

CHAPTER 306—H.F.No. 2401

An act relating to counties; Itasca; exempting the county from certain bidding requirements on the sale of the Itasca County Medical Center.

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

Section 1. EXEMPTION.

Notwithstanding Minnesota Statutes, section 373.01, or any other law to the contrary, Itasca county is exempt from bidding requirements in connection with the sale of the Itasca County Medical Center.

Sec. 2. EFFECTIVE DATE.

Under section 645.023, section 1 is effective without local approval the day after its final enactment.

Presented to the governor March 12, 1996

Signed by the governor March 13, 1996, 2:22 p.m.

CHAPTER 307—H.F.No. 2483

An act relating to courts; clarifying the process for applying for a writ of certiorari; amending Minnesota Statutes 1994, section 606.01; proposing coding for new law in Minnesota Statutes, chapter 543.

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

Section 1. [543.21] SERVICE OF CERTAIN GOVERNMENT ENTITIES.

If a writ is to be issued to, or a complaint is to be served on, a board or agency created by statute or home rule charter, the writ or complaint shall be captioned in the name of the board or agency and served on the chair or an officer of the board or agency.

Sec. 2. Minnesota Statutes 1994, section 606.01, is amended to read:

606.01 CERTIORARI, WITHIN WHAT TIME WRIT ISSUED.

No writ of certiorari shall be issued, to correct any proceeding, unless such writ shall be issued within 60 days after the party applying for such writ shall have received due notice of the proceeding sought to be reviewed thereby. The party shall apply to the court of appeals for the writ.

Presented to the governor March 12, 1996

Signed by the governor March 13, 1996, 2:27 p.m.

CHAPTER 308—H.F.No. 2391

An act relating to commerce; petroleum tank release cleanup; regulating reimbursement; providing enforcement authority to the commissioner of commerce; making various technical changes;

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amending Minnesota Statutes 1994, sections 115C.02, by adding a subdivision; 115C.03, subdivision 8; 115C.06; and 115C.09, as amended; Minnesota Statutes 1995 Supplement, sections 115C.02, subdivision 11a; 115C.092, subdivision 1; 115C.10, subdivision 1; 115C.11, subdivision 1; and 115C.12; proposing coding for new law in Minnesota Statutes, chapter 115C; repealing Minnesota Statutes 1994, section 115C.11, subdivisions 3 and 4; Minnesota Statutes 1995 Supplement, section 115C.11, subdivision 2.

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

Section 1. Minnesota Statutes 1994, section 115C.02, is amended by adding a subdivision to read:

Subd. 2a. **APPLICANT.** “Applicant” means a person eligible under section 115C.09 to receive reimbursement from the fund.

Sec. 2. Minnesota Statutes 1995 Supplement, section 115C.02, subdivision 11a, is amended to read:

Subd. 11a. **PREREMOVAL SITE ASSESSMENT.** “Preremoval site assessment” means actions defined in section 115C.092 which are taken by a registered consultant or the consultant’s subcontractor prior to the removal of a petroleum storage tank in order to determine whether a release has occurred in the area immediately surrounding the tank.

Sec. 3. Minnesota Statutes 1994, section 115C.03, subdivision 8, is amended to read:

Subd. 8. **CLASSIFICATION OF DATA.** Except as otherwise provided in this subdivision, data obtained from a person under subdivision 6 or 7 is public data as defined in section 13.02. Upon certification by the subject of the data that the data relates to sales figures, processes or methods of production unique to that person, or information that would tend to adversely affect the competitive position of that person, the commissioner shall classify the data as private or nonpublic data as defined in section 13.02. Data classified as private or nonpublic under this subdivision may be disclosed when relevant in a proceeding under sections ~~115C.03 to 115C.10~~ this chapter.

Sec. 4. Minnesota Statutes 1994, section 115C.06, is amended to read:

115C.06 EFFECT ON OTHER LAW.

Subdivision 1. **ACTIONS UNDER CHAPTER 115B.** Sections ~~115C.03 to 115C.10~~ do This chapter does not limit any actions initiated by the agency under chapter 115B.

Subd. 2. **DUTY TO NOTIFY AND TAKE ACTION FOR RELEASE.** Sections ~~115C.03 to 115C.10~~ do This chapter does not limit a person’s duty to notify the agency and take action related to a release as provided in section 115.061.

