioner under this section, a county shall within one year of October 4, 1989:

(1) create a separate account in its general fund to credit the money; and

(2) set up accounting procedures to ensure that money in the separate account is spent only for the purposes in subdivision 2.

(b) In each following year, each county shall also:

(1) have in place an approved solid waste management plan or master plan including a recycling implementation strategy under section 115A.551, subdivision 7, and a household hazardous waste management plan under section 115A.96, subdivision 6, by the dates specified in those provisions;

(2) submit a report by April 1 of each year to the commissioner detailing for the previous calendar year:

(i) how the money was spent including, but not limited to, specific information on the number of employees performing SCORE planning, oversight, and administration; the percentage of those employees' total work time allocated to SCORE planning, oversight, and administration; the specific duties and responsibilities of those employees; and the amount of staff salary for these SCORE duties and responsibilities of the employees; and

(ii) the resulting gains achieved in solid waste management practices; and

(3) provide evidence to the commissioner that local revenue equal to 25 percent of the money sought for distribution under this section will be spent for the purposes in subdivision 2.

(c) The commissioner shall withhold all or part of the funds to be distributed to a county under this section if the county fails to comply with this subdivision and subdivision 2.

<u>(d) The requirements for the report specified in paragraph (b), clause (2), that is due April 1, 2010, shall be abbreviated in scope. The information collected shall be sufficient</u>

for the commissioner to determine that counties have complied with the requirement of this subdivision.

Sec. 39. **[115A.559] COMPOSTING COMPETITIVE GRANT PROGRAM.**

Subdivision 1. **Grant program established.** The commissioner shall make competitive grants to political subdivisions to increase composting, reduce the amount of organic wastes entering disposal facilities, and reduce the costs associated with hauling waste by locating the composting site as close as possible to the site where the waste is generated. To achieve the purpose of the grant program, the commissioner shall actively recruit potential applicants beyond traditional solid waste professionals and organizations, such as soil and water conservation districts and schools. Each grant must include an educational component.

Subd. 2. **Application.** (a) The commissioner must develop forms and procedures for soliciting and reviewing applications for grants under this section.

(b) The determination of whether to make a grant under this section is within the discretion of the commissioner, subject to subdivision 4. The commissioner's decisions are not subject to judicial review, except for abuse of discretion.

Subd. 3. **Priorities; eligible projects.** (a) If applications for grants exceed the available appropriations, grants must be made for projects that, in the commissioner's judgment, provide the highest return in public benefits.

(b) To be eligible to receive a grant, a project must:

(1) be locally administered;

(2) have measured outcomes; and

(3) include at least one of the following elements:

(i) the development of erosion control methods that use compost;

(ii) activities to encourage on-site composting by homeowners; or

(iii) activities to encourage composting by schools or public institutions.

Subd. 4. **Cancellation of grant.** If a grant is awarded under this section and funds are not encumbered for the grant within four years after the award date, the grant must be canceled.

Sec. 40. Minnesota Statutes 2008, section 115A.931, is amended to read:

115A.931 YARD WASTE PROHIBITION.

(a) Except as authorized by the agency, in the metropolitan area after January 1, 1990, and outside the metropolitan area after January 1, 1992, a person may not place yard waste:

(1) in mixed municipal solid waste;

(2) in a disposal facility; or

(3) in a resource recovery facility except for the purposes of reuse, composting, or cocomposting.

(b) [Renumbered 115A.03, subd. 38]

(c) On or after January 1, 2010, a person may not place yard waste or source-separated compostable materials generated in a metropolitan county in a plastic bag delivered to a transfer station or compost facility unless the bag meets all the specifications in ASTM Standard Specification for Compostable Plastics (D6400). For purposes of this paragraph, "metropolitan county" has the meaning given in section 473.121, subdivision 4, and "ASTM" has the meaning given in section 296A.01, subdivision 6.

(d) A person who immediately empties a plastic bag containing yard waste or source-separated compostable materials delivered to a transfer station or compost facility and removes the plastic bag from the transfer station or compost facility is exempt from paragraph (c).

(e) Residents of a city of the first class that currently contracts for the collection of yard waste are exempt from paragraph (c) until January 1, 2013, if, by that date, the city implements a citywide source-separated compostable materials collection program using durable carts.

EFFECTIVE DATE. This section is effective January 1, 2010.

Sec. 41. Minnesota Statutes 2008, section 116.07, subdivision 4d, is amended to read:

Subd. 4d. **Permit fees.** (a) The agency ~~may~~ shall collect permit fees in amounts ~~not greater than those~~ necessary, but no greater than the amounts necessary, to cover the reasonable costs of developing, reviewing, and acting upon applications for agency permits ~~and implementing and enforcing the conditions of the permits pursuant to agency rules~~. Permit fees shall not include the costs of litigation~~. The fee schedule must reflect reasonable and routine direct and indirect costs associated with permitting~~, implementation, and enforcement. The agency may impose an additional enforcement fee to be collected for a period of up to two years to cover the reasonable costs of implementing and enforcing the conditions of a permit under the rules of the agency. Any money collected under this paragraph shall be deposited in the appropriate account in the environmental fund.

(b) Notwithstanding paragraph (a), the agency shall collect an annual fee from the owner or operator of all stationary sources, emission facilities, emissions units, air contaminant treatment facilities, treatment facilities, potential air contaminant storage facilities, or storage facilities subject to the requirement to obtain a permit under subchapter V of the federal Clean Air Act, United States Code, title 42, section 7401 et seq., or section 116.081. The annual fee shall be used to pay for all direct and indirect reasonable costs, including attorney general costs, required to develop and administer the permit program requirements of subchapter V of the federal Clean Air Act, United States Code, title 42, section 7401 et seq., and sections of this chapter and the rules adopted under this chapter related to air contamination and noise. Those costs include the reasonable costs of reviewing and acting upon an application for a permit; implementing and enforcing statutes, rules, and the terms and conditions of a permit; emissions, ambient, and deposition monitoring; preparing generally applicable regulations; responding to federal guidance; modeling, analyses, and demonstrations; preparing inventories and tracking emissions; and providing information to the public about these activities.

(c) The agency shall set fees that:

(1) will result in the collection, in the aggregate, from the sources listed in paragraph (b), of an amount not less than $25 per ton of each volatile organic compound; pollutant regulated under United States Code, title 42, section 7411 or 7412 (section 111 or 112 of the federal Clean Air Act); and each pollutant, except carbon monoxide, for which a national primary ambient air quality standard has been promulgated;

(2) may result in the collection, in the aggregate, from the sources listed in paragraph (b), of an amount not less than $25 per ton of each pollutant not listed in clause (1) that is regulated under this chapter or air quality rules adopted under this chapter; and

(3) shall collect, in the aggregate, from the sources listed in paragraph (b), the amount needed to match grant funds received by the state under United States Code, title 42, section 7405 (section 105 of the federal Clean Air Act).

The agency must not include in the calculation of the aggregate amount to be collected under clauses (1) and (2) any amount in excess of 4,000 tons per year of each air pollutant from a source. The increase in air permit fees to match federal grant funds shall be a surcharge on existing fees. The commissioner may not collect the surcharge after the grant funds become unavailable. In addition, the commissioner shall use nonfee funds to the extent practical to match the grant funds so that the fee surcharge is minimized.

(d) To cover the reasonable costs described in paragraph (b), the agency shall provide in the rules promulgated under paragraph (c) for an increase in the fee collected in each year by the percentage, if any, by which the Consumer Price Index for the most recent calendar year ending before the beginning of the year the fee is collected exceeds the Consumer Price Index for the calendar year 1989. For purposes of this paragraph the Consumer Price Index for any calendar year is the average of the Consumer Price Index for all-urban consumers published by the United States Department of Labor, as of the close of the 12-month period ending on August 31 of each calendar year. The revision of the Consumer Price Index that is most consistent with the Consumer Price Index for calendar year 1989 shall be used.

(e) Any money collected under paragraphs (b) to (d) must be deposited in the environmental fund and must be used solely for the activities listed in paragraph (b).

(f) Persons who wish to construct or expand a facility may offer to reimburse the agency for the costs of staff overtime or consultant services needed to expedite permit review. The reimbursement shall be in addition to fees imposed by law. When the agency determines that it needs additional resources to review the permit application in an expedited manner, and that expediting the review would not disrupt permitting program priorities, the agency may accept the reimbursement. Reimbursements accepted by the agency are appropriated to the agency for the purpose of reviewing the permit application. Reimbursement by a permit applicant shall precede and not be contingent upon issuance of a permit and shall not affect the agency's decision on whether to issue or deny a permit, what conditions are included in a permit, or the application of state and federal statutes and rules governing permit determinations.

~~(g) The fees under this subdivision are exempt from section 16A.1285.~~

Sec. 42. Minnesota Statutes 2008, section 116.41, subdivision 2, is amended to read:

Subd. 2. **Training and certification programs.** The agency shall develop standards of competence for persons operating and inspecting various classes of disposal facilities. The agency shall conduct training programs for persons operating facilities for the disposal of waste and for inspectors of such facilities, and ~~may~~ <u>shall</u> charge such fees as are necessary to cover the actual costs of the training programs. All fees received shall be paid into the state treasury and credited to the Pollution Control Agency training account and are appropriated to the agency to pay expenses relating to the training of disposal facility personnel.

The agency shall require operators and inspectors of such facilities to obtain from the agency a certificate of competence. The agency shall conduct examinations to test the competence of applicants for certification, and shall require that certificates be renewed at reasonable intervals. The agency may charge such fees as are necessary to cover the actual costs of receiving and processing applications, conducting examinations, and issuing and renewing certificates. Certificates shall not be required for a private individual for land-spreading and associated interim and temporary storage of sewage sludge on property owned or farmed by that individual.

Sec. 43. **[116.9401] DEFINITIONS.**

(a) For the purposes of sections 116.9401 to 116.9408, the following terms have the meanings given them.

(b) "Agency" means the Pollution Control Agency.

(c) "Alternative" means a substitute process, product, material, chemical, strategy, or combination of these that serves a functionally equivalent purpose to a chemical in a children's product.

(d) "Chemical" means a substance with a distinct molecular composition or a group of structurally related substances and includes the breakdown products of the substance or substances that form through decomposition, degradation, or metabolism.

(e) "Chemical of high concern" means a chemical identified on the basis of credible scientific evidence by a governmental entity or the United Nations' World Health Organization as being known or suspected with a high degree of probability to:

(1) harm the normal development of a fetus or child or cause other developmental toxicity;

(2) cause cancer, genetic damage, or reproductive harm;

(3) disrupt the endocrine or hormone system;

(4) damage the nervous system, immune system, or organs, or cause other systemic toxicity;

(5) be persistent, bioaccumulative, and toxic; or

(6) be very persistent and very bioaccumulative.

(f) "Child" means a person under 12 years of age.

(g) "Children's product" means a consumer product intended for use by children, such as baby products, toys, car seats, personal care products, and clothing.

(h) "Commissioner" means the commissioner of the Pollution Control Agency.

(i) "Department" means the Department of Health.

(j) "Distributor" means a person who sells consumer products to retail establishments on a wholesale basis.

(k) "Green chemistry" means an approach to designing and manufacturing products in ways that minimize the use and generation of toxic substances.

(l) "Manufacturer" means any person who manufactures a final consumer product sold at retail or whose brand name is affixed to the consumer product. In the case of a consumer product imported into the United States, manufacturer includes the importer or domestic distributor of the consumer product if the person who manufactured or assembled the consumer product or whose brand name is affixed to the consumer product does not have a presence in the United States.

(m) "Priority chemical" means a chemical identified by the commissioner as a chemical of high concern that is contained in a children's product offered for sale in Minnesota and meets the criteria in section 116.9403.

(n) "Safer alternative" means an alternative whose potential to harm human health is less than that of a priority chemical that it could replace.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 44. **[116.9402] IDENTIFICATION OF CHEMICALS OF HIGH CONCERN.**

(a) By July 1, 2010, the department shall, after consultation with the agency, publish in the State Register and on the agency's Internet Web site a list of chemicals of high concern.

(b) The department must periodically review and revise the list of chemicals of high concern at least every three years. The department may add chemicals to the list if the chemical meets one or more of the criteria in section 116.9401, paragraph (e).

(c) The department shall consider, among others, chemicals listed in the following sources for possible inclusion on the list of chemicals of high concern:

(1) chemicals identified as "Group 1 carcinogens" or "Group 2A carcinogens" by the United Nations' World Health Organization, International Agency for Research on Cancer;

(2) chemicals identified as "known to be a human carcinogen" and "reasonably anticipated to be a human carcinogen" by the secretary of the United States Department of Health and Human Services;

(3) chemicals identified as "Group A carcinogens" or "Group B carcinogens" by the United States Environmental Protection Agency;

(4) chemicals identified as reproductive or developmental toxicants by:

(i) the United States Department of Health and Human Services, National Toxicology Program, Center for the Evaluation of Risks to Human Reproduction; and

(ii) the California Environmental Protection Agency, Office of Environmental Health Hazard Assessment, pursuant to the California Health and Safety Code, Safe Drinking Water and Toxic Enforcement Act of 1986, chapter 6.6, section 25249.8;

(5) chemicals identified as known or likely endocrine disruptors through screening or testing conducted in accordance with protocols developed by the United States Environmental Protection Agency pursuant to the federal Food, Drug, and Cosmetic Act, United States Code, title 21, section 346a(p), as amended by the federal Food Quality Protection Act, Public Law 104-170, or the federal Safe Drinking Water Act, United States Code, title 42, section 300j-17;

(6) chemicals listed on the basis of endocrine-disrupting properties in Annex XIV, List of Substances Subject to Authorisation, Regulation (EC) No 1907/2006 of the European Parliament concerning the Registration, Evaluation, Authorisation, and Restriction of Chemicals;

(7) persistent, bioaccumulative, and toxic chemicals identified by:

(i) the state of Washington Department of Ecology in Washington Administrative Code, chapter 173-333; or

(ii) the United States Environmental Protection Agency in Code of Federal Regulations, title 40, part 372; and

(8) a very persistent, very bioaccumulative chemical listed in Annex XIV, List of Substances Subject to Authorisation, Regulation (EC) No 1907/2006 of the European Parliament concerning the Registration, Evaluation, Authorisation, and Restriction of Chemicals.

(d) The department may consider chemicals listed by another state as harmful to human health or the environment for possible inclusion in the list of chemicals of high concern.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 45. **[116.9403] IDENTIFICATION OF PRIORITY CHEMICALS.**

The department, after consultation with the agency, may designate a chemical of high concern as a priority chemical if the department finds that the chemical:

(1) has been identified as a high-production volume chemical by the United States Environmental Protection Agency; and

(2) meets any of the following criteria:

(i) the chemical has been found through biomonitoring to be present in human blood, including umbilical cord blood, breast milk, urine, or other bodily tissues or fluids;

(ii) the chemical has been found through sampling and analysis to be present in household dust, indoor air, drinking water, or elsewhere in the home environment; or

(iii) the chemical has been found through monitoring to be present in fish, wildlife, or the natural environment.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 46. **[116.9404] IDENTIFICATION OF SAFER ALTERNATIVES.**

Subdivision 1. **Department determination.** The department shall determine whether a safer alternative to a priority chemical is available and is a technically feasible replacement for the priority chemical. In making this determination, the department:

(1) must utilize information from current scientific literature, the Interstate Chemicals Clearinghouse, manufacturers of children's products, and other sources it deems appropriate;

(2) may presume that an alternative is a safer alternative if the alternative is not a chemical of high concern; and

(3) may presume that a safer alternative is available if:

(i) the sale of the children's product containing the priority chemical has been prohibited by another state within the United States;

(ii) the children's product containing the priority chemical is an item of apparel or a novelty; or

(iii) the alternative is sold in the United States.

Subd. 2. **Department designation.** (a) If the department determines that a safer alternative is available and is a technically feasible replacement for a priority chemical, the department shall designate that priority chemical a Level 1 priority chemical. If the department determines that current information does not indicate that a safer alternative is available or is a technically feasible replacement for a priority chemical, the department shall designate that chemical a Level 2 priority chemical. By February 1, 2011, the department shall publish a list of Level 1 and Level 2 priority chemicals in the State Register and on the department's Internet Web site and shall update the published list whenever a new priority chemical is designated.

(b) The department shall designate at least five priority chemicals as Level 1 or Level 2 by July 1, 2011, and at least five additional priority chemicals as Level 1 or Level 2 by January 1, 2013.

(c) The department shall, at least every two years:

(1) review the list of chemicals of high concern and determine, which, if any, should be designated Level 1 or Level 2 priority chemicals; and

(2) review the reports submitted by manufacturers under section 116.9405 to determine if any Level 2 priority chemicals should be designated as Level 1 priority chemicals.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 47. **[116.9405] DISCLOSURE OF INFORMATION ON PRIORITY CHEMICALS.**

Subdivision 1. **Reporting of chemical use.** Not later than 180 days after Level 1 and Level 2 priority chemicals are identified under section 116.9404, any person who is a manufacturer or distributor of a children's product for sale in this state that contains a Level 1 or Level 2 priority chemical shall notify the agency of that fact in writing unless the children's product is exempt under section 116.9406. This written notice must identify the product, the number of units sold or distributed for sale in this state or nationally during the previous calendar year, and the priority chemical or chemicals contained in the product.

Subd. 2. **Supplemental information.** The manufacturer or distributor of a children's product that contains a Level 1 or Level 2 priority chemical shall provide the following additional information if requested by the agency:

(1) information on the likelihood that the chemical will be released from the children's product to the environment during the children's product's life cycle and the extent to which users of the children's product are likely to be exposed to the chemical;

(2) additional information regarding the potential for harm to human health from specific uses of the priority chemical; and

(3) an assessment of the availability, cost, feasibility, and performance, including potential for harm to human health of alternatives to the priority chemical and the reason the priority chemical is used in the manufacture of the children's product in lieu of identified alternatives. If an assessment acceptable to the agency is not timely submitted as determined by the agency, the agency may assess a fee on the manufacturer or distributor to cover the costs to prepare an independent report on the availability of safer alternatives by a contractor of the agency's choice.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 48. **[116.9406] APPLICABILITY.**

The requirements of sections 116.9401 to 116.9408 do not apply to:

(1) chemicals in used children's products;

(2) priority chemicals used in the manufacturing process, but that are not present in the final product;

(3) priority chemicals used in agricultural production;

(4) motor vehicles as defined in chapter 168 or their component parts, except that the use of priority chemicals in detachable car seats is not exempt;

(5) priority chemicals generated solely as combustion by-products or that are present in combustible fuels;

(6) retailers, unless that retailer knowingly sells a children's product containing a priority chemical after the effective date of its prohibition, of which that retailer has received prior notification from a manufacturer, distributor, or the state;

(7) pharmaceutical products or biologics;

(8) a medical device as defined in the federal Food, Drug, and Cosmetic Act, United States Code, title 21, section 321(h);

(9) food and food or beverage packaging, except a container containing baby food or infant formula;

(10) consumer electronics products and electronic components, including but not limited to personal computers; audio and video equipment; calculators; digital displays; wireless phones; cameras; game consoles; printers; and handheld electronic and electrical devices used to access interactive software or their associated peripherals; or products that comply with the provisions of directive 2002/95/EC of the European Union, adopted by the European Parliament and Council of the European Union now or hereafter in effect; or

(11) outdoor sport equipment, including snowmobiles as defined in section 84.81, subdivision 3; all-terrain vehicles as defined in section 84.92, subdivision 8; personal watercraft as defined in section 86B.005, subdivision 14a; watercraft as defined in section 86B.005, subdivision 18; and off-highway motorcycles, as defined in section 84.787, subdivision 7, and all attachments and repair parts for all of this equipment.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 49. **[116.9407] DONATIONS TO THE STATE.**

The commissioners of health and pollution control may accept donations, grants, and other funds to carry out the purposes of sections 116.9401 to 116.9408. All such donations, grants, and other funds must be accepted without preconditions regarding the outcomes of the oversight processes set forth in sections 116.9401 to 116.9408.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 50. **[116.9408] PARTICIPATION IN INTERSTATE CHEMICALS CLEARINGHOUSE.**

The agency may participate in an interstate chemicals clearinghouse to promote safer chemicals in consumer products in cooperation with other states, including the classification of chemicals in commerce; organizing and managing available data on chemicals, including information on uses, hazards, and environmental and health concerns; and producing and evaluating information on safer alternatives to specific uses of chemicals of concern.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 51. Minnesota Statutes 2008, section 116C.834, subdivision 1, is amended to read:

Subdivision 1. **Costs.** All costs incurred by the state to carry out its responsibilities under the compact and under sections 116C.833 to 116C.843 shall be paid by generators of low-level radioactive waste in this state through fees assessed by the Pollution Control Agency. Fees may be reasonably assessed on the basis of volume or degree of hazard of the waste produced by a generator. Costs for which fees may be assessed include, but are not limited to:

(1) the state contribution required to join the compact;

(2) the expenses of the commission member and state agency costs incurred to support the work of the Interstate Commission; and

(3) regulatory costs.

~~The fees are exempt from section 16A.1285.~~

Sec. 52. Minnesota Statutes 2008, section 116D.045, is amended to read:

116D.045 ENVIRONMENTAL ~~IMPACT STATEMENTS;~~ REVIEW COSTS.

Subdivision 1. **Assessment.** (a) The board shall by rule adopt procedures to assess the proposer of a specific action for reasonable costs of preparing and distributing an environmental impact statement on that action required pursuant to section 116D.04. ~~Such~~ The costs shall be determined by the responsible governmental unit pursuant to the rules promulgated by the board.

(b) A responsible government unit shall assess the proposer of a specific action for the reasonable costs of preparing and distributing an environmental assessment worksheet on that action required under section 116D.04 in accordance with Minnesota Rules, parts 4410.6100 and 4410.6200, except that a local unit of government is exempt from paying the equivalent of the first ten hours of the assessed reasonable costs of preparing and distributing the environmental assessment worksheet. This paragraph is not subject to the rulemaking provisions of chapter 14 and section 14.386 does not apply.

Subd. 2. **Modification.** In the event of a disagreement between the proposer of the action and the responsible governmental unit over the cost of an environmental impact statement or environmental assessment worksheet, the responsible governmental unit shall consult with the board, which may modify the cost or determine that the cost assessed by the responsible governmental unit is reasonable.

Subd. 3. **Use of assessment.** The responsible governmental unit shall assess the project proposer for reasonable costs in preparing and distributing the environmental impact statement or environmental assessment worksheet and the proposer shall pay the assessed cost to the responsible governmental unit. Money received under this subdivision by a responsible governmental unit may be retained by the unit for the same purposes. Money received by a state agency must be credited to a special account and is appropriated to the agency to cover the assessed costs incurred.

Subd. 4. **Partial cost to be paid.** No responsible governmental unit shall commence the preparation of an environmental impact statement or environmental assessment worksheet until at least one-half of the assessed cost of the environmental impact statement or environmental assessment worksheet is paid pursuant to subdivision 3. Other laws notwithstanding, no state agency may issue any permits for the construction or operation of a project for which an environmental impact statement or environmental assessment worksheet is prepared until the assessed cost for the environmental impact statement or environmental assessment worksheet has been paid in full.

Sec. 53. **[216H.021] GREENHOUSE GAS EMISSIONS REPORTING.**

Subdivision 1. **Commissioner to establish reporting system and maintain inventory.** In order to measure the progress in meeting the goals of section 216H.02, subdivision 1, and to provide information to develop strategies to achieve those goals, the commissioner of the Pollution Control Agency shall establish a system for reporting and maintaining an inventory of greenhouse gas emissions. The commissioner must consult with the chief information officer of the Office of Enterprise Technology about system design and operation. Greenhouse gas emissions include those emissions described in section 216H.01, subdivision 2.

Subd. 2. **Reporting system design.** (a) The commissioner shall, to the extent practicable, design the system to coordinate with other regional or federal greenhouse gas emissions-reporting and inventory systems. The coordination may, without limitation, include the use of similar forms and reports, the sharing of information, and the use of common facilities, systems, and databases.

(b) The reporting system need not include all sources of emissions nor all amounts of emissions but, at its outset, must include:

(1) all stationary sources and other facilities required to obtain a permit under Title V of the federal Clean Air Act, United States Code, title 42, section 7401 et. seq.; and

(2) facilities whose annual carbon dioxide equivalent emissions, as defined in section 216H.10, subdivision 3, exceed a threshold set by the commissioner at between 10,000 tons and 25,000 tons. The reporting threshold set by the commissioner must be consistent with the goal of accurately tracking progress in attaining greenhouse gas emissions-reduction goals and the need for emissions data to assist in developing greenhouse gas emissions-reduction strategies.

(c) In designing the greenhouse gas emissions reporting system, the commissioner shall consider requiring the reporting of greenhouse gas emissions from transportation fuels and greenhouse gas emissions from natural gas combustion that are not included in reporting from stationary sources. In determining whether to include reporting of these emissions, the commissioner must consider both the goal of accurately tracking progress in attaining greenhouse gas emissions-reduction goals and the need for emissions data to assist in developing greenhouse gas emissions-reduction strategies recommended by the Minnesota Climate Change Advisory Group. If the commissioner decides that transportation fuels and portions of natural gas combustion should not be included in the initial emissions reporting system, the commissioner must report to the chairs and ranking minority members of the senate and house of representatives committees with primary jurisdiction over energy and environmental policy the reasons for that decision and suggestions for steps that should be taken to allow their inclusion in the emissions reporting system in the future.

(d) A facility reporting greenhouse gas emissions under this section must maintain the data used to create the reports for a minimum of five years.

Subd. 3. **Rules.** The commissioner of the Pollution Control Agency may adopt rules for the purposes of this section.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 54. Minnesota Statutes 2008, section 216H.10, subdivision 7, is amended to read:

Subd. 7. **High-GWP greenhouse gas.** "High-GWP greenhouse gas" means hydrofluorocarbons, perfluorocarbons, ~~and~~ sulfur hexafluoride, nitrous trifluoride, and any other gas the agency determines by rule to have a high global warming potential.

Sec. 55. Minnesota Statutes 2008, section 216H.11, is amended to read:

216H.11 HIGH-GWP GREENHOUSE GAS REPORTING.

Subdivision 1. **Gas manufacturers.** Beginning October 1, 2008, and each year thereafter, a manufacturer of a high-GWP greenhouse gas must report to the agency the total amount of each high-GWP greenhouse gas sold to a purchaser in this state during the previous year.

Subd. 2. **Purchases.** Beginning October 1, 2008, and each year thereafter, a person ~~in this state~~ who purchases ~~500~~ 10,000 metric tons or more carbon dioxide equivalent of a high-GWP greenhouse gas for use or retail sale in this state must report to the agency, on a form prescribed by the commissioner, the total amount of each high-GWP greenhouse gas purchased for use or retail sale in this state during the previous year and the purpose for which the gas was used. The commissioner may adopt rules under chapter 14 to establish a different reporting threshold or to adopt specific reporting requirements for commercial or industrial facilities that purchase high-GWP gases for use or retail sale in this state.

Subd. 3. **Acceptance of federal filing.** With the approval of the commissioner, this section may be satisfied by filing with the commissioner a copy of a greenhouse gas emissions report filed with a federal agency or a regional or national greenhouse gas registry, provided that the entity with which the report is filed requires the emissions data to be verified.

