

(2) modify the statewide voter registration system;

(3) develop and administer a procedure to process complaints;

(4) improve polling place accessibility;

(5) prepare training materials;

(6) provide assistance to persons with limited proficiency in the English language;

and

(7) train local election officials.

This appropriation is available until June 30, 2005.

#### Sec. 4. STATE MATCH PREVIOUSLY EXPENDED.

\$1,750,000 expended by state and local government under the voting equipment grant account established by Minnesota Statutes, section 204B.48, in fiscal years 2002 and 2003, was money appropriated for carrying out the activities for which requirements payments are made under section 251 of the Help America Vote Act of 2002, Public Law 107-252, as required by section 253(b)(5) of the act.

#### Sec. 5. EFFECTIVE DATE.

This act is effective retroactively to the full extent permitted by the Help America Vote Act, Public Law 107-252.

Presented to the governor May 27, 2003

Signed by the governor May 30, 2003, 4:10 p.m.

### CHAPTER 8—S.F.No. 10

*An act relating to state government; updating references; increasing the threshold project amount for designer selection board approval; modifying building code language; modifying state procurement provisions; eliminating a report; regulating data practices; providing for the classification and dissemination of certain data; providing for public access; authorizing the commissioner of administration to render opinions in certain circumstances; amending Minnesota Statutes 2002, sections 13.072, subdivisions 1, 2; 13.08, subdivision 4; 13.32, by adding a subdivision; 13.37, subdivision 3; 13.43, subdivision 1; 13.643, by adding a subdivision; 13.746, subdivision 3; 13.785, subdivision 2; 16B.054; 16B.24, subdivisions 1, 5; 16B.33, subdivision 3; 16B.61, subdivision 1a; 16B.62, subdivision 1; 16C.06, by adding a subdivision; 16C.08, subdivision 4; 16C.10, subdivisions 5, 7; 16C.15; 16C.16, subdivision 7; 196.08; 268.19, by adding a subdivision; 307.08, by adding a subdivision; 327A.01, subdivision 2; 349A.08, subdivision 9; 386.20, subdivision 1; proposing coding for new law in Minnesota Statutes, chapters 13; 16C; repealing Minnesota Statutes 2002, sections 13.6401, subdivision 4; 16C.18, subdivision 1; 270B.03, subdivision 8; Laws 2001, First Special Session chapter 10, article 2, section 40.*

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

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## ARTICLE 1

## DEPARTMENT OF ADMINISTRATION

Section 1. Minnesota Statutes 2002, section 16B.054, is amended to read:

**16B.054 DEVELOPMENTAL DISABILITIES.**

The department of administration is designated as the responsible agency to assist the Minnesota governor's council on developmental disabilities in carrying out all responsibilities under United States Code, title 42, section 6021 et seq. the Developmental Disabilities Assistance and Bill of Rights Act of 2000, also known as United States Code, title 42, sections 15001 to 15115, and Public Law 106-402 (October 30, 2000, 106th Congress), as well as those responsibilities relating to the program which are not delegated to the council.

Sec. 2. Minnesota Statutes 2002, section 16B.24, subdivision 1, is amended to read:

Subdivision 1. **OPERATION AND MAINTENANCE OF BUILDINGS.** The commissioner is authorized to maintain and operate the state capitol building and grounds, subject to whatever standards and policies are set for its appearance and cleanliness by the capitol area architectural and planning board and the commissioner under section 15.50, subdivision 2, clause (j), and all other buildings, cafeterias, and grounds in state-owned buildings in the capitol area under section 15.50, subdivision 2, clause (a), the state department of public safety, bureau of criminal apprehension building in St. Paul, the state department of health building in Minneapolis, ~~the Duluth government services center in Duluth~~, 321 Grove Street buildings in St. Paul, any other properties acquired by the department of administration, and, when the commissioner considers it advisable and practicable, any other building or premises owned or rented by the state for the use of a state agency. The commissioner shall assign and reassign office space in the capitol and state buildings to make an equitable division of available space among agencies. The commissioner shall regularly update the long-range strategic plan for locating agencies and shall follow the plan in assigning and reassigning space to agencies. The plan must include locational and urban design criteria, a cost-analysis method to be used in weighing state ownership against leasing of space in specific instances, and a transportation management plan. If the commissioner determines that a deviation from the plan is necessary or desirable in a specific instance, the commissioner shall provide the legislature with a timely written explanation of the reasons for the deviation. The power granted in this subdivision does not apply to state hospitals or to educational, penal, correctional, or other institutions not enumerated in this subdivision the control of which is vested by law in some other agency.

Sec. 3. Minnesota Statutes 2002, section 16B.24, subdivision 5, is amended to read:

Subd. 5. **RENTING OUT STATE PROPERTY.** (a) **AUTHORITY.** The commissioner may rent out state property, real or personal, that is not needed for public use, if the rental is not otherwise provided for or prohibited by law. The property may not be rented out for more than five years at a time without the approval of the state executive council and may never be rented out for more than 25 years. A rental agreement may provide that the state will reimburse a tenant for a portion of capital

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improvements that the tenant makes to state real property if the state does not permit the tenant to renew the lease at the end of the rental agreement.

(b) **RESTRICTIONS.** Paragraph (a) does not apply to state trust fund lands, other state lands under the jurisdiction of the department of natural resources, lands forfeited for delinquent taxes, lands acquired under section 298.22, or lands acquired under section 41.56 which are under the jurisdiction of the department of agriculture.

(c) **FORT SNELLING CHAPEL; RENTAL.** The Fort Snelling Chapel, located within the boundaries of Fort Snelling State Park, is available for use only on payment of a rental fee. The commissioner shall establish rental fees for both public and private use. The rental fee for private use by an organization or individual must reflect the reasonable value of equivalent rental space. Rental fees collected under this section must be deposited in the general fund.

