

**SENATE
STATE OF MINNESOTA
NINETIETH SESSION**

S.F. No. 4002

(SENATE AUTHORS: KIFFMEYER)

DATE
04/19/2018

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OFFICIAL STATUS
Introduction and first reading
Referred to State Government Finance and Policy and Elections

1.1 A bill for an act
1.2 relating to state government; making supplemental appropriations for certain state
1.3 agencies; changing allocation of rent collected on lease of certain state building
1.4 spaces; changing provisions governing human burials, remains, and cemeteries;
1.5 amending Minnesota Statutes 2016, sections 16B.24, subdivision 5; 307.08.

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

1.7 **ARTICLE 1**

1.8 **STATE GOVERNMENT APPROPRIATIONS**

1.9 Section 1. **APPROPRIATIONS.**

1.10 The sums shown in the columns marked "Appropriations" are added to the appropriations
1.11 in Laws 2017, First Special Session chapter 4, article 1, to the agencies and for the purposes
1.12 specified in this article. The appropriations are from the general fund and are available for
1.13 the fiscal years indicated for each purpose. The figures "2018" and "2019" used in this
1.14 article mean that the addition to the appropriation listed under them is available for the fiscal
1.15 year ending June 30, 2018, or June 30, 2019, respectively. Base adjustments mean the
1.16 addition to the base level adjustment set in Laws 2017, First Special Session chapter 4,
1.17 article 1.

1.18 **APPROPRIATIONS**

1.19 **Available for the Year**

1.20 **Ending June 30**

1.21 **2018 2019**

2.1 **Sec. 2. SECRETARY OF STATE** **\$** **.....** **\$** **330,000**

2.2 \$330,000 in fiscal year 2019 is from the
 2.3 general fund for transfer to the account
 2.4 established in Minnesota Statutes, section
 2.5 5.30, for the purposes authorized under the
 2.6 Omnibus Appropriations Act of 2018, Public
 2.7 Law 115-1410, and section 101 of the Help
 2.8 America Vote Act of 2002 under Public Law
 2.9 107-252. This is a onetime appropriation.

2.10 **Sec. 3. MN.IT** **\$** **.....** **\$** **19,681,000**

2.11 \$19,681,000 in fiscal year 2019 is from the
 2.12 general fund for enhancements to
 2.13 cybersecurity across state government. This
 2.14 appropriation is available until June 30, 2021.
 2.15 \$5,931,000 is added to the base to continue
 2.16 these activities.

2.17 **Sec. 4. MINNESOTA MANAGEMENT AND**
 2.18 **BUDGET** **\$** **.....** **\$** **6,364,000**

2.19 \$6,364,000 in fiscal year 2019 is from the
 2.20 general fund to establish an office to
 2.21 investigate allegations of harassment and
 2.22 discrimination including sexual harassment,
 2.23 train state agencies on the prevention and
 2.24 prohibition of harassment and discrimination,
 2.25 and conduct audits of agency activities,
 2.26 policies, and procedures regarding prevention
 2.27 and prohibition of harassment and
 2.28 discrimination. The base for this appropriation
 2.29 is \$3,625,000 in fiscal year 2020 and
 2.30 \$3,655,000 in fiscal year 2021.

2.31 **Sec. 5. DEPARTMENT OF**
 2.32 **ADMINISTRATION** **\$** **.....** **\$** **200,000**

3.1 \$200,000 in fiscal year 2019 is from the
 3.2 general fund for the Office of the State
 3.3 Archaeologist to complete work required
 3.4 under Minnesota Statutes, section 307.08.

3.5 Sec. 6. INDIAN AFFAIRS COUNCIL \$ \$ 200,000

3.6 \$200,000 in fiscal year 2019 is from the
 3.7 general fund to complete work required under
 3.8 Minnesota Statutes, section 307.08.

3.9 **ARTICLE 2**

3.10 **MISCELLANEOUS**

3.11 Section 1. Minnesota Statutes 2016, section 16B.24, subdivision 5, is amended to read:

3.12 Subd. 5. **Renting out state property.** (a) **Authority.** The commissioner may rent out
 3.13 state property, real or personal, that is not needed for public use, if the rental is not otherwise
 3.14 provided for or prohibited by law. The property may not be rented out for more than five
 3.15 years at a time without the approval of the State Executive Council and may never be rented
 3.16 out for more than 25 years. A rental agreement may provide that the state will reimburse a
 3.17 tenant for a portion of capital improvements that the tenant makes to state real property if
 3.18 the state does not permit the tenant to renew the lease at the end of the rental agreement.

