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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-SEVENTH SESSION

H. F. No. **2701**

03/07/2012 Authored by Holberg and Scott

The bill was read for the first time and referred to the Committee on Civil Law

1.1 A bill for an act
1.2 relating to data practices; providing for expedited requests; requiring certain
1.3 subcontracts be filed with a government entity; making other miscellaneous
1.4 changes; amending Minnesota Statutes 2010, sections 13.03, subdivision 3;
1.5 13.05, by adding a subdivision; 13.072, subdivisions 1, 2; 13.43, subdivision 1;
1.6 16C.05, subdivision 2; 471.345, by adding a subdivision; repealing Minnesota
1.7 Statutes 2010, sections 13.7931, subdivision 6; 84.0874.

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

1.9 Section 1. Minnesota Statutes 2010, section 13.03, subdivision 3, is amended to read:

1.10 Subd. 3. **Request for access to data.** (a) Upon request to a responsible authority
1.11 or designee, a person shall be permitted to inspect and copy public government data at
1.12 reasonable times and places, and, upon request, shall be informed of the data's meaning.
1.13 Except as provided in paragraph (f), if a person requests access for the purpose of
1.14 inspection, the responsible authority may not assess a charge or require the requesting
1.15 person to pay a fee to inspect data.

1.16 (b) For purposes of this section, "inspection" includes, but is not limited to, the
1.17 visual inspection of paper and similar types of government data. Inspection does not
1.18 include printing copies by the government entity, unless printing a copy is the only
1.19 method to provide for inspection of the data. In the case of data stored in electronic form
1.20 and made available in electronic form on a remote access basis to the public by the
1.21 government entity, inspection includes remote access to the data by the public and the
1.22 ability to print copies of or download the data on the public's own computer equipment.
1.23 Nothing in this section prohibits a government entity from charging a reasonable fee for
1.24 remote access to data under a specific statutory grant of authority. A government entity

2.1 may charge a fee for remote access to data where either the data or the access is enhanced
2.2 at the request of the person seeking access.

2.3 (c) The responsible authority or designee shall provide copies of public data upon
2.4 request. If a person requests copies or electronic transmittal of the data to the person,
2.5 the responsible authority may require the requesting person to pay the actual costs of
2.6 searching for and retrieving government data, including the cost of employee time, and for
2.7 making, certifying, and electronically transmitting the copies of the data or the data, but
2.8 may not charge for separating public from not public data. However, if 100 or fewer pages
2.9 of black and white, letter or legal size paper copies are requested, actual costs shall not be
2.10 used, and instead, the responsible authority may charge no more than 25 cents for each
2.11 page copied. If the responsible authority or designee is not able to provide copies at the
2.12 time a request is made, copies shall be supplied as soon as reasonably possible.

2.13 (d) When a request under this subdivision involves any person's receipt of copies
2.14 of public government data that has commercial value and is a substantial and discrete
2.15 portion of or an entire formula, pattern, compilation, program, device, method, technique,
2.16 process, database, or system developed with a significant expenditure of public funds by
2.17 the government entity, the responsible authority may charge a reasonable fee for the
2.18 information in addition to the costs of making and certifying the copies. Any fee charged
2.19 must be clearly demonstrated by the government entity to relate to the actual development
2.20 costs of the information. The responsible authority, upon the request of any person, shall
2.21 provide sufficient documentation to explain and justify the fee being charged.

2.22 (e) The responsible authority of a government entity that maintains public
2.23 government data in a computer storage medium shall provide to any person making a
2.24 request under this section a copy of any public data contained in that medium, in electronic
2.25 form, if the government entity can reasonably make the copy or have a copy made.
2.26 This does not require a government entity to provide the data in an electronic format or
2.27 program that is different from the format or program in which the data are maintained
2.28 by the government entity. The entity may require the requesting person to pay the actual
2.29 cost of providing the copy.

2.30 (f) A person may request expedited access to data upon payment of a fee of \$25
2.31 per document, not to exceed \$200 in aggregate for multiple documents, in addition to
2.32 other costs allowable under this subdivision. The responsible authority must provide the
2.33 requestor access to the data for inspection, or fulfill the request for copies, on or before a
2.34 date agreed to by the requestor and the responsible authority, upon payment of the fee.
2.35 The responsible authority must refund the fee at a rate of \$12.50 per day for each business
2.36 day past the date set by this paragraph that an expedited request is delayed.

3.1 (g) If the responsible authority or designee determines that the requested data
 3.2 is classified so as to deny the requesting person access, the responsible authority or
 3.3 designee shall inform the requesting person of the determination either orally at the time
 3.4 of the request, or in writing as soon after that time as possible, and shall cite the specific
 3.5 statutory section, temporary classification, or specific provision of federal law on which
 3.6 the determination is based. Upon the request of any person denied access to data, the
 3.7 responsible authority or designee shall certify in writing that the request has been denied
 3.8 and, cite the specific statutory section, temporary classification, or specific provision of
 3.9 federal law upon which the denial was based, and identify each series of record, file, or
 3.10 process from which data was withheld and the number of documents withheld, unless
 3.11 the identification would result, directly or indirectly, in the disclosure of data that is not
 3.12 accessible to the requestor.