Sec. 5. Minnesota Statutes 1994, section 115C.09, as amended by Laws 1995, chapter 240, article 1, sections 4, 5, 6, and 7, is amended to read:

115C.09 REIMBURSEMENT TO RESPONSIBLE AND OTHER PERSONS.

Subdivision 1. **REIMBURSABLE COSTS.** (a) The board shall provide ~~partial~~ reimbursement to eligible ~~responsible persons~~ applicants for reimbursable costs ~~incurred~~ after June 4, 1987.

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(b) The following costs are reimbursable for purposes of this section chapter:

(1) corrective action costs incurred by the responsible person applicant and documented in a form prescribed by the board, except the costs related to the physical removal of a tank;

(2) costs that the responsible person is legally obligated to pay as damages to third parties for bodily injury, property damage, or corrective action costs incurred by a third party caused by a release where the responsible person's liability for the costs has been established by a court order, consent decree, or a court-approved stipulation of settlement approved before May 11, 1994, for which the responsible party has assigned its rights to reimbursement under this section to a third-party claimant; and

(3) up to 180 days worth of interest costs, associated with the financing of corrective action and incurred by the applicant in a written financing contract signed by the applicant and executed after May 25, 1991, associated with the financing of corrective action. Interest costs are not eligible for reimbursement to the extent they exceed two percentage points above the adjusted prime rate charged by banks, as defined in section 270.75, subdivision 5, at the time the financing contract was executed; and

(4) preremoval site assessment costs incurred by the applicant and eligible for reimbursement under section 115C.092.

(c) A cost for liability to a third party is incurred by the responsible person when an order or ~~consent decree~~ establishing the liability court-approved settlement is entered that sets forth the specific costs attributed to the liability. Except as provided in this paragraph, reimbursement may not be made for costs of liability to third parties until all eligible corrective action costs have been reimbursed. If a corrective action is expected to continue in operation for more than one year after it has been fully constructed or installed, the board may estimate the future expense of completing the corrective action and, after subtracting this estimate from the total reimbursement available under subdivision 3, reimburse the costs for liability to third parties. The total reimbursement may not exceed the limit set forth in subdivision 3.

Subd. 2. **RESPONSIBLE PERSON ELIGIBILITY.** (a) A responsible person who has incurred reimbursable costs after June 4, 1987, in response to a release, may apply to the board for partial reimbursement under subdivision 3 and rules adopted by the board.

Subd. 2a. **APPLICATION FOR REIMBURSEMENT.** (a) The board may consider applications for reimbursement at the following stages:

(1) after the commissioner approves corrective actions related to soil excavation and treatment or after the commissioner determines that further soil excavation and treatment should not be done. Remedial investigation costs such as soil borings monitoring wells, and well searches are reimbursable at this stage, but corrective action costs relating to the construction and installation of a comprehensive corrective action design system are not; and

(2) after the commissioner determines that the corrective actions described in clause (1) have been fully constructed, installed, or completed;

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(3) after the commissioner approves a comprehensive plan for corrective action that will adequately address the entire release, including groundwater contamination if necessary;

(4) after the commissioner determines that the corrective action necessary to adequately address the release has been fully constructed or installed; and

(5) periodically afterward as the corrective action continues operation, but ~~no~~ for corrective action costs related to the construction and installation of a comprehensive corrective action design system. An applicant shall not submit an application for reimbursement more frequently than four times per 12-month period unless the application is for more than \$2,000 in reimbursement.

(b) The commissioner shall review a plan, and provide an approval or disapproval to the responsible person applicant and the board, within 60 days in the case of a plan submitted under paragraph (a), clause (1), and within 120 days in the case of a plan submitted under paragraph (a), clause (3) (2), or the commissioner shall explain to the board why additional time is necessary. The board shall consider a complete application within 60 days of submission of the application under paragraph (a), clauses clause (1) and (2), and within 120 days of submission of the application under paragraph (a), clauses (3) and (4) clause (2), or the board shall explain for the record why additional time is necessary. For purposes of the preceding sentence, board consideration of an application is timely if it occurs at the regularly scheduled meeting following the deadline. Board staff may review applications submitted to the board simultaneous to at the same time the commissioner's ~~commissioner's~~ consideration of considers the appropriateness of the corrective action, but the board may not act on the application until after the commissioner's approval is received.

