

under a general permit, except that no fee or report is required for uses totaling less than 15,000,000 gallons annually.

Sec. 2. **EFFECTIVE DATE.**

Section 1 is effective the day following final enactment.

Presented to the governor May 5, 1997

Signed by the governor May 6, 1997, 2:45 p.m.

CHAPTER 105—S.F.No. 1894

An act relating to flood relief; providing an exception to the nursing home moratorium; providing for early payment of state aids to local governments; providing certain temporary authority, waivers, and transfers due to the flood situation; appropriating money; amending Minnesota Statutes 1996, section 144A.071, subdivision 4a.

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

Section 1. Minnesota Statutes 1996, section 144A.071, subdivision 4a, is amended to read:

Subd. 4a. **EXCEPTIONS FOR REPLACEMENT BEDS.** It is in the best interest of the state to ensure that nursing homes and boarding care homes continue to meet the physical plant licensing and certification requirements by permitting certain construction projects. Facilities should be maintained in condition to satisfy the physical and emotional needs of residents while allowing the state to maintain control over nursing home expenditure growth.

The commissioner of health in coordination with the commissioner of human services, may approve the renovation, replacement, upgrading, or relocation of a nursing home or boarding care home, under the following conditions:

(a) to license or certify beds in a new facility constructed to replace a facility or to make repairs in an existing facility that was destroyed or damaged after June 30, 1987, by fire, lightning, or other hazard provided:

(i) destruction was not caused by the intentional act of or at the direction of a controlling person of the facility;

(ii) at the time the facility was destroyed or damaged the controlling persons of the facility maintained insurance coverage for the type of hazard that occurred in an amount that a reasonable person would conclude was adequate;

(iii) the net proceeds from an insurance settlement for the damages caused by the hazard are applied to the cost of the new facility or repairs;

(iv) the new facility is constructed on the same site as the destroyed facility or on another site subject to the restrictions in section 144A.073, subdivision 5;

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(v) the number of licensed and certified beds in the new facility does not exceed the number of licensed and certified beds in the destroyed facility; and

(vi) the commissioner determines that the replacement beds are needed to prevent an inadequate supply of beds.

Project construction costs incurred for repairs authorized under this clause shall not be considered in the dollar threshold amount defined in subdivision 2;

(b) to license or certify beds that are moved from one location to another within a nursing home facility, provided the total costs of remodeling performed in conjunction with the relocation of beds does not exceed 25 percent of the appraised value of the facility or \$500,000, whichever is less;

(c) to license or certify beds in a project recommended for approval under section 144A.073;

(d) to license or certify beds that are moved from an existing state nursing home to a different state facility, provided there is no net increase in the number of state nursing home beds;

(e) to certify and license as nursing home beds boarding care beds in a certified boarding care facility if the beds meet the standards for nursing home licensure, or in a facility that was granted an exception to the moratorium under section 144A.073, and if the cost of any remodeling of the facility does not exceed 25 percent of the appraised value of the facility or \$500,000, whichever is less. If boarding care beds are licensed as nursing home beds, the number of boarding care beds in the facility must not increase beyond the number remaining at the time of the upgrade in licensure. The provisions contained in section 144A.073 regarding the upgrading of the facilities do not apply to facilities that satisfy these requirements;

(f) to license and certify up to 40 beds transferred from an existing facility owned and operated by the Amherst H. Wilder Foundation in the city of St. Paul to a new unit at the same location as the existing facility that will serve persons with Alzheimer's disease and other related disorders. The transfer of beds may occur gradually or in stages, provided the total number of beds transferred does not exceed 40. At the time of licensure and certification of a bed or beds in the new unit, the commissioner of health shall delicense and decertify the same number of beds in the existing facility. As a condition of receiving a license or certification under this clause, the facility must make a written commitment to the commissioner of human services that it will not seek to receive an increase in its property-related payment rate as a result of the transfers allowed under this paragraph;

