

Sec. 2. Minnesota Statutes 1991 Supplement, section 490.123, subdivision 1a, is amended to read:

Subd. 1a. **MEMBER CONTRIBUTION RATES.** (a) A judge who is covered by the federal old age, survivors, disability, and health insurance program shall contribute to the fund from each salary payment a sum equal to ~~four~~ 6.27 percent of salary.

(b) A judge not so covered shall contribute to the fund from each salary payment a sum equal to 8.15 percent of salary.

(c) The contribution under this subdivision is payable by salary deduction.

Sec. 3. **REPEALER.**

Minnesota Statutes 1990, section 490.129, is repealed.

Sec. 4. **EFFECTIVE DATE.**

Section 2 is effective on the first day of the first payroll period occurring after final enactment. Section 3 is effective on July 1, 1992.

Presented to the governor April 16, 1992

Signed by the governor April 20, 1992, 4:57 p.m.

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**CHAPTER 493—S.F.No. 2017**

*An act relating to utilities; defining the term excavation; authorizing land surveyors to receive location information related to underground facilities; requiring notice of land surveys; clarifying authority of commission to reinstate original rate for a telephone service subject to emerging competition on finding proposed rate is below incremental cost or is not just and reasonable; requiring commission to make final decision within 180 days on rate increase of telephone service subject to effective competition, when contested case hearing is not held; providing for telephone company promotion activities; authorizing the recording of monuments on plats before actual placement; amending Minnesota Statutes 1990, sections 216D.01, subdivision 8, and by adding subdivisions; 216D.04; 237.60, subdivision 2; 465.79, subdivisions 2 and 4; 505.02, subdivision 1; and 505.03, subdivision 1; Minnesota Statutes 1991 Supplement, 216D.01, subdivision 5; proposing coding for new law in Minnesota Statutes, chapter 237.*

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

Section 1. Minnesota Statutes 1990, section 216D.01, is amended by adding a subdivision to read:

Subd. 1b. BOUNDARY SURVEY. "Boundary survey" means a survey made to establish or to reestablish a boundary line on the ground or to obtain data for preparing a map or plat showing boundary lines.

New language is indicated by underline, deletions by ~~strikeout~~.

Sec. 2. Minnesota Statutes 1991 Supplement, section 216D.01, subdivision 5, is amended to read:

Subd. 5. **EXCAVATION.** "Excavation" means an activity that moves, removes, or otherwise disturbs the soil by use of a motor, engine, hydraulic or pneumatically-powered tool, or machine-powered equipment of any kind, or by explosives. Excavation does not include:

(1) the repair or installation of agricultural drainage tile for which notice has been given as provided by section 116L.07, subdivision 2;

(2) the extraction of minerals;

(3) the opening of a grave in a cemetery;

(4) normal maintenance of roads and streets if the maintenance does not change the original grade and does not involve the road ditch;

(5) plowing, cultivating, planting, harvesting, and similar operations in connection with growing crops, trees, and shrubs, unless any of these activities disturbs the soil to a depth of 18 inches or more; or

(6) landscaping or gardening unless one of the activities disturbs the soil to a depth of 12 inches or more; ~~or~~

~~(7) installation of real estate "For Sale" signs, unless the installation disturbs the soil to a depth of 12 inches or more.~~

Sec. 3. Minnesota Statutes 1990, section 216D.01, is amended by adding a subdivision to read:

Subd. 6a. LAND SURVEYOR. "Land surveyor" means a person licensed to practice land surveying under sections 326.02 to 326.15.

Sec. 4. Minnesota Statutes 1990, section 216D.01, subdivision 8, is amended to read:

Subd. 8. **NOTIFICATION CENTER.** "Notification center" means a center that receives notice from excavators of planned excavation or other requests for location and transmits this notice to participating operators.

Sec. 5. Minnesota Statutes 1990, section 216D.04, is amended to read:

#### 216D.04 EXCAVATION.

Subdivision 1. **NOTICE OF EXCAVATION REQUIRED; CONTENTS.**  
(a) Except in an emergency, an excavator or land surveyor shall contact the notification center and provide an excavation or location notice at least 48 hours before beginning any excavation or boundary survey, excluding Saturdays, Sundays, and holidays. An excavation or boundary survey begins, for purposes of this requirement, the first time excavation or a boundary survey occurs in an

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area that was not previously identified by the excavator or land surveyor in an excavation or boundary survey notice.