3.19 (b) **Restrictions.** Paragraph (a) does not apply to state trust fund lands, other state lands
 3.20 under the jurisdiction of the Department of Natural Resources, lands forfeited for delinquent
 3.21 taxes, or lands acquired under section 298.22.

3.22 (c) **Rental of living accommodations.** The commissioner shall establish rental rates for
 3.23 all living accommodations provided by the state for its employees. Money collected as rent
 3.24 by state agencies pursuant to this paragraph must be deposited in the state treasury and
 3.25 credited to the general fund.

3.26 (d) **Lease of space in certain state buildings to state agencies.** The commissioner may
 3.27 lease portions of the state-owned buildings under the custodial control of the commissioner
 3.28 to state agencies and the court administrator on behalf of the judicial branch of state
 3.29 government and charge rent on the basis of space occupied. Notwithstanding any law to the
 3.30 contrary, all money collected as rent pursuant to the terms of this section shall be deposited
 3.31 in the state treasury. Money collected as rent to recover the bond interest costs of a building
 3.32 funded from the state bond proceeds fund shall be credited to the general fund. Money

4.1 collected as rent to recover the depreciation costs of a building funded from the state bond
 4.2 proceeds fund and money collected as rent to recover capital expenditures from capital asset
 4.3 preservation and replacement appropriations and statewide building access appropriations
 4.4 shall be credited to a segregated asset preservation and replacement account in a special
 4.5 revenue fund. ~~Fifty percent of the money credited to the account each fiscal year must be~~
 4.6 ~~transferred to the general fund.~~ The remaining money in the account is appropriated to the
 4.7 commissioner to be expended for asset preservation projects as determined by the
 4.8 commissioner. Money collected as rent to recover the depreciation and interest costs of a
 4.9 building built with other state dedicated funds shall be credited to the dedicated fund which
 4.10 funded the original acquisition or construction. All other money received shall be credited
 4.11 to the general services revolving fund.

4.12 (e) **Lease of space in Andersen and Freeman buildings.** The commissioner may lease
 4.13 space in the Elmer L. Andersen and Orville L. Freeman buildings to state agencies and
 4.14 charge rent on the basis of space occupied. Money collected as rent under this paragraph
 4.15 to fund future building repairs must be credited to a segregated account for each building
 4.16 in the special revenue fund and is appropriated to the commissioner to make the repairs.
 4.17 When the state acquires title to each building, the account for that building must be abolished
 4.18 and any balance remaining in the account must be transferred to the appropriate asset
 4.19 preservation and replacement account created under paragraph (d).

4.20 Sec. 2. Minnesota Statutes 2016, section 307.08, is amended to read:

4.21 **307.08 DAMAGES; ILLEGAL MOLESTATION OF HUMAN REMAINS;**
 4.22 **BURIALS; CEMETERIES; PENALTY; AUTHENTICATION ASSESSMENT.**

4.23 Subdivision 1. **Legislative intent; scope.** It is a declaration and statement of legislative
 4.24 intent that all human burials, human remains, and ~~human burial grounds~~ cemeteries shall
 4.25 be accorded equal treatment and respect for human dignity without reference to their ethnic
 4.26 origins, cultural backgrounds, or religious affiliations. The provisions of this section shall
 4.27 apply to all human burials, human remains, or ~~human burial grounds~~ cemeteries found on
 4.28 or in all public or private lands or waters in Minnesota.

4.29 Subd. 2. **Felony; gross misdemeanor.** (a) A person who intentionally, willfully, and
 4.30 knowingly does any of the following is guilty of a felony:

4.31 (1) destroys, mutilates, or injures human burials or ~~human burial grounds~~ cemetery, or
 4.32 associated grave goods; or

5.1 (2) without the consent of the appropriate authority, disturbs ~~human burial grounds~~ a
 5.2 cemetery or removes human remains or associated grave goods.

5.3 (b) A person who, without the consent of the appropriate authority and the landowner,
 5.4 intentionally, willfully, and knowingly does any of the following is guilty of a gross
 5.5 misdemeanor:

5.6 (1) removes any tombstone, monument, or structure placed in any public or private
 5.7 cemetery or ~~authenticated~~ assessed human burial ground; or

5.8 (2) removes any fence, railing, or other work erected for protection or ornament, or any
 5.9 tree, shrub, or plant or grave goods and artifacts within the limits of a ~~public or private~~
 5.10 ~~cemetery or authenticated human burial ground~~; or

5.11 (3) discharges any firearms upon or over the grounds of any ~~public or private~~ cemetery
 5.12 ~~or authenticated burial ground~~.