(c) A reimbursement may not be made unless the board determines that the commissioner has determined that the corrective action was appropriate in terms of protecting public health, welfare, and the environment.

Subd. 3. **REIMBURSEMENTS; SUBROGATION; APPROPRIATION.** (a) The board shall reimburse a responsible person who is eligible under subdivision 2 an eligible applicant from the fund in the following amounts:

(1) 90 percent of the total reimbursable costs on the first \$250,000 and 75 percent on any remaining costs in excess of \$250,000 on a site; or

(2) for corrective actions at a residential site used as a permanent residence at the time the release was discovered, 92.5 percent of the total reimbursable costs on the first \$100,000 and 100 percent of any remaining costs in excess of \$100,000.

Not more than \$1,000,000 may be reimbursed for costs associated with a single release, regardless of the number of persons eligible for reimbursement, and not more than \$2,000,000 may be reimbursed for costs associated with a single tank facility.

(b) A reimbursement may not be made from the fund under this subdivision chapter until the board has determined that the costs for which reimbursement is requested were actually incurred and were reasonable.

(c) When an applicant has obtained responsible competitive bids or proposals according to rules promulgated under this chapter prior to June 1, 1995, the eligible costs

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for the tasks, procedures, services, materials, equipment, and tests of the low bid or proposal are presumed to be reasonable by the board, unless the costs of the low bid or proposal are substantially in excess of the average costs charged for similar tasks, procedures, services, materials, equipment, and tests in the same geographical area during the same time period.

(d) When an applicant has obtained a minimum of two responsible competitive bids or proposals on forms prescribed by the board and where the rules promulgated under this chapter after June 1, 1995, designate maximum costs for specific tasks, procedures, services, materials, equipment and tests, the eligible costs of the low bid or proposal are deemed reasonable if the costs are at or below the maximums set forth in the rules.

(e) Costs incurred for change orders executed as prescribed in rules promulgated under this chapter after June 1, 1995, are presumed reasonable if the costs are at or below the maximums set forth in the rules, unless the costs in the change order are above those in the original bid or proposal or are unsubstantiated and inconsistent with the process and standards required by the rules.

(f) A reimbursement may not be made from the fund under ~~this subdivision~~ in response to either an initial or supplemental application for costs incurred after June 4, 1987, that are payable under an applicable insurance policy, except that if the board finds that the responsible person applicant has made reasonable efforts to collect from an insurer and failed, the board shall reimburse the responsible person under this subdivision applicant.

(g) If the board reimburses a responsible person an applicant for costs for which the responsible person applicant has petroleum tank leakage or spill insurance coverage, the board is subrogated to the rights of the responsible person applicant with respect to that insurance coverage, to the extent of the reimbursement by the board. The board may request the attorney general to bring an action in district court against the insurer to enforce the board's subrogation rights. Acceptance by a responsible person an applicant of reimbursement constitutes an assignment by the responsible person applicant to the board of any rights of the responsible person applicant with respect to any insurance coverage applicable to the costs that are reimbursed. Notwithstanding this paragraph, the board may instead request a return of the reimbursement under subdivision 5 and may employ against the responsible party applicant the remedies provided in that subdivision, except where the board has knowingly provided reimbursement because the responsible person applicant was denied coverage by the insurer.

(h) Money in the fund is appropriated to the board to make reimbursements under this section chapter. A reimbursement to a state agency must be credited to the appropriation account or accounts from which the reimbursed costs were paid.

(i) The board may reduce the amount of reimbursement to be made under this section chapter if it finds that the responsible person applicant has not complied with a provision of this chapter, a rule or order issued under this chapter, or one or more of the following requirements:

- (1) the agency was given notice of the release as required by section 115.061;
- (2) the responsible person applicant, to the extent possible, fully cooperated with the agency in responding to the release; and

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(3) the state and federal rules and regulations applicable to the condition or operation of the tank when the noncompliance caused or failed to mitigate the release.

(j) The reimbursement may be reduced as much as 100 percent for failure by the responsible person applicant to comply with the requirements in paragraph (i), clauses (1) to (3). In determining the amount of the reimbursement reduction, the board shall consider:

- (1) the reasonable determination by the agency of the environmental impact of the noncompliance;
- (2) whether the noncompliance was negligent, knowing, or willful;
- (3) the deterrent effect of the award reduction on other tank owners and operators; and
- (4) the amount of reimbursement reduction recommended by the commissioner.