(d) **RENTAL OF LIVING ACCOMMODATIONS.** The commissioner shall establish rental rates for all living accommodations provided by the state for its employees. Money collected as rent by state agencies pursuant to this paragraph must be deposited in the state treasury and credited to the general fund.

(e) **LEASE OF SPACE IN CERTAIN STATE BUILDINGS TO STATE AGENCIES.** The commissioner may lease portions of the state-owned buildings in the capitol complex, the capitol square building, the health building, the Duluth government center, and the building at 1246 University Avenue, St. Paul, Minnesota, to state agencies and the court administrator on behalf of the judicial branch of state government and charge rent on the basis of space occupied. Notwithstanding any law to the contrary, all money collected as rent pursuant to the terms of this section shall be deposited in the state treasury. Money collected as rent to recover the bond interest costs of a building funded from the state bond proceeds fund shall be credited to the general fund. Money collected as rent to recover the depreciation costs of a building funded from the state bond proceeds fund and money collected as rent to recover capital expenditures from capital asset preservation and replacement appropriations and statewide building access appropriations shall be credited to a segregated account in a special revenue fund. Money in the account is appropriated to the commissioner to be expended for asset preservation projects as determined by the commissioner. Money collected as rent to recover the depreciation and interest costs of a building built with other state dedicated funds shall be credited to the dedicated fund which funded the original acquisition or construction. All other money received shall be credited to the general services revolving fund.

Sec. 4. Minnesota Statutes 2002, section 16B.33, subdivision 3, is amended to read:

Subd. 3. **AGENCIES MUST REQUEST DESIGNER.** (a) **APPLICATION.** Upon undertaking a project with an estimated cost greater than ~~\$750,000~~ \$2,000,000 or a planning project with estimated fees greater than ~~\$60,000~~ \$200,000, every user agency, except the capitol area architectural and planning board, shall submit a written

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request for a primary designer for its project to the commissioner, who shall forward the request to the board. The University of Minnesota and the Minnesota state colleges and universities shall follow the process in subdivision 3a to select designers for their projects. The written request must include a description of the project, the estimated cost of completing the project, a description of any special requirements or unique features of the proposed project, and other information which will assist the board in carrying out its duties and responsibilities set forth in this section.

(b) **REACTIVATED PROJECT.** If a project for which a designer has been selected by the board becomes inactive, lapses, or changes as a result of project phasing, insufficient appropriations, or other reasons, the commissioner, the Minnesota state colleges and universities, or the University of Minnesota may, if the project is reactivated, retain the same designer to complete the project.

(c) **FEE LIMIT REACHED AFTER DESIGNER SELECTED.** If a project initially estimated to be below the cost and planning fee limits of this subdivision has its cost or planning fees revised so that the limits are exceeded, the project must be referred to the board for designer selection even if a primary designer has already been selected. In this event, the board may, without conducting interviews, elect to retain the previously selected designer if it determines that the interests of the state are best served by that decision and shall notify the commissioner of its determination.

Sec. 5. Minnesota Statutes 2002, section 16B.61, subdivision 1a, is amended to read:

Subd. 1a. **ADMINISTRATION BY COMMISSIONER.** The commissioner shall administer and enforce the State Building Code as a municipality with respect to public buildings and state licensed facilities in the state. The commissioner shall establish appropriate permit, plan review, and inspection fees for public buildings and state licensed facilities. Fees and surcharges for public buildings and state licensed facilities must be remitted to the commissioner, who shall deposit them in the state treasury for credit to the special revenue fund.

Municipalities other than the state having a ~~contractual~~ an agreement with the commissioner for code administration and enforcement service for public buildings and state licensed facilities shall charge their customary fees, including surcharge, to be paid directly to the ~~contractual~~ jurisdiction by the applicant seeking authorization to construct a public building or a state licensed facility. The commissioner shall ~~contract~~ sign an agreement with a municipality other than the state for plan review, code administration, and code enforcement service for public buildings and state licensed facilities in the ~~contractual~~ jurisdiction if the building officials of the municipality meet the requirements of section 16B.65 and wish to provide those services and if the commissioner determines that the municipality has enough adequately trained and qualified building inspectors to provide those services for the construction project.

The commissioner may direct the state building official to assist a community that has been affected by a natural disaster with building evaluation and other activities related to building codes.

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Administration and enforcement in a municipality under this section must apply any optional provisions of the State Building Code adopted by the municipality. A municipality adopting any optional code provision shall notify the state building official within 30 days of its adoption.

The commissioner shall administer and enforce the provisions of the code relating to elevators statewide, except as provided for under section 16B.747, subdivision 3.

Sec. 6. Minnesota Statutes 2002, section 16B.62, subdivision 1, is amended to read:

Subdivision 1. **MUNICIPAL ENFORCEMENT.** The State Building Code applies statewide and supersedes the building code of any municipality. A municipality must not by ordinance or through development agreement require building code provisions regulating components or systems of any residential structure that are different from any provision of the State Building Code. A municipality may, with the approval of the state building official, adopt an ordinance that is more restrictive than the State Building Code where geological conditions warrant a more restrictive ordinance. A municipality may appeal the disapproval of a more restrictive ordinance to the commissioner. An appeal under this subdivision is subject to the schedule, fee, procedures, cost provisions, and appeal rights set out in section 16B.67. The State Building Code does not apply to agricultural buildings except with respect to state inspections required or rulemaking authorized by sections 103F.141, 216C.19, subdivision 8, and 326.244. All municipalities shall adopt and enforce the State Building Code with respect to new construction within their respective jurisdictions.