Sec. 56. **[325E.046] STANDARDS FOR LABELING PLASTIC BAGS.**

Subdivision 1. **Biodegradable label.** A manufacturer, distributor, or wholesaler may not offer for sale in this state a plastic bag labeled "biodegradable," "degradable," or any form of those terms, or in any way imply that the bag will chemically decompose into innocuous elements in a reasonably short period of time in a landfill, composting, or other terrestrial environment unless a scientifically based standard for biodegradability is developed and the bags are certified as meeting the standard.

Subd. 2. **Compostable label.** A manufacturer, distributor, or wholesaler may not offer for sale in this state a plastic bag labeled "compostable" unless, at the time of sale, the bag meets the ASTM Standard Specification for Compostable Plastics (D6400). Each bag must be labeled to reflect that it meets the standard. For purposes of this subdivision, "ASTM" has the meaning given in section 296A.01, subdivision 6.

Subd. 3. **Enforcement; civil penalty; injunctive relief.** (a) A manufacturer, distributor, or wholesaler who willfully violates this section is subject to a civil penalty of $100 for each violation up to a maximum of $5,000 and may be enjoined from such violations.

(b) The attorney general may bring an action in the name of the state in a court of competent jurisdiction for recovery of civil penalties or for injunctive relief as provided in this subdivision. The attorney general may accept an assurance of discontinuance of acts in violation of this section in the manner provided in section 8.31, subdivision 2b.

EFFECTIVE DATE. This section is effective January 1, 2010.

Sec. 57. **[383B.236] WASTE MANAGEMENT BY HENNEPIN COUNTY.**

The Hennepin County Board of Commissioners may utilize money received from the sale of energy and recovered materials, and placed in the county solid and hazardous waste fund under section 473.811, subdivision 9, for program expenses of the Department of Environmental Services, or the department or office succeeding to the functions of the Department of Environmental Services. This authority shall be in addition to the authority given in section 473.811, subdivision 9.

Sec. 58. Laws 2002, chapter 220, article 8, section 15, is amended to read:

Sec. 15. **INCREASE TO WATER QUALITY PERMIT FEES.**

(a) The pollution control agency shall collect water quality permit application and annual fees that reflect the fees in Minnesota Rules, part 7002.0310, increased to the amounts described in paragraphs (b) to (g).

(b) The application fee for individual permits, general permits, and general industrial stormwater permits is $240.

(c) The annual fees for individual National Pollutant Discharge Elimination System permits for major municipal facilities are as follows:

Design Flow in Million Gallons Per Day Annual Fee 50 and over $175,750 20 to 49.99 $40,350 5 to 19.99 $14,350 Up to 4.99 $5,900

(d) The annual fees for individual National Pollutant Discharge Elimination System permits for major nonmunicipal facilities are as follows:

Design Flow in Million Gallons Per Day Annual Fee 20 to 49.99 $44,200 5 to 19.99 $18,250 Up to 4.99 $8,450

Cooling or mine pit dewatering (any flow) $16,900

(e) The annual fees for individual National Pollutant Discharge Elimination System and State Disposal System permits for nonmajor municipal facilities with design flows greater than 0.100 million gallons per day are $1,450.

(f) The annual fees for general industrial stormwater permits are $280.

(g) The annual fees for general National Pollutant Discharge Elimination System and State Disposal System permits are $345.

~~(h) The application and annual fees are not increased for general construction stormwater permits and sanitary sewer extension permits. The annual fees are not increased for National Pollutant Discharge Elimination System and State Disposal System~~

~~permits regulating municipal nonmajors with facility design flow of 0 to .100, sewage sludge landspreading facilities, and nonmajor nonmunicipal facilities.~~

~~(i)~~ (h) The increased permit fees are effective July 1, 2002. The agency shall adopt amended water quality permit fee rules incorporating the permit fee increases in this subdivision under Minnesota Statutes, section 14.389. The pollution control agency shall begin collecting the increased permit fees on July 1, 2002, even if the rule adoption process has not been initiated or completed. Notwithstanding Minnesota Statutes, section 14.18, subdivision 2, the increased permit fees reflecting the permit fee increases in this section and the rule amendments incorporating those permit fee increases do not require further legislative approval.

Sec. 59. Laws 2007, chapter 57, article 1, section 4, subdivision 2, is amended to read:

Subd. 2. **Land and Mineral Resources Management**	11,747,000	11,272,000

Appropriations by Fund		
General	6,633,000	6,230,000
Natural Resources	3,551,000	3,447,000
Game and Fish	1,363,000	1,395,000
Permanent School	200,000	200,000

$475,000 the first year and $475,000 the second year are for iron ore cooperative research. Of this amount, $200,000 each year is from the minerals management account in the natural resources fund and $275,000 each year is from the general fund. $237,500 the first year and $237,500 the second year are available only as matched by $1 of nonstate money for each $1 of state money. The match may be cash or in-kind.

$86,000 the first year and $86,000 the second year are for minerals cooperative environmental research, of which $43,000 the first year and $43,000 the second year are available only as matched by $1 of nonstate money for each $1 of state money. The match may be cash or in-kind.

$2,800,000 the first year and $2,696,000 the second year are from the minerals management account in the natural resources fund for use as provided in Minnesota Statutes, section 93.2236, paragraph (c).

$200,000 the first year and $200,000 the second year are from the state forest suspense account in the permanent school fund to accelerate land exchanges, land sales, and commercial leasing of school trust lands and to identify, evaluate, and lease construction aggregate located on school trust lands. This appropriation is to be used for securing maximum long-term economic return from the school trust lands consistent with fiduciary responsibilities and sound natural resources conservation and management principles.

$15,000 the first year is for a report by February 1, 2008, to the house and senate committees with jurisdiction over environment and natural resources on proposed minimum legal and conservation standards that could be applied to conservation easements acquired with public money.

$1,201,000 the first year and $701,000 the second year are to support the land records management system. Of this amount, $326,000 the first year and $326,000 the second year are from the game and fish fund and $375,000 the first year and $375,000 the second year are from the natural resources fund. The unexpended balances are available until June 30, 2011. The commissioner must report to the legislative chairs on environmental finance on the outcomes of the land records management support.

$500,000 the first year and $500,000 the second year are for land asset management. This is a onetime appropriation.

Sec. 60. Laws 2008, chapter 363, article 5, section 4, subdivision 7, is amended to read:

Subd. 7. **Fish and Wildlife Management**	123,000	119,000

Appropriations by Fund

General	-0-	(427,000)
Game and Fish	123,000	546,000

$329,000 in 2009 is a reduction for fish and wildlife management.

$46,000 in 2009 is a reduction in the appropriation for the Minnesota Shooting Sports Education Center.

$52,000 in 2009 is a reduction for licensing.

$123,000 in 2008 and $246,000 in 2009 are from the game and fish fund to implement fish virus surveillance, prepare infrastructure to handle possible outbreaks, and implement control procedures for highest risk waters and fish production operations. This is a onetime appropriation.

Notwithstanding Minnesota Statutes, section 297A.94, paragraph (e), $300,000 in 2009 is from the second year appropriation in Laws 2007, chapter 57, article 1, section 4, subdivision 7, from the heritage enhancement account in the game and fish fund to study, predesign, and design a shooting sports ~~facilities at the Vermillion Highlands Wildlife Management Area authorized by Laws 2007,~~

~~chapter 57, article 1, section 168~~ facility in the seven-county metropolitan area. This is available onetime only and is available until expended.

$300,000 in 2009 is appropriated from the game and fish fund for only activities that improve, enhance, or protect fish and wildlife resources. This is a onetime appropriation.

Sec. 61. **WORKING GROUP ON SCORE REPORTING.**

By July 1, 2009, the commissioner of the Pollution Control Agency shall convene a working group on SCORE reporting to review the requirements for counties to report to the agency on activities funded under Minnesota Statutes, section 115A.557. The commissioner shall appoint to the working group representatives from, at a minimum, the following organizations: the Association of Minnesota Counties, the Solid Waste Administrators Association, and the Solid Waste Management Coordinating Board. The working group shall make recommendations to amend the reporting requirements under Minnesota Statutes, section 115A.557, subdivision 3, in ways that reduce the resources counties employ to collect the data reported, while ensuring that estimation methods used to report data are consistent across counties and that the data reported are accurate and useful as a guide to solid waste management policy makers. The working group shall also make recommendations regarding the feasibility and desirability of multicounty reporting of the data. The working group's recommendations must be presented in a report submitted to the chairs and ranking minority members of the senate and house of representatives committees with primary jurisdiction over solid waste policy no later than December 15, 2009.

Sec. 62. **COMPOST REPORT.**

By December 15, 2011, the commissioner of the Pollution Control Agency shall report to the legislative committees with jurisdiction over environment and natural resources policy on:

(1) the mixed municipal solid waste diversion rates accomplished by the grant program under Minnesota Statutes, section 115A.559;

(2) participants in the grant program and the programs developed with grant funds; and

(3) the potential for new permanent programs based on results of projects funded with grants issued under Minnesota Statutes, section 115A.559.

Sec. 63. **PRIORITY CHEMICAL REPORTS.**

(a) By January 15, 2010, the commissioner of health, in consultation with the Pollution Control Agency, shall report to the chairs and ranking minority members of the senate and house of representatives committees with primary jurisdiction over environment and natural resources policy, commerce, and public health regarding the progress on implementing Minnesota Statutes, sections 116.9401 to 116.9408.

(b) By January 15, 2010, the commissioner of the Pollution Control Agency shall report to the chairs and ranking minority members of the senate and house of representatives committees with primary jurisdiction over environment and natural resources policy, commerce, and public health on the agency's plans to implement Minnesota Statutes, section 116.9405, and assess mechanisms to reduce and phase out the use of priority chemicals in children's products, including potential funding mechanisms. The report must include information on the progress of other states in reducing toxic chemicals in children's products and recommend ways to promote product design that incorporates the principles of green chemistry and life cycle analysis in order to protect public health and the environment. In developing the report, the agency may consult outside experts and groups working to reduce toxic chemicals in children's products in Minnesota and nationally.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 64. **ENVIRONMENTAL REVIEW STREAMLINING REPORT.**

By January 15, 2010, the commissioner of the Pollution Control Agency must submit a report to the environment and natural resources policy and finance committees of the house of representatives and senate on options to streamline the environmental review process under chapter 116D. In preparing the report, the commissioner must consult with state agencies, local government units, and business, agriculture, and environmental advocacy organizations with an interest in the environmental review process. The report must include options that will reduce the time required to complete environmental review and the cost of the process to responsible governmental units and project proposers while maintaining air, land, and water quality standards.

Sec. 65. **COMPENSATION OF GOVERNOR'S STAFF.**

For fiscal years 2010 and 2011, the Department of Natural Resources, the Pollution Control Agency, and the Board of Water and Soil Resources may not use funds appropriated in this act or funds from any statutory or open appropriation to directly or indirectly pay for the compensation costs of staff in the office of the governor.

Sec. 66. **FISH CONSUMPTION ADVISORIES.**

The commissioner of natural resources, in cooperation with the commissioner of health, shall ensure that fish consumption advisories are displayed in at least four different languages, one of which must be English, to fairly represent the population of the state.

Sec. 67. **CARBON SEQUESTRATION FORESTRY REPORT.**

The Minnesota Forest Resources Council shall review the Minnesota Climate Change Advisory Group's recommendation to increase carbon sequestration in forests by planting 1,000,000 acres of trees and shall submit a report to the chairs of the house of representatives and senate committees with jurisdiction over energy and energy finance, environment and natural resources, and environment and natural resources finance; the governor; and the commissioner of natural resources by January 15, 2010. The report shall, at a minimum, include recommendations on implementation and analysis of the number and ownership of acres available for tree planting, the types of native species best suited for planting, the availability of planting stock, and potential costs.

Sec. 68. **REPEALER.**

Laws 2008, chapter 363, article 5, section 30, is repealed.

ARTICLE 2
ENERGY FINANCE

Section 1. **SUMMARY OF APPROPRIATIONS.**

The amounts shown in this section summarize direct appropriations, by fund, made in this article.

		2010		2011		Total
General	$	28,041,000	$	27,041,000	$	55,082,000
Petroleum Tank Cleanup		1,084,000		1,084,000		2,168,000
Workers' Compensation		751,000		751,000		1,502,000
Special Revenue		300,000		300,000		600,000
Total	**$**	**30,176,000**	**$**	**29,176,000**	**$**	**59,352,000**

Sec. 2. **ENERGY FINANCE APPROPRIATIONS.**

The sums shown in the columns marked "Appropriations" are appropriated to the agencies and for the purposes specified in this article. The appropriations are from the general fund, or another named fund, and are available for the fiscal years indicated for each purpose. The figures "2010" and "2011" used in this article mean that the appropriations listed under them are available for the fiscal year ending June 30, 2010, or June 30, 2011, respectively. "The first year" is fiscal year 2010. "The second year" is fiscal year 2011. "The biennium" is fiscal years 2010 and 2011. Appropriations for the fiscal year ending June 30, 2009, are effective the day following final enactment.

	APPROPRIATIONS Available for the Year Ending June 30	
	2010	**2011**

Sec. 3. **DEPARTMENT OF COMMERCE**

Subdivision 1. **Total Appropriation**	**$ 24,743,000**	**$ 23,743,000**

Appropriations by Fund

	2010	2011
General	22,608,000	21,608,000
Petroleum Cleanup	1,084,000	1,084,000
Workers' Compensation	751,000	751,000
Special Revenue	300,000	300,000

The amounts that may be spent for each purpose are specified in the following subdivisions.

Subd. 2. **Financial Institutions**	6,638,000	6,638,000

$1,000 each year is for consumer small loan regulation modifications in article 7. This appropriation is added to the department's base.

Subd. 3. **Petroleum Tank Release Cleanup Board**	1,084,000	1,084,000

This appropriation is from the petroleum tank release cleanup fund. The base funding for this program ends June 30, 2012.

Subd. 4. **Administrative Services**	4,300,000	4,300,000

Subd. 5. **Telecommunications**			1,010,000	1,010,000
Subd. 6. **Market Assurance**			7,421,000	7,421,000
Appropriations by Fund				
General	6,670,000	6,670,000		
Workers' Compensation	751,000	751,000		
Subd. 7. **Office of Energy Security**			3,990,000	2,990,000
Subd. 8. **Telecommunications Access Minnesota**			300,000	300,000

$300,000 the first year and $300,000 the second year are for transfer to the commissioner of human services to supplement the ongoing operational expenses of the Minnesota Commission Serving Deaf and Hard-of-Hearing People. This appropriation is from the telecommunication access Minnesota fund, and is added to the commission's base. This appropriation consolidates, and is not in addition to, appropriation language from Laws 2006, chapter 282, article 11, section 4, and Laws 2007, chapter 57, article 2, section 3, subdivision 7.

Sec. 4. **PUBLIC UTILITIES COMMISSION**	**$**	**5,433,000**	**$**	**5,433,000**

Sec. 5. Minnesota Statutes 2008, section 45.027, subdivision 1, is amended to read:

Subdivision 1. **General powers.** In connection with the duties and responsibilities entrusted to the commissioner, and Laws 1993, chapter 361, section 2, the commissioner of commerce may:

(1) make public or private investigations within or without this state as the commissioner considers necessary to determine whether any person has violated or is about to violate any law, rule, or order related to the duties and responsibilities entrusted to the commissioner;

(2) require or permit any person to file a statement in writing, under oath or otherwise as the commissioner determines, as to all the facts and circumstances concerning the matter being investigated;

(3) hold hearings, upon reasonable notice, in respect to any matter arising out of the duties and responsibilities entrusted to the commissioner;

(4) conduct investigations and hold hearings for the purpose of compiling information related to the duties and responsibilities entrusted to the commissioner;

(5) examine the books, accounts, records, and files of every licensee, and of every person who is engaged in any activity regulated; the commissioner or a designated representative shall have free access during normal business hours to the offices and places of business of the person, and to all books, accounts, papers, records, files, safes, and vaults maintained in the place of business;

(6) publish information which is contained in any order issued by the commissioner; ~~and~~

(7) require any person subject to duties and responsibilities entrusted to the commissioner, to report all sales or transactions that are regulated. The reports must be made within ten days after the commissioner has ordered the report. The report is accessible only to the respondent and other governmental agencies unless otherwise ordered by a court of competent jurisdiction~~.~~; and

(8) assess a licensee the necessary expenses of the investigation performed by the department when an investigation is made by order of the commissioner. The cost of the investigation shall be determined by the commissioner and is based on the salary cost of investigators or assistants and at an average rate per day or fraction thereof so as to provide for the total cost of the investigations. All money collected must be deposited into the general fund.

Sec. 6. Minnesota Statutes 2008, section 60A.14, subdivision 1, is amended to read:

Subdivision 1. **Fees other than examination fees.** In addition to the fees and charges provided for examinations, the following fees must be paid to the commissioner for deposit in the general fund:

(a) by township mutual fire insurance companies;

(1) for filing certificate of incorporation $25 and amendments thereto, $10;

(2) for filing annual statements, $15;

(3) for each annual certificate of authority, $15;

(4) for filing bylaws $25 and amendments thereto, $10;

(b) by other domestic and foreign companies including fraternals and reciprocal exchanges;

(1) for filing an application for an initial certification of authority to be admitted to transact business in this state, $1,500;

(2) for filing certified copy of certificate of articles of incorporation, $100;

(3) for filing annual statement, $225;

(4) for filing certified copy of amendment to certificate or articles of incorporation, $100;

(5) for filing bylaws, $75 or amendments thereto, $75;

(6) for each company's certificate of authority, $575, annually;

(c) the following general fees apply:

(1) for each certificate, including certified copy of certificate of authority, renewal, valuation of life policies, corporate condition or qualification, $25;

(2) for each copy of paper on file in the commissioner's office 50 cents per page, and $2.50 for certifying the same;

(3) for license to procure insurance in unadmitted foreign companies, $575;

(4) for valuing the policies of life insurance companies, one cent per $1,000 of insurance so valued, provided that the fee shall not exceed $13,000 per year for any company. The commissioner may, in lieu of a valuation of the policies of any foreign life insurance company admitted, or applying for admission, to do business in this state, accept a certificate of valuation from the company's own actuary or from the commissioner of insurance of the state or territory in which the company is domiciled;

(5) for receiving and filing certificates of policies by the company's actuary, or by the commissioner of insurance of any other state or territory, $50;

(6) for each appointment of an agent filed with the commissioner, $10;

(7) for filing forms, rates, and compliance certifications under section 60A.315, ~~$90~~ <u>$140</u> per filing, or ~~$75~~ <u>$125</u> per filing when submitted via electronic filing system. Filing fees may be paid on a quarterly basis in response to an invoice. Billing and payment may be made electronically;

(8) for annual renewal of surplus lines insurer license, $300.

The commissioner shall adopt rules to define filings that are subject to a fee.

Sec. 7. Minnesota Statutes 2008, section 216B.62, subdivision 3, is amended to read:

Subd. 3. **Assessing all public utilities.** The department and commission shall quarterly, at least 30 days before the start of each quarter, estimate the total of their expenditures in the performance of their duties relating to ~~(1)~~ public utilities under ~~section~~

~~216A.085,~~ sections 216A.085 and 216B.01 to 216B.67, other than amounts chargeable to public utilities under subdivision 2 ~~or~~, 6, ~~and (2) alternative energy engineering activity under section 216C.261~~ or 7. The remainder~~, except the amount assessed against cooperatives and municipalities for alternative energy engineering activity under subdivision 5,~~ shall be assessed by the commission and department to the several public utilities in proportion to their respective gross operating revenues from retail sales of gas or electric service within the state during the last calendar year. The assessment shall be paid into the state treasury within 30 days after the bill has been transmitted via mail, personal delivery, or electronic service to the several public utilities, which shall constitute notice of the assessment and demand of payment thereof. The total amount which may be assessed to the public utilities, under authority of this subdivision, shall not exceed one-sixth of one percent of the total gross operating revenues of the public utilities during the calendar year from retail sales of gas or electric service within the state. The assessment for the third quarter of each fiscal year shall be adjusted to compensate for the amount by which actual expenditures by the commission and department for the preceding fiscal year were more or less than the estimated expenditures previously assessed.

Sec. 8. Minnesota Statutes 2008, section 216B.62, subdivision 4, is amended to read:

Subd. 4. **Objections.** Within 30 days after the date of the transmittal of any bill as provided by ~~subdivisions~~ subdivision 2 ~~and~~, 3, or 7, the public utility against which the bill has been rendered may file with the commission objections setting out the grounds upon which it is claimed the bill is excessive, erroneous, unlawful or invalid. The commission shall within 60 days hold a hearing and issue an order in accordance with its findings. The order shall be appealable in the same manner as other final orders of the commission.

Sec. 9. Minnesota Statutes 2008, section 216B.62, subdivision 5, is amended to read:

Subd. 5. **Assessing cooperatives and municipals.** The commission and department may charge cooperative electric associations, generation and transmission cooperative electric associations, municipal power agencies, and municipal electric utilities their proportionate share of the expenses incurred in the review and disposition of resource plans, adjudication of service area disputes, proceedings under section 216B.1691, 216B.2425, or 216B.243, and the costs incurred in the adjudication of complaints over service standards, practices, and rates. Cooperative electric associations electing to become subject to rate regulation by the commission pursuant to section 216B.026, subdivision 4, are also subject to this section. Neither a cooperative electric association nor a municipal electric utility is liable for costs and expenses in a calendar year in excess of the limitation on costs that may be assessed against public utilities under subdivision 2. A cooperative electric association, generation and transmission cooperative electric association, municipal power agency, or municipal electric utility may object to and appeal bills of the commission and department as provided in subdivision 4.

~~The department shall assess cooperatives and municipalities for the costs of alternative energy engineering activities under section 216C.261. Each cooperative and municipality shall be assessed in proportion that its gross operating revenues for the sale of gas and electric service within the state for the last calendar year bears to the total of those revenues for all public utilities, cooperatives, and municipalities.~~

Sec. 10. Minnesota Statutes 2008, section 216B.62, is amended by adding a subdivision to read:

Subd. 7. **Assessing all utilities.** The department shall assess public utilities, cooperative electric associations, and municipal utilities for the costs of activities under chapter 216C. The department shall not assess for costs of grants, loans, or other aids or for costs that can be recovered through other assessment authority. Each public utility, cooperative, and municipal utility shall be assessed in the proportion that its gross operating revenue for the sale of gas and electric service within the state for the last calendar year bears to the total of those revenues for all public utilities, cooperatives, and municipalities.

ARTICLE 3
ENERGY DEFINITIONS; GOALS; LEGISLATIVE REVIEW

Section 1. **FEDERAL STIMULUS FUNDING; GOAL OF ENERGY PROGRAMS.**

Subdivision 1. **Definitions.** For the purposes of articles 2 to 6, the following terms have the meaning given them.

(a) "Act" means the American Recovery and Reinvestment Act of 2009.

(b) "Commissioner" means the commissioner of commerce.

(c) "Stimulus funding" or "funding" means funding provided to the state under the act for:

(1) energy efficiency and conservation block grants authorized under subtitle E of title V of the federal Energy Independence and Security Act of 2007, United States Code, title 42, section 17151 et seq.;

(2) the Weatherization Assistance Program authorized under part A of title IV of the federal Energy Conservation and Production Act, United States Code, title 42, section 6861, et seq.; and

(3) the State Energy Program authorized under part D of title III of the federal Energy Policy and Conservation Act, United States Code, title 42, section 6321, et seq.

Subd. 2. **Stimulus funding allocation and use goals.** To the extent allowed by federal law and regulation and consistent with the purposes and principles of the act, stimulus funding must be allocated and expended under articles 2 to 4 for activities that best achieve the following goals:

(1) job retention and creation;

(2) improved energy efficiency and increased renewable energy production capacity;

(3) coordination with and leveraging of other resources to increase the total benefits derived from stimulus funding;

(4) timely implementation of funded activities;

(5) long-term sustainability of benefits derived from stimulus funds;

(6) geographic distribution across the state;

(7) compliance with the disadvantaged business enterprise outreach requirements in Minnesota Statutes, section 16C.16, subdivision 4; and

(8) ensuring that projects are cost-effective and maximize energy savings per dollar of stimulus funding expended.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 2. **LEGISLATIVE REVIEW.**

The Office of Energy Security shall, prior to expending any stimulus funds, submit to the chairs and ranking minority members of the senate and house of representatives committees with primary jurisdiction over energy policy and finance the criteria it proposes to use to rank the programs in articles 2 to 6 in order to allocate stimulus funding among the programs. Comments on the proposed criteria must be submitted to the Office of Energy Security within ten working days of receipt of the criteria. The Office of Energy Security shall consider the comments before establishing the final allocation criteria, and shall submit a report on the amount of stimulus funds allocated to each of the programs under articles 2 to 6 the chairs and ranking minority members of the senate and house of representatives committees with primary jurisdiction over energy policy and finance within ten working days of establishing the stimulus funding allocations.

EFFECTIVE DATE. This section is effective the day following final enactment.

ARTICLE 4
ENERGY EFFICIENCY

Section 1. **WEATHERIZATION.**

Subdivision 1. **Allocation of funds.** All stimulus funds for weatherization must be allocated by the director of the Office of Energy Security, consistent with federal allocation requirements and state allocation formulas in the state weatherization plan. Existing providers of weatherization services must be fully utilized, consistent with effective program delivery, before additional providers of weatherization services are added.

Subd. 2. **Rental units.** Programs that include rental units must be developed, including developing procedures to increase low-income rental unit participation in programs. Priority must be given to serving the largest number of new weatherization clients consistent with federal eligibility requirements.

Subd. 3. **Background check.** Any person offering employment to an individual to conduct weatherization activities under this section shall request a criminal history background check from the superintendent of the Bureau of Criminal Apprehension on that individual. In order for an individual to be eligible for employment, the individual must provide an executed criminal history consent form and a money order or check payable to the Bureau of Criminal Apprehension in an amount equal to the actual cost to the Bureau of Criminal Apprehension of conducting the background check. The superintendent of the Bureau of Criminal Apprehension shall conduct the background check by retrieving criminal history data maintained in the criminal justice information system computers.