(g) to license and certify nursing home beds to replace currently licensed and certified boarding care beds which may be located either in a remodeled or renovated boarding care or nursing home facility or in a remodeled, renovated, newly constructed, or replacement nursing home facility within the identifiable complex of health care facilities in which the currently licensed boarding care beds are presently located, provided that the number of boarding care beds in the facility or complex are decreased by the number to be licensed as nursing home beds and further provided that, if the total costs of new construction, replacement, remodeling, or renovation exceed ten percent of the appraised value of the facility or \$200,000, whichever is less, the facility makes a written commit-

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ment to the commissioner of human services that it will not seek to receive an increase in its property-related payment rate by reason of the new construction, replacement, remodeling, or renovation. The provisions contained in section 144A.073 regarding the upgrading of facilities do not apply to facilities that satisfy these requirements;

(h) to license as a nursing home and certify as a nursing facility a facility that is licensed as a boarding care facility but not certified under the medical assistance program, but only if the commissioner of human services certifies to the commissioner of health that licensing the facility as a nursing home and certifying the facility as a nursing facility will result in a net annual savings to the state general fund of \$200,000 or more;

(i) to certify, after September 30, 1992, and prior to July 1, 1993, existing nursing home beds in a facility that was licensed and in operation prior to January 1, 1992;

(j) to license and certify new nursing home beds to replace beds in a facility condemned as part of an economic redevelopment plan in a city of the first class, provided the new facility is located within one mile of the site of the old facility. Operating and property costs for the new facility must be determined and allowed under existing reimbursement rules;

(k) to license and certify up to 20 new nursing home beds in a community-operated hospital and attached convalescent and nursing care facility with 40 beds on April 21, 1991, that suspended operation of the hospital in April 1986. The commissioner of human services shall provide the facility with the same per diem property-related payment rate for each additional licensed and certified bed as it will receive for its existing 40 beds;

(l) to license or certify beds in renovation, replacement, or upgrading projects as defined in section 144A.073, subdivision 1, so long as the cumulative total costs of the facility's remodeling projects do not exceed 25 percent of the appraised value of the facility or \$500,000, whichever is less;

(m) to license and certify beds that are moved from one location to another for the purposes of converting up to five four-bed wards to single or double occupancy rooms in a nursing home that, as of January 1, 1993, was county-owned and had a licensed capacity of 115 beds;

(n) to allow a facility that on April 16, 1993, was a 106-bed licensed and certified nursing facility located in Minneapolis to layaway all of its licensed and certified nursing home beds. These beds may be relicensed and recertified in a newly-constructed teaching nursing home facility affiliated with a teaching hospital upon approval by the legislature. The proposal must be developed in consultation with the interagency committee on long-term care planning. The beds on layaway status shall have the same status as voluntarily delicensed and decertified beds, except that beds on layaway status remain subject to the surcharge in section 256.9657. This layaway provision expires July 1, 1997;

(o) to allow a project which will be completed in conjunction with an approved moratorium exception project for a nursing home in southern Cass county and which is directly related to that portion of the facility that must be repaired, renovated, or replaced, to correct an emergency plumbing problem for which a state correction order has been issued and which must be corrected by August 31, 1993;

(p) to allow a facility that on April 16, 1993, was a 368-bed licensed and certified nursing facility located in Minneapolis to layaway, upon 30 days prior written notice to

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the commissioner, up to 30 of the facility's licensed and certified beds by converting three-bed wards to single or double occupancy. Beds on layaway status shall have the same status as voluntarily delicensed and decertified beds except that beds on layaway status remain subject to the surcharge in section 256.9657, remain subject to the license application and renewal fees under section 144A.07 and shall be subject to a \$100 per bed reactivation fee. In addition, at any time within three years of the effective date of the layaway, the beds on layaway status may be:

(1) relicensed and recertified upon relocation and reactivation of some or all of the beds to an existing licensed and certified facility or facilities located in Pine River, Brainerd, or International Falls; provided that the total project construction costs related to the relocation of beds from layaway status for any facility receiving relocated beds may not exceed the dollar threshold provided in subdivision 2 unless the construction project has been approved through the moratorium exception process under section 144A.073;

(2) relicensed and recertified, upon reactivation of some or all of the beds within the facility which placed the beds in layaway status, if the commissioner has determined a need for the reactivation of the beds on layaway status.