If a city has adopted or is enforcing the State Building Code on June 3, 1977, or determines by ordinance after that date to undertake enforcement, it shall enforce the code within the city. A city may by ordinance and with permission of the township board extend the enforcement of the code to contiguous unincorporated territory not more than two miles distant from its corporate limits in any direction if the code is not in effect in the territory. Where two or more noncontiguous cities which have elected to enforce the code have boundaries less than four miles apart, each is authorized to enforce the code on its side of a line equidistant between them. Once enforcement authority is extended extraterritorially by ordinance, the authority may continue to be exercised in the designated territory even though another city less than four miles distant later elects to enforce the code. After the extension, the city may enforce the code in the designated area to the same extent as if the property were situated within its corporate limits.

Enforcement of the code in an extended area outside a city's corporate limits includes all rules, laws, and ordinances associated with administration of the code.

A city which, on June 3, 1977, had not adopted the code may not commence enforcement of the code within or outside of its jurisdiction until it has provided written notice to the commissioner, the county auditor, and the town clerk of each town in which it intends to enforce the code. A public hearing on the proposed enforcement

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must be held not less than 30 days after the notice has been provided. Enforcement of the code by the city outside of its jurisdiction commences on the first day of January in the year following the notice and hearing.

Municipalities may provide for the issuance of permits, inspection, and enforcement within their jurisdictions by means which are convenient, and lawful, including by means of contracts with other municipalities pursuant to section 471.59, and with qualified individuals. The other municipalities or qualified individuals may be reimbursed by retention or remission of some or all of the building permit fee collected or by other means. In areas of the state where inspection and enforcement is unavailable from qualified employees of municipalities, the commissioner shall train and designate individuals available to carry out inspection and enforcement on a fee basis. Nothing in this section prohibits a municipality from adopting ordinances relating to zoning, subdivision, or planning unless the ordinance conflicts with a provision of the State Building Code that regulates components or systems of any residential structure.

Sec. 7. Minnesota Statutes 2002, section 16C.08, subdivision 4, is amended to read:

Subd. 4. **REPORTS.** (a) The commissioner shall submit to the governor, the chairs of the house ways and means and senate finance committees, and the legislative reference library a yearly listing of all contracts for professional or technical services executed. The report must identify the contractor, contract amount, duration, and services to be provided. The commissioner shall also issue yearly reports summarizing the contract review activities of the department by fiscal year.

(b) The fiscal year report must be submitted by September 1 of each year and must:

- (1) be sorted by agency and by contractor;
- (2) show the aggregate value of contracts issued by each agency and issued to each contractor;
- (3) distinguish between contracts that are being issued for the first time and contracts that are being extended;
- (4) state the termination date of each contract; ~~and~~
- (5) identify services by commodity code, including topics such as contracts for training, contracts for research and opinions, and contracts for computer systems; and
- (6) identify which contracts were awarded without following the solicitation process in this chapter because it was determined that there was only a single source for the services.

(c) Within 30 days of final completion of a contract over \$40,000 covered by this subdivision, the head of the agency entering into the contract must submit a one-page

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report to the commissioner who must submit a copy to the legislative reference library. The report must:

(1) summarize the purpose of the contract, including why it was necessary to enter into a contract;

(2) state the amount spent on the contract; and

(3) explain why this amount was a cost-effective way to enable the agency to provide its services or products better or more efficiently; and

(4) if the contract was awarded without following the solicitation process in this chapter because it was determined that there was only a single source for the services, explain why the agency determined there was only a single source for the services.

Sec. 8. Minnesota Statutes 2002, section 16C.10, subdivision 5, is amended to read:

Subd. 5. **SPECIFIC PURCHASES.** The solicitation process described in this chapter is not required for acquisition of the following:

(1) merchandise for resale purchased under policies determined by the commissioner;

(2) farm and garden products which, as determined by the commissioner, may be purchased at the prevailing market price on the date of sale;

(3) goods and services from the Minnesota correctional facilities;

(4) goods and services from rehabilitation facilities and sheltered workshops extended employment providers that are certified by the commissioner of economic security;

(5) goods and services for use by a community-based facility operated by the commissioner of human services;

(6) goods purchased at auction or when submitting a sealed bid at auction provided that before authorizing such an action, the commissioner consult with the requesting agency to determine a fair and reasonable value for the goods considering factors including, but not limited to, costs associated with submitting a bid, travel, transportation, and storage. This fair and reasonable value must represent the limit of the state's bid; and

(7) utility services where no competition exists or where rates are fixed by law or ordinance.

**Sec. 9. [16C.144] GUARANTEED SAVINGS CONTRACTS.**

Subdivision 1. DEFINITIONS. The following definitions apply to this section.

(a) "Utility" means electricity, natural gas, or other energy resource, water, and wastewater.

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(b) “Utility cost-savings” means the difference between the utility costs under the precontract conditions and the utility costs after the changes have been made under the contract. Such savings shall be calculated in comparison to an established baseline of utility costs.

(c) “Established baseline” means the precontract utilities, operations, and maintenance costs.

(d) “Utility cost-savings measure” means a measure that produces utility cost savings and/or operation and maintenance cost savings.

(e) “Operation and maintenance cost savings” means a measurable decrease in operation and maintenance costs that are a direct result of the implementation of one or more utility cost-savings measures but do not include savings from in-house staff labor. Such savings shall be calculated in comparison to an established baseline of operation and maintenance costs.

(f) “Guaranteed savings contract” means a contract for the evaluation, recommendation, and installation of one or more utility cost-savings measures. The contract must provide that all payments are to be made over time but not to exceed ten years from the date of final installation, and the savings are guaranteed to the extent necessary to make payments for the utility cost-savings measures.