Subd. 4. **Employment prohibited.** An individual convicted of a violent crime, as defined in section 611A.08, subdivision 6, or a crime against property may not be hired to conduct weatherization activities under this section.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 2. **LOCAL GOVERNMENT AND SCHOOL DISTRICT BUILDING RENOVATIONS.**

The Office of Energy Security must coordinate the use of stimulus funds with the local public building enhanced energy-efficiency program under Minnesota Statutes, section 216C.43. The Office of Energy Security shall prioritize lighting upgrades, energy recommissioning, and other cost-effective energy projects that are ready for immediate implementation. Stimulus funds may be used for, but are not limited to, grants for a portion of costs incurred by local governments to implement energy efficiency improvements under the local public building enhanced energy-efficiency program. The Office of Energy

Security may require a local government, as a condition of receiving a grant, to commit to implement future activities, including, but not limited to, staff training, that are designed to create additional energy or operating savings to the local government. The Office of Energy Security shall coordinate with the Department of Education to prioritize school district projects for funding under this section, consistent with the principles of statewide geographic distribution of projects, optimized energy savings, and an improved learning environment for schoolchildren.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 3. **STATE GOVERNMENT BUILDINGS.**

The Department of Administration shall develop a plan and procedures to select, fund, and implement projects using stimulus funds. The plan and procedures shall prioritize lighting upgrades, energy-efficient windows, energy recommissioning, and other cost-effective energy projects that are ready for immediate implementation. Funds may be used for, but are not limited to, grants for a portion of costs incurred by state agencies in implementing energy efficiency improvements. The Department of Administration may require a state agency, as a condition of receiving stimulus funds, to commit to implement future activities, including, but not limited to, staff training, that are designed to create additional energy or operating savings to the state agency.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 4. **RESIDENTIAL ENERGY EFFICIENCY PROGRAMS.**

The Office of Energy Security shall coordinate with the Minnesota Housing Finance Agency to use stimulus funds in conjunction with the Minnesota Housing Finance Agency's existing financing programs to improve energy efficiency in dwellings.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 5. **TRAINING AND WORKFORCE DEVELOPMENT.**

(a) The Department of Employment and Economic Development, in consultation with the Office of Energy Security and the Office of Higher Education, shall develop a plan and procedures to:

(1) allocate stimulus funds to training programs to train energy professionals needed to implement the energy programs described in sections 2 to 4, including but not limited to energy auditors, energy managers, and building operators;

(2) coordinate, oversee, and monitor the training and certification of energy professionals; and

(3) allocate stimulus funding for the purposes of clauses (1) and (2) and to training providers.

(b) Training strategies must be designed to meet the wide range of facilities managers and building sizes and types, and must protect the occupational health and safety of workers employed on these energy projects. Technical skills training must include insulation, air sealing, and mechanical work.

(c) The plan must include procedures to:

(1) train individuals already employed in implementing energy programs;

(2) recruit individuals to be trained to perform work in energy projects using stimulus funding who are unemployed, especially targeting communities experiencing disproportionately high rates of unemployment, including, but not limited to, low-income, rural, or tribal communities and individuals in construction trades and crafts; and

(3) ensure that the full capacity of current training providers is utilized, including, but not limited to, opportunities industrialization centers, skilled trades labor unions, tribal colleges or nonprofits working in tribal communities, community action partnerships, utility companies, higher education institutions, and nonprofit organizations with demonstrated expertise in energy efficiency.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 6. **ACCOUNTABILITY AND TRANSPARENCY REPORTING.**

The director of the Office of Energy Security, after compiling information supplied by the Departments of Administration, Education, and Employment and Economic Development, and the Office of Higher Education, shall report on the progress of the programs funded under articles 2 to 6 to the house of representatives and senate committees with jurisdiction over energy finance and workforce development policy by September 1, 2009, January 15, 2010, April 1, 2010, and September 1, 2010. The report must include a complete accounting of all stimulus funds spent on the programs funded under articles 2 to 6, to the extent allowable by state and federal law, including, but not limited to:

(1) the specific projects funded, including the location, building owner, and project manager;

(2) the number of jobs retained or created by each project;

(3) the total calculated and actual energy savings for each project;

(4) the remaining balances in each stimulus fund;

(5) the nonstimulus funding leveraged by stimulus funds for each project;

(6) the training courses provided, including the location and provider of courses offered, the funding source for each training course, and the total number of trainees; and

(7) compliance with prevailing wage, veterans, and disadvantaged business enterprise requirements.

EFFECTIVE DATE. This section is effective the day following final enactment.

ARTICLE 5
RENEWABLE ENERGY

Section 1. **RENEWABLE ENERGY GRANT PROGRAM.**

(a) The commissioner of commerce shall establish a program to award grants to energy projects that meet the following conditions:

(1) the project qualifies as a community-based energy development (C-BED) project, as defined in Minnesota Statutes, section 216B.1612, subdivision 2, paragraph (g);

(2) for wind projects, the project is located in an area where the measured wind resource is Class 4 or above;

(3) the project begins commercial operation after July 1, 2009;

(4) the project does not receive renewable energy payment incentives under Minnesota Statutes, section 216C.41; and

(5) the project meets any other conditions established under the American Recovery and Reinvestment Act of 2009, Public Law 111-5, for use of these funds.

(b) The department shall develop an application form, application review procedures, criteria that projects must meet in order to be considered for a grant award, procedures and guidelines for project monitoring and evaluation, and other administrative procedures necessary to fully implement a grant program.

(c) The maximum grant to a project is $500,000.

(d) No more than two projects in a single county may receive a grant under this section.

(e) No C-BED qualifying owner may financially participate in more than one project that receives a grant under this section.

(f) Grant awards must be geographically dispersed throughout the state.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 2. **RENEWABLE ELECTRIC GENERATION FACILITY REBATES.**

(a) The commissioner shall establish a program to award rebates to qualifying facilities that generate electricity from a renewable source and that:

(1) begin operation after July 1, 2009;

(2) meet all other conditions established under the act; and

(3) provide electricity to:

(i) a homeowner's primary residence; or

(ii) a business, with 20 or fewer full-time employees.

(b) The commissioner shall develop an application form, application review procedures, criteria that projects must meet in order to be considered for a rebate, procedures and guidelines for project monitoring and evaluation, and other administrative procedures necessary to fully implement a rebate program.

(c) The owner of a qualifying facility may apply to the commissioner for a rebate of the lesser of $2,500 or 35 percent of the cost of the electric generation facility, including installation costs.

(d) The commissioner shall award rebates only from funds appropriated for that purpose and to the extent of those appropriations. Grants must be made to applicants in the order of the time of receipt of a complete application.

(e) For purposes of this section:

(1) "Qualifying facility" means an electric generation facility with a capacity of less than 40 kilowatts that generates electricity from a renewable energy source.

(2) "Renewable energy source" means:

(i) solar;

(ii) wind;

(iii) hydroelectric;

(iv) hydrogen, provided that after January 1, 2010, the hydrogen must be generated from the resources listed in this clause; or

(v) biomass, which includes, without limitation, landfill gas; an anaerobic digester system; and the predominantly organic components of wastewater effluent, sludge, or related by-products from publicly owned treatment works, but not including incineration of wastewater sludge to produce electricity.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 3. **SOLAR ENERGY PROJECTS IN PUBLIC BUILDINGS AND SCHOOLS.**

(a) The commissioner shall establish a program to award grants to:

(1) local units of government to pay the costs of installing solar energy projects to generate energy used in public buildings; or

(2) to school districts to pay the costs of installing solar energy projects to generate energy used in K-12 schools.

(b) To be eligible to receive a grant, a project must:

(1) begin operation after July 1, 2009; and

(2) meet all other conditions established under the act.

(c) The commissioner shall develop an application form, application review procedures, criteria that a project must meet in order to be considered for a grant award, procedures and guidelines for project monitoring and evaluation, and other administrative procedures necessary to fully implement a grant program.

(d) In awarding grants, the commissioner must determine, at a minimum, the following:

(1) that the physical condition of the building is sufficient to support the efficient operation of the solar energy project;

(2) that there is no significant possibility that the building may close within ten years, which determination, for a school, must be based on enrollment projections; and

(3) that the projected cumulative energy savings exceed the grant amount within 15 years for a qualifying solar thermal project, and within 20 years for a photovoltaic device.

(e) In awarding grants, the commissioner must also consider:

(1) the reliability and cost-effectiveness of the solar technology to be installed;

(2) the extent to which the proposal effectively coordinates with the conservation and energy efficiency programs offered by the energy utilities serving the building in which the project is located, and with the public building enhanced energy efficiency program under section 216C.43, if applicable;

(3) life cycle energy use reductions and greenhouse gas emissions reductions projected per dollar of installed cost of the project; and

(4) the geographic distribution of grant recipients throughout the state.

(f) For the purposes of this section:

(1) "public building" means any publicly owned building, sports arena, or other facility of a county, city, or other local unit of government; and

(2) "solar energy" means:

(i) a photovoltaic device, as defined in Minnesota Statutes, section 216C.06, subdivision 16; or

(ii) a qualifying thermal project, as defined in Minnesota Statutes, section 216B.2411, subdivision 2, that includes modifications made to a distribution system to distribute heating or cooling throughout a building.

EFFECTIVE DATE. This section is effective the day following final enactment.

ARTICLE 6

MISCELLANEOUS ENERGY PROGRAMS

Section 1. **ENERGY PROGRAMS IN COMMERCIAL AND INDUSTRIAL BUILDINGS.**

(a) The commissioner shall establish a program to award grants to commercial and industrial facilities for the purpose of installing energy-efficiency improvements or creating renewable energy sources to generate electricity or to heat or cool a building. To be eligible to receive a grant, a project must:

(1) begin commercial operation after July 1, 2009; and

(2) meet all other conditions established under the act.

(b) The commissioner shall develop an application form, application review procedures, criteria that a project must meet in order to be considered for a grant award, procedures and guidelines for project monitoring and evaluation, and other administrative procedures necessary to fully implement a grant program.

(c) For the purposes of this section, "renewable energy source" means:

(i) solar;

(ii) wind;

(iii) hydroelectric;

(iv) hydrogen, provided that after January 1, 2010, the hydrogen must be generated from the resources listed in this clause; or

(v) biomass, which includes, without limitation, landfill gas; an anaerobic digester system; and the predominantly organic components of wastewater effluent, sludge, or related by-products from publicly owned treatment works, but not including incineration of wastewater sludge to produce electricity.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 2. **ENERGY EDUCATION, TRAINING, AND DATA SYSTEMS.**

The Office of Energy Security shall establish programs to work with teachers and other energy experts to include energy issues in K-12 curricula; develop training and certification programs for technicians to install and service wind and solar energy systems; and upgrade data systems to enable accurate tracking of energy savings resulting from the conservation improvement program and other state energy programs.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 3. **ENERGY EFFICIENCY GRANTS TO LOCAL GOVERNMENTS.**

The Office of Energy Security shall establish a grant program to award grants to local units of government to enhance energy efficiency and reduce energy use. Energy efficiency and conservation block grant funds may be used for grants for planning, consultant services, energy audits, implementing energy-efficient building codes and inspection services, energy efficiency renovations, street lighting, and the installation of renewable energy devices deployed on public buildings.

EFFECTIVE DATE. This section is effective the day following final enactment.

ARTICLE 7
OTHER ENERGY APPROPRIATIONS

Section 1. **WEATHERIZATION ASSISTANCE PROGRAM APPROPRIATION.**

Of the funds available to the state of Minnesota from the federal stimulus funding for the weatherization assistance program under the American Recovery and Reinvestment Act of 2009, Public Law 111-5, $131,937,411 is appropriated to the commissioner of commerce. The funds must be administered consistent with the requirements in article 4, section 1.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 2. **ENERGY EFFICIENCY AND CONSERVATION BLOCK PROGRAM APPROPRIATION.**

Of the funds available to the state of Minnesota from the federal stimulus funding for the Energy Efficiency and Conservation Block Grant Program under the American Recovery and Reinvestment Act of 2009, Public Law 111-5, $10,644,100, is appropriated to the commissioner of commerce. The appropriation must be distributed as follows:

(1) $6,546,121 is for energy efficiency grants to local government in article 6, section 3; and

(2) $4,097,979, is for local government and school district buildings consistent with the requirements in article 4, section 2.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 3. **STATE ENERGY PROGRAM APPROPRIATION.**

Of the funds available to the state of Minnesota from the federal stimulus funding for the State Energy Program under the American Recovery and Reinvestment Act of

2009, Public Law 111-5, $54,172,000 is appropriated to the commissioner of commerce. Of this amount:

(1) $10,650,000 is for local government and school district buildings consistent with the requirements in article 4, section 2;

(2) $8,000,000 is for state government buildings consistent with the requirements in article 4, section 3;

(3) $12,000,000 is for the residential energy financing program in article 4, section 4;

(4) $12,000,000 is for renewable energy programs, including, but not limited to, the programs specified in article 5;

(6) $5,000,000 is for grants to commercial and industrial facilities for energy efficiency and renewable energy projects in article 6, section 1;

(7) $5,022,000 is for energy education, training, and information and data systems in article 6, section 2; and

(8) $1,500,000 is for a grant to the Board of Trustees of the Minnesota State Colleges and Universities for the International Renewable Energy Technology Institute (IRETI) to be located at Minnesota State University, Mankato, as a public and private partnership to support applied research in renewable energy and energy efficiency to aid in the transfer of technology from Sweden to Minnesota and to support technology commercialization from companies located in Minnesota and throughout the world.

EFFECTIVE DATE. This section is effective the day following final enactment.

ARTICLE 8
DEPARTMENT OF COMMERCE; OTHER REGULATORY PROVISIONS

Section 1. Minnesota Statutes 2008, section 47.58, subdivision 1, is amended to read:

Subdivision 1. **Definitions.** For the purposes of this section, the terms defined in this subdivision have the meanings given them.

(a) "Reverse mortgage loan" means a loan:

(1) Made to a borrower wherein the committed principal amount is paid to the borrower in equal or unequal installments over a period of months or years, interest is assessed, and authorized closing costs are incurred as specified in the loan agreement;

(2) Which is secured by a mortgage on residential property owned solely by the borrower; and

(3) Which is due when the committed principal amount has been fully paid to the borrower, or upon sale of the property securing the loan, or upon the death of the last

surviving borrower, or upon the borrower terminating use of the property as principal residence so as to disqualify the property from the homestead credit given in chapter 290A.

(b) "Lender" means any bank subject to chapter 48, credit union subject to chapter 52, savings bank organized and operated pursuant to chapter 50, savings association subject to chapter 51A, any residential mortgage originator subject to chapter 58, or any insurance company as defined in section 60A.02, subdivision 4. "Lender" also includes any federally chartered bank supervised by the comptroller of the currency or federally chartered savings association supervised by the Federal Home Loan Bank Board or federally chartered credit union supervised by the National Credit Union Administration, to the extent permitted by federal law.

(c) "Borrower" includes any natural person holding an interest in severalty or as joint tenant or tenant-in-common in the property securing a reverse mortgage loan.

(d) "Outstanding loan balance" means the current net amount of money owed by the borrower to the lender whether or not that sum is suspended pursuant to the terms of the reverse mortgage loan agreement or is immediately due and payable. The outstanding loan balance is calculated by adding the current totals of the items described in clauses (1) to (5) and subtracting the current totals of the item described in clause (6):

(1) The sum of all payments made by the lender which are necessary to clear the property securing the loan of any outstanding mortgage encumbrance or mechanics or material supplier's lien.

(2) The total disbursements made by the lender to date pursuant to the loan agreement as formulated in accordance with subdivision 3.

(3) All taxes, assessments, insurance premiums and other similar charges paid to date by the lender pursuant to subdivision 6, which charges were not reimbursed by the borrower within 60 days.

(4) All actual closing costs which the borrower has deferred, if a deferral provision is contained in the loan agreement as authorized by subdivision 7.

(5) The total accrued interest to date, as authorized by subdivision 5.

(6) All payments made by the borrower pursuant to subdivision 4.

(e) "Actual closing costs" mean reasonable charges or sums ordinarily paid at the time of closing for the following, whether or not retained by the lender:

(1) Any insurance premiums on policies covering the mortgaged property including but not limited to premiums for title insurance, fire and extended coverage insurance, flood insurance, and private mortgage insurance.

(2) Abstracting, title examination and search, and examination of public records related to the mortgaged property.

(3) The preparation and recording of any or all documents required by law or custom for closing a reverse mortgage loan agreement.

(4) Appraisal and survey of real property securing a reverse mortgage loan.

(5) A single service charge, which service charge shall include any consideration, not otherwise specified in this section as an "actual closing cost," paid by the borrower to the lender for or in relation to the acquisition, making, refinancing or modification of a reverse mortgage loan, and shall also include any consideration received by the lender for making a commitment for a reverse mortgage loan, whether or not an actual loan follows the commitment. The service charge shall not exceed one percent of the bona fide committed principal amount of the reverse mortgage loan.

(6) Charges and fees necessary for or related to the transfer of real property securing a reverse mortgage loan or the closing of a reverse mortgage loan agreement paid by the borrower and received by any party other than the lender.

Sec. 2. Minnesota Statutes 2008, section 47.60, subdivision 1, is amended to read:

Subdivision 1. **Definitions.** For purposes of this section, the terms defined have the meanings given them:

(a) "Consumer small loan" is a loan transaction in which cash is advanced to a borrower for the borrower's own personal, family, or household purpose. A consumer small loan is a short-term, unsecured loan to be repaid in a single installment. The cash advance of a consumer small loan is equal to or less than $350. A consumer small loan includes an indebtedness evidenced by but not limited to a promissory note or agreement to defer the presentation of a personal check for a fee.

(b) "Consumer small loan lender" is a financial institution as defined in section 47.59 or a ~~person~~ business entity registered with the commissioner and engaged in the business of making consumer small loans.

Sec. 3. Minnesota Statutes 2008, section 47.60, subdivision 3, is amended to read:

Subd. 3. **Filing.** Before a ~~person~~ business entity other than a financial institution as defined by section 47.59 engages in the business of making consumer small loans to Minnesota residents, the ~~person~~ business entity shall file with the commissioner as a consumer small loan lender. The filing must be on a form prescribed by the commissioner together with a fee of $250 for each place of business and contain the following information in addition to the information required by the commissioner:

(1) evidence that the filer has available for the operation of the business at the location specified, liquid assets of at least $50,000; and

(2) a biographical statement on the principal person responsible for the operation and management of the business to be certified.

Revocation of the filing ~~and the right to engage in the business of a consumer small loan lender~~ is the same as in the case of a regulated lender license in section 56.09.

For purposes of this subdivision, "business entity" includes one that does not have a physical location in Minnesota that makes a consumer small loan electronically via the Internet.

Sec. 4. Minnesota Statutes 2008, section 47.60, subdivision 6, is amended to read:

Subd. 6. **Penalties for violation.** A ~~person~~ business entity or the ~~person's~~ entity's members, officers, directors, agents, and employees who violate or participate in the violation of any of the provisions of this section may be liable in the same manner as in section 56.19.

Sec. 5. Minnesota Statutes 2008, section 48.21, is amended to read:

48.21 REAL ESTATE; RESTRICTIONS ON HOLDING.

Subdivision 1. **Specific restrictions.** (a) A bank may purchase, carry as an asset, and convey real estate only:

(1) as provided for in section 47.10;

(2) if acquired through foreclosure of a mortgage given to it in good faith as security for loans made by or money due to it;

(3) if conveyed to it in satisfaction of debts previously contracted in good faith in the course of its dealings;

(4) if acquired by sale on execution or judgment of a court in its favor; or

(5) if reasonably necessary to mitigate or avoid loss on a loan or investment theretofore made.

(b) Real estate acquired under clauses (2) to (5) shall be carried as an asset only in accordance with rules the commissioner prescribes. The maximum period for holding other real estate as an asset shall be five years, provided that upon application to the commissioner, the commissioner may approve the possession of such real estate by a bank for a period longer than five years, but not to exceed an additional five years, if:

(1) the bank has made a good faith attempt to dispose of the real estate within the initial five-year period; or

(2) disposal within the initial five-year period would be detrimental to the bank.

Subd. 2. **Real estate holdings not bank liabilities.** Real estate owned by a bank as a result of actions authorized in clauses (2) to (5) of subdivision 1 and subsequently sold to any buyer on a contract for deed may not be considered creating a liability to a bank for purposes of section 48.24.

Subd. 3. **Real estate holdings not sold; authority to write off.** Notwithstanding any rules of the commissioner to the contrary, if real estate owned by a bank pursuant to clauses (2) to (5) of subdivision 1 is not sold or otherwise disposed of within the maximum period ~~established by rule by the commissioner~~, the bank may write off any remaining balance at a rate not less than one-fifth of that balance each subsequent calendar year.

Sec. 6. Minnesota Statutes 2008, section 58.05, subdivision 3, is amended to read:

Subd. 3. **Certificate of exemption.** A person must obtain a certificate of exemption from the commissioner to qualify as an exempt person under section 58.04, subdivision 1, paragraph (c), a financial institution under clause (2), or by order of the commissioner under clause (6); or under section 58.04, subdivision 2, paragraph (b), as a financial institution under clause ~~(3)~~ (4), or by order of the commissioner under clause ~~(7)~~ (8).

Sec. 7. Minnesota Statutes 2008, section 58.06, subdivision 2, is amended to read:

Subd. 2. **Application contents.** (a) The application must contain the name and complete business address or addresses of the license applicant. The license applicant must be a partnership, limited liability partnership, association, limited liability company, corporation, or other form of business organization, and the application must contain the names and complete business addresses of each partner, member, director, and principal officer. The application must also include a description of the activities of the license applicant, in the detail and for the periods the commissioner may require.

(b) ~~An~~ A residential mortgage originator applicant must submit one of the following:

(1) evidence which shows, to the commissioner's satisfaction, that either the federal Department of Housing and Urban Development or the Federal National Mortgage Association has approved the residential mortgage originator applicant as a mortgagee;

(2) a surety bond or irrevocable letter of credit in the amount of not less than $50,000 in a form approved by the commissioner, issued by an insurance company or bank authorized to do so in this state. The bond or irrevocable letter of credit must be available for the recovery of expenses, fines, and fees levied by the commissioner under this chapter and for losses incurred by borrowers. The bond or letter of credit must be submitted with the license application, and evidence of continued coverage must be submitted with each renewal. Any change in the bond or letter of credit must be submitted for approval by the commissioner within ten days of its execution; or

(3) a copy of the residential mortgage originator applicant's most recent audited financial statement, including balance sheet, statement of income or loss, statements of changes in shareholder equity, and statement of changes in financial position. Financial statements must be as of a date within 12 months of the date of application.

(c) The application must also include all of the following:

(1) an affirmation under oath that the applicant:

(i) is in compliance with the requirements of section 58.125;

(ii) will maintain a perpetual roster of individuals employed as residential mortgage originators, including employees and independent contractors, which includes the ~~date~~ dates that mandatory testing, initial education ~~was~~, and continuing education were completed. In addition, the roster must be made available to the commissioner on demand, within three business days of the commissioner's request;

(iii) will advise the commissioner of any material changes to the information submitted in the most recent application within ten days of the change;

(iv) will advise the commissioner in writing immediately of any bankruptcy petitions filed against or by the applicant or licensee;

(v) will maintain at all times either a net worth, net of intangibles, of at least $250,000 or a surety bond or irrevocable letter of credit in the amount of at least $50,000;

(vi) complies with federal and state tax laws; and

(vii) complies with sections 345.31 to 345.60, the Minnesota unclaimed property law;

(2) information as to the mortgage lending, servicing, or brokering experience of the applicant and persons in control of the applicant;

(3) information as to criminal convictions, excluding traffic violations, of persons in control of the license applicant;

(4) whether a court of competent jurisdiction has found that the applicant or persons in control of the applicant have engaged in conduct evidencing gross negligence, fraud, misrepresentation, or deceit in performing an act for which a license is required under this chapter;

(5) whether the applicant or persons in control of the applicant have been the subject of: an order of suspension or revocation, cease and desist order, or injunctive order, or order barring involvement in an industry or profession issued by this or another state or federal regulatory agency or by the Secretary of Housing and Urban Development within the ten-year period immediately preceding submission of the application; and

(6) other information required by the commissioner.

Sec. 8. Minnesota Statutes 2008, section 58.126, is amended to read:

58.126 EDUCATION AND TESTING REQUIREMENT.

(a) No individual shall engage in residential mortgage origination or make residential mortgage loans, whether as an employee or independent contractor, before the completion of ~~15~~ 20 hours of educational training which has been approved by the commissioner, and covering state and federal laws concerning residential mortgage lending.

(b) In addition to the initial education requirements in paragraph (a), each individual must also complete eight hours of continuing education annually. The education must include:

(1) three hours of federal law and regulations;

(2) two hours of ethics, which must include fraud, consumer protection, and fair lending; and

(3) two hours of standards governing nontraditional mortgage lending.

(c) The commissioner may by rule establish testing requirements for individuals subject to the requirements of paragraphs (a) and (b). An individual must satisfy the testing requirements established by the commissioner before engaging in residential mortgage loan origination or making residential mortgage loans.

EFFECTIVE DATE. This section is effective September 1, 2009, and applies to license applications and renewals made on or after that date.