5.13 Subd. 3. **Protective posting.** Upon the agreement of the appropriate authority and the
 5.14 landowner, ~~an authenticated or recorded human burial ground~~ a cemetery may be posted
 5.15 for protective purposes every 75 feet around its perimeter with signs listing the activities
 5.16 prohibited by subdivision 2 and the penalty for violation of it. Posting is at the discretion
 5.17 of the Indian affairs council in the case of American Indian burials cemeteries or at the
 5.18 discretion of the state archaeologist in the case of ~~non-Indian burials~~ non-American Indian
 5.19 cemeteries. This subdivision does not require posting of a ~~burial ground~~ cemetery. The size,
 5.20 description, location, and information on the signs used for protective posting must be
 5.21 approved by the appropriate authority and the landowner.

5.22 Subd. 3a. **Authentication Cemeteries; records and condition assessments.** ~~The state~~
 5.23 ~~archaeologist shall authenticate all burial grounds for purposes of this section. The state~~
 5.24 ~~archaeologist may retain the services of a qualified professional archaeologist, a qualified~~
 5.25 ~~physical anthropologist, or other appropriate experts for the purpose of gathering information~~
 5.26 ~~that the state archaeologist can use to authenticate or identify burial grounds. If probable~~
 5.27 ~~Indian burial grounds are to be disturbed or probable Indian remains analyzed, the Indian~~
 5.28 ~~Affairs Council must approve the professional archaeologist, qualified anthropologist, or~~
 5.29 ~~other appropriate expert. Authentication is at the discretion of the state archaeologist based~~
 5.30 ~~on the needs identified in this section or upon request by an agency, a landowner, or other~~
 5.31 ~~appropriate authority.~~ (a) Cemeteries shall be assessed according to this subdivision.

5.32 (b) The state archaeologist shall implement and maintain a system of records identifying
 5.33 the location of known, recorded, or suspected cemeteries. The state archaeologist shall
 5.34 provide access to the records as provided in subdivision 11.

6.1 (c) The cemetery condition assessment of non-American Indian cemeteries is at the
 6.2 discretion of the state archaeologist based on the needs identified in this section or upon
 6.3 request by an agency, a landowner, or other appropriate authority.

6.4 (d) The cemetery condition assessment of American Indian cemeteries is at the discretion
 6.5 of the Indian Affairs Council based on the needs identified in this section or upon request
 6.6 by an agency, a landowner, or other appropriate authority.

6.7 (e) The cemetery condition assessment of cemeteries that include American Indian and
 6.8 non-American Indian remains shall be assessed at the discretion of the state archaeologist
 6.9 in collaboration with the Indian Affairs Council based on the needs identified in this section
 6.10 or upon request by an agency, a landowner, or other appropriate authority.

6.11 (f) The state archaeologist and the Indian Affairs Council shall have 90 days from the
 6.12 date a request is received to conduct a cemetery condition assessment or provide notice to
 6.13 the requester whether or not a condition assessment of a cemetery is needed.

6.14 (g) The state archaeologist and the Indian Affairs Council may retain the services of a
 6.15 qualified professional archaeologist, a qualified forensic anthropologist, or other appropriate
 6.16 experts for the purpose of gathering information that the state archaeologist or the Indian
 6.17 Affairs Council can use to assess or identify cemeteries.

6.18 Subd. 5. **Cost; use of data.** The cost of ~~authentication~~ condition assessment, recording,
 6.19 surveying, and marking ~~burial grounds~~ cemeteries and the cost of identification, analysis,
 6.20 rescue, and reburial of human remains on public lands or waters shall be the responsibility
 6.21 of the state or political subdivision controlling the lands or waters. On private lands or waters
 6.22 these costs shall be borne by the state, but may be borne by the landowner upon mutual
 6.23 agreement with the state. The state archaeologist must make the data collected for this
 6.24 activity available using standards adopted by the Office of MN.IT Services and geospatial
 6.25 technology standards and guidelines published by the Minnesota Geospatial Information
 6.26 Office. Costs associated with this data delivery must be borne by the state.

6.27 Subd. 7. **Remains found outside of recorded cemeteries.** (a) All unidentified human
 6.28 remains or burials found outside of ~~recorded~~ cemeteries or unplatted graves or burials found
 6.29 within recorded cemeteries and in contexts which indicate antiquity greater than 50 years
 6.30 shall be treated with utmost respect for all human dignity and dealt with according to the
 6.31 provisions of this section.

6.32 (b) If ~~such~~ the burials are not American Indian or their ethnic identity cannot be
 6.33 ascertained, as determined by the state archaeologist, they shall be dealt with ~~in accordance~~

7.1 ~~with provisions established~~ as determined by the state archaeologist and other appropriate
7.2 authority, as specified in subdivision 3a, paragraph (c).