(b) The excavation or boundary survey notice may be oral or written, and must contain the following information:

(1) the name of the individual providing the excavation or boundary survey notice;

(2) the precise location of the proposed area of excavation or boundary survey;

(3) the name, address, and telephone number of the excavator or land surveyor or excavator's or land surveyor's company;

(4) the excavator's or land surveyor's field telephone number, if one is available;

(5) the type and the extent of the proposed excavation or boundary survey work;

(6) whether or not the discharge of explosives is anticipated; and

(7) the date and time when excavation or boundary survey is to commence.

**Subd. 2. DUTIES OF NOTIFICATION CENTER.** The notification center shall assign an inquiry identification number to each excavation or location notice and retain a record of all excavation or location notices received for at least six years. The center shall immediately transmit the information contained in an excavation or location notice to every operator that has an underground facility in the area of the proposed excavation or boundary survey.

**Subd. 3. LOCATING UNDERGROUND FACILITIES.** (a) An operator shall, within 48 hours after receiving an excavation notice or within 96 hours after receiving a location notice from the center, excluding Saturdays, Sundays, and holidays, unless otherwise agreed to between the excavator or land surveyor and operator, locate and mark or otherwise provide the approximate horizontal location of the underground facilities of the operator, without cost to the excavator or land surveyor. The excavator or land surveyor shall determine the precise location of the underground facility, without damage, before excavating within two feet of the marked location of the underground facility.

(b) For the purpose of this section, the approximate horizontal location of the underground facilities is a strip of land two feet on either side of the underground facilities.

(c) Markers used to designate the approximate location of underground facilities must follow the current color code standard used by the American Public Works Association.

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(d) If the operator cannot complete marking of the excavation or boundary survey area before the excavation or boundary survey commencement time stated in the excavation or location notice, the operator shall promptly contact the excavator or land surveyor. If the excavator or land surveyor postpones the excavation or boundary survey commencement time stated in the excavation or location notice by more than 48 hours, or cancels the excavation or boundary survey, the excavator or land surveyor shall notify the notification center.

**Sec. 6. [237.115] DISCUSSION OF INFORMATION SUBJECT TO A PROTECTIVE ORDER.**

In any meeting of the commission during which information that is subject to a protective order is discussed, the commission shall employ the procedures of section 14.60 to close to all persons who are not authorized to obtain the information under the protective order that portion of the meeting during which the information will be discussed and take other appropriate measures to ensure that the data is not disclosed to persons who are not authorized to obtain the information under the protective order.

Sec. 7. Minnesota Statutes 1990, section 237.60, subdivision 2, is amended to read:

Subd. 2. **EMERGING COMPETITION.** (a) A company may decrease the rate for a service subject to emerging competition that is listed in the price list, effective ten days after filing a new price list with the commission and the department, along with an incremental cost study demonstrating that the ~~proposed~~ new price is above incremental cost. The commission shall prevent a proposed price reduction from going into effect or prospectively reinstate the original rate if the reduction has gone into effect if, after receiving a complaint or on its own motion, under section 237.081, the commission finds that the ~~proposed~~ new rate is below incremental cost or that the ~~proposed~~ new rate is not just and reasonable.

(b) A company may increase the rate for a service subject to emerging competition that is listed in the price list effective 30 days after notice is given to affected customers, the commission, and the department. The notice and new price list filing to the commission and the department for a rate increase must include an incremental cost study demonstrating that the proposed price is above incremental cost. The department shall investigate an increase in rates for services subject to emerging competition, and report its findings to the commission within 30 days of the filing. The commission may, within 60 days after the date of the filing, order that the rate increase is interim in nature and subject to refund. If interim rates are not ordered, the rate increase is not refundable. If a rate is subject to refund, the commission, after a contested case hearing or an expedited hearing under section 237.61 ~~if there are no material facts in dispute~~, must make a final decision regarding the propriety of the rate increase within ten six months of the date the price change was filed, except that if a contested case hearing before an administrative law judge is required the commission shall

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make a final decision within ten months of the date the price change was filed. If the commission does not do so, the price change is deemed approved.

(c) If language describing a rate, term, or condition of service in a price list is changed without substantially altering the application of the price list, the change may take effect upon one-day notice to the commission.

(d) If a term or condition of service in a price list is changed in a way that results in a substantial change in the application of the price list, but the price is not changed, the change in the price list is effective at the same time as a price decrease under paragraph (a).