(k) A person An applicant may assign the right to receive reimbursement to each lender who advanced funds to pay the costs of the corrective action or to each contractor or consultant who provided corrective action services. An assignment must be made by filing with the board a document, in a form prescribed by the board, indicating the identity of the responsible person applicant, the identity of the assignee, the dollar amount of the assignment, and the location of the corrective action. An assignment signed by the responsible person applicant is valid unless terminated by filing a termination with the board, in a form prescribed by the board, which must include the written concurrence of the assignee. The board shall maintain an index of assignments filed under this paragraph. The board shall pay the reimbursement to the responsible person applicant and to one or more assignees by a multiparty check. The board has no liability to a responsible person an applicant for a payment under an assignment meeting the requirements of this paragraph.

Subd. 3a. **ELIGIBILITY OF OTHER PERSONS.** Notwithstanding the provisions of subdivisions 1 to 3, the board shall provide full reimbursement to a person who has taken corrective action if the board or commissioner of commerce determines that A person who has taken corrective action may apply to the board for reimbursement under subdivision 3 if the board determines that:

- (1) the person took the corrective action in response to a request or order of the commissioner made under this chapter;
- (2) the commissioner has determined that the person was not a responsible person under section 115C.02 as defined in this chapter; and
- (3) the costs for which reimbursement is requested were actually incurred and were reasonable the board has determined the person was not a volunteer under subdivision 3b; and
- (4) the person incurs reimbursable costs on or after June 4, 1987.

Notwithstanding subdivision 3, paragraph (a), a person eligible for reimbursement under this subdivision shall receive 100 percent of total reimbursable costs up to \$1,000,000.

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Subd. 3b. **VOLUNTEER ELIGIBILITY.** (a) ~~Notwithstanding subdivisions 1 to 3,~~ A person may apply to the board for ~~partial reimbursement under subdivision 3~~ where if the board determines that:

(1) the person is not a responsible person ~~under section 115C.02 as defined in this chapter;~~

(2) holds legal or equitable title to the property where a release occurred; and

(3) incurs reimbursable costs on or after May 23, 1989.

(b) ~~A person eligible for reimbursement under this subdivision must, to the maximum extent possible, comply with the same conditions and requirements of reimbursement as those imposed by this section on a responsible person.~~

(c) ~~The board may reduce the reimbursement to a person eligible under this subdivision if the person acquired legal or equitable title to the property from a responsible person who failed to comply with the provisions of subdivision 3, paragraph (i), except that the board may not reduce the reimbursement under this provision to a mortgagee who acquires title to the property through foreclosure or receipt of a deed in lieu of foreclosure.~~

Subd. 3c. **RELEASE AT REFINERIES AND TANK FACILITIES NOT ELIGIBLE FOR REIMBURSEMENT.** (a) ~~Notwithstanding other provisions of subdivisions 1 to 3b,~~ a Reimbursement may not be made under this ~~section~~ chapter for costs associated with a release:

(1) from a tank located at a petroleum refinery; or

(2) from a tank facility, including a pipeline terminal, with more than 1,000,000 gallons of total petroleum storage capacity at the tank facility.

(b) Paragraph (a), clause (2), does not apply to reimbursement for costs associated with a release from a tank facility:

(1) owned or operated by a person engaged in the business of mining iron ore or taconite;

(2) owned by a political subdivision, a housing and redevelopment authority, an economic development authority, or a port authority that acquired the tank facility prior to May 23, 1989; or

(3) owned by a person:

(i) who acquired the tank facility prior to May 23, 1989;

(ii) who did not use the tank facility for the bulk storage of petroleum; and

(iii) who is not affiliated with the party who used the tank facility for the bulk storage of petroleum.

Subd. 3d. **POLITICAL SUBDIVISION ELIGIBILITY.** (a) ~~Notwithstanding the provisions of subdivisions 1 to 3,~~ A political subdivision that has taken corrective action may apply to the board for ~~partial reimbursement under subdivision 3~~ where the political subdivision if the board determines that:

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(1) the political subdivision is not a responsible person under section 115C.02 as defined by this chapter; and

(2) is not a volunteer under subdivision 3b; and

(3) incurs reimbursable costs on or after April 8, 1992.