Sec. 9. Minnesota Statutes 2008, section 58.13, subdivision 1, is amended to read:

Subdivision 1. **Generally.** (a) No person acting as a residential mortgage originator or servicer, including a person required to be licensed under this chapter, and no person exempt from the licensing requirements of this chapter under section 58.04, except as otherwise provided in paragraph (b), shall:

(1) fail to maintain a trust account to hold trust funds received in connection with a residential mortgage loan;

(2) fail to deposit all trust funds into a trust account within three business days of receipt; commingle trust funds with funds belonging to the licensee or exempt person; or use trust account funds for any purpose other than that for which they are received;

(3) unreasonably delay the processing of a residential mortgage loan application, or the closing of a residential mortgage loan. For purposes of this clause, evidence of unreasonable delay includes but is not limited to those factors identified in section 47.206, subdivision 7, clause (d);

(4) fail to disburse funds according to its contractual or statutory obligations;

(5) fail to perform in conformance with its written agreements with borrowers, investors, other licensees, or exempt persons;

(6) charge a fee for a product or service where the product or service is not actually provided, or misrepresent the amount charged by or paid to a third party for a product or service;

(7) fail to comply with sections 345.31 to 345.60, the Minnesota unclaimed property law;

(8) violate any provision of any other applicable state or federal law regulating residential mortgage loans including, without limitation, sections 47.20 to 47.208<u>, and 47.58</u>;

(9) make or cause to be made, directly or indirectly, any false, deceptive, or misleading statement or representation in connection with a residential loan transaction including, without limitation, a false, deceptive, or misleading statement or representation regarding the borrower's ability to qualify for any mortgage product;

(10) conduct residential mortgage loan business under any name other than that under which the license or certificate of exemption was issued;

(11) compensate, whether directly or indirectly, coerce or intimidate an appraiser for the purpose of influencing the independent judgment of the appraiser with respect to the value of real estate that is to be covered by a residential mortgage or is being offered as security according to an application for a residential mortgage loan;

(12) issue any document indicating conditional qualification or conditional approval for a residential mortgage loan, unless the document also clearly indicates that final qualification or approval is not guaranteed, and may be subject to additional review;

(13) make or assist in making any residential mortgage loan with the intent that the loan will not be repaid and that the residential mortgage originator will obtain title to the property through foreclosure;

(14) provide or offer to provide for a borrower, any brokering or lending services under an arrangement with a person other than a licensee or exempt person, provided that a person may rely upon a written representation by the residential mortgage originator that it is in compliance with the licensing requirements of this chapter;

(15) claim to represent a licensee or exempt person, unless the person is an employee of the licensee or exempt person or unless the person has entered into a written agency agreement with the licensee or exempt person;

(16) fail to comply with the record keeping and notification requirements identified in section 58.14 or fail to abide by the affirmations made on the application for licensure;

(17) represent that the licensee or exempt person is acting as the borrower's agent after providing the nonagency disclosure required by section 58.15, unless the disclosure is retracted and the licensee or exempt person complies with all of the requirements of section 58.16;

(18) make, provide, or arrange for a residential mortgage loan that is of a lower investment grade if the borrower's credit score or, if the originator does not utilize credit scoring or if a credit score is unavailable, then comparable underwriting data, indicates that the borrower may qualify for a residential mortgage loan, available from or through the originator, that is of a higher investment grade, unless the borrower is informed that the borrower may qualify for a higher investment grade loan with a lower interest rate and/or lower discount points, and consents in writing to receipt of the lower investment grade loan;

For purposes of this section, "investment grade" refers to a system of categorizing residential mortgage loans in which the loans are: (i) commonly referred to as "prime" or "subprime"; (ii) commonly designated by an alphabetical character with "A" being the highest investment grade; and (iii) are distinguished by interest rate or discount points or both charged to the borrower, which vary according to the degree of perceived risk of default based on factors such as the borrower's credit, including credit score and credit patterns, income and employment history, debt ratio, loan-to-value ratio, and prior bankruptcy or foreclosure;

(19) make, publish, disseminate, circulate, place before the public, or cause to be made, directly or indirectly, any advertisement or marketing materials of any type, or any statement or representation relating to the business of residential mortgage loans that is false, deceptive, or misleading;

(20) advertise loan types or terms that are not available from or through the licensee or exempt person on the date advertised, or on the date specified in the advertisement. For purposes of this clause, advertisement includes, but is not limited to, a list of sample mortgage terms, including interest rates, discount points, and closing costs provided by licensees or exempt persons to a print or electronic medium that presents the information to the public;

(21) use or employ phrases, pictures, return addresses, geographic designations, or other means that create the impression, directly or indirectly, that a licensee or other person is a governmental agency, or is associated with, sponsored by, or in any manner connected to, related to, or endorsed by a governmental agency, if that is not the case;

(22) violate section 82.49, relating to table funding;

(23) make, provide, or arrange for a residential mortgage loan all or a portion of the proceeds of which are used to fully or partially pay off a "special mortgage" unless the borrower has obtained a written certification from an authorized independent loan counselor that the borrower has received counseling on the advisability of the loan transaction. For purposes of this section, "special mortgage" means a residential mortgage loan originated, subsidized, or guaranteed by or through a state, tribal, or local government, or nonprofit organization, that bears one or more of the following nonstandard payment terms which substantially benefit the borrower: (i) payments vary with income; (ii) payments of principal or interest are not required or can be deferred under specified conditions; (iii) principal or interest is forgivable under specified conditions; or (iv) where no interest or an annual interest rate of two percent or less is charged in connection with the loan. For purposes of this section, "authorized independent loan counselor" means a nonprofit, third-party individual or organization providing homebuyer education programs, foreclosure prevention services, mortgage loan counseling, or credit counseling certified by the United States Department of Housing and Urban Development, the Minnesota Home Ownership Center, the Minnesota Mortgage Foreclosure Prevention Association, AARP, or NeighborWorks America;

(24) make, provide, or arrange for a residential mortgage loan without verifying the borrower's reasonable ability to pay the scheduled payments of the following, as applicable: principal; interest; real estate taxes; homeowner's insurance, assessments, and mortgage insurance premiums. For loans in which the interest rate may vary, the reasonable ability to pay shall be determined based on a fully indexed rate and a repayment schedule which achieves full amortization over the life of the loan. For all residential mortgage loans, the borrower's income and financial resources must be verified by tax returns, payroll receipts, bank records, or other similarly reliable documents.

Nothing in this section shall be construed to limit a mortgage originator's or exempt person's ability to rely on criteria other than the borrower's income and financial resources to establish the borrower's reasonable ability to repay the residential mortgage loan, including criteria established by the United States Department of Veterans Affairs or the United States Department of Housing and Urban Development for interest rate reduction refinancing loans or streamline loans, or criteria authorized or promulgated by the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation; however, such other criteria must be verified through reasonably reliable methods and documentation. The mortgage originator's analysis of the borrower's reasonable ability to repay may include, but is not limited to, consideration of the following items, if verified: (1) the borrower's current and expected income; (2) current and expected cash flow; (3) net worth and other financial resources other than the consumer's equity in the dwelling that secures the loan; (4) current financial obligations; (5) property taxes and insurance; (6) assessments on the property; (7) employment status; (8) credit history; (9) debt-to-income ratio; (10) credit scores; (11) tax returns; (12) pension statements; and (13) employment payment records, provided that no mortgage originator shall disregard facts and circumstances that indicate that the financial or other information submitted by the consumer is inaccurate or incomplete. A statement by the borrower to the residential mortgage originator or exempt person of the borrower's income and resources or sole reliance on any single item listed above is not sufficient to establish the existence of the income or resources when verifying the reasonable ability to pay.

(25) engage in "churning." As used in this section, "churning" means knowingly or intentionally making, providing, or arranging for a residential mortgage loan when the new residential mortgage loan does not provide a reasonable, tangible net benefit to the borrower considering all of the circumstances including the terms of both the new and refinanced loans, the cost of the new loan, and the borrower's circumstances;

(26) the first time a residential mortgage originator orally informs a borrower of the anticipated or actual periodic payment amount for a first-lien residential mortgage loan which does not include an amount for payment of property taxes and hazard insurance, the residential mortgage originator must inform the borrower that an additional amount will be due for taxes and insurance and, if known, disclose to the borrower the amount of the anticipated or actual periodic payments for property taxes and hazard insurance. This same oral disclosure must be made each time the residential mortgage originator orally informs the borrower of a different anticipated or actual periodic payment amount change from the amount previously disclosed. A residential mortgage originator need not make this disclosure concerning a refinancing loan if the residential mortgage originator knows that the borrower's existing loan that is anticipated to be refinanced does not have an escrow account; or

(27) make, provide, or arrange for a residential mortgage loan, other than a reverse mortgage pursuant to United States Code, title 15, chapter 41, if the borrower's compliance with any repayment option offered pursuant to the terms of the loan will result in negative amortization during any six-month period.

(b) Paragraph (a), clauses (24) through (27), do not apply to a state or federally chartered bank, savings bank, or credit union, an institution chartered by Congress under the Farm Credit Act, or to a person making, providing, or arranging a residential mortgage loan originated or purchased by a state agency or a tribal or local unit of government. This paragraph supersedes any inconsistent provision of this chapter.

Sec. 10. Minnesota Statutes 2008, section 60A.124, is amended to read:

60A.124 INDEPENDENT AUDIT.

The audit report of the independent certified public accountant that performs the audit of an insurer's annual statement as required under section ~~60A.129~~ 60A.1291, subdivision ~~3~~ 2, ~~paragraph (a),~~ should contain a statement as to whether anything, in connection with their audit, came to their attention that caused them to believe that the insurer failed to adopt and consistently apply the valuation procedure as required by sections 60A.122 and 60A.123.

Sec. 11. **[60A.1291] ANNUAL AUDIT.**

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

(a) "Accountant" and "independent public accountant" mean an independent certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants and in all states in which the accountant or firm is licensed or is required to be licensed to practice. For Canadian and British companies, the term means a Canadian-chartered or British-chartered accountant.

(b) "Audit committee" means a committee or equivalent body established by the board of directors of an entity for the purpose of overseeing the accounting and financial reporting processes of an insurer or group of insurers, and audits of financial statements of the insurer or group of insurers. The audit committee of any entity that controls a group of insurers may be deemed to be the audit committee for one or more of these controlled insurers solely for the purposes of this section at the election of the controlling person under subdivision 15, paragraph (e). If an audit committee is not designated by the insurer, the insurer's entire board of directors constitutes the audit committee.

(c) "Indemnification" means an agreement of indemnity or a release from liability where the intent or effect is to shift or limit in any manner the potential liability of the person or firm for failure to adhere to applicable auditing or professional standards, whether or not resulting in part from knowing of other misrepresentations made by the insurer or its representatives.

(d) "Independent board member" has the same meaning as described in subdivision 15, paragraph (c).

(e) "Internal control over financial reporting" means a process effected by an entity's board of directors, management and other personnel designed to provide reasonable assurance regarding the reliability of the financial statements, for example, those items specified in subdivision 4, paragraphs (a), clauses (2) to (6), (b), and (c), and includes those policies and procedures that:

(1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of assets;

(2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of the financial statements, for example, those items specified in subdivision 4, paragraphs (a), clauses (2) to (6), (b), and (c), and that receipts and expenditures are being made only in accordance with authorizations of management and directors; and

(3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of assets that could have a material effect on the financial statements, for example, those items specified in subdivision 4, paragraphs (a), clauses (2) to (6), (b), and (c).

(f) "SEC" means the United States Securities and Exchange Commission.

(g) "Section 404" means Section 404 of the Sarbanes-Oxley Act of 2002 and the SEC's rules and regulations promulgated under it.

(h) "Section 404 report" means management's report on "internal control over financial reporting" as defined by the SEC and the related attestation report of the independent certified public accountant as described in paragraph (a).

(i) "SOX compliant entity" means an entity that either is required to be compliant with, or voluntarily is compliant with, all of the following provisions of the Sarbanes-Oxley Act of 2002: (i) the preapproval requirements of Section 201 (section 10A(i) of the Securities Exchange Act of 1934); (ii) the audit committee independence requirements of Section 301 (section 10A(m)(3) of the Securities Exchange Act of 1934); and (iii) the internal control over financial reporting requirements of Section 404 (Item 308 of SEC Regulation S-K).

Subd. 2. **Filing requirements.** Every insurance company doing business in this state, including fraternal benefit societies, reciprocal exchanges, service plan corporations licensed pursuant to chapter 62C, and legal service plans licensed pursuant to chapter 62G, unless exempted by the commissioner pursuant to subdivision 9, paragraph (a), or by subdivision 18, shall have an annual audit of the financial activities of the most recently completed calendar year performed by an independent certified public accountant, and shall file the report of this audit with the commissioner on or before June 1 for the immediately preceding year ending December 31. The commissioner may require an insurer to file an audited financial report earlier than June 1 with 90 days' advance notice to the insurer.

Extensions of the June 1 filing date may be granted by the commissioner for 30-day periods upon a showing by the insurer and its independent certified public accountant of the reasons for requesting the extension and a determination by the commissioner of good cause for the extension.

The request for extension must be submitted in writing not less than ten days before the due date in sufficient detail to permit the commissioner to make an informed decision with respect to the requested extension.

If an extension is granted in accordance with this subdivision, a similar extension of 30 days is granted to the filing of management's report of internal control over financial reporting.

Every insurer required to file an annual audited financial report pursuant to this subdivision shall designate a group of individuals as constituting its audit committee. The audit committee of an entity that controls an insurer may be deemed to be the insurer's audit committee for purposes of this subdivision at the election of the controlling person.

Subd. 3. **Exemptions.** Foreign and alien insurers filing audited financial reports in another state under the other state's requirements of audited financial reports which have been found by the commissioner to be substantially similar to these requirements are exempt from this subdivision if a copy of the audited financial report, communication of internal control related matters noted in an audit, accountant's letter of qualifications, and report on significant deficiencies in internal controls, which are filed with the other state, are filed with the commissioner in accordance with the filing dates specified in subdivision 2 (Canadian insurers may submit accountants' reports as filed with the Canadian Dominion Department of Insurance); and a copy of any notification of adverse financial condition report filed with the other state is filed with the commissioner within the time specified in subdivision 11. Foreign or alien insurers required to file management's report of internal control over financial reporting in another state are exempt from filing the report in this state provided the other state has substantially similar reporting requirements and the report is filed with the commissioner of the other state within the time specified. This subdivision does not prohibit or in any way limit the commissioner from ordering, conducting, and performing examinations of insurers under the authority of this chapter.

Subd. 4. **Contents of annual audit; financial report.** (a) The annual audited financial report must report, in conformity with statutory accounting practices required or permitted by the commissioner of insurance of the state of domicile, the financial position of the insurer as of the end of the most recent calendar year and the results of its operations, cash flows, and changes in capital and surplus for the year ended. The annual audited financial report must include:

(1) a report of an independent certified public accountant;

(2) a balance sheet reporting admitted assets, liabilities, capital, and surplus;

(3) a statement of operations;

(4) a statement of cash flows;

(5) a statement of changes in capital and surplus; and

(6) notes to the financial statements.

(b) The notes required under paragraph (a) are those required by the appropriate National Association of Insurance Commissioners (NAIC) annual statement instructions and National Association of Insurance Commissioners Accounting Practices and Procedures Manual and include reconciliation of differences, if any, between the audited statutory financial statements and the annual statement filed under section 60A.13, subdivision 1, with a written description of the nature of these differences.

(c) The financial statements included in the audited financial report must be prepared in a form and using language and groupings substantially the same as the relevant sections of the annual statement of the insurer filed with the commissioner. The financial statement must be comparative, presenting the amounts as of December 31 of the current year and the amounts as of the immediately preceding December 31. In the first year in which an insurer is required to file an audited financial report, the comparative data may be omitted. The amounts may be rounded to the nearest $1,000, and all immaterial amounts may be combined.

Subd. 5. **Designation of independent certified public accountant.** Each insurer required by this section to file an annual audited financial report must notify the commissioner in writing of the name and address of the independent certified public accountant or accounting firm retained to conduct the annual audit within 60 days after becoming subject to the annual audit requirement. The insurer shall obtain from the accountant a letter which states that the accountant is aware of the provisions that relate to accounting and financial matters in the insurance laws and the rules of the insurance regulatory authority of the state of domicile. The letter shall affirm that the accountant will express an opinion on the financial statements in terms of their conformity to the statutory accounting practices prescribed or otherwise permitted by that insurance regulatory authority, specifying the exceptions believed to be appropriate. A copy of the accountant's letter shall be filed with the commissioner.

Subd. 6. **Report of disagreements.** If an accountant who was the accountant for the immediately preceding filed audited financial report is dismissed or resigns, the insurer shall notify the commissioner of this event within five business days. Within ten business days of this notification, the insurer shall also furnish the commissioner with a separate letter stating whether in the 24 months preceding this event there were any disagreements with the former accountant on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which, if not resolved to the satisfaction of the former accountant, would have caused that person to make reference to the subject matter of the disagreement in connection with the opinion on the financial statements. The disagreements required to be reported in response to this subdivision include both those resolved to the former accountant's satisfaction and those not resolved to the former accountant's satisfaction. Disagreements contemplated by this subdivision are those disagreements between personnel of the insurer responsible for presentation of its financial statements and personnel of the accounting firm responsible for rendering its report. The insurer shall also in writing request the former accountant to furnish a letter addressed to the insurer stating whether the accountant agrees with the statements contained in the insurer's letter and, if not, stating the reasons for any disagreement. The insurer shall furnish this responsive letter from the former accountant to the commissioner together with its own.

Subd. 7. **Qualifications of independent certified public accountant.** (a) The commissioner shall not recognize any person or firm as a qualified independent certified public accountant that is not in good standing with the American Institute of Certified Public Accountants and in all states in which the accountant is licensed or is required to be licensed to practice, or for a Canadian or British company, that is not a chartered accountant. Except as otherwise provided, an independent certified public accountant must be recognized as qualified as long as the person conforms to the standards of the person's profession, as contained in the Code of Professional Conduct of the American Institute of Certified Public Accountants and the Code of Professional Conduct of the Minnesota Board of Public Accountancy or similar code and the person is properly licensed in good standing with all required state boards of accountancy.

(b) The lead or coordinating audit partner, having primary responsibility for the audit, may not act in that capacity for more than five consecutive years. The person shall be disqualified from acting in that or a similar capacity for the same company or its insurance subsidiaries or affiliates for a period of five consecutive years. An insurer may make application to the commissioner for relief from this rotation requirement on the basis of unusual circumstances. This application must be made at least 30 days before the end of the calendar year. The commissioner may consider the following factors in determining if the relief should be granted:

(1) number of partners, expertise of the partners, or the number of insurance clients in the currently registered firm;

(2) premium volume of the insurer; or

(3) number of jurisdictions in which the insurer transacts business.

The insurer shall file, with its annual statement filing, the approval for relief from this paragraph with the states that it is licensed in or doing business in and with the NAIC. If the nondomestic state accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic format acceptable to the NAIC.

(c) The commissioner shall not recognize as a qualified independent certified public accountant, nor accept an annual audited financial report, prepared in whole or in part by an accountant who provides to an insurer, contemporaneously with the audit, the following nonaudit services:

(1) bookkeeping or other services related to the accounting records or financial statements of the insurer;

(2) financial information systems design and implementation;

(3) appraisal or valuation services, fairness opinions, or contribution in-kind reports;

(4) actuarially oriented advisory services involving the determination of amounts recorded in the financial statements. The accountant may assist an insurer in understanding the methods, assumptions, and inputs used in the determination of amounts recorded in the financial statement only if it is reasonable to conclude that the services provided will not be subject to audit procedures during an audit of the insurer's financial statements. An accountant's actuary may also issue an actuarial opinion or certification on an insurer's reserves if the following conditions have been met:

(i) neither the accountant nor the accountant's actuary has performed any management functions or made any management decisions;

(ii) the insurer has competent personnel, or engages a third-party actuary, to estimate the loss reserves for which management takes responsibility; and

(iii) the accountant's actuary tests the reasonableness of the reserves after the insurer's management has determined the amount of the loss reserves;

(5) internal audit outsourcing services;

(6) management functions or human resources;

(7) broker or dealer, investment adviser, or investment banking services;

(8) legal services or expert services unrelated to the audit; and

(9) any other services that the commissioner determines, by rule, are impermissible.

(d) The commissioner shall not recognize as a qualified independent certified public accountant, nor accept any audited financial report, prepared in whole or in part by any natural person who has been convicted of fraud, bribery, a violation of the Racketeer Influenced and Corrupt Organizations Act, United States Code, title 18, sections 1961 to 1968, or any dishonest conduct or practices under federal or state law, has been found to have violated the insurance laws of this state with respect to any previous reports submitted under this section, or has demonstrated a pattern or practice of failing to detect or disclose material information in previous reports filed under the provisions of this section.

(e) The commissioner, after notice and hearing under chapter 14, may find that the accountant is not qualified for purposes of expressing an opinion on the financial statements in the annual audited financial report. The commissioner may require the insurer to replace the accountant with another whose relationship with the insurer is qualified within the meaning of this section.

Subd. 8. **Exemptions to qualifications of certified public accountant.** (a) Insurers having direct written and assumed premiums of less than $100,000,000 in any calendar year may request an exemption from subdivision 7, paragraph (c). The insurer shall file with the commissioner a written statement discussing the reasons why the insurer should be exempt from these provisions. If the commissioner finds, upon review of this statement, that compliance with this section would constitute a financial or organizational hardship upon the insurer, an exemption may be granted.

(b) A qualified independent certified public accountant who performs the audit may engage in other nonaudit services, including tax services, that are not described in subdivision 7, paragraph (c), only if the activity is approved in advance by the audit committee, in accordance with paragraph (c).

(c) All auditing services and nonaudit services provided to an insurer by the qualified independent certified public accountant of the insurer must be preapproved by the audit committee. The preapproval requirement is waived with respect to nonaudit services if the insurer is a SOX compliant entity or a direct or indirect wholly owned subsidiary of a SOX compliant entity or:

(1) the aggregate amount of all such nonaudit services provided to the insurer constitutes not more than five percent of the total amount of fees paid by the insurer to its qualified independent certified public accountant during the fiscal year in which the nonaudit services are provided;

(2) the services were not recognized by the insurer at the time of the engagement to be nonaudit services; and

(3) the services are promptly brought to the attention of the audit committee and approved before the completion of the audit by the audit committee or by one or more members of the audit committee who are the members of the board of directors to whom authority to grant such approvals has been delegated by the audit committee.

(d) The audit committee may delegate to one or more designated members of the audit committee the authority to grant the preapprovals required by paragraph (c). The decisions of any member to whom this authority is delegated must be presented to the full audit committee at each of its scheduled meetings.

(e) The commissioner shall not recognize an independent certified public accountant as qualified for a particular insurer if a member of the board, president, chief executive officer, controller, chief financial officer, chief accounting officer, or any person serving in an equivalent position for that insurer, was employed by the independent certified public accountant and participated in the audit of that insurer during the one-year period preceding the date that the most current statutory opinion is due. This paragraph applies only to partners and senior managers involved in the audit. An insurer may make application to the commissioner for relief from this paragraph on the basis of unusual circumstances.

(f) The insurer shall file, with its annual statement filing, the approval for relief with the states that it is licensed in or doing business in and the NAIC. If the nondomestic state accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic format acceptable to the NAIC.

Subd. 9. **Consolidated or combined audits.** (a) The commissioner may allow an insurer to file consolidated or combined audited financial statements required by subdivision 2, in lieu of separate annual audited financial statements, where it can be demonstrated that an insurer is part of a group of insurance companies that has a pooling or 100 percent reinsurance agreement which substantially affects the solvency and integrity of the reserves of the insurer and the insurer cedes all of its direct and assumed business to the pool. An affiliated insurance company not meeting these requirements may be included in the consolidated or combined audited financial statements, if the company's total admitted assets are less than five percent of the consolidated group's total admitted assets. If these circumstances exist, then the company may file a written application to file consolidated or combined audited financial statements. This application must be for a specified period.

(b) Upon written application by a domestic insurer, the commissioner may authorize the domestic insurer to include additional affiliated insurance companies in the consolidated or combined audited financial statements. A foreign insurer must obtain the prior written authorization of the commissioner of its state of domicile in order to submit an application for authority to file consolidated or combined audited financial statements. This application must be for a specified period.

(c) A consolidated annual audit filing must include a columnar consolidated or combining worksheet. Amounts shown on the audited consolidated or combined financial statement must be shown on the worksheet. Amounts for each insurer must be stated separately. Noninsurance operations may be shown on the worksheet on a combined or individual basis. Explanations of consolidating or eliminating entries must be shown on the worksheet. A reconciliation of any differences between the amounts shown in the individual insurer columns of the worksheet and comparable amounts shown on the annual statement of the insurers must be included on the worksheet.

Subd. 10. **Scope of audit and report of independent certified public accountant.** Financial statements furnished pursuant to subdivision 4 must be examined by an independent certified public accountant. The audit of the insurer's financial statements must be conducted in accordance with generally accepted auditing standards. In accordance with AICPA Statement on Auditing Standards (SAS) No. 109, Understanding the Entity and its Environment and Assessing the Risks of Material Misstatement, or its replacement, the independent certified public accountant should obtain an understanding of internal control sufficient to plan the audit. To the extent required by SAS No. 109, for those insurers required to file a management's report of internal control over financial reporting pursuant to subdivision 17, the independent certified public accountant should consider (as that term is defined in SAS No. 102, Defining Professional Requirements in Statements on Auditing Standards or its replacement) the most recently available report in planning and performing the audit of the statutory financial statements. Consideration should be given to other procedures illustrated in the Financial Condition Examiners Handbook promulgated by the National Association of Insurance Commissioners as the independent certified public accountant deems necessary.

Subd. 11. **Notification of adverse financial condition.** The insurer required to furnish the annual audited financial report shall require the independent certified public accountant to provide written notice within five business days to the board of directors of the insurer or its audit committee of any determination by that independent certified public accountant that the insurer has materially misstated its financial condition as reported to the commissioner as of the balance sheet date currently under audit or that the insurer does not meet the minimum capital and surplus requirement of sections 60A.07, 66A.32, and 66A.33 as of that date. An insurer required to file an annual audited financial report who received a notification of adverse financial condition from the accountant shall file a copy of the notification with the commissioner within five business days of the receipt of the notification. The insurer shall provide the independent certified public accountant making the notification with evidence of the report being furnished to the commissioner. If the independent certified public accountant fails to receive the evidence within the required five-day period, the independent certified public accountant shall furnish to the commissioner a copy of the notification to the board of directors or its audit committee within the next five business days. No independent certified public accountant is liable in any manner to any person for any statement made in connection with this subdivision if the statement is made in good faith in compliance with this subdivision. If the accountant becomes aware of facts which might have affected the audited financial report after the date it was filed, the accountant shall take the action prescribed by AU section 561, Subsequent Discovery of Facts Existing at the Date of the Auditor's Report of the Professional Standards issued by the American Institute of Certified Public Accountants, or its replacement.

Subd. 12. **Communication of internal control related matters noted in an audit.** In addition to the annual audited financial report, each insurer shall furnish the commissioner with a written communication as to any unremediated material weaknesses in its internal control over financial reporting noted during the audit. The communication must be prepared by the accountant within 60 days after the filing of the annual audited financial report, and must contain a description of any unremediated material weakness, as the term material weakness is defined by SAS No. 115, Communicating Internal Control Related Matters Identified in an Audit, as of December 31 immediately preceding so as to coincide with the audited financial report discussed in subdivision 2 in the insurer's internal control over financial reporting noted by the accountant during the course of their audit of the financial statements. If no unremediated material weaknesses were noted, the communication should so state.

The insurer is required to provide a description of remedial actions taken or proposed to correct unremediated material weaknesses, if the actions are not described in the accountant's communication.

Subd. 13. **Accountant's letter of qualification.** The accountant shall furnish the insurer in connection with, and for inclusion in, the filing of the annual audited financial report, a letter stating that the accountant is independent with respect to the insurer and conforms to the standards of the accountant's profession as contained in the Code of Professional Conduct of the American Institute of Certified Public Accountants and the Code of Professional Conduct of the Minnesota Board of Accountancy or similar code; the background and experience in general, and the experience in audits of insurers of the staff assigned to the engagement and whether each is an independent certified public accountant; that the accountant understands that the annual audited financial report and the opinion on it will be filed in compliance with this statute and that the commissioner will be relying on this information in the monitoring and regulation of the financial position of insurers; that the accountant consents to the requirements of subdivision 14 and that the accountant consents and agrees to make available for review by the commissioner, or the commissioner's designee or appointed agent, the work papers, as defined in subdivision

14; a representation that the accountant is properly licensed in good standing by the appropriate state licensing authorities and is a member in good standing in the American Institute of Certified Public Accountants; and a representation that the accountant complies with subdivision 7. Nothing in this section prohibits the accountant from utilizing staff the accountant deems appropriate where use is consistent with the standards prescribed by generally accepted auditing standards.

Subd. 14. **Availability and maintenance of independent certified public accountants' work papers.** Work papers are the records kept by the independent certified public accountant of the procedures followed, tests performed, information obtained, and conclusions reached pertinent to the independent certified public accountant's audit of the financial statements of an insurer. Work papers may include audit planning documents, work programs, analyses, memoranda, letters of confirmation and representation, management letters, abstracts of company documents, and schedules or commentaries prepared or obtained by the independent certified public accountant in the course of the audit of the financial statements of an insurer and that support the accountant's opinion. Every insurer required to file an audited financial report shall require the accountant, through the insurer, to make available for review by the examiners the work papers prepared in the conduct of the audit and any communications related to the audit between the accountant and the insurer. The work papers must be made available at the offices of the insurer, at the offices of the commissioner, or at any other reasonable place designated by the commissioner. The insurer shall require that the accountant retain the audit work papers and communications until the commissioner has filed a report on examination covering the period of the audit but no longer than seven years after the period reported upon, provided retention of the working papers beyond the seven years is not required by other professional or regulatory requirements. In the conduct of the periodic review by the examiners, it must be agreed that photocopies of pertinent audit work papers may be made and retained by the commissioner. These copies shall be part of the commissioner's work papers and must be given the same confidentiality as other examination work papers generated by the commissioner.