(g) “Baseline adjustments” means adjusting the established baselines in paragraphs (b) and (d) for changes in the following variables:

- (1) utility rates;
- (2) number of days in the utility billing cycle;
- (3) square footage of the facility;
- (4) operational schedule of the facility;
- (5) facility temperature set points;
- (6) weather; and
- (7) amount of equipment or lighting utilized in the facility.

(h) “Lease purchase contract” means a contract obligating the state to make regular lease payments to satisfy the lease costs of the utility cost-savings measures until the final payment, after which time the utility cost-savings measures become the sole property of the state of Minnesota.

(i) “Qualified provider” means a person or business experienced in the design, implementation, and installation of utility cost-savings measures.

(j) “Engineering report” means a report prepared by a professional engineer licensed by the state of Minnesota summarizing estimates of all costs of installations, modifications, or remodeling, including costs of design, engineering, installation,

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maintenance, repairs, and estimates of the amounts by which utility and operation and maintenance costs will be reduced.

(k) "Capital cost avoidance" means money expended by a state agency to pay for utility cost-savings measures with a guaranteed savings contract so long as the measures that are being implemented to achieve the cost-savings are a significant portion of an overall project.

(l) "Guaranteed savings contracting guidelines" means policies, procedures, and requirements of guaranteed savings contracts established by the department of administration upon enacting this legislation.

**Subd. 2. GUARANTEED SAVINGS CONTRACT.** The commissioner may enter into a guaranteed savings contract with a qualified provider if:

(1) the qualified provider is selected through a competitive process in accordance with the guaranteed savings contracting guidelines within the department of administration;

(2) the qualified provider agrees to submit an engineering report prior to the execution of the guaranteed savings contract;

(3) the commissioner finds that the amount it would spend on the utility cost-savings measures recommended in the engineering report will not exceed the amount to be saved in utility operation and maintenance costs over ten years from the date of implementation of utility cost-savings measures;

(4) the qualified provider provides a written guarantee that the utility, operation, and maintenance cost savings will meet or exceed the costs of the guaranteed savings contract. The qualified provider shall reimburse the state for any shortfall of guaranteed utility cost-savings; and

(5) the qualified provider gives a sufficient bond in accordance with section 574.26 to the commissioner for the faithful implementation and installation of the utility cost-savings measures.

**Subd. 3. LEASE PURCHASE CONTRACT.** The commissioner may enter into a lease purchase agreement with any party for the implementation of utility cost-savings measures in accordance with an engineering report. The implementation costs of the utility cost-savings measures recommended in the engineering report shall not exceed the amount to be saved in utility and operation and maintenance costs over the term of the lease purchase agreement. The term of the lease purchase agreement shall not exceed ten years. The lease is assignable in accordance with terms approved by the commissioner of finance.

**Subd. 4. USE OF CAPITAL COST AVOIDANCE.** The affected state agency may contribute funds for capital cost avoidance for guaranteed savings contracts. Use of capital cost avoidance is subject to the guaranteed savings contracting guidelines within the department of administration.

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Subd. 5. **REPORT.** By January 15 of 2005 and 2007, the commissioner of administration shall submit to the commissioner of finance and the chairs of the senate and house of representatives capital investment committees a list of projects in the agency that have been funded using guaranteed energy savings, as outlined in this section, during the preceding biennium. For each guaranteed savings contract entered into, the commissioner of administration shall contract with an independent third party to evaluate the cost-effectiveness of each utility cost-savings measure implemented to ensure that such measures were the least-cost measures available. For the purposes of this section, "independent third party" means an entity not affiliated with the qualified provider; that is not involved in creating or providing conservation project services to that provider; and that has expertise (or access to expertise) in energy savings practices.

Subd. 6. **CONTRACT LIMITS.** Contracts may not be entered into after June 30, 2007.

Sec. 10. Minnesota Statutes 2002, section 16C.15, is amended to read:

**16C.15 SHELTERED WORKSHOPS AND SERVICES WORK ACTIVITY PROGRAMS REHABILITATION FACILITIES AND EXTENDED EMPLOYMENT PROVIDERS.**

The commissioner, in consultation with the commissioner of economic security, shall prepare a list containing products and services of ~~state-certified~~ certified rehabilitation facilities, sheltered workshops, and work activity programs and extended employment providers as described in chapter 268A for acquisition by state agencies and institutions.

Sec. 11. Minnesota Statutes 2002, section 16C.16, subdivision 7, is amended to read:

Subd. 7. **ECONOMICALLY DISADVANTAGED AREAS.** (a) Except as otherwise provided in paragraph (b), the commissioner may award up to a six percent preference in the amount bid on state procurement to small businesses located in an economically disadvantaged area.

(b) The commissioner may award up to a four percent preference in the amount bid on state construction to small businesses located in an economically disadvantaged area.

(c) A business is located in an economically disadvantaged area if:

(1) the owner resides in or the business is located in a county in which the median income for married couples is less than 70 percent of the state median income for married couples;

(2) the owner resides in or the business is located in an area designated a labor surplus area by the United States Department of Labor; or

(3) the business is a certified rehabilitation facility or work activity program extended employment provider as described in chapter 268A.

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(d) The commissioner may designate one or more areas designated as targeted neighborhoods under section 469.202 or as enterprise zones under section 469.167 as economically disadvantaged areas for purposes of this subdivision if the commissioner determines that this designation would further the purposes of this section. If the owner of a small business resides or is employed in a designated area, the small business is eligible for any preference provided under this subdivision.

(e) The department of revenue shall gather data necessary to make the determinations required by paragraph (c), clause (1), and shall annually certify counties that qualify under paragraph (c), clause (1). An area designated a labor surplus area retains that status for 120 days after certified small businesses in the area are notified of the termination of the designation by the United States Department of Labor.

