

HOUSE OF REPRESENTATIVES

EIGHTY-SEVENTH SESSION

H. F. No. 2458

02/22/2012 Authored by Torkelson, Dill, Gunther and Fabian
The bill was read for the first time and referred to the Committee on Government Operations and Elections

03/19/2012 Adoption of Report: Pass and re-referred to the Committee on State Government Finance

03/21/2012 Adoption of Report: Pass as Amended and re-referred to the Committee on Ways and Means

04/19/2012 Adoption of Report: Pass as Amended and Read Second Time

04/20/2012 Fiscal Calendar, Amended
Read Third Time as Amended
Passed by the House as Amended and transmitted to the Senate to include Floor Amendments

1.1 A bill for an act
1.2 relating to state government; creating an advisory inspections process; proposing
1.3 coding for new law in Minnesota Statutes, chapter 15.

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

1.5 Section 1. [15.985] ADVISORY INSPECTIONS.

1.6 (a) Upon the voluntary request of a person to a state agency for an advisory
1.7 inspection for the purpose of complying with state law, the agency must, except as
1.8 provided in paragraphs (f) and (g), conduct an advisory inspection. An agency is not
1.9 required to conduct an advisory inspection if the agency has a regularly scheduled
1.10 inspection that would occur within 90 days after the request for the advisory inspection,
1.11 or if before an advisory inspection is requested, the agency has notified the person that
1.12 it will be conducting an inspection within 45 days. If an advisory inspection results in
1.13 findings that potentially could make a person subject to a fine or other penalty imposed
1.14 by the agency, the agency must notify the person in writing of those findings within ten
1.15 days of the inspection.

1.16 (1) Except as provided in clause (2), if within 60 days of receiving notice the person
1.17 notifies that agency it has corrected the situation that made the person potentially subject
1.18 to the fine or penalty, and the agency later determines that the situation is corrected,
1.19 the agency may not impose a fine or penalty as a result of the findings in the advisory
1.20 inspection.

1.21 (2) For violations of chapter 177, if the person notifies the agency within the time
1.22 period for remedying violations required under the applicable section of chapter 177, that
1.23 it has corrected the situation that made the person potentially subject to the fine or penalty,

2.1 and the agency later determines that the situation is corrected, the agency may not impose
2.2 a fine or penalty as a result of the finding in the advisory inspection.

2.3 (3) A person may not request more than one advisory inspection from the same
2.4 agency in a calendar year. A person may not request an advisory inspection after an
2.5 inspection resulting in a fine or other penalty has been determined and the violator notified
2.6 of the amount to be paid, until fines or penalties have been paid or settled.

2.7 (b) For purposes of this section:

2.8 (1) "inspection" includes an examination of real or personal property, or an audit or
2.9 other examination of financial or other documents;

2.10 (2) "penalty" includes a civil or administrative fine or other financial sanction;

2.11 (3) "person" includes a real person and businesses, including corporations,
2.12 partnerships, limited liability companies, and unincorporated associations; and

2.13 (4) "state agency" means a department, agency, board, commission, constitutional
2.14 office, or other group in the executive branch of state government.

2.15 (c) If an agency revises, amends, extends, or adds additional violations to a notice,
2.16 the person has 60 days from the date of those changes to correct the situation without fine
2.17 or penalty. For violations of chapter 177, the person has the time period for remedying
2.18 violations under the applicable section of chapter 177, to correct the situation without
2.19 fine or penalty.

2.20 (d) An agency conducting an inspection under this section may impose and collect
2.21 from the person requesting the inspection, a fee equal to the costs incurred by the agency
2.22 related to the inspection. Fees under this section shall be considered as charges for goods
2.23 and services provided for the direct and primary use of a private individual, business, or
2.24 other entity under section 16A.1283, paragraph (b), clause (3). Fee revenue collected
2.25 under this section must be deposited in an appropriate fund other than the general fund
2.26 and is appropriated from that fund to the agency collecting the fee for the purpose of
2.27 conducting inspections under this section.