(b) A political subdivision eligible for reimbursement under this subdivision may only apply for reimbursement if the identified responsible person has failed to take a corrective action ordered by the commissioner.

(e) ~~A political subdivision eligible for reimbursement under this subdivision must, to the maximum extent possible, comply with the same conditions and requirements of reimbursement as those imposed by this section on a responsible person.~~

Subd. 4. REIMBURSEMENT DOES NOT AFFECT OTHER LIABILITY. The right to apply for reimbursement and the receipt of reimbursement does not limit the liability of a responsible person for damages or costs incurred by a person or the state as a result of a release.

Subd. 5. RETURN OF REIMBURSEMENT. (a) The board may demand the complete or partial return of any reimbursement made under this ~~section~~ chapter if the applicant for reimbursement:

(1) misrepresents or omits a fact relevant to a determination made by the board or the commissioner under this ~~section~~ chapter;

(2) fails to complete corrective action that the commissioner determined at the time of the reimbursement to be necessary to adequately address the release, unless the reimbursement was made under subdivision 3a;

(3) fails to reimburse a person for agreed-to amounts for corrective actions taken in response to a request by the applicant; or

(4) has entered an agreement to settle or compromise any portion of the incurred costs, in which case the amount returned must be prorated in proportion to the amount of the settlement or compromise.

(b) If a reimbursement under this ~~subdivision~~ chapter is not returned upon demand by the board, the board may recover the reimbursement, with administrative and legal expenses, in a civil action in district court brought by the attorney general against the applicant. If the board's demand for return of the reimbursement is based on willful actions of the applicant, the applicant shall also forfeit and pay to the state a civil penalty, in an amount to be determined by the court, of not more than the full amount of the reimbursement.

Subd. 6. FRAUD. If a person, with intent to defraud, issues an invoice or other demand for payment with knowledge that it is false in whole or in part, and with knowledge that it is being submitted to the board for reimbursement:

(1) that person shall be considered to have presented a false claim to a public body under section 609.465; and

(2) the board may demand that the person return any money received as a result of a reimbursement made on the basis of the false invoice or other demand for payment. If the

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money is not returned upon demand by the board, the board may recover the money, with administrative and legal expenses, in a civil action in district court brought by the attorney general against the person. The person shall also forfeit and pay to the state a civil penalty, in an amount to be determined by the court, of not more than the full amount of the money received by the person on the basis of the false invoice or other demand for payment.

Subd. 7. **DUTY TO PROVIDE INFORMATION.** (a) A person who submits an application to the board for reimbursement, or who has issued invoices or other demands for payment which are the basis of an application, shall furnish to the board copies of any financial records which the board requests and which are relevant to determining the validity of the costs listed in the application, or shall make the financial records reasonably available to the board for inspection and auditing. The board may obtain access to information required to be made available under this ~~subdivision~~ chapter in the manner provided in section 115C.03, subdivision 7.

(b) After reimbursement has been granted, an agreement to settle or compromise any portion of the incurred costs must be reported to the board by the parties to the agreement.

Subd. 8. **LIMITATION ON REIMBURSEMENT OBLIGATION.** The amount of the state's obligation to make reimbursement under this chapter is limited to the amount available. Notwithstanding any other provisions of this chapter, there shall be no obligation to the general fund to make a reimbursement if there are not sufficient funds in the petroleum tank fund.

Subd. 9. **INSUFFICIENT FUNDS.** The board may not approve an application for reimbursement if there are insufficient funds available to pay the reimbursement.

Subd. 10. **DELEGATION OF BOARD'S POWERS.** The board may delegate to the commissioner of commerce its powers and duties under this ~~section~~ chapter.

Sec. 6. Minnesota Statutes 1995 Supplement, section 115C.092, subdivision 1, is amended to read:

Subdivision 1. **PREREMOVAL SITE ASSESSMENT; REIMBURSEMENT.** (a) Preremoval site assessment costs which are in compliance with the requirements of this chapter and with rules promulgated under this chapter shall be reimbursable under section 115C.09, subdivision 3. The applicant shall obtain written competitive proposals for the preremoval site assessment on a form prescribed by the board utilizing, as appropriate, tasks and costs established in rules promulgated under this chapter governing the initial site assessment.