The property-related payment rate of a facility placing beds on layaway status must be adjusted by the incremental change in its rental per diem after recalculating the rental per diem as provided in section 256B.431, subdivision 3a, paragraph (d). The property-related payment rate for a facility relicensing and recertifying beds from layaway status must be adjusted by the incremental change in its rental per diem after recalculating its rental per diem using the number of beds after the relicensing to establish the facility's capacity day divisor, which shall be effective the first day of the month following the month in which the relicensing and recertification became effective. Any beds remaining on layaway status more than three years after the date the layaway status became effective must be removed from layaway status and immediately delicensed and decertified;

(q) to license and certify beds in a renovation and remodeling project to convert 13 three-bed wards into 13 two-bed rooms and 13 single-bed rooms, expand space, and add improvements in a nursing home that, as of January 1, 1994, met the following conditions: the nursing home was located in Ramsey county; was not owned by a hospital corporation; had a licensed capacity of 64 beds; and had been ranked among the top 15 applicants by the 1993 moratorium exceptions advisory review panel. The total project construction cost estimate for this project must not exceed the cost estimate submitted in connection with the 1993 moratorium exception process;

(r) to license and certify beds in a renovation and remodeling project to convert 12 four-bed wards into 24 two-bed rooms, expand space, and add improvements in a nursing home that, as of January 1, 1994, met the following conditions: the nursing home was located in Ramsey county; had a licensed capacity of 154 beds; and had been ranked among the top 15 applicants by the 1993 moratorium exceptions advisory review panel. The total project construction cost estimate for this project must not exceed the cost estimate submitted in connection with the 1993 moratorium exception process;

(s) to license and certify up to 117 beds that are relocated from a licensed and certified 138-bed nursing facility located in St. Paul to a hospital with 130 licensed hospital beds located in South St. Paul, provided that the nursing facility and hospital are owned by the same or a related organization and that prior to the date the relocation is completed

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the hospital ceases operation of its inpatient hospital services at that hospital. After relocation, the nursing facility's status under section 256B.431, subdivision 2j, shall be the same as it was prior to relocation. The nursing facility's property-related payment rate resulting from the project authorized in this paragraph shall become effective no earlier than April 1, 1996. For purposes of calculating the incremental change in the facility's rental per diem resulting from this project, the allowable appraised value of the nursing facility portion of the existing health care facility physical plant prior to the renovation and relocation may not exceed \$2,490,000;

(t) to license and certify two beds in a facility to replace beds that were voluntarily delicensed and decertified on June 28, 1991;

(u) to allow 16 licensed and certified beds located on July 1, 1994, in a 142-bed nursing home and 21-bed boarding care home facility in Minneapolis, notwithstanding the licensure and certification after July 1, 1995, of the Minneapolis facility as a 147-bed nursing home facility after completion of a construction project approved in 1993 under section 144A.073, to be laid away upon 30 days' prior written notice to the commissioner. Beds on layaway status shall have the same status as voluntarily delicensed or decertified beds except that they shall remain subject to the surcharge in section 256.9657. The 16 beds on layaway status may be relicensed as nursing home beds and recertified at any time within five years of the effective date of the layaway upon relocation of some or all of the beds to a licensed and certified facility located in Watertown, provided that the total project construction costs related to the relocation of beds from layaway status for the Watertown facility may not exceed the dollar threshold provided in subdivision 2 unless the construction project has been approved through the moratorium exception process under section 144A.073.