Subd. 15. **Requirements for audit committee.** (a) The audit committee must be directly responsible for the appointment, compensation, and oversight of the work of any accountant including resolution of disagreements between management and the accountant regarding financial reporting for the purpose of preparing or issuing the audited financial report or related work pursuant to this regulation. Each accountant shall report directly to the audit committee.

(b) Each member of the audit committee must be a member of the board of directors of the insurer or a member of the board of directors of an entity elected pursuant to paragraph (e) and subdivision 1, paragraph (b).

(c) In order to be considered independent for purposes of this section, a member of the audit committee may not, other than in his or her capacity as a member of the audit committee, the board of directors, or any other board committee, accept any consulting, advisory, or other compensatory fee from the entity or be an affiliated person of the entity or any subsidiary of the entity. However, if law requires board participation by otherwise nonindependent members, that law shall prevail and such members may participate in the audit committee and be designated as independent for audit committee purposes, unless they are an officer or employee of the insurer or one of its affiliates.

(d) If a member of the audit committee ceases to be independent for reasons outside the member's reasonable control, that person, with notice by the responsible entity to the state, may remain an audit committee member of the responsible entity until the earlier of the next annual meeting of the responsible entity or one year from the occurrence of the event that caused the member to be no longer independent.

(e) To exercise the election of the controlling person to designate the audit committee for purposes of this section, the ultimate controlling person shall provide written notice to the commissioners of the affected insurers. Notification must be made timely before the issuance of the statutory audit report and include a description of the basis for the election. The election can be changed through notice to the commissioner by the insurer, which shall include a description of the basis for the change. The election remains in effect for perpetuity, until rescinded.

(f) The audit committee shall require the accountant that performs for an insurer any audit required by this section to timely report to the audit committee in accordance with the requirements of SAS No. 114, The Auditor's Communication with Those Charged with Governance, including:

(1) all significant accounting policies and material permitted practices;

(2) all material alternative treatments of financial information within statutory accounting principles that have been discussed with management officials of the insurer, ramifications of the use of the alternative disclosures and treatments, and the treatment preferred by the accountant; and

(3) other material written communications between the accountant and the management of the insurer, such as any management letter or schedule of unadjusted differences.

(g) If an insurer is a member of an insurance holding company system, the reports required by paragraph (f) may be provided to the audit committee on an aggregate basis for insurers in the holding company system, provided that any substantial differences among insurers in the system are identified to the audit committee.

(h) The proportion of independent audit committee members shall meet or exceed the following criteria:

(1) for companies with prior calendar year direct written and assumed premiums $0 to $300,000,000, no minimum requirements;

(2) for companies with prior calendar year direct written and assumed premiums over $300,000,000 to $500,000,000, majority of members must be independent; and

(3) for companies with prior calendar year direct written and assumed premiums over $500,000,000, 75 percent or more must be independent.

(i) An insurer with direct written and assumed premium, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than $500,000,000 may make application to the commissioner for a waiver from the requirements of this subdivision based upon hardship. The insurer shall file, with its annual statement filing, the approval for relief from this subdivision with the states that it is licensed in or doing business in and the NAIC. If the nondomestic state accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic format acceptable to the NAIC.

This subdivision does not apply to foreign or alien insurers licensed in this state or an insurer that is a SOX compliant entity or a direct or indirect wholly-owned subsidiary of a SOX compliant entity.

Subd. 16. **Conduct of insurer in connection with the preparation of required reports and documents.** (a) No director or officer of an insurer shall, directly or indirectly:

(1) make or cause to be made a materially false or misleading statement to an accountant in connection with any audit, review, or communication required under this section; or

(2) omit to state, or cause another person to omit to state, any material fact necessary in order to make statements made, in light of the circumstances under which the statements were made, not misleading to an accountant in connection with any audit, review, or communication required under this section.

(b) No officer or director of an insurer, or any other person acting under the direction thereof, shall directly or indirectly take any action to coerce, manipulate, mislead, or fraudulently influence any accountant engaged in the performance of an audit pursuant to this section if that person knew or should have known that the action, if successful, could result in rendering the insurer's financial statements materially misleading.

(c) For purposes of paragraph (b), actions that, "if successful, could result in rendering the insurer's financial statements materially misleading" include, but are not limited to, actions taken at any time with respect to the professional engagement period to coerce, manipulate, mislead, or fraudulently influence an accountant:

(1) to issue or reissue a report on an insurer's financial statements that is not warranted in the circumstances due to material violations of statutory accounting principles prescribed by the commissioner, generally accepted auditing standards, or other professional or regulatory standards;

(2) not to perform audit, review, or other procedures required by generally accepted auditing standards or other professional standards;

(3) not to withdraw an issued report; or

(4) not to communicate matters to an insurer's audit committee.

Subd. 17. **Management's report of internal control over financial reporting.** (a) Every insurer required to file an audited financial report pursuant to this section that has annual direct written and assumed premiums, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of $500,000,000 or more, shall prepare a report of the insurer's or group of insurers' internal control over financial reporting, as these terms are defined in subdivision 1. The report must be filed with the commissioner along with the communication of internal control related matters noted in an audit described under subdivision 12. Management's report of internal control over financial reporting shall be as of December 31 immediately preceding.

(b) Notwithstanding the premium threshold in paragraph (a), the commissioner may require an insurer to file management's report of internal control over financial reporting if the insurer is in any RBC level event, or meets any one or more of the standards of an insurer deemed to be in hazardous financial condition as pursuant to sections 606.20 to 606.22.

(c) An insurer or a group of insurers that is:

(1) directly subject to Section 404;

(2) part of a holding company system whose parent is directly subject to Section 404;

(3) not directly subject to Section 404 but is a SOX compliant entity; or

(4) a member of a holding company system whose parent is not directly subject to Section 404 but is a SOX compliant entity;

may file its or its parent's Section 404 report and an addendum in satisfaction of this requirement provided that those internal controls of the insurer or group of insurers having a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements, consisting of those items included in subdivision 4, paragraphs (a), clauses (2) to (6), (b), and (c), were included in the scope of the Section 404 report. The addendum shall be a positive statement by management that there are no material processes with respect to the preparation of the insurer's or group of insurers' audited statutory financial statements, consisting of those items included in subdivision 4, paragraphs (a), clauses (2) to (6), (b), and (c), excluded from the Section 404 report. If there are internal controls of the insurer or group of insurers that have a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements and those internal controls were not included in the scope of the Section 404 report, the insurer or group of insurers may either file (i) a report under this subdivision, or (ii) the Section 404 report and a report under this subdivision for those internal controls that have a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements not covered by the Section 404 report.

(d) Management's report of internal control over financial reporting shall include:

(1) a statement that management is responsible for establishing and maintaining adequate internal control over financial reporting;

(2) a statement that management has established internal control over financial reporting and an assertion, to the best of management's knowledge and belief, after diligent inquiry, as to whether its internal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles;

(3) a statement that briefly describes the approach or processes by which management evaluated the effectiveness of its internal control over financial reporting;

(4) a statement that briefly describes the scope of work that is included and whether any internal controls were excluded;

(5) disclosure of any unremediated material weaknesses in the internal control over financial reporting identified by management as of December 31 immediately preceding. Management is not permitted to conclude that the internal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles if there is one or more unremediated material weaknesses in its internal control over financial reporting;

(6) a statement regarding the inherent limitations of internal control systems; and

(7) signatures of the chief executive officer and the chief financial officer or equivalent position or title.

(e) Management shall document and make available upon financial condition examination the basis upon which its assertions, required in paragraph (d), are made. Management may base its assertions, in part, upon its review, monitoring, and testing of internal controls undertaken in the normal course of its activities.

(1) Management has discretion as to the nature of the internal control framework used, and the nature and extent of documentation, in order to make its assertion in a cost-effective manner and, as such, may include assembly of or reference to existing documentation.

(2) Management's report on internal control over financial reporting, required by paragraph (a), and any documentation provided in support of the report during the course of a financial condition examination, must be kept confidential by the Department of Commerce.

Subd. 18. **Exemptions.** (a) Upon written application of any insurer, the commissioner may grant an exemption from compliance with the provisions of this section. In order to receive an exemption, an insurer must demonstrate to the satisfaction of the commissioner that compliance would constitute a financial or organizational hardship upon the insurer. An exemption may be granted at any time and from time to time for specified periods. Within ten days from the denial of an insurer's written request for an exemption, the insurer may request in writing a hearing on its application for an exemption. This hearing must be held in accordance with chapter 14. Upon written application of any insurer, the commissioner may permit an insurer to file annual audited financial reports on some basis other than a calendar year basis for a specified period. An exemption may not be granted until the insurer presents an alternative method satisfying the purposes of this section. Within ten days from a denial of a written request for an exemption, the insurer may request in writing a hearing on its application. The hearing must be held in accordance with chapter 14.

(b) This section applies to all insurers, unless otherwise indicated, required to file an annual audit by subdivision 2, except insurers having less than $1,000,000 of direct written premiums in this state in any calendar year and fewer than 1,000 policyholders or certificate holders of directly written policies nationwide at the end of the calendar year, are exempt from this section for that year, unless the commissioner makes a specific finding that compliance is necessary for the commissioner to carry out statutory responsibilities, except that insurers having assumed premiums from reinsurance contracts or treaties of $1,000,000 or more are not exempt.

Subd. 19. **Canadian and British companies.** (a) In the case of Canadian and British insurers, the annual audited financial report means the annual statement of total business on the form filed by these companies with their domiciliary supervision authority and duly audited by an independent chartered accountant.

(b) For these insurers the letter required in subdivision 5 shall state that the accountant is aware of the requirements relating to the annual audited statement filed with the commissioner under subdivision 2, and shall affirm that the opinion expressed is in conformity with those requirements.

Subd. 20. **Commercial mortgage loan valuation procedures.** A report of the independent certified public accountant that performs the audit of an insurer's annual statement as required under subdivision 2, shall be filed and contain a statement as to whether anything in connection with the audit came to the accountant's attention that caused the accountant to believe that the insurer failed to adopt and consistently apply the valuation procedures as required by sections 60A.122 and 60A.123.

Subd. 21. **Examinations.** (a) The commissioner or a designated representative shall determine the nature, scope, and frequency of examinations under this section conducted by examiners under section 60A.031. These examinations may cover all aspects of the insurer's assets, condition, affairs, and operations and may include and be supplemented by audit procedures performed by independent certified public accountants. Scheduling of examinations will take into account all relevant matters with respect to the insurer's condition, including results of the National Association of Insurance Commissioners, Insurance Regulatory Information Systems, changes in management, results of market conduct examinations, and audited financial reports. The type of examinations performed by examiners under this section must be compliance examinations, targeted examinations, and comprehensive examinations.

(b) Compliance examinations will consist of a review of the accountant's workpapers defined under this section and a general review of the insurer's corporate affairs and insurance operations to determine compliance with the Minnesota insurance laws and the rules of the Department of Commerce. The examiners may perform alternative or additional examination procedures to supplement those performed by the accountant when the examiners determine that the procedures are necessary to verify the financial condition of the insurer.

(c) Targeted examinations may cover limited areas of the insurer's operations as the commissioner may deem appropriate.

(d) Comprehensive examinations will be performed when the report of the accountant as provided for in subdivision 7, paragraph (b), the notification required by subdivision 7, paragraph (c), the results of compliance or targeted examinations, or other circumstances indicate in the judgment of the commissioner or a designated representative that a complete examination of the condition and affairs of the insurer is necessary.

(e) Upon completion of each targeted, compliance, or comprehensive examination, the examiner appointed by the commissioner shall make a full and true report on the results of the examination. Each report shall include a general description of the audit procedures performed by the examiners and the procedures of the accountant that the examiners may have utilized to supplement their examination procedures and the procedures that were performed by the registered independent certified public accountant if included as a supplement to the examination.

Subd. 22. **Penalties.** An annual statement, report, or document related to the business of insurance must not be filed with the commissioner or issued to the public if it is signed by anyone who is represented in the instrument as an "accountant," unless the person is qualified as defined by this section. A violation of this subdivision is a violation of section 72A.19 and punishable in accordance with section 72A.25.

EFFECTIVE DATE. (a) Domestic insurers retaining a certified public accountant on the effective date of this section who qualify as independent shall comply with this section for the year ending December 31, 2010, and each year thereafter unless the commissioner permits otherwise.

(b) Domestic insurers not retaining a certified public accountant on the effective date of this section who qualifies as independent shall meet the following schedule for compliance unless the commissioner permits otherwise.

(1) As of December 31, 2010, file with the commissioner an audited financial report.

(2) For the year ending December 31, 2010, and each year thereafter, such insurers shall file with the commissioner all reports and communication required by this section.

(c) Foreign insurers shall comply with this section for the year ending December 31, 2010, and each year thereafter, unless the commissioner permits otherwise.

(d) The requirements of subdivision 7, paragraph (b), are in effect for audits of the year beginning January 1, 2010, and thereafter.

(e) The requirements of subdivision 15 are in effect January 1, 2010. An insurer or group of insurers that is not required to have independent audit committee members or only a majority of independent audit committee members, as opposed to a supermajority, because the total written and assumed premium is below the threshold and subsequently becomes subject to one of the independence requirements due to changes in premium has one year following the year the threshold is exceeded, but not earlier than January 1, 2010, to comply with the independence requirements. Likewise, an insurer that becomes subject to one of the independence requirements as a result of a business combination has one calendar year following the date of acquisition or combination to comply with the independence requirements.

(f) An insurer or group of insurers that is not required to file a report because the total written premium is below the threshold and subsequently becomes subject to the reporting requirements has two years following the year the threshold is exceeded, but not earlier than December 31, 2010, to file a report. Likewise, an insurer acquired in a business combination has two calendar years following the date of acquisition or combination to comply with the reporting requirements.

(g) The requirements and provisions contained in this section are effective January 1, 2010, and thereafter.

Sec. 12. Minnesota Statutes 2008, section 60B.03, subdivision 15, is amended to read:

Subd. 15. **Insolvency.** "Insolvency" means:

(a) For an insurer organized under sections 67A.01 to 67A.26, the inability to pay any uncontested debt as it becomes due ~~or any other loss within 30 days after the due date specified in the first assessment notice issued pursuant to section 67A.17~~.

(b) For any other insurer, that it is unable to pay its debts or meet its obligations as they mature or that its assets do not exceed its liabilities plus the greater of (1) any capital and surplus required by law to be constantly maintained, or (2) its authorized and issued capital stock. For purposes of this subdivision, "assets" includes one-half of the maximum total assessment liability of the policyholders of the insurer, and "liabilities" includes reserves required by law. For policies issued on the basis of unlimited assessment liability, the maximum total liability, for purposes of determining solvency only, shall be deemed to be that amount that could be obtained if there were 100 percent collection of an assessment at the rate of ten mills per dollar of insurance written by it and in force.

Sec. 13. Minnesota Statutes 2008, section 60L.02, subdivision 3, is amended to read:

Subd. 3. **Additional requirements.** (a) In order to be eligible to be governed by sections 60L.01 to 60L.15, the insurer must meet the requirements specified under this subdivision.

(b) The insurer shall:

(1) have been in continuous operation for a minimum of five years; and

(2) maintain a minimum claims-paying, financial strength, or equivalent rating from at least one nationally recognized statistical rating organization in one of the organization's three highest rating categories for the time period during which sections 60L.01 to 60L.15 apply to the insurer. For purposes of this subdivision, the rating must be based on a

review of the insurer by the nationally recognized statistical rating organization with the cooperation of the insurer; must not depend on a guarantee or other credit enhancement from another entity; and must not be modified or otherwise qualified to show dependence of the rating on the performance or a contractual obligation of, or the insurer's affiliation with, another insurer.

(c) The insurer or an affiliate, as defined in section 60D.15, subdivision 2, of the insurer shall employ at least one individual as a professional investment manager for the insurer's investments whom the board of directors or trustees of the insurer finds is qualified on the basis of experience, education or training, competence, personal integrity, and who conducts professional investment management activities in accordance with the Code of Ethics and Standards of Professional Conduct of the Association for Investment Management and Research. For purposes of complying with this paragraph, an employee of an affiliate may only be used if they are responsible for managing the insurer's investments.

(d) The board of directors of the insurer must annually adopt a resolution finding that the insurer or an affiliate, as defined in section 60D.15, subdivision 2, of the insurer has employed a professional investment manager for the insurer's investments with sufficient expertise and has sufficient other resources to implement and monitor the insurer's investment policies and strategies.

(e) In the report required under section ~~60A.129~~ 60A.1291, subdivision ~~3~~ 12, ~~paragraph (1),~~ the insurer's independent auditor shall not have identified any significant deficiencies in the insurer's internal control structure related to investments during any of the five years immediately preceding the date on which sections 60L.01 to 60L.15 begin to apply to the insurer, and as long as sections 60L.01 to 60L.15 apply to the insurer.

Sec. 14. **[61A.258] PRENEED INSURANCE PRODUCTS; MINIMUM MORTALITY STANDARDS FOR RESERVES AND NONFORFEITURE VALUES.**

Subdivision 1. **Definitions.** For the purposes of this section, the following terms have the meanings given them:

(1) "2001 CSO Mortality Table (2001 CSO)" means that mortality table, consisting of separate rates of mortality for male and female lives, developed by the American Academy of Actuaries CSO Task Force from the Valuation Basic Mortality Table developed by the Society of Actuaries Individual Life Insurance Valuation Mortality Task Force, and adopted by the National Association of Insurance Commissioners (NAIC) in December 2002. The 2001 CSO Mortality Table (2001 CSO) is included in the Proceedings of the NAIC (2nd Quarter 2002). Unless the context indicates otherwise,

the "2001 CSO Mortality Table (2001 CSO)" includes both the ultimate form of that table and the select and ultimate form of that table and includes both the smoker and nonsmoker mortality tables and the composite mortality tables. It also includes both the age-nearest-birthday and age-last-birthday bases of the mortality tables;

(2) "Ultimate 1980 CSO" means the Commissioners' 1980 Standard Ordinary Life Valuation Mortality Tables (1980 CSO) without ten-year selection factors, incorporated into the 1980 amendments to the NAIC Standard Valuation Law approved in December 1983; and

(3) "preneed insurance" is any life insurance policy or certificate that is issued in combination with, in support of, with an assignment to, or as a guarantee for a prearrangement agreement for goods and services to be provided at the time of and immediately following the death of the insured. Goods and services may include, but are not limited to embalming, cremation, body preparation, viewing or visitation, coffin or urn, memorial stone, and transportation of the deceased. The status of the policy or contract as preneed insurance is determined at the time of issue in accordance with the policy form filing.

Subd. 2. **Minimum valuation mortality standards.** For preneed insurance contracts, the minimum mortality standard for determining reserve liabilities and nonforfeiture values for both male and female insureds shall be the Ultimate 1980 CSO.

Subd. 3. **Minimum valuation interest rate standards.** (a) The interest rates used in determining the minimum standard for valuation of preneed insurance shall be the calendar year statutory valuation interest rates as defined in section 61A.25.

(b) The interest rates used in determining the minimum standard for nonforfeiture values for preneed insurance shall be the calendar year statutory nonforfeiture interest rates as defined in section 61A.24.

Subd. 4. **Minimum valuation method standards.** (a) The method used in determining the standard for the minimum valuation of reserves of preneed insurance shall be the method defined in section 61A.25.

(b) The method used in determining the standard for the minimum nonforfeiture values for preneed insurance shall be the method defined in section 61A.24.

EFFECTIVE DATE; TRANSITION RULES. (a) This section is effective January 1, 2009, and applies to preneed insurance policies and certificates issued on or after that date.

(b) For preneed insurance policies issued on or after the effective date of this section and before January 1, 2012, the 2001 CSO may be used as the minimum standard for reserves and minimum standard for nonforfeiture benefits for both male and female insureds.

(c) If an insurer elects to use the 2001 CSO as a minimum standard for any policy issued on or after the effective date of this section and before January 1, 2012, the insurer shall provide, as a part of the actuarial opinion memorandum submitted in support of the company's asset adequacy testing, an annual written notification to the domiciliary commissioner. The notification shall include:

(1) a complete list of all preneed policy forms that use the 2001 CSO as a minimum standard;

(2) a certification signed by the appointed actuary stating that the reserve methodology employed by the company in determining reserves for the preneed policies issued after the effective date and using the 2001 CSO as a minimum standard, develops adequate reserves (For the purposes of this certification, the preneed insurance policies using the 2001 CSO as a minimum standard cannot be aggregated with any other policies.); and

(3) supporting information regarding the adequacy of reserves for preneed insurance policies issued after the effective date of this section and using the 2001 CSO as a minimum standard for reserves.

(d) Preneed insurance policies issued on or after January 1, 2012, must use the Ultimate 1980 CSO in the calculation of minimum nonforfeiture values and minimum reserves.

Sec. 15. Minnesota Statutes 2008, section 61B.19, subdivision 4, is amended to read:

Subd. 4. **Limitation of benefits.** The benefits for which the association may become liable shall in no event exceed the lesser of:

(1) the contractual obligations for which the insurer is liable or would have been liable if it were not an impaired or insolvent insurer; or

(2) subject to the limitation in clause (5), with respect to any one life, regardless of the number of policies or contracts:

(i) ~~$300,000~~ $500,000 in life insurance death benefits, but not more than ~~$100,000~~ $130,000 in net cash surrender and net cash withdrawal values for life insurance;

(ii) ~~$300,000~~ $500,000 in health insurance benefits, including any net cash surrender and net cash withdrawal values;

(iii) ~~$100,000~~ $250,000 in annuity net cash surrender and net cash withdrawal values;

(iv) ~~$300,000~~ $410,000 in present value of annuity benefits for structured settlement annuities or for annuities in regard to which periodic annuity benefits, for a period of not less than the annuitant's lifetime or for a period certain of not less than ten years, have begun to be paid, on or before the date of impairment or insolvency; or

(3) subject to the limitations in clauses (5) and (6), with respect to each individual resident participating in a retirement plan, except a defined benefit plan, established under section 401, 403(b), or 457 of the Internal Revenue Code of 1986, as amended through December 31, 1992, covered by an unallocated annuity contract, or the beneficiaries of each such individual if deceased, in the aggregate, ~~$100,000~~ $250,000 in net cash surrender and net cash withdrawal values;

(4) where no coverage limit has been specified for a covered policy or benefit, the coverage limit shall be ~~$300,000~~ $500,000 in present value;

(5) in no event shall the association be liable to expend more than ~~$300,000~~ $500,000 in the aggregate with respect to any one life under clause (2), items (i), (ii), (iii), (iv), and clause (4), and any one individual under clause (3);

(6) in no event shall the association be liable to expend more than ~~$7,500,000~~ $10,000,000 with respect to all unallocated annuities of a retirement plan, except a defined benefit plan, established under section 401, 403(b), or 457 of the Internal Revenue Code of 1986, as amended through December 31, 1992. If total claims from a plan exceed ~~$7,500,000~~ $10,000,000, the ~~$7,500,000~~ $10,000,000 shall be prorated among the claimants;

(7) for purposes of applying clause (2)(ii) and clause (5), with respect only to health insurance benefits, the term "any one life" applies to each individual covered by a health insurance policy;

(8) where covered contractual obligations are equal to or less than the limits stated in this subdivision, the association will pay the difference between the covered contractual obligations and the amount credited by the estate of the insolvent or impaired insurer, if that amount has been determined or, if it has not, the covered contractual limit, subject to the association's right of subrogation;

(9) where covered contractual obligations exceed the limits stated in this subdivision, the amount payable by the association will be determined as though the covered contractual obligations were equal to those limits. In making the determination, the estate shall be deemed to have credited the covered person the same amount as the estate would credit a covered person with contractual obligations equal to those limits; or

(10) the following illustrates how the principles stated in clauses (8) and (9) apply. The example illustrated concerns hypothetical claims subject to the limit stated in clause (2)(iii). The principles stated in clauses (8) and (9), and illustrated in this clause, apply to claims subject to any limits stated in this subdivision.

CONTRACTUAL OBLIGATIONS OF:

	$50,000	
	Estate	Guaranty Association
0% recovery from estate	$ 0	$ 50,000
25% recovery from estate	$ 12,500	$ 37,500
50% recovery from estate	$ 25,000	$ 25,000
75% recovery from estate	$ 37,500	$ 12,500
	$100,000	
	Estate	Guaranty Association
0% recovery from estate	$ 0	$ 100,000
25% recovery from estate	$ 25,000	$ 75,000
50% recovery from estate	$ 50,000	$ 50,000
75% recovery from estate	$ 75,000	$ 25,000
	$200,000	
	Estate	Guaranty Association
0% recovery from estate	$ 0	$ 100,000
25% recovery from estate	$ 50,000	$ 75,000
50% recovery from estate	$ 100,000	$ 50,000
75% recovery from estate	$ 150,000	$ 25,000

For purposes of this subdivision, the commissioner shall determine the discount rate to be used in determining the present value of annuity benefits.

EFFECTIVE DATE. This section is effective the day following final enactment and applies to member insurers who are first determined to be impaired or insolvent on or after that date. Member insurers who are subject to an order of impairment in effect on the effective date but are not declared insolvent until after the effective date shall continue to be governed by the law in effect prior to the effective date.

Sec. 16. Minnesota Statutes 2008, section 61B.28, subdivision 4, is amended to read:

Subd. 4. **Prohibited sales practice.** No person, including an insurer, agent, or affiliate of an insurer, shall make, publish, disseminate, circulate, or place before the public, or cause directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in any newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio station or television station, or in any other way, an advertisement, announcement, or statement, written or oral, which uses the existence of the Minnesota Life and Health Insurance Guaranty Association for the purpose of sales, solicitation, or inducement to purchase any form of insurance covered by sections 61B.18 to 61B.32. The notice required by subdivision 8 is not a violation of this subdivision nor is it a violation of this subdivision to explain verbally to an applicant or potential applicant the coverage provided by the Minnesota Life and Health Insurance Guaranty Association at any time during the application process or thereafter. This subdivision does not apply to the Minnesota Life and Health Insurance Guaranty Association or an entity that does not sell or solicit insurance. ~~A person violating this section is guilty of a misdemeanor.~~

Sec. 17. Minnesota Statutes 2008, section 61B.28, subdivision 8, is amended to read:

Subd. 8. **Form.** The form of notice referred to in subdivision 7, paragraph (a), is as follows:

"....................

....

....

(insert name, current address, and
telephone number of insurer)

NOTICE CONCERNING POLICYHOLDER RIGHTS IN AN
INSOLVENCY UNDER THE MINNESOTA LIFE AND HEALTH
INSURANCE GUARANTY ASSOCIATION LAW

If the insurer that issued your life, annuity, or health insurance policy becomes impaired or insolvent, you are entitled to compensation for your policy from the assets of that insurer. The amount you recover will depend on the financial condition of the insurer.

In addition, residents of Minnesota who purchase life insurance, annuities, or health insurance from insurance companies authorized to do business in Minnesota are protected, SUBJECT TO LIMITS AND EXCLUSIONS, in the event the insurer becomes financially impaired or insolvent. This protection is provided by the Minnesota Life and Health Insurance Guaranty Association.