3.13 Sec. 2. Minnesota Statutes 2010, section 13.05, is amended by adding a subdivision to
 3.14 read:

3.15 Subd. 14. **Procedure upon receipt of request for data.** Upon receipt of a request
 3.16 for access to data under section 13.03 or 13.04, the responsible authority shall notify all
 3.17 officials or employees that may be in possession of relevant data of the existence of the
 3.18 request, the specific data requested, and the responsible authority's plan for responding
 3.19 to the request. The responsible authority must also instruct officials or employees in
 3.20 possession of the data that the data requested, and any data created as a result of the
 3.21 request, must be maintained until the request is fulfilled. An official or employee who
 3.22 improperly destroys or tampers with requested data after being notified under this
 3.23 subdivision is subject to the remedies and penalties provided in section 13.08.

3.24 Sec. 3. Minnesota Statutes 2010, section 13.072, subdivision 1, is amended to read:

3.25 Subdivision 1. **Opinion; when required.** (a) Upon request of a government entity,
 3.26 the commissioner may give a written opinion on any question relating to public access
 3.27 to government data, rights of subjects of data, or classification of data under this chapter
 3.28 or other Minnesota statutes governing government data practices. Upon request of any
 3.29 person who disagrees with a determination regarding data practices made by a government
 3.30 entity, the commissioner may give a written opinion regarding the person's rights as a
 3.31 subject of government data or right to have access to government data.

3.32 (b) Upon request of a body subject to chapter 13D, the commissioner may give a
 3.33 written opinion on any question relating to the body's duties under chapter 13D. Upon
 3.34 request of a person who disagrees with the manner in which members of a governing body

4.1 perform their duties under chapter 13D, the commissioner may give a written opinion
4.2 on compliance with chapter 13D. A governing body or person requesting an opinion
4.3 under this paragraph must pay the commissioner a fee of \$200. Money received by the
4.4 commissioner under this paragraph is appropriated to the commissioner for the purposes
4.5 of this section.

4.6 (c) If the commissioner determines that no opinion will be issued, the commissioner
4.7 shall give the government entity or body subject to chapter 13D or person requesting
4.8 the opinion notice of the decision not to issue the opinion within five business days of
4.9 receipt of the request. If the commissioner determines that an opinion will not be issued
4.10 because the issue presented has been addressed by a prior opinion, the commissioner shall
4.11 include this fact in the notice and publish the notice on the commissioner's Web site. If
4.12 this notice is not given, the commissioner shall issue an opinion within 20 days of receipt
4.13 of the request.

4.14 (d) For good cause and upon written notice to the person requesting the opinion,
4.15 the commissioner may extend this deadline for one additional 30-day period. The notice
4.16 must state the reason for extending the deadline. The government entity or the members
4.17 of a body subject to chapter 13D must be provided a reasonable opportunity to explain the
4.18 reasons for its decision regarding the data or how they perform their duties under chapter
4.19 13D. The commissioner or the government entity or body subject to chapter 13D may
4.20 choose to give notice to the subject of the data concerning the dispute regarding the data
4.21 or compliance with chapter 13D.

4.22 (e) This section does not apply to a determination made by the commissioner of
4.23 health under section 13.3805, subdivision 1, paragraph (b), or 144.6581.

4.24 (f) A written, numbered, and published opinion issued by the attorney general shall
4.25 take precedence over an opinion issued by the commissioner under this section.

4.26 Sec. 4. Minnesota Statutes 2010, section 13.072, subdivision 2, is amended to read:

4.27 Subd. 2. **Effect.** Opinions issued by the commissioner under this section are not
4.28 binding on the government entity or members of a body subject to chapter 13D whose
4.29 data or performance of duties is the subject of the opinion, but an opinion described in
4.30 subdivision 1, paragraph (a), must be given deference by a court or other tribunal in a
4.31 proceeding involving the data. The commissioner shall arrange for public dissemination
4.32 of opinions issued under this section, and shall indicate when the principles stated in an
4.33 opinion are intended to provide guidance to all similarly situated persons or government
4.34 entities. This section does not preclude a person from bringing any other action under
4.35 this chapter or other law in addition to or instead of requesting a written opinion. A

5.1 government entity, members of a body subject to chapter 13D, or person that acts in
5.2 conformity with a written opinion of the commissioner issued to the government entity,
5.3 members, or person or to another party is not liable for compensatory or exemplary
5.4 damages or awards of attorneys fees in actions for violations arising under section 13.08
5.5 or 13.085, or for a penalty under section 13.09 or for fines, awards of attorney fees, or
5.6 any other penalty under chapter 13D. A member of a body subject to chapter 13D is not
5.7 subject to forfeiture of office if the member was acting in reliance on an opinion.