(b) If contamination is found at the site, the board shall reimburse an applicant upon submission of the applicant's first application for reimbursement under section 115C.09, subdivision 2. If no contamination is found at the site, the board shall reimburse the applicant upon provision by the applicant of documentation that the tank or tanks have been removed from the site.

(c) Notwithstanding any provision in this subdivision to the contrary, the board shall not reimburse for a preremoval site assessment which is done for the purposes of facilitating a property transfer. The board shall presume that a preremoval site assessment is done for the purposes of facilitating a property transfer if the property is transferred within three months of incurring preremoval site assessment costs.

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Sec. 7. Minnesota Statutes 1995 Supplement, section 115C.10, subdivision 1, is amended to read:

Subdivision 1. **PAYMENT FROM FUND; SUBROGATION; APPROPRIATION.** (a) If the cost of authorized actions under section 115C.03 exceeds the amount appropriated to the agency for the actions and amounts awarded to the agency from the federal government, the agency may apply to the board for money to pay for the actions from the fund. The board shall pay the agency the cost of the proposed actions under section 115C.03 if the board finds that the conditions for the agency to be paid from the fund have been met, and that an adequate amount exists in the fund to pay for the corrective action. If the board pays the agency for the cost of authorized actions for which a responsible person has petroleum tank leakage or spill there is insurance coverage, the board is subrogated to the agency's rights with respect to the responsible person and the responsible person's insurer insurance, to the extent of the board's payment of costs for which the responsible person has insurance coverage exists, subject to the limitations on an agency cost recovery action set forth in section 115C.04, subdivision 3. The board may request the attorney general to bring an action in district court against the responsible person or that person's, the applicant, or the insurer to enforce the board's subrogation rights. Acceptance of a payment from the board by the agency constitutes an assignment to the board of the subrogation rights specified in this subdivision.

(b) Money in the fund is appropriated to the board for the purpose of this subdivision.

Sec. 8. Minnesota Statutes 1995 Supplement, section 115C.11, subdivision 1, is amended to read:

Subdivision 1. **REGISTRATION.** (a) All consultants and contractors who perform corrective action services must register with the board. In order to register, consultants must meet and demonstrate compliance with the following criteria:

(1) provide a signed statement to the board verifying agreement to abide by this chapter and the rules adopted under it and to include a signed statement with each claim that all costs claimed by the consultant are a true and accurate account of services performed;

(2) provide a signed statement that the consultant shall make available for inspection any records requested by the board for field or financial audits under the scope of this chapter;

(3) certify knowledge of the requirements of this chapter and the rules adopted under it;

(4) obtain and maintain professional liability coverage, including pollution impairment liability; and

(5) agree to submit to the board a certificate or certificates verifying the existence of the required insurance coverage.

(b) The board must maintain a list of all registered consultants and a list of all registered contractors.

(c) All corrective action services must be performed by registered consultants and contractors.

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(d) Reimbursement for corrective action services performed by an unregistered consultant or contractor is subject to reduction under section 115C.09, subdivision 3, paragraph (i).

(e) Corrective action services performed by a consultant or contractor prior to being removed from the registration list may be reimbursed without reduction by the board.

(f) If the information in an application for registration becomes inaccurate or incomplete in any material respect, the registered consultant or contractor must promptly file a corrected application with the board.

(g) Registration is effective on the date 30 days after a complete application is received by the board. The board may reimburse without reduction the cost of work performed by an unregistered contractor if the contractor performed the work within ~~30~~ 60 days of the effective date of registration.

(h) Registration under this section remains in force until voluntarily terminated by the registrant, or until suspended or revoked by the commissioner of commerce. All registrants must comply with registration criteria under this section.

Sec. 9. [115C.111] CONSULTANT AND CONTRACTOR SANCTIONS; ACTIONS BASED ON CONDUCT OCCURRING BEFORE EFFECTIVE DATE OF SECTION.

Subdivision 1. APPLICATION. This section applies to administrative actions based on conduct that occurred before the effective date of this section.