Minnesota Life and Health Insurance Guaranty Association
(insert current
address and telephone number)

The maximum amount the guaranty association will pay for all policies issued on one life by the same insurer is limited to ~~$300,000~~ $500,000. Subject to this ~~$300,000~~ $500,000 limit, the guaranty association will pay up to ~~$300,000~~ $500,000 in life insurance death benefits, ~~$100,000~~ $130,000 in net cash surrender and net cash withdrawal values for life insurance, ~~$300,000~~ $500,000 in health insurance benefits, including any net cash surrender and net cash withdrawal values, ~~$100,000~~ $250,000 in annuity net cash surrender and net cash withdrawal values, ~~$300,000~~ $410,000 in present value of annuity benefits for annuities which are part of a structured settlement or for annuities in regard to which periodic annuity benefits, for a period of not less than the annuitant's lifetime or for a period certain of not less than ten years, have begun to be paid on or before the date of impairment or insolvency, or if no coverage limit has been specified for a covered policy or benefit, the coverage limit shall be ~~$300,000~~ $500,000 in present value. Unallocated annuity contracts issued to retirement plans, other than defined benefit plans, established under section 401, 403(b), or 457 of the Internal Revenue Code of 1986, as amended through December 31, 1992, are covered up to ~~$100,000~~ $250,000 in net cash surrender and net cash withdrawal values, for Minnesota residents covered by the plan provided, however, that the association shall not be responsible for more than ~~$7,500,000~~ $10,000,000 in claims from all Minnesota residents covered by the plan. If total claims exceed ~~$7,500,000~~ $10,000,000, the ~~$7,500,000~~ $10,000,000 shall be prorated among all claimants. These are the maximum claim amounts. Coverage by the guaranty association is also subject to other substantial limitations and exclusions and requires continued residency in Minnesota. If your claim exceeds the guaranty association's limits, you may still recover a part or all of that amount from the proceeds of the liquidation of the insolvent insurer, if any exist. Funds to pay claims may not be immediately available. The guaranty association assesses insurers licensed to sell life and health insurance in Minnesota after the insolvency occurs. Claims are paid from this assessment.

THE COVERAGE PROVIDED BY THE GUARANTY ASSOCIATION IS NOT A SUBSTITUTE FOR USING CARE IN SELECTING INSURANCE COMPANIES THAT ARE WELL MANAGED AND FINANCIALLY STABLE. IN SELECTING AN INSURANCE COMPANY OR POLICY, YOU SHOULD NOT RELY ON COVERAGE BY THE GUARANTY ASSOCIATION.

THIS NOTICE IS REQUIRED BY MINNESOTA STATE LAW TO ADVISE POLICYHOLDERS OF LIFE, ANNUITY, OR HEALTH INSURANCE POLICIES OF THEIR RIGHTS IN THE EVENT THEIR INSURANCE CARRIER BECOMES FINANCIALLY INSOLVENT. THIS NOTICE IN NO WAY IMPLIES THAT THE COMPANY CURRENTLY HAS ANY TYPE OF FINANCIAL PROBLEMS. ALL LIFE,

ANNUITY, AND HEALTH INSURANCE POLICIES ARE REQUIRED TO PROVIDE THIS NOTICE."

Additional language may be added to the notice if approved by the commissioner prior to its use in the form. This section does not apply to fraternal benefit societies regulated under chapter 64B.

Sec. 18. Minnesota Statutes 2008, section 67A.01, is amended to read:

67A.01 NUMBER OF MEMBERS REQUIRED, PROPERTY AND TERRITORY.

Subdivision 1. **Number of members.** ~~(a)~~ It shall be lawful for any number of persons, not less than 25, residing in adjoining ~~townships~~ counties in this state, who shall collectively own property worth at least $50,000, to form themselves into a corporation for mutual insurance against loss or damage by the perils listed in section 67A.13.

~~(b) Except as otherwise provided in this section, the company shall operate in no more than 150 adjoining townships in the aggregate at the same time. The company may, if approval has been granted by the commissioner, operate in more than 150 adjoining townships in the aggregate at the same time, subject to a maximum of 300 townships. If the company confines its operations to one county it may transact business in that county by so providing in its certificate of incorporation. In case of merger of two or more companies having contiguous territories, the surviving company in the merger may transact business in the entire territory of the merged companies, but the territory of the surviving company in the merger must not be larger than 300 townships.~~

Subd. 2. **Authorized territory.** (a) A township mutual fire insurance company may be authorized to write business in up to nine adjoining counties in the aggregate at the same time. If policyholder surplus is at least $500,000 as reported in the company's last annual financial statement filed with the commissioner, the company may, if approval has been granted by the commissioner, be authorized to write business in ten or more counties in the aggregate at the same time, subject to a maximum of 20 adjoining counties, in accordance with the following schedule:

Number of Counties	Surplus Requirement
10	$500,000
11	600,000
12	700,000
13	800,000
14	900,000
15	1,000,000

16	1,100,000
17	1,200,000
18	1,300,000
19	1,400,000
20	1,500,000

(b) In the case of a merger of two or more companies having contiguous territories, the surviving company in the merger may transact business in the entire territory of the merged companies; however, the territory of the surviving company in the merger may not be larger than 20 counties.

(c) A township mutual fire insurance company may write new and renewal insurance on property in cities within the company's authorized territory having a population less than 25,000. A township mutual may continue to write new and renewal insurance once the population increases to 25,000 or greater provided that amended and restated articles are filed with the commissioner along with a certification that such city's population has increased to 25,000 or greater.

(d) A township mutual fire insurance company may write new and renewal insurance on property in cities within the company's authorized territory with a population of 25,000 or greater, but less than 150,000, if approval has been granted by the commissioner. No township mutual fire insurance company shall insure any property in cities with a population of 150,000 or greater.

(e) If a township mutual fire insurance company provides evidence to the commissioner that the company had insurance in force on December 31, 2007, in a city within the company's authorized territory with a population of 25,000 or greater, but less than 150,000, the company may write new and renewal insurance on property in that city provided that the company files amended and restated articles by July 31, 2010, naming that city.

Sec. 19. Minnesota Statutes 2008, section 67A.06, is amended to read:

67A.06 POWERS OF CORPORATION.

Every corporation formed under the provisions of sections 67A.01 to 67A.26, shall have power:

(1) to have succession by its corporate name for the time stated in its certificate of incorporation;

(2) to sue and be sued in any court;

(3) to have and use a common seal and alter the same at pleasure;

(4) to acquire, by purchase or otherwise, and to hold, enjoy, improve, lease, encumber, and convey all real and personal property necessary for the purpose of its organization, subject to such limitations as may be imposed by law or by its articles of incorporation;

(5) to elect or appoint in such manner as it may determine all necessary or proper officers, agents, boards, and committees, fix their compensation, and define their powers and duties;

(6) to make and amend consistently with law bylaws providing for the management of its property and the regulation and government of its affairs;

(7) to wind up and liquidate its business in the manner provided by chapter 60B; ~~and~~

(8) to indemnify certain persons against expenses and liabilities as provided in section 302A.521. In applying section 302A.521 for this purpose, the term "members" shall be substituted for the terms "shareholders" and "stockholders~~.~~"; and

(9) to eliminate or limit a director's personal liability to the company or its members for monetary damages for breach of fiduciary duty as a director. A company shall not eliminate or limit the liability of a director:

(i) for breach of loyalty to the company or its members;

(ii) for acts or omissions made in bad faith or with intentional misconduct or knowing violation of law;

(iii) for transactions from which the director derived an improper personal benefit; or

(iv) for acts or omissions occurring before the date that the provisions in the articles eliminating or limiting liability become effective.

Sec. 20. Minnesota Statutes 2008, section 67A.07, is amended to read:

67A.07 PRINCIPAL OFFICE.

The principal office of a township mutual fire insurance company shall be located in a ~~township or in a city in a township~~ county in which the company is authorized to do business.

Sec. 21. Minnesota Statutes 2008, section 67A.14, subdivision 1, is amended to read:

Subdivision 1. **Kinds of property; property outside authorized territory.** (a) Township mutual fire insurance companies may insure qualified property. Qualified property means dwellings, household goods, appurtenant structures, farm buildings, farm personal property, churches, church personal property, county fair buildings, community and township meeting halls and their usual contents.

(b) Township mutual fire insurance companies may extend coverage to include an insured's secondary property if the township mutual fire insurance company covers qualified property belonging to the insured. Secondary property means any real or personal property that is not considered qualified property for a township mutual fire insurance company to cover under this chapter. The maximum amount of coverage that a township mutual fire insurance company may write for secondary property is 25 percent of the total limit of liability of the policy issued to an insured covering the qualified property.

(c) A township mutual fire insurance company may insure any real or personal property, including qualified or secondary property, subject to the limitations in subdivision 1, paragraph (b), located outside the limits of the territory in which the company is authorized by its certificate or articles of incorporation to transact business, if the company is already covering qualified property belonging to the insured, inside the limits of the company's territory.

(d) A township mutual fire insurance company may insure property temporarily outside of the authorized territory of the township mutual fire insurance company.

Sec. 22. Minnesota Statutes 2008, section 67A.14, subdivision 7, is amended to read:

Subd. 7. **Amount of insurable risk.** No township mutual fire insurance company shall insure or reinsure a single risk or hazard in a larger sum than the greater of $3,000, or one tenth of its net assets plus two tenths of a mill of its insurance in force; provided that no portion of any such risk or hazard which shall have been reinsured, as authorized by the laws of this state, shall be included in determining the limitation of risk prescribed by this subdivision.

Sec. 23. **[67A.175] SURPLUS REQUIREMENTS.**

Subdivision 1. **Minimum.** Township mutual fire insurance companies shall maintain a minimum policyholders' surplus of $300,000 at all times.

Subd. 2. **Corrective action plan; filing.** A township mutual fire insurance company that falls below the $300,000 minimum surplus requirement must file a corrective action plan with the commissioner. The plan shall state how the company will correct its surplus deficiency. The plan must be submitted within 45 days of the company falling below the minimum surplus level.

Subd. 3. **Corrective action plan; commissioner's notification.** Within 30 days after the submission by a township mutual fire insurance company of a corrective action plan, the commissioner shall notify the insurer whether the plan may be implemented or is, in the judgment of the commissioner, unsatisfactory. If the commissioner determines the plan is unsatisfactory, the notification to the company must set forth the reasons for the determination, and may set forth proposed revisions that will render the plan satisfactory in the judgment of the commissioner. Upon notification from the commissioner, the insurer shall prepare a revised corrective action plan that may incorporate by reference any revisions proposed by the commissioner, and shall submit the revised plan to the commissioner within 45 days.

Sec. 24. Minnesota Statutes 2008, section 67A.18, subdivision 1, is amended to read:

Subdivision 1. **By member.** Any member may terminate membership in the company by giving written notice or returning the member's policy to the secretary ~~and paying the withdrawing member's share of all existing claims~~.

Sec. 25. **REPEALER.**

Subdivision 1. **Annual audits.** Minnesota Statutes 2008, section 60A.129, is repealed.

Subd. 2. **Township mutual insured properties, joint or partial risks, and assessments.** Minnesota Statutes 2008, sections 67A.14, subdivision 5; 67A.17; and 67A.19, are repealed.

Subd. 3. **Banking procedures; real estate tax records.** Minnesota Rules, part 2675.2180, is repealed.

Subd. 4. **Debt prorating companies.** Minnesota Rules, parts 2675.7100; 2675.7110; 2675.7120; 2675.7130; and 2675.7140, are repealed.

Subd. 5. **Guaranty association; inflation indexing.** Minnesota Statutes 2008, section 61B.19, subdivision 6, is repealed.

ARTICLE 9
DEBT MANAGEMENT AND DEBT SETTLEMENT SERVICE

Section 1. Minnesota Statutes 2008, section 45.011, subdivision 1, is amended to read:

Subdivision 1. **Scope.** As used in chapters 45 to 83, 155A, 332, 332A, 332B, 345, and 359, and sections 325D.30 to 325D.42, 326B.802 to 326B.885, and 386.61 to 386.78, unless the context indicates otherwise, the terms defined in this section have the meanings given them.

Sec. 2. Minnesota Statutes 2008, section 46.04, subdivision 1, is amended to read:

Subdivision 1. **General.** The commissioner of commerce, referred to in chapters 46 to 59A~~,~~ and ~~chapter~~ 332A, and 332B as the commissioner, is vested with all the powers, authority, and privileges which, prior to the enactment of Laws 1909, chapter 201, were conferred by law upon the public examiner, and shall take over all duties in relation to state banks, savings banks, trust companies, savings associations, and other financial institutions within the state which, prior to the enactment of chapter 201, were imposed upon the public examiner. The commissioner of commerce shall exercise a constant supervision, either personally or through the examiners herein provided for, over the books and affairs of all state banks, savings banks, trust companies, savings associations, credit unions, industrial loan and thrift companies, and other financial institutions doing business within this state; and shall, through examiners, examine each financial institution at least once every 24 calendar months. In satisfying this examination requirement, the commissioner may accept reports of examination prepared by a federal agency having comparable supervisory powers and examination procedures. With the exception of industrial loan and thrift companies which do not have deposit liabilities and licensed regulated lenders, it shall be the principal purpose of these examinations to inspect and verify the assets and liabilities of each and so far investigate the character and value of the assets of each institution as to determine with reasonable certainty that the values are correctly carried on its books. Assets and liabilities shall be verified in accordance with methods of procedure which the commissioner may determine to be adequate to carry out the intentions of this section. It shall be the further purpose of these examinations to assess the adequacy of capital protection and the capacity of the institution to meet usual and reasonably anticipated deposit withdrawals and other cash commitments without resorting to excessive borrowing or sale of assets at a significant loss, and to investigate each institution's compliance with applicable laws and rules. Based on the examination findings, the commissioner shall make a determination as to whether the institution is being operated in a safe and sound manner. None of the above provisions limits the commissioner in making additional examinations as deemed necessary or advisable. The commissioner shall investigate the methods of operation and conduct of these institutions and their systems of accounting, to ascertain whether these methods and systems are in accordance with law and sound banking principles. The commissioner may make requirements as to records as deemed necessary to facilitate the carrying out of the commissioner's duties and to properly protect the public interest. The commissioner may examine, or cause to be examined by these examiners, on oath, any officer, director, trustee, owner, agent, clerk, customer, or depositor of any financial institution touching the affairs and business thereof, and may issue, or cause to be issued by the examiners, subpoenas, and administer, or cause to be administered by the examiners, oaths. In case of any refusal to obey any subpoena issued under the commissioner's direction, the refusal may at once be reported to the district court of the district in which the bank or other financial institution is located, and this court shall enforce obedience to these subpoenas in the manner provided by law for enforcing obedience to subpoenas of the court. In all matters relating to official duties, the commissioner of commerce has the power possessed by courts of law to issue subpoenas and cause them to be served and enforced, and all officers, directors, trustees, and employees of state banks, savings banks, trust companies, savings associations, and other financial institutions within the state, and all persons having dealings with or knowledge of the affairs or methods of these institutions, shall afford reasonable facilities for these examinations, make returns and reports to the commissioner of commerce as the commissioner may require; attend and answer, under oath, the commissioner's lawful inquiries; produce and exhibit any books, accounts, documents, and property as the commissioner may desire to inspect, and in all things aid the commissioner in the performance of duties.

Sec. 3. Minnesota Statutes 2008, section 46.05, is amended to read:

46.05 SUPERVISION OVER FINANCIAL INSTITUTIONS.

Every state bank, savings bank, trust company, savings association, debt management services provider, debt settlement services provider, and other financial institutions shall be at all times under the supervision and subject to the control of the commissioner of commerce. If, and whenever in the performance of duties, the commissioner finds it necessary to make a special investigation of any financial institution under the commissioner's supervision, and other than a complete examination, the commissioner shall make a charge therefor to include only the necessary costs thereof. Such a fee shall be payable to the commissioner on the commissioner's making a request for payment.

Sec. 4. Minnesota Statutes 2008, section 46.131, subdivision 2, is amended to read:

Subd. 2. **Assessment authority.** Each bank, trust company, savings bank, savings association, regulated lender, industrial loan and thrift company, credit union, motor vehicle sales finance company, debt management services provider, debt settlement services provider, and insurance premium finance company organized under the laws of this state or required to be administered by the commissioner of commerce shall pay into the state treasury its proportionate share of the cost of maintaining the Department of Commerce.

Sec. 5. Minnesota Statutes 2008, section 325E.311, subdivision 6, is amended to read:

Subd. 6. **Telephone solicitation.** "Telephone solicitation" means any voice communication over a telephone line for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, whether the communication is made by a live operator, through the use of an automatic dialing-announcing device as defined in section 325E.26, subdivision 2, or by other means. Telephone solicitation does not include communications:

(1) to any residential subscriber with that subscriber's prior express invitation or permission; or

(2) by or on behalf of any person or entity with whom a residential subscriber has a prior or current business or personal relationship.

Telephone solicitation also does not include communications if the caller is identified by a caller identification service and the call is:

(i) by or on behalf of an organization that is identified as a nonprofit organization under state or federal law, unless the organization is a debt management services provider defined in section 332A.02<u> or a debt settlement services provider defined in section 332B.02</u>;

(ii) by a person soliciting without the intent to complete, and who does not in fact complete, the sales presentation during the call, but who will complete the sales presentation at a later face-to-face meeting between the solicitor who makes the call and the prospective purchaser; or

(iii) by a political party as defined under section 200.02, subdivision 6.

Sec. 6. Minnesota Statutes 2008, section 332A.02, is amended by adding a subdivision to read:

<u>Subd. 2a.</u> <u>**Advertise.**</u> <u>"Advertise" means to solicit business through any means or medium.</u>

Sec. 7. Minnesota Statutes 2008, section 332A.02, subdivision 5, is amended to read:

Subd. 5. **Controlling or affiliated party.** "Controlling or affiliated party" means any person <u>or entity that controls or is controlled, </u>directly or indirectly ~~controlling, controlled by~~, or <u>is </u>under common control with another person.<u> Controlling or affiliated party includes, but is not limited to, employees, officers, independent contractors, corporations, partnerships, and limited liability corporations.</u>

Sec. 8. Minnesota Statutes 2008, section 332A.02, subdivision 8, is amended to read:

Subd. 8. **Debt management services provider.** "Debt management services provider" means any person offering or providing debt management services to a debtor domiciled in this state, regardless of whether or not a fee is charged for the services and regardless of whether the person maintains a physical presence in the state. This term includes any person to whom duties under a debt management services agreement or debt management services plan are delegated, and does not include services performed by the following when engaged in the regular course of their respective businesses and professions:

(1) attorneys at law, escrow agents, accountants, broker-dealers in securities;

(2) state or national banks, trust companies, savings associations, title insurance companies, insurance companies, and all other lending institutions duly authorized to transact business in Minnesota~~, provided no fee is charged for the service~~;

(3) persons who, as employees on a regular salary or wage of an employer not engaged in the business of debt management, perform credit services for their employer;

(4) public officers acting in their official capacities and persons acting as a debt management services provider pursuant to court order;

(5) any person while performing services incidental to the dissolution, winding up, or liquidation of a partnership, corporation, or other business enterprise;

(6) the state, its political subdivisions, public agencies, and their employees;

(7) ~~credit unions and~~ collection agencies, provided ~~no fee is charged for the service~~ that the services are provided to a creditor;

(8) "qualified organizations" designated as representative payees for purposes of the Social Security and Supplemental Security Income Representative Payee System and the federal Omnibus Budget Reconciliation Act of 1990, Public Law 101-508;

(9) accelerated mortgage payment providers. "Accelerated mortgage payment providers" are persons who, after satisfying the requirements of sections 332.30 to 332.303, receive funds to make mortgage payments to a lender or lenders, on behalf of mortgagors, in order to exceed regularly scheduled minimum payment obligations under the terms of the indebtedness. The term does not include: (i) persons or entities described in clauses (1) to (8); (ii) mortgage lenders or servicers, industrial loan and thrift companies, or regulated lenders under chapter 56; or (iii) persons authorized to make loans under section 47.20, subdivision 1. For purposes of this clause and sections 332.30 to 332.303, "lender" means the original lender or that lender's assignee, whichever is the current mortgage holder;

(10) trustees, guardians, and conservators; ~~and~~

(11) debt settlement services providers~~.~~; and

(12) credit unions.

Sec. 9. Minnesota Statutes 2008, section 332A.02, subdivision 9, is amended to read:

Subd. 9. **Debt management services.** "Debt management services" means the provision of any ~~one or more of the following~~ services ~~in connection with debt incurred primarily for personal, family, or household services:~~

~~(1) managing the financial affairs of an individual by distributing income or money to the individual's creditors;~~

~~(2) receiving funds for the purpose of distributing the funds among creditors in payment or partial payment of obligations of a debtor; or~~

~~(3) adjusting, prorating, pooling, or liquidating the indebtedness of a debtor~~ whereby a debt management services provider assists in managing the financial affairs of a debtor by distributing periodic payments to the debtor's creditors from funds that the debt management services provider receives from the debtor and where the primary purpose of the services is to effect repayment of debt incurred primarily for personal, family, or household services.

Any person so engaged or holding out as so engaged is deemed to be engaged in the provision of debt management services regardless of whether or not a fee is charged for such services.

Sec. 10. Minnesota Statutes 2008, section 332A.02, subdivision 10, is amended to read:

Subd. 10. **Debtor.** "Debtor" means the person for whom the debt ~~prorating service is~~ management services are performed.

Sec. 11. Minnesota Statutes 2008, section 332A.02, subdivision 13, is amended to read:

Subd. 13. **Debt settlement services provider.** "Debt settlement services provider" ~~means any person engaging in or holding out as engaging in the business of negotiating, adjusting, or settling debt incurred primarily for personal, family, or household purposes without holding or receiving the debtor's funds or personal property and without paying the debtor's funds to, or distributing the debtor's property among, creditors~~ has the meaning given in section 332B.02, subdivision 10. The term shall not include persons listed in subdivision 8, clauses (1) to (10).

Sec. 12. Minnesota Statutes 2008, section 332A.04, subdivision 6, is amended to read:

Subd. 6. **Right of action on bond.** If the registrant has failed to account to a debtor or distribute to the debtor's creditors the amounts required by this chapter ~~and~~, or has failed to perform any of the services promised in the debt management services agreement ~~between the debtor and registrant~~, the registrant is in default. The debtor or the debtor's legal representative or receiver, the commissioner, or the attorney general, shall have, in addition to all other legal remedies, a right of action in the name of the debtor on the bond or the security given under this section, for loss suffered by the debtor, not exceeding the face amount of the bond or security, and without the necessity of joining the registrant in the suit or action based on the default.

Sec. 13. Minnesota Statutes 2008, section 332A.08, is amended to read:

332A.08 DENIAL OF REGISTRATION.

The commissioner, with notice to the applicant by certified mail sent to the address listed on the application, may deny an application for a registration upon finding that the applicant:

(1) has submitted an application required under section 332A.04 that contains incorrect, misleading, incomplete, or materially untrue information. An application is incomplete if it does not include all the information required in section 332A.04;

(2) has failed to pay any fee or pay or maintain any bond required by this chapter, or failed to comply with any order, decision, or finding of the commissioner made under and within the authority of this chapter;

(3) has violated any provision of this chapter or any rule or direction lawfully made by the commissioner under and within the authority of this chapter;

(4) or any controlling or affiliated party has ever been convicted of a crime or found civilly liable for an offense involving moral turpitude, including forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, conspiracy to defraud, or any other similar offense or violation, or any violation of a federal or state law or regulation in connection with activities relating to the rendition of debt management services or any consumer fraud, false advertising, deceptive trade practices, or similar consumer protection law;

(5) has had a registration or license previously revoked or suspended in this state or any other state or the applicant or licensee has been permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the debt management services provider business; or any controlling or affiliated party has been an officer, director, manager, or shareholder owning more than a ten percent interest in a debt management services provider whose registration has previously been revoked or suspended in this state or any other state, or who has been permanently or temporarily enjoined by any court of competent jurisdiction

from engaging in or continuing any conduct or practice involving any aspect of the debt management services provider business;

(6) has made any false statement or representation to the commissioner;

(7) is insolvent;

(8) refuses to fully comply with an investigation or examination of the debt management services provider by the commissioner;

(9) has improperly withheld, misappropriated, or converted any money or properties received in the course of doing business;

(10) has failed to have a trust account with an actual cash balance equal to or greater than the sum of the escrow balances of each debtor's account;

(11) has defaulted in making payments to creditors on behalf of debtors as required by agreements between the provider and debtor; ~~or~~

(12) has used fraudulent, coercive, or dishonest practices, or demonstrated incompetence, untrustworthiness, or financial irresponsibility in this state or elsewhere; or

(13) has been shown to have engaged in a pattern of failing to perform the services promised.

Sec. 14. Minnesota Statutes 2008, section 332A.10, is amended to read:

332A.10 WRITTEN DEBT MANAGEMENT SERVICES AGREEMENT.

Subdivision 1. **Written agreement required.** (a) A debt management services provider may not perform any debt management services or receive any money related to a debt management services plan until the provider has obtained a debt management services agreement that contains all terms of the agreement between the debt management services provider and the debtor.

(b) A debt management services agreement must:

(1) be in writing, dated, and signed by the debt management services provider and the debtor;

(2) conspicuously indicate whether or not the debt management services provider is registered with the Minnesota Department of Commerce and include any registration number; and

(3) be written in the debtor's primary language if the debt management services provider advertised in that language.

(c) The registrant must furnish the debtor with a copy of the signed contract upon execution.

Subd. 2. **Actions prior to written agreement.** No person may provide debt management services for a debtor or execute a debt management services agreement unless the person first has:

(1) provided the debtor individualized counseling and educational information that, at a minimum, addresses managing household finances, managing credit and debt, budgeting, and personal savings strategies;

(2) prepared in writing and provided to the debtor, in a form that the debtor may keep, an individualized financial analysis and a proposed debt management services plan listing the debtor's known debts with specific recommendations regarding actions the debtor should take to reduce or eliminate the amount of the debts, including written disclosure that debt management services are not suitable for all debtors and that there are other ways, including bankruptcy, to deal with indebtedness;

(3) made a determination supported by an individualized financial analysis that the debtor can reasonably meet the requirements of the proposed debt management services plan and that there is a net tangible benefit to the debtor of entering into the proposed debt management services plan; ~~and~~

(4) prepared, in a form the debtor may keep, a written list identifying all known creditors of the debtor that the provider reasonably expects to participate in the plan and the creditors, including secured creditors, that the provider reasonably expects not to participate; and

(5) disclosed, in addition to the written disclosure on the agreement required under subdivision 1, whether or not the debt management services provider is registered with the Minnesota Department of Commerce and any registration number.

Subd. 3. **Required ~~terms~~ provisions.** (a) Each debt management services agreement must contain the following ~~terms~~ provisions, which must be disclosed prominently and clearly in bold print on the front page of the agreement, segregated by bold lines from all other information on the page:

(1) the origination fee amount to be paid by the debtor and whether all or a portion of the ~~initial~~ origination fee ~~amount~~ is refundable or nonrefundable;

(2) the monthly fee amount or percentage to be paid by the debtor; and

(3) the total amount of fees reasonably anticipated to be paid by the debtor over the term of the agreement.