(e) If a new pricing plan is proposed for a service that is currently offered by a telephone company, the change in the price list is subject to the same schedules governing a price increase under paragraph (b). For purposes of this paragraph, a new pricing plan is a proposal that bundles rate elements for a service, alters the definition of the rate elements for a service, or includes increases for some rate elements and decreases for other rate elements.

(f) A telephone company may offer a new service to its customers ten days after it files a price list and incremental cost study for the service with the department and the commission.

(g) A telephone company may discontinue a telephone service that is subject to emerging competition, as long as the discontinuance is effective for that service throughout the state, effective 60 days after notice to the commission, the department, and affected customers, unless the commission, within 45 days of the notice, orders a hearing on it. If the commission orders a hearing, the commission shall make a final determination on the discontinuance within 180 days of the date that notice of the discontinuance was filed with the commission, except that if a contested case hearing before an administrative law judge is required the commission shall make a final decision within ten months of the date the notice of discontinuance was filed.

(h) A change in a price list not covered by paragraphs (a) to (f) must be reviewed according to the schedule prescribed for a price increase under paragraph (b).

~~(h)~~ (i) An incremental cost study required by this section ~~and~~ section 237.62, and section 4 must be a long-run incremental cost study unless the commission has allowed the telephone company required to do the study to set rates based on a variable cost study. A telephone company may include a petition to file a variable cost study instead of a long-run incremental cost study with its notice of price change, notice of a promotion, or its filing of a new service. The commission shall grant the petition if the company demonstrates that a long-run incremental cost study is burdensome in relation to its annual revenue from the service involved, that the company has a low market share, that the service is no longer being offered to new customers, or if the company shows other good cause. A petition must be accompanied by a variable cost study. If the petition is denied, the company shall withdraw a filing made under this section.

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(†) (j) For purposes of this section and section 237.62, (1) long-run incremental cost means the change in total cost associated with a change in volume of the service, expressed on a per-unit basis, and (2) variable cost means the change in total cost, excluding fixed costs, associated with a change in volume of service, expressed on a per-unit basis.

**Sec. 8. [237.62] PROMOTION ACTIVITIES.**

A telephone company may promote the use of its services by offering a waiver of part or all of a recurring or a nonrecurring charge, a redemption coupon, or a premium with the purchase of a service. Section 237.09 does not apply to promotions under this section, but the customer group to which the promotion is available must be based on reasonable distinctions among customers. No single promotion may be effective for longer than 90 days at a time. The service being promoted must have a price that is above the incremental cost of the service, including amortized cost of the promotion. A promotion may take effect the day after the notice is filed with the commission. The notice must identify customers to whom the promotion is available and include cost information demonstrating that the revenue from the service covers incremental cost, including cost of the promotion. A telephone company that offers a promotion under this section shall file a report on the promotion with the commission and the department within 90 days of the conclusion of the promotion.

Sec. 9. Minnesota Statutes 1990, section 465.79, subdivision 2, is amended to read:

Subd. 2. **DUTIES OF BOUNDARY COMMISSION.** The boundary commission shall review ~~metes and bounds~~ property descriptions within the city. Upon notice to all known parties in interest, the commission shall attempt to establish agreements between adjoining landowners as to the location of common boundaries as delineated by a certified land survey. If agreement cannot be reached, the commission shall make a recommendation as to the location of the common boundary. The commission shall prepare a plan designating all agreed and recommended boundary lines and report to the city council.

Sec. 10. Minnesota Statutes 1990, section 465.79, subdivision 4, is amended to read:

Subd. 4. **JUDICIAL REVIEW.** Following hearing, the council may petition the district court for judicial approval of the proposed plan. If any affected parcel is land registered under chapter 508, the petition must be referred to the examiner of titles for a report. The council shall provide sufficient information to identify all parties in interest and shall give notice to parties in interest as the court may order. The court shall determine the location of any contested, disputed, or unagreed boundary and shall determine adverse claims to each parcel as provided in chapter 559. After hearing and determining all disputes, the court shall issue its judgment in the form of a plat complying with chapter 505 and an order designating the owners and encumbrancers of each lot. Real property taxes need not be paid or current as a condition of filing the plat, notwithstanding the requirements of section 505.04.