The property-related payment rate of the facility placing beds on layaway status must be adjusted by the incremental change in its rental per diem after recalculating the rental per diem as provided in section 256B.431, subdivision 3a, paragraph (d). The property-related payment rate for the facility relicensing and recertifying beds from layaway status must be adjusted by the incremental change in its rental per diem after recalculating its rental per diem using the number of beds after the relicensing to establish the facility's capacity day divisor, which shall be effective the first day of the month following the month in which the relicensing and recertification became effective. Any beds remaining on layaway status more than five years after the date the layaway status became effective must be removed from layaway status and immediately delicensed and decertified;

(v) to license and certify beds that are moved within an existing area of a facility or to a newly-constructed addition which is built for the purpose of eliminating three- and four-bed rooms and adding space for dining, lounge areas, bathing rooms, and ancillary service areas in a nursing home that, as of January 1, 1995, was located in Fridley and had a licensed capacity of 129 beds; or

(w) to relocate 36 beds in Crow Wing county and four beds from Hennepin county to a 160-bed facility in Crow Wing county, provided all the affected beds are under common ownership;

(x) to license and certify a total replacement project of up to 49 beds located in Norman county that are relocated from a nursing home destroyed by flood and whose residents were relocated to other nursing homes. The operating cost payment rates for the

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new nursing facility shall be determined based on the interim and settle-up payment provisions of Minnesota Rules, part 9549.0057, and the reimbursement provisions of section 256B.431, except that subdivision 25, paragraphs (b), clause (3), and (d), shall not apply until the second rate year after the settle-up cost report is filed. Property-related reimbursement rates shall be determined under section 256B.431, taking into account any federal or state flood-related loans or grants provided to the facility; or

(y) to license and certify a total replacement project of up to 129 beds located in Polk county that are relocated from a nursing home destroyed by flood and whose residents were relocated to other nursing homes. The operating cost payment rates for the new nursing facility shall be determined based on the interim and settle-up payment provisions of Minnesota Rules, part 9549.0057, and the reimbursement provisions of section 256B.431, except that subdivision 25, paragraphs (b), clause (3), and (d), shall not apply until the second rate year after the settle-up cost report is filed. Property-related reimbursement rates shall be determined under section 256B.431, taking into account any federal or state flood-related loans or grants provided to the facility.

Sec. 2. TEMPORARY AUTHORITY TO SUSPEND RULES.

Notwithstanding any law to the contrary, for fiscal years 1997 and 1998, an agency, with the approval of the governor, may temporarily suspend specific agency rules as necessary to expedite flood recovery effort. The suspension of rules must be confined to geographic areas affected by flooding within counties included in a federal disaster declaration and to the minimum periods of times necessary to deal with the emergency situation. The agency must promptly report the reasons for and the impact of any suspended rules to the chairs of the legislative committees that oversee the policy and budgetary affairs of the agency and to the chairs of the legislative committees on governmental operations. This section expires February 1, 1998.

Sec. 3. TEMPORARY WAIVER OF FEES.

Notwithstanding any law to the contrary, for fiscal years 1997 and 1998, an agency, with the approval of the governor, may waive fees that would otherwise be charged for agency services. The waiver of fees must be confined to geographic areas affected by flooding within counties included in a federal disaster declaration and to the minimum periods of times necessary to deal with the emergency situation. The agency must promptly report the reasons for and the impact of any suspended fees to the chairs of the legislative committees that oversee the policy and budgetary affairs of the agency. This section expires February 1, 1998.

Sec. 4. FEDERAL FUNDS.

State agencies may apply for any federal funds available for flood relief. Notwithstanding Minnesota Statutes, section 3.3005, the commissioner of finance may submit the request to receive and spend federal funds to the legislative advisory commission required under Minnesota Statutes, section 3.3005, any time after the application is made for those funds. If a recommendation is not made within five days, no further review by the legislative advisory commission is required, and the commissioner shall approve or disapprove the request. If a recommendation is made for further review, the commissioner may proceed according to Minnesota Statutes, section 3.3005, subdivision 5. This section expires February 1, 1998.

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Sec. 5. SCHOOL DISTRICT AVERAGE DAILY MEMBERSHIP.

For fiscal year 1998, the commissioner of children, families, and learning may adjust school district average daily membership data calculated under Minnesota Statutes, section 124.17, for those school districts affected by flooding in the spring of 1997 for students who have not yet returned to their resident school districts because school facilities or homes are not available for occupancy.

Sec. 6. FLOOD COSTS; STATE AGENCIES.