Subd. 2. AUTHORITY. The commissioner of commerce may by order censure, suspend, or revoke a registrant and require payment of all costs of proceedings resulting in an action instituted under this subdivision and impose a civil penalty of not more than \$10,000 if the commissioner of commerce finds: (i) that the order is in the public interest; and (ii) that the registrant or, in the case of a registrant that is not a natural person, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the registrant:

(1) has engaged in conduct that departs from or fails to conform to the minimal standards of acceptable and prevailing engineering, hydrogeological, or other technical practices within the reasonable control of the consultant or contractor;

(2) has participated in a kickback scheme prohibited under section 115C.045;

(3) has engaged in conduct likely to deceive or defraud, or demonstrated a willful or careless disregard for public health or the environment;

(4) has committed fraud, embezzlement, theft, forgery, bribery, falsified or destroyed records, made false statements, received stolen property, made false claims, or obstructed justice;

(5) is the subject of an order revoking, suspending, restricting, limiting, or imposing other disciplinary action against the contractor's or consultant's license or certification in another state or jurisdiction; or

(6) if the person is a consultant, has failed to comply with any of the ongoing obligations for registration as a consultant in section 115C.11, subdivision 1.

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Subd. 3. AMOUNT OF CIVIL PENALTY. The civil penalty that may be imposed under subdivision 2 shall be in an amount that the commissioner of commerce determines will deprive the consultant or contractor of any economic advantage gained by reason of the consultant's or contractor's conduct or to reimburse the board for the cost of the investigation and proceeding.

Sec. 10. [115C.112] CONSULTANT AND CONTRACTOR SANCTIONS; ACTIONS BASED ON CONDUCT OCCURRING ON AND AFTER EFFECTIVE DATE OF SECTION.

The commissioner of commerce may by order deny a registration, censure, suspend, or revoke a registrant and require payment of all costs of proceedings resulting in an action instituted under this section and impose a civil penalty of not more than \$10,000 if the commissioner of commerce finds: (i) that the order is in the public interest; and (ii) that the registrant or, in the case of a registrant that is not a natural person, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the registrant:

(1) has engaged in conduct that departs from or fails to conform to the minimal standards of acceptable and prevailing engineering, hydrogeological, or other technical practices within the reasonable control of the consultant or contractor;

(2) has participated in a kickback scheme prohibited under section 115C.045;

(3) has engaged in conduct likely to deceive or defraud, or demonstrating a willful or careless disregard for public health or the environment;

(4) has committed fraud, embezzlement, theft, forgery, bribery, falsified or destroyed records, made false statements, received stolen property, made false claims, or obstructed justice;

(5) is the subject of an order revoking, suspending, restricting, limiting, or imposing other disciplinary action against the contractor's or consultant's license or certification in another state or jurisdiction;

(6) if the person is a consultant, has failed to comply with any of the ongoing obligations for registration as a consultant in section 115C.11, subdivision 1;

(7) has failed to comply with any provision or any rule or order under this chapter or chapter 45;

(8) has engaged in anticompetitive activity;

(9) has performed corrective action without having an accurate and complete registration on file with the board or has allowed another to perform corrective action when that party does not have a complete registration on file with the board;

(10) has been shown to be incompetent, untrustworthy, or financially irresponsible;
or

(11) has made or assisted another in making any material misrepresentation or omission to the board, commissioner, commissioner of commerce, or upon reasonable request has withheld or concealed information from, or refused to furnish information to, the board, commissioner, or commissioner of commerce.

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Sec. 11. [115C.113] ORDERS.

The commissioner of commerce may issue an order requiring a registrant or applicant for registration to show cause why the registration should not be revoked or suspended, the registrant censured, the application denied, or other sanction imposed under section 115C.111 or 115C.112. The order must be calculated to give reasonable notice of the time and place for hearing on the matter, and must state the reasons for the entry of the order. The commissioner of commerce may by order summarily suspend a registration pending final determination of an order to show cause. A hearing on the merits must be held within 30 days of the issuance of the order of summary suspension. All hearings must be conducted under chapter 14. After the hearing, the commissioner of commerce shall enter an order disposing of the matter as the facts require. If the registrant or applicant for registration fails to appear at a hearing after having been duly notified of it, the person shall be considered in default, and the proceeding may be determined against the registrant or applicant for registration upon consideration of the order to show cause, the allegations of which may be considered to be true.

Sec. 12. Minnesota Statutes 1995 Supplement, section 115C.12, is amended to read:

115C.12 APPEAL OF REIMBURSEMENT DETERMINATION.