Sec. 12. Minnesota Statutes 2002, section 327A.01, subdivision 2, is amended to read:

Subd. 2. **BUILDING STANDARDS.** "Building standards" means the materials and installation standards of the State Building Code, adopted by the commissioner of administration pursuant to sections 16B.59 to 16B.75, that is in effect at the time of the construction or remodeling.

Sec. 13. **REPEALER.**

Minnesota Statutes 2002, section 16C.18, subdivision 1, is repealed.

Sec. 14. **EFFECTIVE DATE.**

Section 9 is effective the day following final enactment.

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## ARTICLE 2

### DATA PRACTICES

Section 1. Minnesota Statutes 2002, section 13.072, subdivision 1, is amended to read:

Subdivision 1. **OPINION; WHEN REQUIRED.** (a) Upon request of a state agency, statewide system, or political subdivision government entity, the commissioner may give a written opinion on any question relating to public access to government data, rights of subjects of data, or classification of data under this chapter or other Minnesota statutes governing government data practices. Upon request of any person who disagrees with a determination regarding data practices made by a state agency, statewide system, or political subdivision government entity, the commissioner may give a written opinion regarding the person's rights as a subject of government data or right to have access to government data.

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(b) Upon request of a body subject to chapter 13D, the commissioner may give a written opinion on any question relating to the body's duties under chapter 13D. Upon request of a person who disagrees with the manner in which members of a governing body perform their duties under chapter 13D, the commissioner may give a written opinion on compliance with chapter 13D. A governing body or person requesting an opinion under this paragraph must pay the commissioner a fee of \$200. Money received by the commissioner under this paragraph is appropriated to the commissioner for the purposes of this section.

(c) If the commissioner determines that no opinion will be issued, the commissioner shall give the ~~state agency, statewide system, political subdivision, government entity or body subject to chapter 13D~~ or person requesting the opinion notice of the decision not to issue the opinion within five days of receipt of the request. If this notice is not given, the commissioner shall issue an opinion within 20 days of receipt of the request.

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

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

~~(e)~~ (f) A written opinion issued by the attorney general shall take precedence over an opinion issued by the commissioner under this section.

Sec. 2. Minnesota Statutes 2002, section 13.072, subdivision 2, is amended to read:

Subd. 2. **EFFECT.** Opinions issued by the commissioner under this section are not binding on the ~~state agency, statewide system, government entity or political subdivision~~ members of a body subject to chapter 13D whose data or performance of duties is the subject of the opinion, but an opinion described in subdivision 1, paragraph (a), must be given deference by a court in a proceeding involving the data. The commissioner shall arrange for public dissemination of opinions issued under this section. This section does not preclude a person from bringing any other action under this chapter or other law in addition to or instead of requesting a written opinion. A government entity, members of a body subject to chapter 13D, or person that acts in conformity with a written opinion of the commissioner issued to the government entity, members, or person or to another party is not liable for compensatory or exemplary damages or awards of attorneys fees in actions under section 13.08 or for a penalty

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under section 13.09 or for fines, awards of attorney fees, or any other penalty under chapter 13D. A member of a body subject to chapter 13D is not subject to forfeiture of office if the member was acting in reliance on an opinion.

Sec. 3. Minnesota Statutes 2002, section 13.08, subdivision 4, is amended to read:

Subd. 4. **ACTION TO COMPEL COMPLIANCE.** (a) In addition to the remedies provided in subdivisions 1 to 3 or any other law, any aggrieved person seeking to enforce the person's rights under this chapter or obtain access to data may bring an action in district court to compel compliance with this chapter and may recover costs and disbursements, including reasonable attorney's fees, as determined by the court. If the court determines that an action brought under this subdivision is frivolous and without merit and a basis in fact, it may award reasonable costs and attorney fees to the responsible authority. If the court issues an order to compel compliance under this subdivision, the court may impose a civil penalty of up to \$300 against the government entity. This penalty is payable to the state general fund and is in addition to damages under subdivision 1. The matter shall be heard as soon as possible. In an action involving a request for government data under section 13.03 or 13.04, the court may inspect in camera the government data in dispute, but shall conduct its hearing in public and in a manner that protects the security of data classified as not public. If the court issues an order to compel compliance under this subdivision, the court shall forward a copy of the order to the commissioner of administration.

(b) In determining whether to assess a civil penalty under this subdivision, the court shall consider whether the government entity has substantially complied with general data practices under this chapter, including but not limited to, whether the government entity has:

- (1) designated a responsible authority under section 13.02, subdivision 16;
- (2) designated a data practices compliance official under section 13.05, subdivision 13;
- (3) prepared the public document that names the responsible authority and describes the records and data on individuals that are maintained by the government entity under section 13.05, subdivision 1;
- (4) developed public access procedures under section 13.03, subdivision 2; procedures to guarantee the rights of data subjects under section 13.05, subdivision 8; and procedures to ensure that data on individuals are accurate and complete and to safeguard the data's security under section 13.05, subdivision 5;
- (5) sought an oral, written, or electronic opinion from the commissioner of administration related to the matter at issue and acted in conformity with that opinion or acted in conformity with an opinion issued under section 13.072 that was sought by another person; or
- (6) provided ongoing training to government entity personnel who respond to requests under this chapter.

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(c) The court shall award reasonable attorney fees to a prevailing plaintiff who has brought an action under this subdivision if the government entity that is the defendant in the action was also the subject of a written opinion issued under section 13.072 and the court finds that the opinion is directly related to the cause of action being litigated and that the government entity did not act in conformity with the opinion.

**Sec. 4. [13.15] COMPUTER DATA.**

Subdivision 1. DEFINITIONS. As used in this section, the following terms have the meanings given.