2.28 (e) Nothing in this section shall prohibit or interfere with an agency offering similar
2.29 programs that allow independent audits or inspections, including the environmental
2.30 improvement program under chapter 114C. If a person conducts a self-audit under chapter
2.31 114C, the requirements of this section do not apply. For advisory inspections conducted
2.32 by the Pollution Control Agency, terms and requirements of chapter 114C shall be used
2.33 instead of those in this section.

2.34 (f) If agency staff resources are limited, an agency must give higher priority to the
2.35 agency's regular inspections over advisory inspections under this section. In so far as
2.36 conducting advisory inspections reduces an agency's costs, the savings must be reflected in

3.1 the charges for advisory inspections. An agency may not add additional staff complement
3.2 for purposes of this section before July 1, 2013. An agency may not add additional staff
3.3 complement for purposes of this section after July 1, 2013, unless: (1) the agency has
3.4 documented the demand for advisory inspections and has documented why additional staff
3.5 complement is needed to meet the demand; and (2) the agency has documented that the
3.6 revenue generated by advisory inspections will cover the expenses of the additional staff
3.7 complement. If a person requests an advisory inspection, but the agency does not have
3.8 staff resources necessary to conduct the advisory inspection before a regular inspection is
3.9 conducted, and the regular inspection results in findings that could make a person subject
3.10 to a fine or penalty, the agency must take into account the person's request for an advisory
3.11 inspection and the person's desire to take corrective action before taking any enforcement
3.12 action against the person.

3.13 (g) This section does not apply to:

3.14 (1) criminal penalties;

3.15 (2) situations in which implementation of this section is prohibited by federal law or
3.16 would result in loss of federal funding or other federal sanctions;

3.17 (3) conduct constituting fraud;

3.18 (4) violations in a manner that endangers a human life or presents significant risk of
3.19 major injury or severe emotional harm to humans;

3.20 (5) violations that are part of a pattern that has occurred repeatedly and shows
3.21 willful intent;

3.22 (6) violations for which it may be demonstrated that the alternative inspections
3.23 process is being used to avoid enforcement;

3.24 (7) violations that occur within three years of violating an applicable law;

3.25 (8) the Department of Revenue;

3.26 (9) the Workers' Compensation Division at the Department of Labor and Industry;

3.27 (10) violations of vehicle size weight limits under sections 169.80 to 169.88;

3.28 (11) commercial motor vehicle inspections under section 169.781 and motor carrier
3.29 regulations under chapter 221;

3.30 (12) the Dairy and Food Inspection Division of the Department of Agriculture, if the
3.31 division provides free inspections similar to those under this section;

3.32 (13) state inspections or surveys of: hospitals, nursing homes, outpatient surgical
3.33 centers, supervised living facilities, board and lodging with special services, home care,
3.34 housing with services and assisted living settings, hospice, and supplemental nursing
3.35 services agencies;

4.1 (14) examinations of health maintenance organizations or county-based purchasing
4.2 entities regulated under chapter 62D;

4.3 (15) special transportation services under section 174.30; and

4.4 (16) financial institutions regulated by federal agencies, including state chartered
4.5 banks, federal chartered banks, state chartered credit unions, federal chartered credit
4.6 unions, and industrial loan and thrifts, to the extent that application of this section to those
4.7 institutions would interfere with agreements between state and federal regulatory agencies.

4.8 (h) An agency may terminate an advisory inspection and proceed as if an inspection
4.9 were a regular inspection if, in the process of conducting an advisory inspection, the
4.10 agency finds a situation that the agency determines: could lead to criminal penalties;
4.11 endangers human life or presents significant risk of major injury or severe emotional
4.12 harm to humans; presents a severe and imminent threat to animals, food, feed, crops,
4.13 commodities, or the environment; or evidences a pattern of willful violations.

4.14 **EFFECTIVE DATE.** This section is effective July 1, 2012.