(b) Each debt management services agreement must also contain the following:

(1) a disclosure that if the amount of debt owed is increased by interest, late fees, over the limit fees, and other amounts imposed by the creditors, the length of the debt management services agreement will be extended and remain in force and that the total

dollar charges agreed upon may increase at the rate agreed upon in the original contract agreement;

(2) a prominent statement describing the terms upon which the debtor may cancel the contract as set forth in section 332A.11;

(3) a detailed description of all services to be performed by the debt management services provider for the debtor;

(4) the debt management services provider's refund policy; and

(5) the debt management services provider's principal business address and the name and address of its agent in this state authorized to receive service of process.

Subd. 4. **Prohibited terms.** The following terms shall not be included in the debt management services agreement:

(1) a hold harmless clause;

(2) a confession of judgment, or a power of attorney to confess judgment against the debtor or appear as the debtor in any judicial proceeding;

(3) a waiver of the right to a jury trial, if applicable, in any action brought by or against a debtor;

(4) an assignment of or an order for payment of wages or other compensation for services;

(5) a provision in which the debtor agrees not to assert any claim or defense arising out of the debt management services agreement;

(6) a waiver of any provision of this chapter or a release of any obligation required to be performed on the part of the debt management services provider; or

(7) a mandatory arbitration <u>or choice of law</u> clause.

Subd. 5. **New debt management services agreements; modification of existing agreements.** (a) Separate and additional debt management services agreements that comply with this chapter may be entered into by the debt management services provider and the debtor provided that no additional ~~initial~~ <u>origination</u> fee may be charged by the debt management services provider.

(b) Any modification of an existing debt management services agreement, including any increase in the number or amount of debts included in the debt management ~~service~~ <u>services agreement</u>, must be in writing and signed by both parties, except that the signature of the debtor is not required if:

(1) a creditor is added to or deleted from a debt management services agreement at the request of the debtor or a debtor voluntarily increases the amount of a payment, provided the debt management services provider must provide an updated payment schedule to the debtor within seven days; or

(2) the payment amount to a creditor in the agreement increases by $10 or less and the total payment amount to all creditors increases a total of $20 or less as a result of incorrect or incomplete information provided by the debtor regarding the amount of debt owed a creditor, provided the debt management services provider must notify the debtor of the increase within seven days.

No fees, charges, or other consideration may be demanded from the debtor for the modification, other than an increase in the amount of the monthly maintenance fee established in the original debt management services agreement.

Sec. 15. Minnesota Statutes 2008, section 332A.11, subdivision 2, is amended to read:

Subd. 2. **Notice of debtor's right to cancel.** A debt management services agreement must contain, on its face, in an easily readable ~~typeface~~ type immediately adjacent to the space for signature by the debtor, the following notice: "Right To Cancel: You have the right to cancel this contract at any time on ten days' written notice."

Sec. 16. Minnesota Statutes 2008, section 332A.14, is amended to read:

332A.14 PROHIBITIONS.

~~A registrant~~ (a) No debt management services provider shall ~~not~~:

(1) purchase from a creditor any obligation of a debtor;

(2) use, threaten to use, seek to have used, or seek to have threatened the use of any legal process, including but not limited to garnishment and repossession of personal property, against any debtor while the debt management services agreement between the registrant and the debtor remains executory;

(3) advise, counsel, or encourage a debtor to stop paying a creditor ~~until a debt management services plan is in place~~, or imply, infer, encourage, or in any other way indicate, that it is advisable to stop paying a creditor;

(4) sanction or condone the act by a debtor of ceasing payments or imply, infer, or in any manner indicate that the act of ceasing payments is advisable or beneficial to the debtor;

~~(4)~~ (5) require as a condition of performing debt management services the purchase of any services, stock, insurance, commodity, or other property or any interest therein either by the debtor or the registrant;

~~(5)~~ (6) compromise any debts unless the prior written approval of the debtor has been obtained to such compromise and unless such compromise inures solely to the benefit of the debtor;

~~(6)~~ (7) receive from any debtor as security or in payment of any fee a promissory note or other promise to pay or any mortgage or other security, whether as to real or personal property;

~~(7)~~ (8) lend money or provide credit to any debtor if any interest or fee is charged, or directly or indirectly collect any fee for referring, advising, procuring, arranging, or assisting a consumer in obtaining any extension of credit or other debtor service from a lender or debt management services provider;

~~(8)~~ (9) structure a debt management services agreement that would result in negative amortization of any debt in the plan;

~~(9)~~ (10) engage in any unfair, deceptive, or unconscionable act or practice in connection with any service provided to any debtor;

~~(10)~~ (11) offer, pay, or give any material cash fee, gift, bonus, premium, reward, or other compensation to any person for referring any prospective customer to the registrant or for enrolling a debtor in a debt management services plan, or provide any other incentives for employees or agents of the debt management services provider to induce debtors to enter into a debt management services plan;

~~(11)~~ (12) receive any cash, fee, gift, bonus, premium, reward, or other compensation from any person other than the debtor or a person on the debtor's behalf in connection with activities as a registrant, provided that this paragraph does not apply to a registrant which is a bona fide nonprofit corporation duly organized under chapter 317A or under the similar laws of another state;

~~(12)~~ (13) enter into a contract with a debtor unless a thorough written budget analysis indicates that the debtor can reasonably meet the requirements of the financial adjustment plan and will be benefited by the plan;

~~(13)~~ (14) in any way charge or purport to charge or provide any debtor credit insurance in conjunction with any contract or agreement involved in the debt management services plan;

~~(14)~~ (15) operate or employ a person who is an employee or owner of a collection agency or process-serving business; or

~~(15)~~ (16) solicit, demand, collect, require, or attempt to require payment of a sum that the registrant states, discloses, or advertises to be a voluntary contribution to a debt management services provider or designee from the debtor.

Sec. 17. **[332B.02] DEFINITIONS.**

Subdivision 1. **Scope.** Unless a different meaning is clearly indicated by the context, for the purposes of this chapter, the terms defined in this section have the meanings given them.

Subd. 2. **Advertise.** "Advertise" means to solicit business through any means or medium.

Subd. 3. **Aggregate debt.** "Aggregate debt" means the total of principal and interest that is owed by the debtor to the creditors at the time of execution of the debt settlement agreement.

Subd. 4. **Attorney general.** "Attorney general" means the attorney general of the state of Minnesota.

Subd. 5. **Commissioner.** "Commissioner" means the commissioner of commerce.

Subd. 6. **Controlling or affiliated party.** "Controlling or affiliated party" means any person or entity that controls or is controlled, directly or indirectly, or is under common control with another person. Controlling or affiliated party includes, but is not limited to, employees, officers, independent contractors, corporations, partnerships, and limited liability corporations.

Subd. 7. **Debt settlement services.** "Debt settlement services" means any one or more of the following activities:

(1) offering to provide advice, or offering to act or acting as an intermediary between a debtor and one or more of the debtor's creditors, where the primary purpose of the advice or action is to obtain a settlement for less than the full amount of debt, whether in principal, interest, fees, or other charges, incurred primarily for personal, family, or household purposes including, but not limited to, offering debt negotiation, debt reduction, or debt relief services; or

(2) advising, encouraging, assisting, or counseling a debtor to accumulate funds in an account for future payment of a reduced amount of debt to one or more of the debtor's creditors.

Any person so engaged or holding out as so engaged is deemed to be engaged in the provision of debt settlement services, regardless of whether or not a fee is charged for such services.

Subd. 8. **Debt settlement services agreement.** "Debt settlement services agreement" means the written contract between the debt settlement services provider and the debtor.

Subd. 9. **Debt settlement services plan.** "Debt settlement services plan" means the debtor's individualized package of debt settlement services set forth in the debt settlement services agreement.

Subd. 10. **Debt settlement services provider.** "Debt settlement services provider" means any person offering or providing debt settlement services to a debtor domiciled in this state, regardless of whether or not a fee is charged for the services and regardless of whether the person maintains a physical presence in the state. The term includes any person to whom duties under a debt management agreement or debt management plan are delegated.

Subd. 11. **Person.** "Person" means an individual, firm, partnership, association, or corporation.

Sec. 18. **[332B.03] REQUIREMENT OF REGISTRATION.**

On or after August 1, 2009, it is unlawful for any person, whether or not located in this state, to operate as a debt settlement services provider or provide debt settlement services including, but not limited to, offering, advertising, or executing or causing to be executed any debt settlement services or debt settlement services agreement, except as authorized by law, without first becoming registered as provided in this chapter. Debt settlement services providers may continue to provide debt settlement services without complying with this chapter to those debtors who entered into a contract to participate in a debt settlement services plan prior to August 1, 2009, but may not enter into a debt settlement services agreement with a debt on or after August 1, 2009, without complying with this chapter.

Sec. 19. **[332B.04] REGISTRATION.**

Subdivision 1. **Form.** Application for registration to operate as a debt settlement services provider in this state must be made in writing to the commissioner, under oath, in the form prescribed by the commissioner, and must contain:

(1) the full name of each principal of the entity applying;

(2) the address, which must not be a post office box, and the telephone number and, if applicable, the e-mail address, of the applicant;

(3) consent to the jurisdiction of the courts of this state;

(4) the name and address of the registered agent authorized to accept service of process on behalf of the applicant or appointment of the commissioner as the applicant's agent for purposes of accepting service of process;

(5) disclosure of:

(i) whether any controlling or affiliated party has ever been convicted of a crime or found civilly liable for an offense involving moral turpitude, including forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, conspiracy to defraud, or any other similar offense or violation, or any violation of a federal or state law or regulation in connection with activities relating to the rendition of debt settlement services or involving any consumer fraud, false advertising, deceptive trade practices, or similar consumer protection law;

(ii) any judgments, private or public litigation, tax liens, written complaints, administrative actions, or investigations by any government agency against the applicant or any officer, director, manager, or shareholder owning more than five percent interest in the applicant, unresolved or otherwise, filed or otherwise commenced within the preceding ten years;

(iii) whether the applicant or any person employed by the applicant has had a record of having defaulted in the payment of money collected for others, including the discharge of debts through bankruptcy proceedings; and

(iv) whether the applicant's license or registration to provide debt settlement services in any other state has ever been revoked or suspended;

(6) a copy of the applicant's standard debt settlement services agreement that the applicant intends to execute with debtors;

(7) proof of accreditation; and

(8) any other information and material as the commissioner may require.

The commissioner may, for good cause shown, temporarily waive any requirement of this subdivision.

Subd. 2. **Term and scope of registration.** A registration is effective until 11:59 p.m. on December 31 of the year for which the application for registration is filed or until it is surrendered by the registrant or revoked or suspended by the commissioner. The registration is limited solely to the business of providing debt settlement services.

Subd. 3. **Fees; bond.** An applicant for registration as a debt settlement services provider must comply with the requirements of section 332A.04, subdivisions 3, 4, and 5.

Subd. 4. **Right of action on bond.** If the registrant has failed to account to a debtor, or has failed to perform any of the services promised, the registrant is in default. The debtor or the debtor's legal representative or receiver, the commissioner, or the attorney general, shall have, in addition to all other legal remedies, a right of action in the name of the debtor on the bond or the security given under this section, for loss suffered by the debtor, not exceeding the face amount of the bond or security, and without the necessity of joining the registrant in the suit or action based on the default.

Subd. 5. **Registrant list.** The commissioner must maintain a list of registered debt settlement services providers. The list must be made available to the public in written form upon request and on the Department of Commerce Web site.

Subd. 6. **Renewal of registration.** Each year, each registrant under the provisions of this chapter must not, more than 60 nor less than 30 days before its registration is to expire, apply to the commissioner for renewal of its registration on a form prescribed by the commissioner. The application must be signed by the registrant under penalty of perjury, contain current information on all matters required in the original application, and be accompanied by a payment of $250. The registrant must maintain a continuous surety bond that satisfies the requirements of section 332A.04, subdivision 4. The renewal is effective for one year. The commissioner may, for good cause shown, temporarily waive any requirement of this section.

Sec. 20. **[332B.05] DENIAL, SUSPENSION, REVOCATION, OR NONRENEWAL OF REGISTRATION.**

Subdivision 1. **Denial.** The commissioner, with notice to the applicant by certified mail sent to the address listed on the application, may deny an application for a registration for any of the reasons specified under section 332A.08.

Subd. 2. **Suspension, revocation, or nonrenewal.** The commissioner may suspend, revoke, or refuse to renew any registration issued under this chapter, or may levy a civil penalty under section 45.027, or any combination of actions, if the debt settlement services provider or any controlling or affiliated person has committed any act or omission for which the commissioner could have refused to issue an initial registration.

Subd. 3. **Procedure.** Suspension, revocation, or nonrenewal must be upon notice and under the conditions prescribed in section 332A.09, subdivision 1. Upon issuance of an order suspending, revoking, or refusing to renew a registration, the commissioner:

(1) shall follow the procedure established in section 332A.09, subdivision 2; and

(2) may follow the procedure specified in section 332A.09, subdivision 3, concerning the appointment of a receiver for funds of sanctioned registrants.

Sec. 21. **[332B.06] WRITTEN DEBT SETTLEMENT SERVICES AGREEMENT; DISCLOSURES; TRUST ACCOUNT.**

Subdivision 1. **Written agreement required.** (a) A debt settlement services provider may not perform, or impose any charges or receive any payment for, any debt settlement services until the provider and the debtor have executed a debt settlement services agreement that contains all terms of the agreement between the debt settlement services provider and the debtor and complies with all the applicable requirements of this chapter.

(b) A debt settlement services agreement must:

(1) be in writing, dated, and signed by the debt settlement services provider and the debtor;

(2) conspicuously indicate whether or not the debt settlement services provider is registered with the Minnesota Department of Commerce and include any registration number; and

(3) be written in the debtor's primary language if the debt settlement services provider advertises in that language.

(c) The registrant must furnish the debtor with a copy of the signed contract upon execution.

Subd. 2. **Actions prior to executing a written agreement.** No person may provide debt settlement services for a debtor or execute a debt settlement services agreement unless the person first has:

(1) provided the debtor individualized counseling that, at a minimum, addresses managing household finances, managing credit and debt, budgeting, personal savings strategies, and a detailed description of all the various ways to reduce or eliminate the debt, which must, at a minimum, include bankruptcy; and

(2) prepared in writing and provided to the debtor, in a form the debtor may keep, an individualized financial analysis of the debtor's financial circumstances, including income and liabilities, and made a determination supported by the individualized financial analysis that:

(i) the debt settlement plan proposed for addressing the debt is suitable for the individual debtor;

(ii) the debtor can reasonably meet the requirements of the proposed debt settlement services plan; and

(iii) there is a net tangible benefit to the debtor of entering into the proposed debt settlement services plan.

Subd. 3. **Disclosures.** (a) A person offering to provide or providing debt settlement services must disclose both orally and in writing whether or not the person is registered with the Minnesota Department of Commerce and any registration number.

(b) No person may provide debt settlement services unless the person first has provided, both orally and in writing, on a single sheet of paper, separate from any other document or writing, the following verbatim notice:

WARNING

We CANNOT GUARANTEE that you will successfully reduce or eliminate your debt.

You SHOULD NOT stop paying your creditors.

Fees, interest, and other charges will continue to mount up during the (insert number) months this plan is in effect.

Even if you sign up for this service:

• YOUR WAGES OR BANK ACCOUNT MAY STILL BE GARNISHED.

• YOU MAY STILL BE CONTACTED BY CREDITORS.

• YOU MAY STILL BE SUED BY CREDITORS for the money you owe.

Even if we do settle your debt, YOU MAY STILL HAVE TO PAY TAXES on the amount forgiven.

Your credit rating may be adversely affected.

(c) The heading, "WARNING," must be in bold, underlined, 28-point type, and the remaining text must be in 14-point type, with a double space between each statement.

(d) The disclosure and notice required under this subdivision must be provided in the debtor's primary language if the debt settlement provider advertises in that language.

Subd. 4. **Required information.** (a) Each debt settlement services agreement must contain the following information, which must be disclosed prominently and clearly in bold print on the front page of the agreement, segregated by bold lines from all other information on the page:

(1) the origination fee amount to be paid by the debtor and whether all or part of the origination fee is refundable or nonrefundable; and

(2) the service fee formula and the total amount of service fees reasonably anticipated to be paid by the debtor over the term of the agreement.

(b) Each debt settlement services agreement must also contain the following:

(1) a prominent statement describing the terms upon which the debtor may cancel the contract as set forth in section 332B.07;

(2) a detailed description of all services to be performed by the debt settlement services provider for the debtor;

(3) the debt settlement services provider's refund policy;

(4) the debt settlement services provider's principal business address, which must not be a post office box, and the name and address of its agent in this state authorized to receive service of process; and

(5) the name of each creditor the debtor has listed and the aggregate debt owed to each creditor that will be the subject of settlement.

Subd. 5. **Prohibited terms.** A debt settlement services agreement may not contain any of the terms prohibited under section 332A.10, subdivision 4.

Subd. 6. **New debt settlement services agreements; modifications of existing agreements.** (a) Separate and additional debt settlement services agreements that comply with this chapter may be entered into by the debt settlement services provider and the debtor, provided that no additional origination fee may be charged by the debt settlement services provider.

(b) Any modification of an existing debt settlement services agreement, including any increase in the number or amount of debts included in the debt settlement services agreement, must be in writing and signed by both parties. No fee may be charged to modify an existing agreement.

Subd. 7. **Payments held in trust.** If the registrant holds funds for the debtor, the registrant must maintain a separate trust account and deposit in the account all payments received from the moment that the funds are available, except that the registrant may commingle the payment with the registrant's own property or funds, but only to the extent necessary to ensure the maintenance of a minimum balance if the financial institution at which the trust account is held requires a minimum balance to avoid the assessment of fees or penalties for failure to maintain a minimum balance. All disbursements, whether to the debtor or to the creditors of the debtor, or to the registrant, must be made from such account.

Sec. 22. **[332B.07] RIGHT TO CANCEL.**

Subdivision 1. **Debtor's right to cancel.** (a) A debtor has the right to cancel a debt settlement services agreement without cause at any time upon ten days' written notice to the debt settlement services provider.

(b) In the event of cancellation, the debt settlement services provider must, within ten days of the cancellation, notify the debtor's creditors of the cancellation and provide a refund of all funds paid by or for the debtor to the debt settlement services provider, except for the origination fee specified in section 332B.09, subdivision 1.

Subd. 2. **Notice of debtor's right to cancel.** A debt settlement services agreement must contain, on its face, in an easily readable type immediately adjacent to the space for signature by the debtor, the following notice: "Right to Cancel: You have the right to cancel this contract at any time on ten days' written notice."

Subd. 3. **Automatic termination.** Upon the payment of all listed or settled debts and fees, the debt settlement services agreement must automatically terminate, and all unexpended funds paid by or for the debtor to the debt settlement services provider must be immediately returned to the debtor.

Subd. 4. **Debt settlement services provider's right to cancel.** (a) A debt settlement services provider may cancel a debt settlement services agreement with good cause upon 30 days' written notice to the debtor.

(b) Within ten days after the cancellation, the debt settlement services provider must:

(1) notify the debtor's creditors of the cancellation; and

(2) return to the debtor all funds paid by or for the debtor to the debt settlement provider, except for the origination fee specified in section 332B.09, subdivision 1.

Sec. 23. **[332B.08] BOOKS, RECORDS, AND INFORMATION.**

Subdivision 1. **Records retention; annual report.** Every registrant must keep, and use in the registrant's business, such books, accounts, and records, including electronic records, as will enable the commissioner to determine whether the registrant is complying with this chapter and the rules, orders, and directives adopted by the commissioner under this chapter. Every registrant must preserve such books, accounts, and records for at least six years after making the final entry on any transaction recorded therein. Examinations of the books, records, and method of operations conducted under the supervision of the commissioner shall be done at the cost of the registrant. The cost must be assessed as determined under section 46.131.

Subd. 2. **Annual report.** On or before March 15 of each calendar year, each registrant must file a report with the commissioner containing such information as the commissioner may require about the preceding calendar year. The report must be in a form the commissioner prescribes.

Subd. 3. **Statements to debtors.** (a) Each registrant must:

(1) maintain and make available records and accounts that will enable each debtor to ascertain the amounts paid to the creditors of the debtor. A statement showing amounts received from the debtor, disbursements to each creditor, amounts that any creditor has agreed to as payment in full for any debt owed the creditor by the debtor, charges deducted by the registrant, and other information as the commissioner may prescribe, must be furnished by the registrant to the debtor at least monthly and, in addition, upon any cancellation or termination of the contract;

(2) include in the statement furnished to debtors a list of all activities conducted pursuant to the contract, including the number and description of communications with each creditor during the reporting period; and

(3) prepare and retain in the file of each debtor a written analysis of the debtor's income and expenses to substantiate that the plan of payment is feasible and practicable.

(b) Each debtor must have reasonable access, without cost, by electronic or other means, to information in the registrant's files applicable to the debtor. These statements, records, and accounts must otherwise remain confidential, except for duly authorized state and government officials, the commissioner, the attorney general, the debtor, and the debtor's representative and designees.

Sec. 24. **[332B.09] FEES, PAYMENTS, AND CONSENT OF CREDITORS.**

Subdivision 1. **Origination fee.** A debt settlement services provider may charge a nonrefundable origination fee of not more than $50.

Subd. 2. **Service fee.** In addition to the origination fee under subdivision 1, a debt settlement services provider may charge a service fee equal to five percent of the savings actually negotiated by the debt settlement services provider. No other fees may be charged. The savings shall be calculated as the difference between the aggregate debt that is stated in the debt settlement services agreement at the time of its execution and total amount that the debtor actually pays to settle all the debts stated in the debt settlement services agreement, provided that only savings resulting from concessions actually negotiated by the debt settlement services provider may be counted.

Subd. 3. **Collection of fees.** No debt settlement services provider may claim, demand, charge, collect, or receive any compensation until after the debt settlement service provider has fully performed each and every service the provider has contracted to perform or represented would be performed or as otherwise provided in this section.

Subd. 4. **Consent of creditors.** Before providing any services, a debt settlement services provider must obtain the written consent of all creditors that agree to participate in the debt settlement services plan set forth in the debt management services agreement. The debt settlement services provider must notify the debtor within ten days after any failure to obtain the required consent of any creditor and of the debtor's right to cancel the agreement without penalty. If not all creditors listed in the debt settlement services agreement have consented to participate in the debt settlement services plan, the debt settlement services provider must obtain the written authorization from the debtor to proceed with the debt settlement services agreement without the participation of all listed creditors.

Subd. 5. **Withdrawal of creditor.** Whenever a creditor withdraws from a debt settlement services plan, the debt settlement services provider must promptly notify the debtor of the withdrawal, identify the creditor, and inform the debtor of the right to cancel the debt settlement services agreement. In no case may this notice be provided more than 15 days after the debt settlement services provider learns of the creditor's decision to withdraw from a plan.

Subd. 6. **Timely notification of settlement.** A debt settlement services provider must notify the debtor within 24 hours of settlement of a debt with a creditor.

Sec. 25. **[332B.10] PROHIBITIONS.**

No debt settlement services provider shall:

(1) engage in any activity, act, or omission prohibited under section 332A.14;

(2) promise, guarantee, or directly or indirectly imply, infer, or in any manner represent that any debt will be settled prior to the presentation to the debtor of an offer by the creditors participating in the debt settlement plan to settle;

(3) misrepresent the timing of negotiations with creditors;

(4) imply, infer, or in any manner represent that:

(i) fees, interest, and other charges will not continue to accrue prior to the time debts are settled;

(ii) wages or bank accounts are not subject to garnishment;

(iii) creditors will not continue to contact the debtor;

(iv) the debtor is not subject to legal action; and

(v) the debtor will not be subject to tax consequences for the portion of any debts forgiven;

(5) execute a power of attorney or any other agreement, oral or written, express or implied, that extinguishes or limits the debtor's right at any time to contract or communicate with any creditor or the creditor's right at any time to communicate with the debtor;

(6) exercise or attempt to exercise a power of attorney after an individual has terminated an agreement;

(7) state, imply, infer, or, in any other manner, indicate that entering into a debt settlement services agreement or settling debts will either have no effect on, or improve, the debtor's credit, credit rating, and credit score;

(8) challenge a debt without the written consent of the debtor;

(9) make any false or misleading claim regarding a creditor's right to collect a debt;

(10) represent that the debt settlement services provider can negotiate better settlement terms with a creditor than the debtor alone can negotiate;

(11) provide or offer to provide legal advice or legal services unless the person providing or offering to provide legal advice is licensed to practice law in the state;

(12) misrepresent that it is authorized or competent to furnish legal advice or perform legal services; and

(13) settle a debt or lead an individual to believe that a payment to a creditor is in settlement of a debt to the creditor unless, at the time of settlement, the individual receives a certification from the creditor that the payment is in full settlement of the debt.

Sec. 26. **[332B.11] ADVERTISEMENT OF DEBT SETTLEMENT SERVICES PLAN.**

No debt settlement services provider may engage in any activity proscribed by section 332A.16, or represent, claim, imply, or infer that secured debts may be settled.

Sec. 27. **[332B.12] DEBT SETTLEMENT SERVICES AGREEMENT RESCISSION.**

Any debtor has the right to rescind any debt settlement services agreement with a debt settlement services provider that commits a material violation of this chapter. On rescission, all fees paid to the debt settlement services provider or any other person other than creditors of the debtor must be returned to the debtor entering into the debt settlement services agreement within ten days of rescission of the debt settlement services agreement.

Sec. 28. **[332B.13] ENFORCEMENT; REMEDIES.**

Subdivision 1. **Violation as deceptive practice.** A violation of any of the provisions of this chapter is considered an unfair or deceptive trade practice under section 8.31, subdivision 1. A private right of action under section 8.31 by an aggrieved debtor is in the public interest.

Subd. 2. **Private right of action.** (a) A debt settlement provider who fails to comply with any of the provisions of this chapter is liable under this section in an individual action for the sum of:

(1) actual, incidental, and consequential damages sustained by the debtor as a result of the failure; and

(2) statutory damages of up to $5,000.

(b) A debt settlement provider who fails to comply with any of the provisions of this chapter is liable to the named plaintiffs under this section in a class action for the amount that each named plaintiff could recover under paragraph (a), clause (1), and to the other class members for such amount as the court may allow.

(c) In determining the amount of statutory damages, the court shall consider, among other relevant factors:

(1) the frequency, nature, and persistence of noncompliance;

(2) the extent to which the noncompliance was intentional; and

(3) in the case of a class action, the number of debtors adversely affected.

(d) A plaintiff or class successful in a legal or equitable action under this section is entitled to the costs of the action, plus reasonable attorney fees.

Subd. 3. **Injunctive relief.** A debtor may sue a debt settlement services provider for temporary or permanent injunctive or other appropriate equitable relief to prevent violations of any provision of this chapter. A court must grant injunctive relief on a showing that the debt settlement services provider has violated any provision of this chapter, or in the case of a temporary injunction, on a showing that the debtor is likely to prevail on allegations that the debt settlement services provider violated any provision of this chapter.

Subd. 4. **Remedies cumulative.** The remedies provided in this section are cumulative and do not restrict any remedy that is otherwise available. The provisions of this chapter are not exclusive and are in addition to any other requirements, rights, remedies, and penalties provided by law.

Subd. 5. **Public enforcement.** The attorney general shall enforce this chapter under section 8.31.