(a) ELECTRONIC ACCESS DATA. "Electronic access data" means data created, collected, or maintained about a person's access to a government entity's computer for the purpose of:

- (1) gaining access to data or information;
- (2) transferring data or information; or
- (3) using government services.

(b) COOKIE. "Cookie" means any data that a government-operated computer electronically places on the computer of a person who has gained access to a government computer.

Subd. 2. CLASSIFICATION OF DATA. Electronic access data are private data on individuals or nonpublic data.

Subd. 3. NOTICE; REFUSAL TO ACCEPT COOKIE. (a) A government entity that creates, collects, or maintains electronic access data or uses its computer to install a cookie on a person's computer must inform persons gaining access to the entity's computer of the creation, collection, or maintenance of electronic access data or the entity's use of cookies before requiring the person to provide any data about the person to the government entity. As part of that notice, the government entity must inform the person how the data will be used and disseminated, including the uses and disseminations in subdivision 4.

(b) Notwithstanding a person's refusal to accept a cookie on the person's computer, a government entity must allow the person to gain access to data or information, transfer data or information, or use government services by the government entity's computer.

Subd. 4. USE OF ELECTRONIC ACCESS DATA. Electronic access data may be disseminated:

- (1) to the commissioner for the purpose of evaluating electronic government services;
- (2) to another government entity to prevent unlawful intrusions into government electronic systems; or
- (3) as otherwise provided by law.

New language is indicated by underline, deletions by strikeout.

Sec. 5. Minnesota Statutes 2002, section 13.32, is amended by adding a subdivision to read:

Subd. 4a. NONPUBLIC SCHOOL STUDENTS. Data collected by a public school on a child or parent of a child, whose identity must be reported pursuant to section 120A.24, is private data which:

(1) shall not be designated directory information pursuant to subdivision 5 unless prior written consent is given by the child's parent or guardian; and

(2) may be disclosed only pursuant to subdivision 3, clause (a), (b), (c), or (f).

This provision does not apply to students who receive shared time educational services from a public agency or institution.

**Sec. 6. [13.3215] UNIVERSITY OF MINNESOTA DATA.**

Claims experience and all related information received from carriers and claims administrators participating in a University of Minnesota group health, dental, life, or disability insurance plan or the University of Minnesota workers' compensation program, and survey information collected from employees or students participating in these plans and programs, except when the university determines that release of the data will not be detrimental to the plan or program, are classified as nonpublic data not on individuals pursuant to section 13.02, subdivision 9.

Sec. 7. Minnesota Statutes 2002, section 13.37, subdivision 3, is amended to read:

Subd. 3. DATA DISSEMINATION. Crime prevention block maps and names, home addresses, and telephone numbers of volunteers who participate in community crime prevention programs may be disseminated to volunteers participating in crime prevention programs. The location of a National Night Out event is public data.

Sec. 8. Minnesota Statutes 2002, section 13.43, subdivision 1, is amended to read:

Subdivision 1. DEFINITION. As used in this section, "personnel data" means data on individuals collected because the individual is or was an employee of or an applicant for employment by, performs services on a voluntary basis for, or acts as an independent contractor with a state agency, statewide system or political subdivision or is a member of or an applicant for an advisory board or commission. Personnel data includes data submitted by an employee to a government entity as part of an organized self-evaluation effort by the government entity to request suggestions from all employees on ways to cut costs, make government more efficient, or improve the operation of government. An employee who is identified in a suggestion shall have access to all data in the suggestion except the identity of the employee making the suggestion.

**Sec. 9. [13.468] DATA SHARING WITHIN COUNTIES.**

County welfare, human services, corrections, public health, and veterans service units within a county may inform each other as to whether an individual or family currently is being served by the county unit, without the consent of the subject of the

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data. Data that may be shared are limited to the following: the name, telephone number, and last known address of the data subject; and the identification and contact information regarding personnel of the county unit responsible for working with the individual or family. If further information is necessary for the county unit to carry out its duties, each county unit may share additional data if the unit is authorized by state statute or federal law to do so or the individual gives written, informed consent.

Sec. 10. Minnesota Statutes 2002, section 13.643, is amended by adding a subdivision to read:

Subd. 5. DATA RECEIVED FROM FEDERAL GOVERNMENT. All data received by the department of agriculture from the United States Department of Health and Human Services, the Food and Drug Administration, and the Agriculture, Food Safety, and Inspection Service that is necessary for the purpose of carrying out the department of agriculture's statutory food safety regulatory and enforcement duties are classified as nonpublic data under section 13.02, subdivision 9, and private data on individuals under section 13.02, subdivision 12. This section does not preclude the obligation of the department of agriculture to appropriately inform consumers of issues that could affect public health.

Sec. 11. Minnesota Statutes 2002, section 13.746, subdivision 3, is amended to read:

Subd. 3. **STATE LOTTERY.** (a) **ACCESS TO CRIMINAL DATA.** The state lottery director's access to criminal history data on certain persons is governed by sections 349A.06, subdivision 4, and 349A.07, subdivision 2.

(b) **LOTTERY PRIZE WINNERS.** Certain data on lottery prize winners are classified under section 349A.08, subdivision 9.

(c) **ELECTRONIC TRANSMISSIONS.** Data on individuals requesting electronic transmissions from the lottery are classified in section 349A.08, subdivision 9.

Sec. 12. Minnesota Statutes 2002, section 13.785, subdivision 2, is amended to read:

Subd. 2. **DEPARTMENT OF VETERANS AFFAIRS.** (a) **CERTAIN VETERANS BENEFITS AND MILITARY CERTIFICATES OF DISCHARGE.** Access to military certificates of discharge and to files pertaining to claims for certain veterans benefits is governed by section 196.08.