Subdivision 1. APPEAL FROM DETERMINATION OF COMMISSIONER OF COMMERCE. An applicant for reimbursement may appeal to the board a reimbursement determination made by the commissioner of commerce under authority delegated by the board according to section 115C.09, subdivision 10, by submitting a written notice setting forth the specific basis for the appeal. The commissioner of commerce shall send written notification of the reimbursement determination by first class United States mail to the applicant for reimbursement at the applicant's last known address. The applicant for reimbursement must file written notice with the board of an appeal of a reimbursement determination made by the commissioner of commerce within 60 days of the date that the commissioner of commerce sends written notice to the applicant of the reimbursement determination. The board shall consider the appeal within 90 days of receipt of the written notice of appeal by the applicant for reimbursement. The written notice must set forth the specific basis for the appeal.

Subd. 2. APPEAL FROM DECISION OF THE BOARD. (a) An applicant for reimbursement may appeal a reimbursement determination of the board as a contested case under chapter 14. An applicant for reimbursement must provide written notification to the board of a request for a contested case, setting forth the specific basis for the appeal, within 30 days of the date that the board makes a reimbursement determination.

(b) This subdivision applies to reimbursement determinations made by the board as a result of an appeal to the board under subdivision 1 and reimbursement determinations made by the board when the board has not delegated its authority to make reimbursement determinations.

(c) An appeal of a reimbursement determination may only be made by an applicant as defined by this chapter.

Subd. 3. CONTESTED CASE; FINAL DECISION. The final decision in a contested case requested by an applicant under subdivision 2 shall be made by the commissioner of commerce.

New language is indicated by underline, deletions by strikeout.

Sec. 13. REPEALER.

Minnesota Statutes 1994, section 115C.11, subdivisions 3 and 4; Minnesota Statutes 1995 Supplement, section 115C.11, subdivision 2, are repealed.

Sec. 14. EFFECTIVE DATES.

Sections 1 to 7 and 12 are effective the day after final enactment and apply to applications for reimbursement pending on or filed on or after that date. Section 8 is effective the day after final enactment and applies to all current and future registrants. Sections 9 to 11 are effective the day after final enactment and apply to disciplinary actions pending on or commenced on or after that date. Section 13 is effective the day following final enactment.

Presented to the governor March 12, 1996

Signed by the governor March 13, 1996, 2:33 p.m.

CHAPTER 309—H.F.No. 2068

An act relating to highways; designating the POW/MIA Memorial Highway.

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

Section 1. POW/MIA MEMORIAL HIGHWAY.

Anoka County SAH/County Road No. 7, from its intersection with Grant Street in the city of Anoka, to its intersection with Anoka County SAH No. 24 in the city of St. Francis, is designated the "POW/MIA Memorial Highway."

Presented to the governor March 14, 1996

Signed by the governor March 15, 1996, 10:42 a.m.

CHAPTER 310—H.F.No. 2377

An act relating to state government; repealing obsolete laws; repealing Minnesota Statutes 1994, sections 1.17; 1.25; 1.331; 3.85, subdivision 7; 4.02; 4.45; 6.26; 10.05; 10.38; 15.07; 15.09; 15.14; 15.15; 15.793; 15A.083, subdivisions 2 and 3; 15A.15; 17.14, subdivision 2; 17.351, subdivision 2; 17.47, subdivision 5; 17.53, subdivisions 4 and 11; 17.693, subdivisions 3 and 7; 17.81, subdivision 6; 17.981; 17A.03, subdivision 4; 18.46, subdivision 14; 18.58; 18.77, subdivision 2; 18B.01, subdivision 16; 18B.065, subdivision 6; 18B.08, subdivision 5; 18C.105; 18C.531, subdivisions 6, 11, 19, 20, and 27; 19.50, subdivision 16; 19.64, subdivision 5; 21.72, subdivision 2; 21.81, subdivision 18; 24.135, subdivisions 6 and 7; 24.165; 25.33, subdivision 2; 25.44; 25.46; 27.01, subdivisions 1, 3, 6, and 9; 27.137, subdivisions 2, 3, 4, 6, and 8; 27.15; 29.21, subdivision 2; 30.01, subdivision 2; 31.51, subdivisions 10 and 12; 31.782, subdivision 2; 31.92, subdivision 1a; 31A.02,

New language is indicated by underline, deletions by strikeout.