5.8 Sec. 5. Minnesota Statutes 2010, section 13.43, subdivision 1, is amended to read:

5.9 Subdivision 1. **Definition.** As used in this section, "personnel data" means
5.10 government data on individuals maintained because the individual is or was an employee
5.11 of or an applicant for employment by, performs services on a voluntary basis for, or acts
5.12 as an independent contractor or subcontractor with a government entity. Personnel data
5.13 includes data submitted by an employee to a government entity as part of an organized
5.14 self-evaluation effort by the government entity to request suggestions from all employees
5.15 on ways to cut costs, make government more efficient, or improve the operation of
5.16 government. An employee who is identified in a suggestion shall have access to all data in
5.17 the suggestion except the identity of the employee making the suggestion.

5.18 Sec. 6. Minnesota Statutes 2010, section 16C.05, subdivision 2, is amended to read:

5.19 Subd. 2. **Creation and validity of contracts.** (a) A contract is not valid and the state
5.20 is not bound by it and no agency, without the prior written approval of the commissioner
5.21 granted pursuant to subdivision 2a, may authorize work to begin on it unless:

5.22 (1) it has first been executed by the head of the agency or a delegate who is a party
5.23 to the contract;

5.24 (2) it has been approved by the commissioner; and

5.25 (3) the accounting system shows an encumbrance for the amount of the contract
5.26 liability, except as allowed by policy approved by the commissioner and commissioner of
5.27 management and budget for routine, low-dollar procurements.

5.28 (b) The combined contract and amendments must not exceed five years without
5.29 specific, written approval by the commissioner according to established policy, procedures,
5.30 and standards, or unless otherwise provided for by law. The term of the original contract
5.31 must not exceed two years unless the commissioner determines that a longer duration is
5.32 in the best interest of the state.

5.33 (c) Grants, interagency agreements, purchase orders, work orders, and annual plans
5.34 need not, in the discretion of the commissioner and attorney general, require the signature

6.1 of the commissioner and/or the attorney general. A signature is not required for work
6.2 orders and amendments to work orders related to Department of Transportation contracts.
6.3 Bond purchase agreements by the Minnesota Public Facilities Authority do not require
6.4 the approval of the commissioner.

6.5 (d) Amendments to contracts must entail tasks that are substantially similar to
6.6 those in the original contract or involve tasks that are so closely related to the original
6.7 contract that it would be impracticable for a different contractor to perform the work. The
6.8 commissioner or an agency official to whom the commissioner has delegated contracting
6.9 authority under section 16C.03, subdivision 16, must determine that an amendment would
6.10 serve the interest of the state better than a new contract and would cost no more.

6.11 (e) A fully executed copy of every contract, subcontract, amendments to the
6.12 contract, and performance evaluations relating to the contract must be kept on file at
6.13 the contracting agency for a time equal to that specified for contract vendors and other
6.14 parties in subdivision 5.

6.15 (f) The attorney general must periodically review and evaluate a sample of state
6.16 agency contracts to ensure compliance with laws.

6.17 (g) An agency contract must require the contractor to submit to the agency a copy of
6.18 any subcontract entered into under the prime contract. The Minnesota State Colleges and
6.19 Universities is an agency for purposes of this paragraph.

6.20 Sec. 7. Minnesota Statutes 2010, section 471.345, is amended by adding a subdivision
6.21 to read:

6.22 Subd. 20. **Subcontractor contracts.** (a) A municipal contract must require the
6.23 contractor to submit to the municipality a copy of any subcontract entered into under the
6.24 prime contract. A fully executed copy of every contract, subcontract, amendment to a
6.25 contract or subcontract, and performance evaluations relating to the contract must be kept
6.26 by the municipality as required by section 15.17 and chapter 138.

6.27 (b) For purposes of this subdivision, a contract includes the definition provided in
6.28 subdivision 2, and also includes a contract for professional services.

6.29 Sec. 8. **REPEALER.**

6.30 Minnesota Statutes 2010, sections 13.7931, subdivision 6; and 84.0874, are repealed.

13.7931 NATURAL RESOURCE DATA CODED ELSEWHERE.

Subd. 6. **Electronic licensing system data.** Data on individuals created, collected, stored, or maintained by the department for the purposes of obtaining a noncommercial game and fish license, cross-country ski pass, horse pass, or snowmobile trail sticker; registering a recreational motor vehicle; or any other electronic licensing transaction are classified under section 84.0874.

84.0874 ELECTRONIC LICENSING SYSTEM DATA.

The following data created, collected, stored, or maintained by the department for purposes of obtaining a noncommercial game and fish license, cross-country ski pass, horse pass, or snowmobile trail sticker; registering a recreational motor vehicle; or any other electronic licensing transaction are private data on individuals as defined in section 13.02, subdivision 12: name, addresses, driver's license number, and date of birth. The data may be disclosed for law enforcement purposes. The data, other than the driver's license number, may be disclosed to a government entity and for natural resources management purposes, including recruitment, retention, and training certification and verification.