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Sec. 11. Minnesota Statutes 1990, section 505.02, subdivision 1, is amended to read:

Subdivision 1. The land shall be surveyed and a plat made setting forth and naming all thoroughfares, showing all public grounds, and giving the dimensions of all lots, thoroughfares and public grounds. All in-lots shall be numbered by beginning the numbering with number one and numbering each lot progressively, through the block in which they are situated, all blocks shall be numbered progressively, by beginning the numbering with the number one and numbering each block progressively through each plat. Consecutive lot or block numbering shall not be continued from one plat into another. All outlots shall be designated by alphabetical order beginning with outlot "A" in each plat. Durable iron monuments shall be set at all angle and curve points on the outside boundary lines of the plat and also at all block and lot corners and at all intermediate points on the block and lot lines indicating changes of direction in the lines and witness corners. The plat shall indicate that all monuments have been set or will be set within one year after recording, or sooner as specified by the approving local governmental unit. A financial guarantee may be required for the placement of monuments. There shall be shown on the plat all survey and mathematical information and data necessary to locate all monuments and to locate and retrace any and all interior and exterior boundary lines appearing thereon. The outside boundary lines of the plat shall be correctly designated on the plat and shall show bearings on all straight lines, or angles at all angle points, and central angle and radii and arc length for all curves. All distances shall be shown between all monuments as measured to the nearest hundredth of a foot. All lot distances shall be shown on the plat to the nearest hundredth of a foot and all curved lines within the plat shall show central angles, radii and arc distances. If a curved line constitutes the line of more than one lot in any block of a plat, the central angle for that part of each lot on the curved line shall be shown. The width of all thoroughfares shall be shown on the plat. Ditto marks shall not be used on the plat for any purpose. In any instance where a river, stream, creek, lake or pond constitutes a boundary line within or of the plat, a survey line shall be shown with bearings or angles and distances between all angle points and their relation to a water line, and all distances measured on the survey line between lot lines shall be shown, and the survey line shall be shown as a dashed line. The outside boundary lines of the plat shall close by latitude and departure with an error not to exceed one foot in 7,500 feet. All rivers, streams, creeks, lakes, ponds, swamps, and all public highways and thoroughfares laid out, opened, or traveled (existing before the platting) shall be correctly located and plainly shown and designated on the plat. The name and adjacent boundary lines of any adjoining platted lands shall be dotted on the plat.

Sec. 12. Minnesota Statutes 1990, section 505.03, subdivision 1, is amended to read:

Subdivision 1. On the plat shall be written an instrument of dedication, which shall be signed and acknowledged by the owner of the land. All signatures on the plat shall be written with black ink (not ball point). The instrument shall

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contain a full and accurate description of the land platted and set forth what part of the land is dedicated, and also to whom, and for what purpose these parts are dedicated. The surveyor shall certify on the plat that the plat is a correct representation of the survey, that all distances are correctly shown on the plat, that all monuments have been or will be correctly placed in the ground as shown or stated, and that the outside boundary lines are correctly designated on the plat. If there are no wet lands or public highways to be designated in accordance with section 505.02, the surveyor shall so state. The certificate shall be sworn to before any officer authorized to administer an oath. The plat shall, except in cities whose charters provide for official supervision of plats by municipal officers or bodies, together with an abstract and certificate of title, be presented for approval to the council of the city or town board of towns wherein there reside over 5,000 people in which the land is located; and, if the land is located outside the limits of any city, or such town, then to the board of county commissioners of the county in which the land is located.

Presented to the governor April 16, 1992

Signed by the governor April 20, 1992, 4:38 p.m.

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#### CHAPTER 494—S.F.No. 2282

*An act relating to state government; regulating administrative rulemaking; providing for corrective legislation; extending the response period that precedes the writing of an administrative law judge's report on rules adopted after public hearing; requiring the attorney general and administrative law judge to disregard harmless errors; regulating notices; amending Minnesota Statutes 1990, sections 3C.04, subdivision 4; 14.115, subdivision 5; 14.15, subdivision 1, and by adding a subdivision; 14.22; 14.26; 14.30; and 14.32.*

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

Section 1. Minnesota Statutes 1990, section 3C.04, subdivision 4, is amended to read:

Subd. 4. **TECHNICAL BILLS.** The revisor's office shall prepare and submit to the legislature bills clarifying and correcting the statutes and administrative rules.

Sec. 2. Minnesota Statutes 1990, section 14.115, subdivision 5, is amended to read:

Subd. 5. **COMPLIANCE.** If an administrative law judge or the attorney general finds that an agency has failed to comply with subdivisions 1 to 4, the rules shall not be adopted unless the failure to comply is considered a harmless error under section 14.15, subdivision 5; 14.26, subdivision 3; or 14.32, subdivision 2.

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