Sec. 29. **[332B.14] INVESTIGATIONS.**

At any reasonable time, the commissioner may examine the books and records of every registrant and of any person engaged in the business of providing debt settlement services. The commissioner, once during any calendar year, may require the submission of an audit prepared by a certified public accountant of the books and records of each registrant. If the registrant has, within one year previous to the commissioner's demand, had an audit prepared for some other purpose, this audit may be submitted to satisfy the requirement of this section. The commissioner may investigate any complaint concerning violations of this chapter and may require the attendance and sworn testimony of witnesses and the production of documents.

APPENDIX
Article locations in H2123-3

60A.129 LOSS RESERVE CERTIFICATION AND ANNUAL AUDIT.

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

(a) "Qualified actuary," except as it relates to subdivision 2, paragraph (c), for companies authorized to provide life insurance coverage under section 60A.06, subdivision 1, clause (4), is a person who is either:

(1) a member in good standing of the Casualty Actuarial Society; or

(2) a member in good standing of the American Academy of Actuaries who has been approved as qualified for signing casualty loss reserve opinions by the Casualty Practice Council of the American Academy of Actuaries; or

(3) a person who otherwise has competency in loss reserve evaluation as demonstrated to the satisfaction of the insurance regulatory official of the domiciliary state. In such case, at least 90 days prior to the filing of its annual statement, the insurer must request approval that the person be deemed qualified and that request must be approved or denied. The request must include the National Association of Insurance Commissioners biographical form and a list of all loss reserve opinions issued in the last three years by this person.

(b) For purposes of subdivision 2, paragraph (c), a qualified actuary for companies authorized to write life insurance coverage under section 60A.06, subdivision 1, clause (4), shall be:

(1) a member in good standing of the American Academy of Actuaries;

(2) qualified to sign statements of actuarial opinion for life and health insurance company annual statements in accordance with the American Academy of Actuaries qualification standards for actuaries signing these statements;

(3) familiar with the valuation requirements applicable to life and health insurance companies.

(c) A qualified actuary as defined by this subdivision is an individual who:

(1) has not been found by the commissioner, or if so found has subsequently been reinstated as a qualified actuary, following appropriate notice and hearing to have:

(i) violated any provision of, or any obligation imposed by, the state insurance law or other law in the course of the actuary's dealings as a qualified actuary;

(ii) been found guilty of fraudulent or dishonest practices;

(iii) demonstrated incompetency, lack of cooperation, or untrustworthiness to act as a qualified actuary; or

(iv) submitted to the commissioner during the past five years, pursuant to this chapter, an actuarial opinion that the commissioner rejected because it did not meet the provisions of this chapter including standards set by the actuarial standards board;

(2) has resigned or been removed as an actuary within the past five years as a result of acts or omissions indicated in any adverse report on examination or as a result of failure to adhere to generally acceptable actuarial standards of the American Academy of Actuaries; and

(3) has not failed to notify the commissioner of any action taken by any commissioner of any other state similar to that under clause (1).

(d) "Accountant" and "independent public accountant" mean an independent certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants and in all states in which the accountant or firm is licensed to practice. For Canadian and British companies, the term means a Canadian-chartered or British-chartered accountant.

Subd. 2. **Loss reserve certification.** (a) Each domestic company engaged in providing the types of coverage described in section 60A.06, subdivision 1, clause (1), (2), (3), (5)(b), (6), (8), (9), (10), (11), (12), (13), or (14), must have its loss reserves certified by a qualified actuary. The company must file the certification with the commissioner within 30 days of completion of the certification, but not later than June 1. The actuary providing the certification may be an employee of the company but the commissioner may still require an independent actuarial certification as described in subdivision 1. This subdivision does not apply to township mutual companies, or to other domestic insurers having less than $1,000,000 of premiums written in any year and fewer than 1,000 policyholders. The commissioner may allow an exception to the stand alone certification where it can be demonstrated that a company in a group has a pooling or 100 percent reinsurance agreement used in a group which substantially affects the solvency and integrity of the reserves of the company, or where it is only the parent company of a group which is licensed to do business in Minnesota. If these circumstances exist, the company may file a written request with the commissioner for an exception. Companies writing reinsurance alone are not exempt from this requirement. The certification must contain the following statement: "In my opinion, the reserves described in this certification are consistent with reserves computed in accordance with standards and principles established by the Actuarial Standards Board and are fairly stated."

(b) Each foreign company engaged in providing the types of coverage described in section 60A.06, subdivision 1, clause (1), (2), (3), (5)(b), (6), (8), (9), (10), (11), (12), (13), or (14), required by this section to file an annual audited financial report, whose total net earned premium for Schedule P, Part 1A to Part 1H plus Part 1R, (Schedule P, Part 1A to Part 1H plus Part 1R, Column 4, current year premiums earned, from the company's most currently filed annual statement) is equal to one-third or more of the company's total net earned premium (Underwriting and Investment Exhibit, Part 2, Column 4, total line, of the annual statement) must have a reserve certification by a qualified actuary at least every three years. In the year that the certification is due, the company must file the certification with the commissioner within 30 days of completion of the certification, but not later than June 1. The actuary providing the certification may be an employee of the company. Companies writing reinsurance alone are not exempt from this requirement. The certification must contain the following statement: "The loss reserves and loss expense reserves have been examined and found to be calculated in accordance with generally accepted actuarial principles and practices and are fairly stated."

Subd. 3. **Annual audit.** (a) Every insurance company doing business in this state, including fraternal benefit societies, reciprocal exchanges, service plan corporations licensed pursuant to chapter 62C, and legal service plans licensed pursuant to chapter 62G, unless exempted by the commissioner pursuant to subdivision 5, paragraph (a), or by subdivision 7, shall have an annual audit of the financial activities of the most recently completed calendar year performed by an independent certified public accountant, and shall file the report of this audit with the commissioner on or before June 1 for the immediately preceding year ending December 31. The commissioner may require an insurer to file an audited financial report earlier than June 1 with 90 days' advance notice to the insurer.

Extensions of the June 1 filing date may be granted by the commissioner for 30-day periods upon a showing by the insurer and its independent certified public accountant of the reasons for requesting the extension and a determination by the commissioner of good cause for the extension.

The request for extension must be submitted in writing not less than ten days before the due date in sufficient detail to permit the commissioner to make an informed decision with respect to the requested extension.

(b) Foreign and alien insurers filing audited financial reports in another state under the other state's requirements of audited financial reports which have been found by the commissioner to be substantially similar to these requirements are exempt from this subdivision if a copy of the audited financial report, accountant's letter of qualifications, and report on significant deficiencies in internal controls, which are filed with the other state, are filed with the commissioner in accordance with the filing dates specified in paragraphs (a) and (l), (Canadian insurers may submit accountants' reports as filed with the Canadian Dominion Department of Insurance); and a copy of any notification of adverse financial condition report filed with the other state is filed with the commissioner within the time specified in paragraph (k). This paragraph does not prohibit or in any way limit the commissioner from ordering, conducting, and performing examinations of insurers under the authority of this chapter.

(c)(i) The annual audited financial report shall report, in conformity with statutory accounting practices required or permitted by the commissioner of insurance of the state of domicile, the financial position of the insurer as of the end of the most recent calendar year and the results of its operations, cash flows, and changes in capital and surplus for the year ended. The annual audited financial report shall include a report of an independent certified public accountant; a balance sheet reporting admitted assets, liabilities, capital, and surplus; a statement of operations; a statement of cash flows; a statement of changes in capital and surplus; and notes to the financial statements.

(ii) The notes required under item (i) shall be those required by the appropriate National Association of Insurance Commissioners annual statement instructions and National Association of Insurance Commissioners Accounting Practices and Procedures Manual and shall include reconciliation of differences, if any, between the audited statutory financial statements and the annual statement filed under section 60A.13, subdivision 1, with a written description of the nature of these differences.

(iii) The financial statements included in the audited financial report shall be prepared in a form and using language and groupings substantially the same as the relevant sections of the annual statement of the insurer filed with the commissioner. The financial statement shall be comparative, presenting the amounts as of December 31 of the current year and the amounts as of the immediately preceding December 31. In the first year in which an insurer is required to file an audited financial report, the comparative data may be omitted. The amounts may be rounded to the nearest $1,000, and all insignificant amounts may be combined.

(d) Each insurer required by this section to file an annual audited financial report must notify the commissioner in writing of the name and address of the independent certified public accountant or accounting firm retained to conduct the annual audit within 60 days after becoming subject to the annual audit requirement. The insurer shall obtain from the accountant a letter which states that the accountant is aware of the provisions that relate to accounting and financial matters in the insurance laws and the rules of the insurance regulatory authority of the state of domicile. The letter shall affirm that the accountant will express an opinion on the financial statements in terms of their conformity to the statutory accounting practices prescribed or otherwise permitted by that insurance regulatory authority, specifying the exceptions believed to be appropriate. A copy of the accountant's letter shall be filed with the commissioner.

(e) If an accountant who was the accountant for the immediately preceding filed audited financial report is dismissed or resigns, the insurer shall notify the commissioner of this event within five business days. Within ten business days of this notification, the insurer shall also furnish the commissioner with a separate letter stating whether in the 24 months preceding this event there were any disagreements with the former accountant on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which, if not resolved to the satisfaction of the former accountant, would have caused that person to make reference to the subject matter of the disagreement in connection with the opinion. The disagreements required to be reported in response to this paragraph include both those resolved to the former accountant's satisfaction and those not resolved to the former accountant's satisfaction. Disagreements contemplated by this section are those disagreements between personnel of the insurer responsible for presentation of its financial statements and personnel of the accounting firm responsible for rendering its report. The insurer shall also in writing request the former accountant to furnish a letter addressed to the insurer stating whether the accountant agrees with the statements contained in the insurer's letter and, if not, stating the reasons for any disagreement. The insurer shall furnish this responsive letter from the former accountant to the commissioner together with its own.

(f) The commissioner shall not recognize any person or firm as a qualified independent certified public accountant that is not in good standing with the American Institute of Certified Public Accountants and in all states in which the accountant is licensed to practice, or for a Canadian or British company, that is not a chartered accountant. Except as otherwise provided, an independent certified public accountant shall be recognized as qualified as long as the person conforms to the standards of the person's profession, as contained in the Code of Professional Ethics of the American Institute of Certified Public Accountants and the rules of professional conduct of the Minnesota Board of Public Accountancy or similar code.

(g) No partner or other person responsible for rendering a report for calendar year 1997 and thereafter may act in that capacity for more than seven consecutive years. Following any period of service, the person shall be disqualified from acting in that or a similar capacity for the same company or its insurance subsidiaries or affiliates for a period of two years. An insurer may make application to the commissioner for relief from the above rotation requirement on the basis of unusual circumstances. The commissioner may consider the number of partners, the expertise of the partners or the number of insurance clients in the currently registered firm, the premium volume of the insurer, or the number of jurisdictions in which the insurer transacts business in determining if the relief should be granted.

(h) The commissioner shall not recognize as a qualified independent certified public accountant, nor accept any audited financial report, prepared in whole or in part by any natural person who has been convicted of fraud, bribery, a violation of the Racketeer Influenced and Corrupt Organizations Act, United States Code, title 18, sections 1961 to 1968, or any dishonest conduct or practices under federal or state law, has been found to have violated the insurance laws of this state with respect to any previous reports submitted under this section, or has demonstrated a pattern or practice of failing to detect or disclose material information in previous reports filed under the provisions of this section.

(i) The commissioner, after notice and hearing under chapter 14, may find that the accountant is not qualified for purposes of expressing an opinion on the financial statements in the annual audited financial report. The commissioner may require the insurer to replace the accountant with another whose relationship with the insurer is qualified within the meaning of this section.

(j) Financial statements furnished under paragraph (a), shall be examined by an independent certified public accountant. The examination of the insurer's financial statements shall be conducted in accordance with generally accepted auditing standards and consideration should be given to other procedures illustrated in the Financial Condition Examiners Handbook, issued by the National Association of Insurance Commissioners, as the independent certified public accountant considers necessary.

(k) The insurer required to furnish the annual audited financial report shall require the independent certified public accountant to provide written notice within five business days to the board of directors of the insurer or its audit committee of any determination by that independent certified public accountant that the insurer has materially misstated its financial condition as reported to the commissioner as of the balance sheet date currently under examination or that the insurer does not meet the minimum capital and surplus requirement of sections 60A.07, 66A.32, and 66A.33 as of that date. An insurer required to file an annual audited financial report who received a notification of adverse financial condition from the accountant shall file a copy of the notification with the commissioner within five business days of the receipt of the notification. The insurer shall provide the independent certified public accountant making the notification with evidence of the report being furnished to the commissioner. If the independent certified public accountant fails to receive the evidence within the required five-day period, the independent certified public accountant shall furnish to the commissioner a copy of the notification to the board of directors or its audit committee within the next five business days. No independent certified public accountant shall be liable in any manner to any person for any statement made in connection with this paragraph if the statement is made in good faith in compliance with this paragraph. If the accountant becomes aware of facts which might have affected the audited financial report after the date it was filed under this section, the accountant shall take the action prescribed by Professional Standards issued by the American Institute of Certified Public Accountants.

(l) In addition to the annual audited financial statements, each insurer shall furnish the commissioner with a written report prepared by the accountant describing significant deficiencies in the insurer's internal control structure noted by the accountant during the audit. The accountant shall follow the professional standards issued by the American Institute of Certified Public Accountants, which require an accountant to communicate significant deficiencies, known as reportable conditions, noted during a financial statement audit, to the appropriate parties within an entity. No report shall be issued if the accountant does not identify significant deficiencies. Any such report by the accountant describing significant deficiencies in the insurer's internal control structure, shall be filed annually by the insurer with the commissioner within 60 days after the filing of the annual audited financial statements. This report on internal control shall be in the form prescribed by generally accepted auditing standards. The insurer shall provide the commissioner with a description of remedial actions taken or proposed to correct significant deficiencies, if those actions are not described in the accountant's report.

(m) The accountant shall furnish the insurer in connection with, and for inclusion in, the filing of the annual audited financial report, a letter stating that the accountant is independent with respect to the insurer and conforms to the standards of the accountant's profession as contained in the Code of Professional Ethics of the American Institute of Certified Public Accountants and the rules of professional conduct of the Minnesota Board of Accountancy or similar code; the background and experience in general, and the experience in audits of insurers of the staff assigned to the engagement and whether each is an independent certified public accountant; that the accountant understands that the annual audited financial report and the opinion thereon will be filed in compliance with this statute and that the commissioner will be relying on this information in the monitoring and regulation of the financial position of insurers; that the accountant consents to the requirements of paragraph (n) and that the accountant consents and agrees to make available for review by the commissioner, or the commissioner's designee or appointed agent, the workpapers, as defined in paragraph (n); a representation that the accountant is properly licensed by the appropriate state licensing authority and is a member in good standing in the American Institute of Certified Public Accountants; and, a representation that the accountant complies with paragraph (f). Nothing in this section shall be construed as prohibiting the accountant from utilizing staff the accountant deems appropriate where use is consistent with the standards prescribed by generally accepted auditing standards.

(n) Workpapers are the records kept by the independent certified public accountant of the procedures followed, tests performed, information obtained, and conclusions reached pertinent to the independent certified public accountant's examination of the financial statements of an insurer. Workpapers may include audit planning documents, work programs, analyses, memoranda, letters of confirmation and representation, management letters, abstracts of company documents, and schedules or commentaries prepared or obtained by the independent certified public accountant in the course of the examination of the financial statements of an insurer and that support the accountant's opinion. Every insurer required to file an audited financial report shall require the accountant, through the insurer, to make available for review by the examiners the workpapers prepared in the conduct of the examination and any communications related to the audit between the accountant and the insurer. The workpapers shall be made available at the offices of the insurer, at the offices of the commissioner, or at any other reasonable place designated by the commissioner. The insurer shall require that the accountant retain the audit workpapers and communications until the commissioner has filed a report on examination covering the period of the audit but no longer than seven years after the period reported upon. In the conduct of the periodic review by the examiners, it shall be agreed that photocopies of pertinent audit workpapers may be made and retained by the commissioner. These copies shall be part of the commissioner's workpapers and shall be given the same confidentiality as other examination workpapers generated by the commissioner.

(o)(i) In the case of Canadian and British insurers, the annual audited financial report means the annual statement of total business on the form filed by these companies with their domiciliary supervision authority and duly audited by an independent chartered accountant.

(ii) For these insurers, the letter required in paragraph (d), shall state that the accountant is aware of the requirements relating to the annual audited statement filed with the commissioner under paragraph (a), and shall affirm that the opinion expressed is in conformity with those requirements.

(p) The audit report of the independent certified public accountant that performs the audit of an insurer's annual statement as required under paragraph (a), shall contain a statement as to whether anything, in connection with the audit, came to the accountant's attention that caused the accountant to believe that the insurer failed to adopt and consistently apply the valuation procedures as required by sections 60A.122 and 60A.123.

Subd. 4. **Examinations.** (a) The commissioner or a designated representative shall determine the nature, scope, and frequency of examinations under this section conducted by examiners under section 60A.031. These examinations may cover all aspects of the insurer's assets, condition, affairs, and operations and may include and be supplemented by audit procedures performed by independent certified public accountants. Scheduling of examinations will take into account all relevant matters with respect to the insurer's condition, including results of the National Association of Insurance Commissioners, Insurance Regulatory Information Systems, changes in management, results of market conduct examinations, and audited financial reports. The type of examinations performed by examiners under this section shall be compliance examinations, targeted examinations, and comprehensive examinations.

(b) Compliance examinations will consist of a review of the accountant's workpapers defined under this section and a general review of the insurer's corporate affairs and insurance operations to determine compliance with the Minnesota insurance laws and the rules of the Department of Commerce. The examiners may perform alternative or additional examination procedures to supplement those performed by the accountant when the examiners determine that the procedures are necessary to verify the financial condition of the insurer.

(c) Targeted examinations may cover limited areas of the insurer's operations as the commissioner may deem appropriate.

(d) Comprehensive examinations will be performed when the report of the accountant as provided for in subdivision 3, paragraph (g), the notification required by subdivision 3, paragraph (h), the results of compliance or targeted examinations, or other circumstances indicate in the judgment of the commissioner or a designated representative that a complete examination of the condition and affairs of the insurer is necessary.

(e) Upon completion of each targeted, compliance, or comprehensive examination, the examiner appointed by the commissioner shall make a full and true report on the results of the examination. Each report shall include a general description of the audit procedures performed by the examiners and the procedures of the accountant that the examiners may have utilized to supplement their examination procedures and the procedures that were performed by the registered independent certified public accountant if included as a supplement to the examination.

Subd. 5. **Consolidated filing.** (a) The commissioner may allow an insurer to file a consolidated loss reserve certification required by subdivision 2, in lieu of separate loss certifications and may allow an insurer to file consolidated or combined audited financial statements required by subdivision 3, paragraph (a), in lieu of separate annual audited financial statements, where it can be demonstrated that an insurer is part of a group of insurance companies that has a pooling or 100 percent reinsurance agreement which substantially affects the solvency and integrity of the reserves of the insurer and the insurer cedes all of its direct and assumed business to the pool. An affiliated insurance company not meeting these requirements may be included in the consolidated or combined audited financial statements, if the company's total admitted assets are less than five percent of the consolidated group's total admitted assets. If these circumstances exist, then the company may file a written application to file a consolidated loss reserve certification and/or consolidated or combined audited financial statements. This application shall be for a specified period.

(b) Upon written application by a domestic insurer, the commissioner may authorize the domestic insurer to include additional affiliated insurance companies in the consolidated or combined audited financial statements. Foreign insurers must obtain the prior written authorization of the commissioner of their state of domicile in order to submit an application for authority to file consolidated or combined audited financial statements. This application shall be for a specified period.

(c) A consolidated annual audit filing shall include a columnar consolidated or combining worksheet. Amounts shown on the audited consolidated or combined financial statement shall be shown on the worksheet. Amounts for each insurer shall be stated separately. Noninsurance operations may be shown on the worksheet on a combined or individual basis. Explanations of consolidating or eliminating entries shall be shown on the worksheet. A reconciliation of any differences between the amounts shown in the individual insurer columns of the worksheet and comparable amounts shown on the annual statement of the insurers shall be included on the worksheet.

Subd. 6. **Penalties.** No annual statement, report, or document related to the business of insurance shall be filed with the commissioner or issued to the public if it is signed by anyone who is represented in the instrument as an "actuary" or "accountant," unless the person is qualified as defined by this section. A violation of this subdivision is a violation of section 72A.19 and punishable in accordance with section 72A.25.

Subd. 7. **Exemptions.** (a) Upon written application of any insurer, the commissioner may grant an exemption from compliance with the provisions of this section. In order to receive an exemption, an insurer must demonstrate to the satisfaction of the commissioner that compliance would constitute a financial or organizational hardship upon the insurer. An exemption may be granted at any time and from time to time for specified periods. Within ten days from the denial of an insurer's written request for an exemption, the insurer may request in writing a hearing on its application for an exemption. This hearing shall be held in accordance with chapter 14. Upon written application of any insurer, the commissioner may permit an insurer to file annual audited financial reports on some basis other than a calendar year basis for a specified period. No exemption shall be granted until the insurer presents an alternative method satisfying the purposes of this section. Within ten days from a denial of a written request for an exemption, the insurer may request in writing a hearing on its application. The hearing shall be held in accordance with chapter 14.

(b) This section applies to all insurers, unless otherwise indicated, required to file an annual audit by subdivision 3, paragraph (a), except insurers having less than $1,000,000 of direct written premiums in this state in any calendar year and fewer than 1,000 policyholders or certificate holders of directly written policies nationwide at the end of the calendar year, are exempt from this section for that year, unless the commissioner makes a specific finding that compliance is necessary for the commissioner to carry out statutory responsibilities, except that insurers having assumed premiums from reinsurance contracts or treaties of $1,000,000 or more are not exempt.

61B.19 PURPOSE; SCOPE; LIMITATION OF COVERAGE; LIMITATION OF BENEFITS; CONSTRUCTION.

Subd. 6. **Adjustment of liability limits.** The dollar amounts stated in subdivision 4 shall be adjusted for inflation based upon the implicit price deflator for the gross domestic product compiled by the United States Department of Commerce and hereafter referred to as the index. The dollar amounts stated in subdivision 4 are based upon the value of the index for the fourth quarter of 1992, which is the reference base index for purposes of this subdivision. The dollar amounts in subdivision 4 shall change on October 1 of each year after 1993 based upon the percentage difference between the index for the fourth quarter of the preceding year and the reference base index, calculated to the nearest whole percentage point. The commissioner shall announce and publish, on or before April 30 of each year, the changes in the dollar amounts required by this subdivision to take effect on October 1 of that year. The commissioner shall use the most recent revision of the relevant gross domestic product implicit price deflators available as of April 1. If the United States Department of Commerce changes the base year for the gross domestic product implicit price deflator, the commissioner shall make the calculations necessary to convert from the old to the new base year. Changes must be in increments of $10,000. No adjustment may be made until the change in the index results in at least a $10,000 increase.

67A.14 INSURABLE PROPERTY.

Subd. 5. **What may not be insured; property outside designated territory; exceptions.** (a) No township mutual insurance company shall insure any property in cities of the first or second class.

(b) If by annexation or other growth in population a city, town, township or unorganized territory or any portion thereof is reclassified into a city of the second class, a township mutual insurance company may do business in that portion of the city in which it was authorized to do business prior to the reclassification.

(c) A township mutual insurance company may insure any real or personal property, including qualified or secondary property, subject to the limitations in subdivision 1, paragraph (b), located outside of the limits of the territory in which the company is authorized by its certificate or articles of incorporation to transact business, if the company is already covering qualified property belonging to the insured, inside the limits of the company's territory.

(d) A township mutual fire insurance company may insure property temporarily outside of the authorized territory of the township mutual insurance company.

(e) Except as otherwise provided in paragraph (b) or elsewhere in this chapter, a company may operate in adjoining cities of the second class if approval has been granted by the commissioner.

67A.17 ASSESSMENTS.

Subdivision 1. **Determination.** When any loss shall be ascertained which exceeds in amount the cash funds of the company, the secretary, or, in the secretary's absence, the president, shall convene the directors, who shall levy an assessment upon each policyholder for the proportionate amount to be paid to cover this excess; or the company may borrow not to exceed two mills on each dollar of insurance written by it and then in force, and from this fund pay these losses, and afterwards levy assessments to pay the loans.

If the fund for the payment of expenses is insufficient, the amount of the deficiency may be added to any assessment.

Subd. 1a. **Advance premiums or assessments.** The directors of a company may collect an advance premium or an assessment for the purpose of maintaining surplus funds in its treasury to be used in payment of losses or expenses.

Subd. 2. **Secretary's duties.** It shall be the duty of the secretary or chosen manager, after the assessment is completed, to immediately notify every person composing the company, by letter sent to the person's usual post office address, of the amount of the loss, and the sum due as the person's share thereof, and of the time when and to whom the payment is to be made, but this time shall not be less than 60, nor more than 90, days from the date of the notice, and every person designated to receive this money may demand and receive two percent in addition to the amount due on the assessment, as aforesaid, for fees in receiving and paying over the same.

Subd. 3. **Member subject to suit and directors' liability.** Suits at law may be brought against any member of the company who refuses or neglects to pay any assessment. The articles may eliminate or limit a director's personal liability to the company or its members for monetary damages for breach of fiduciary duty as a director. The articles shall not eliminate or limit the liability of a director:

(1) for breach of loyalty to the company or its members;

(2) for acts or omissions made in bad faith or with intentional misconduct or knowing violation of law;

(3) for transactions from which the director derived an improper personal benefit; or

(4) for acts or omissions occurring before the date that the provisions in the articles eliminating or limiting liability become effective.

67A.19 JOINT OR PARTIAL RISKS.

Township mutual fire insurance companies may issue joint or partial risk policies in conjunction with adjoining companies of the same class and, in this case, they are not confined to the townships in which they are otherwise authorized to do business; but no such insurance of a joint or partial risk shall be valid or binding upon the company insuring the same until approved by all the companies holding prior policies on the property so insured, and the total amount of the joint insurance on any one piece of property shall in no case exceed the total percentage of its value for which the property is insurable by the company.

Laws 2008, chapter 363, article 5, section 30

Sec. 30. **MINING ADMINISTRATIVE FEE.**

(a) Until a new application fee schedule is adopted for permits to mine or process taconite according to the report submitted by the commissioner of natural resources under this article, the commissioner shall charge the administrative fees established in paragraph (b), payable to the commissioner by June 30 of each year, beginning in 2008.

(b) A company that manages a taconite mining or taconite processing operation shall pay:

(1) $90,000 if the total production of the company's combined operations in the state had an annual production of 10,000,000 or more tons of taconite pellets or iron nuggets during the previous calendar year;

(2) $10,000 if the total production of the company's combined operations in the state had an annual production of less than 10,000,000 tons of taconite pellets or iron nuggets during the previous calendar year; and

(3) $3,333 if the mining operation is permitted to mine, but had no annual production of taconite pellets or iron nuggets during the previous calendar year.**EFFECTIVE DATE.**

This section is effective the day following final enactment and applies to companies that manage a taconite mining or taconite processing operation holding or applying for a permit to mine under Minnesota Statutes, section 93.481, during the 2007 calendar year.