(b) **AGENT ORANGE INFORMATION AND ASSISTANCE ACT.** Disclosure of summary data and of the identity of a veteran about whom information is received under sections 196.19 to 196.26, is governed by section 196.25.

Sec. 13. Minnesota Statutes 2002, section 16C.06, is amended by adding a subdivision to read:

Subd. 3a. INFORMATION IN BIDS AND PROPOSALS. Data relating to bids and proposals are governed by section 13.591.

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Sec. 14. Minnesota Statutes 2002, section 16C.10, subdivision 7, is amended to read:

Subd. 7. **REVERSE AUCTION.** (a) For the purpose of this subdivision, "reverse auction" means a purchasing process in which vendors compete to provide goods at the lowest selling price in an open and interactive environment.

(b) The provisions of ~~section~~ sections 13.591, subdivision 3, and 16C.06, subdivisions 2 and 3, do not apply when the commissioner determines that a reverse auction is the appropriate purchasing process.

Sec. 15. Minnesota Statutes 2002, section 196.08, is amended to read:

**196.08 FILES AND RECORDS CONFIDENTIAL.**

(a) The contents of, and all files, records, reports, papers and documents pertaining to, any claim for the benefits of Laws 1943, chapter 420, whether pending or adjudicated, shall be deemed confidential and privileged and no disclosure thereof shall be made, without the consent in writing of the claimant who has not been adjudicated incompetent, except as follows:

(a) (1) To said claimant personally, a duly appointed guardian, an attorney in fact, or a duly authorized representative, and as to personal matters, when, in the judgment of the commissioner, such disclosure would not be injurious to the physical or mental health of the claimant.

(b) (2) To the representatives of veterans' organizations recognized by the United States government, not exceeding five from each such veterans' organizations, and when such representatives have been duly certified as such by the state department of any such veterans' organizations in the state of Minnesota.

(c) (3) In any court in the state of Minnesota which has jurisdiction of the parties to, and subject matter of, an action or proceeding therein pending, as found by said court, when required to be produced by the process of such court, and then only in open court, as evidence, in such action or proceeding after a judge thereof shall have ruled the same to be relevant and competent evidence in such action or proceeding according to the laws and statutes of said state.

(b) Notwithstanding section 382.16, and except as authorized in paragraph (c), no government entity may release the contents of, or any files, records, reports, papers, or documents pertaining to, United States government form DD214 or DD215 or any other certificate of discharge from military service to any person unless that person:

(1) provides proof of identity;

(2) demonstrates tangible interest; and

(3) completes the required release form prepared by the government entity.

(c) This section does not prohibit release of forms DD214 and DD215 or other certificates of discharge from military service by an employee or official within a

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government entity to another employee or official within that government entity for purposes of performance of official duties.

(d) Forms DD214 and DD215 and certificates of discharge from military service filed with a government agency on or after January 1, 2004, are classified as private data on individuals under section 13.02, subdivision 12.

(e) Notwithstanding section 386.015, subdivision 5, no fee may be charged by a government entity for the release of information to a qualified person under this section.

(f) For purposes of paragraph (b), a person who has a tangible interest is:

(1) the subject of the record, report, paper, or document;

(2) the surviving spouse of the subject, if the subject is deceased;

(3) a surviving child of the subject, if the subject is deceased and there is no surviving spouse;

(4) a surviving parent of the subject, if the subject is deceased and there is no surviving spouse or surviving children; and

(5) a duly appointed guardian, an attorney in fact, or a duly authorized representative.

(g) For purposes of this section, the term "government entity" has the meaning given in section 13.02, subdivision 7a.

Sec. 16. Minnesota Statutes 2002, section 268.19, is amended by adding a subdivision to read:

Subd. 1a. WAGE DETAIL DATA. (a) Wage and employment data gathered pursuant to section 268.044 may be disseminated to and used, without the consent of the subject of the data, by an agency of another state that is designated as the performance accountability and consumer information agency for that state pursuant to Code of Federal Regulations, volume 20, part 663.510(c), in order to carry out the requirements of the Workforce Investment Act of 1998, United States Code, title 29, sections 2842 and 2871.

(b) The commissioner may enter into a data exchange agreement with an employment and training service provider under section 116L.17, or the Workforce Investment Act of 1998, United States Code, title 29, section 2864, under which the commissioner, with the consent of the subject of the data, may furnish data on the quarterly wages paid and number of hours worked on those individuals who have received employment and training services from the provider. With the initial consent of the subject of the data, this data may be shared for up to three years after termination of the employment and training services provided to the individual without execution of an additional consent. This data shall be furnished solely for the purpose of evaluating the employment and training services provided. The data subject's ability to

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receive service is not affected by a refusal to give consent under this paragraph. The consent form must state this fact.

Sec. 17. Minnesota Statutes 2002, section 307.08, is amended by adding a subdivision to read:

Subd. 11. **BURIAL SITES DATA.** Burial sites locational and related data maintained by the office of the state archaeologist and accessible through the office's "Unplatted Burial Sites and Earthworks in Minnesota" Web site are security information for purposes of section 13.37. Persons who gain access to the data maintained on the site are subject to liability under section 13.08 and the penalty established by section 13.09 if they improperly use or further disseminate the data.

Sec. 18. Minnesota Statutes 2002, section 349A.08, subdivision 9, is amended to read:

Subd. 9. **PRIVACY.** (a) The phone number and street address of a winner of a lottery prize is private data on individuals under chapter 13.

(b) Data on an individual, including name, physical and electronic address, and telephone number, that are given to the lottery for direct marketing purposes are private data on individuals as defined in section 13.02. For purposes of this subdivision, "direct marketing" means marketing conducted by the lottery directly with the consumer.