\$1,000,000 is appropriated from the budget reserve in the general fund to the commissioner of finance for transfer to state agencies as required for flood-related costs. Before making a transfer to an agency, the commissioner must determine that the agency does not have sufficient resources available to support local flood recovery efforts in a timely manner. Each agency receiving a transfer from this appropriation must submit a report to the commissioner of public safety identifying the costs paid from the amount transferred and requesting reimbursement from the federal emergency management agency (FEMA). All reimbursements received from FEMA for these costs are available for reappropriation under this section. This appropriation is available until June 30, 1998, and any amount remaining on June 30, 1998, cancels to the budget reserve in the general fund.

Sec. 7. FLOOD-RELATED DISASTER APPROPRIATION.

\$20,000,000 is appropriated from the budget reserve in the general fund to the commissioner of public safety for reimbursements to counties, cities, and towns and to individuals or families for individual/family grants which may be used for costs related to flooding in 1997. This appropriation is added to the \$3,000,000 appropriation in Laws 1997, chapter 12, for flood-related purposes.

Sec. 8. ALLOCATION.

(a) The amount appropriated in section 7 is available for the following purposes:

(1) for the state costs associated with section 1;

(2) for state match of federal disaster funds for 1997 flood-related disaster costs according to the formula agreed to by the state and the federal emergency management agency (FEMA);

(3) for what would otherwise be the local government match for eligible 1997 flood-related disaster costs in the formula in clause (2); and

(4) for other flood-related costs not covered in clauses (2) and (3).

(b) In allocating any funds available under paragraph (a), clause (4), the commissioner of public safety must consult with the commissioners of natural resources, transportation, and the pollution control agency.

Sec. 9. NO PRECEDENT SET.

Funding by the state in this act for costs that would otherwise be a local fiscal responsibility under funding formulas negotiated by the state and FEMA is not to be considered a precedent for any future disaster funding.

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Sec. 10. APPROPRIATION CARRYOVER.

The appropriation in section 7 is available until June 30, 1998.

Sec. 11. EARLY PAYMENT OF STATE AIDS.

Notwithstanding Minnesota Statutes, sections 273.1398, subdivision 6, and section 477A.015, the commissioner of revenue, in consultation with the division of emergency management, shall make the payments of homestead and agricultural credit aid and local government aid as provided in this section to all qualified local units of government that the commissioner determines have suffered financial hardship. As used in this section, "qualified local units of government" means:

(1) counties that have been designated by the director of the Federal Emergency Management Agency as eligible for federal aid due to flooding; and

(2) home rule charter and statutory cities and towns located in whole or in part within those counties.

Payment of the homestead and agricultural credit aid and local government aid that would otherwise have been payable on July 20, 1997, shall be made as soon as practicable after the date of enactment of this act. For payments in 1997 only, the entire amount of any deduction from local government aid or homestead and agricultural credit aid under Minnesota Statutes, section 273.1399, shall be deducted from the December payments of aids to the affected local governments.

Sec. 12. EFFECTIVE DATE.

This act is effective the day following final enactment.

Presented to the governor May 5, 1997

Signed by the governor May 6, 1997, 2:45 p.m.

CHAPTER 106—S.F.No. 472

An act relating to taxation; recodifying sales taxes on cigarettes and tobacco products; providing criminal and civil penalties; appropriating money; amending Minnesota Statutes 1996, sections 16A.26; 16A.661, subdivision 3; 16A.6701, subdivision 1; 116P.13, subdivision 1; 325D.32, subdivision 4; and 325D.415; proposing coding for new law as Minnesota Statutes, chapter 297F; repealing Minnesota Statutes 1996, sections 297.01; 297.02; 297.03; 297.031; 297.032; 297.04; 297.041; 297.05; 297.06; 297.07; 297.075; 297.08; 297.09; 297.10; 297.11; 297.12; 297.13; 297.21; 297.22; 297.23; 297.24; 297.25; 297.26; 297.31; 297.32; 297.321; 297.33; 297.335; 297.34; 297.35; 297.36; 297.37; 297.38; 297.385; 297.39; 297.40; 297.41; 297.42; 297.43; and 297.44.

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

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