Sec. 19. Minnesota Statutes 2002, section 386.20, subdivision 1, is amended to read:

Subdivision 1. **RECORDATION.** (a) Certificates of discharge from the United States army, the United States navy, and the United States marine corps and releases or transfers from active duty therein may be recorded in the office of the county recorder of any county in this state by the person to whom such discharge, release or transfer was issued without the payment of any fee to the county recorder for recording the same. Upon the request of the person having such instrument recorded, the county recorder shall not stamp, mark, or make any endorsement upon any such certificate of discharge, release or transfer, but after the recording thereof has been completed the recorder shall return the certificate of discharge, release, or transfer in the condition received.

(b) In any county where the compensation of the county recorder consists of fees only, the county recorder shall be entitled to a fee of 60 cents for recording such instrument, which shall be paid by the county upon presentation of a verified claim by the county recorder.

(c) The release of any information pertaining to military certificates of discharge is governed by section 196.08.

Sec. 20. **REPEALER.**

Minnesota Statutes 2002, sections 13.6401, subdivision 4; and 270B.03, subdivision 8; and Laws 2001, First Special Session chapter 10, article 2, section 40, are repealed.

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**Sec. 21. EFFECTIVE DATE; APPLICATION.**

(a) Section 3 is effective August 1, 2003, and applies to actions commenced on and after that date.

(b) Sections 12, 15, and 19 are effective January 1, 2004.

(c) Sections 11 and 18 are effective the day following enactment.

Presented to the governor May 27, 2003

Signed by the governor May 30, 2003, 3:50 p.m.

**CHAPTER 9—H.F.No. 51**

*An act relating to education; providing for early childhood, family, and kindergarten through grade 12 education including general education, education excellence, special programs, facilities and technology, nutrition, school accounting, other programs, libraries, early childhood family support, prevention, self-sufficiency and life long learning, state agencies, deficiencies, and technical amendments; providing for rulemaking; appropriating money; amending Minnesota Statutes 2002, sections 12.21, subdivision 3; 84A.51, subdivision 4; 119A.52; 119A.53; 119B.011, subdivision 20; 120A.05, subdivisions 9, 11; 120A.24, subdivision 4; 120A.41; 121A.21; 121A.41, subdivision 10; 121A.55; 121A.61, subdivision 3; 121A.64; 122A.09, subdivisions 4, 10; 122A.12, subdivisions 1, 2; 122A.18, subdivision 7a; 122A.21; 122A.22; 122A.41, subdivision 2; 122A.414, by adding a subdivision; 122A.415, subdivisions 1, 3; 122A.58; 122A.63, subdivision 3; 123A.06, subdivision 3; 123A.18, subdivision 2; 123A.73, subdivisions 3, 4, 5; 123B.02, subdivision 1; 123B.14, subdivision 1; 123B.51, subdivisions 3, 4; 123B.52, by adding a subdivision; 123B.53, subdivision 4; 123B.57, subdivisions 1, 4, 6; 123B.59, subdivisions 1, 2, 3, 5, by adding a subdivision; 123B.63, subdivisions 1, 2, 3, 4; 123B.72, subdivision 3; 123B.75, subdivision 5; 123B.88, subdivision 2; 123B.90, subdivisions 2, 3; 123B.91, subdivision 1; 123B.92, subdivisions 1, 3, 9; 123B.93; 124D.03, subdivision 12; 124D.081, by adding a subdivision; 124D.09, subdivisions 3, 9, 10, 13, 16, 20; 124D.10, subdivisions 2a, 3, 4, 13, 16, 20, 23a; 124D.11, subdivisions 1, 2, 4, 6, 9; 124D.118, subdivision 4; 124D.13, subdivisions 2, 4, 8; 124D.135, subdivisions 1, 8; 124D.15, subdivision 7; 124D.16, subdivisions 1, 6; 124D.19, subdivision 3; 124D.20, subdivisions 3, 5, by adding subdivisions; 124D.22, subdivision 3; 124D.42, subdivision 6; 124D.454, subdivisions 1, 2, 3, 8, 10, by adding a subdivision; 124D.52, subdivisions 1, 3; 124D.531, subdivisions 1, 2, 4, 7; 124D.59, subdivision 2; 124D.65, subdivision 5; 124D.86, subdivisions 1a, 3, 4, 5, 6; 125A.05; 125A.12; 125A.21, subdivision 2; 125A.28; 125A.30; 125A.76, subdivisions 1, 4; 125A.79, subdivisions 1, 6; 126C.05, subdivisions 8, 14, 15, 16, 17, by adding a subdivision; 126C.10, subdivisions 1, 3, 4, 17, 24, 28, by adding subdivisions; 126C.13, subdivision 4; 126C.15, subdivision 1; 126C.17, subdivisions 1, 2, 5, 7, 7a, 9, 13; 126C.21, subdivision 3; 126C.40, subdivision 1; 126C.42, subdivision 1; 126C.43, subdivisions 2, 3; 126C.44; 126C.45; 126C.457; 126C.48, subdivision 3; 126C.63, subdivisions 5, 8; 126C.69, subdivisions 2, 9; 127A.05, subdivision 4; 127A.45, subdivisions 2, 3, 7a, 10, 12, 13, 14, 14a, 16; 127A.47, subdivisions 7, 8; 127A.49, subdivisions 2, 3; 128C.02, subdivision 1; 128C.05, by adding a subdivision; 128D.11, subdivision 8; 134.34, subdivision 4; 134.47, subdivision 1; 169.26, subdivision 3; 169.28, subdivision 1; 169.435; 169.449, subdivision 1; 169.4501,*

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