7.3 (c) If ~~such~~ the burials ~~are~~ include American Indian remains, as determined by the state
7.4 archaeologist, ~~efforts shall be made by~~ they must be dealt with as provided by the provisions
7.5 of subdivision 3a, paragraph (d). The state archaeologist and the Indian Affairs Council ~~to~~
7.6 shall ascertain their tribal identity; of the remains in consultation with appropriate experts
7.7 designated by the Indian Affairs Council. If ~~their~~ probable tribal identity of the remains can
7.8 be determined and the remains have been removed from their original context, such remains
7.9 shall be turned over to contemporary tribal leaders for disposition.

7.10 (d) If tribal identity of the remains cannot be determined, the American Indian remains
7.11 must be dealt with in accordance with provisions established by the state archaeologist and
7.12 as determined by the Indian Affairs Council if they are from public land. If removed Indian
7.13 remains are from private land they shall be dealt with in accordance with provisions
7.14 established by the Indian Affairs Council.

7.15 (e) If it is deemed desirable by the state archaeologist or necessary for identification
7.16 purposes by the Indian Affairs Council, removed remains shall be studied in a timely and
7.17 respectful manner by a qualified professional archaeologist or a qualified physical
7.18 anthropologist appropriate experts as designated by the Indian Affairs Council before being
7.19 delivered to tribal leaders or before being reburied.

7.20 Subd. 7a. **Landowner responsibilities.** (a) Application by a landowner for permission
7.21 to develop or disturb nonburial areas within ~~authenticated~~ an assessed or recorded burial
7.22 grounds cemetery shall be made to the:

7.23 (1) ~~to the~~ state archaeologist and other appropriate authority in the case of ~~non-Indian~~
7.24 non-American Indian burials; and

7.25 (2) ~~to the~~ Indian Affairs Council and other appropriate authority in the case of American
7.26 Indian burials.

7.27 (b) Landowners with ~~authenticated~~ known or suspected human burial grounds cemeteries
7.28 on their property are obligated to inform prospective buyers of the burial ground cemetery.

7.29 Subd. 8. **Burial ground Cemetery relocation.** No ~~non-Indian burial ground~~
7.30 non-American Indian cemetery may be relocated without the consent of the appropriate
7.31 authority. No American Indian burial ground cemetery may be relocated unless the request
7.32 to relocate is approved by the Indian Affairs Council. When a burial ground cemetery is
7.33 located on public lands or waters, any burial relocations must be duly licensed under section

8.1 138.36 and the cost of removal is the responsibility of and shall be paid by the state or
8.2 political subdivision controlling the lands or waters. If ~~burial grounds~~ cemeteries are
8.3 ~~authenticated~~ assessed on private lands, efforts may be made by the state to purchase and
8.4 protect them instead of removing them to another location.

8.5 Subd. 9. **Interagency cooperation.** (a) The state archaeologist and the Indian Affairs
8.6 Council shall enter into a memorandum of understanding to coordinate their responsibilities
8.7 under this section.

8.8 (b) The Department of Natural Resources, the Department of Transportation, and all
8.9 other state agencies and local governmental units whose activities may be affected, shall
8.10 cooperate with the state archaeologist and the Indian Affairs Council to carry out the
8.11 provisions of this section.

8.12 Subd. 10. **Construction and development plan review.** When ~~human burials are known~~
8.13 ~~or suspected to~~ cemeteries exist, on public lands or waters, the state or political subdivision
8.14 controlling the lands or waters or, in the case of private lands, the landowner or developer,
8.15 shall submit construction and development plans to the state archaeologist for review prior
8.16 to the time bids are advertised and prior to any disturbance within the ~~burial area~~ cemetery.
8.17 If the known or suspected burials are the cemetery is thought to be Indian American Indian,
8.18 or the project is within 300 feet of American Indian cemeteries, American Indian burial
8.19 features, historic American Indian villages, or historic American Indian cultural features,
8.20 plans shall also be submitted to the Indian Affairs Council. The state archaeologist and the
8.21 Indian Affairs Council shall review the plans within ~~30~~ 45 days of receipt and make
8.22 recommendations for the preservation in place or removal of the ~~human burials~~ cemetery
8.23 or remains, which may be endangered by construction or development activities.

8.24 Subd. 11. **Burial sites data.** Burial sites locational and related data maintained by the
8.25 Office of the State Archaeologist ~~and accessible through the office's "Unplatted Burial Sites~~
8.26 ~~and Earthworks in Minnesota" Web site~~ are security information for purposes of section
8.27 13.37. Persons who gain access to the data maintained on the site are subject to liability
8.28 under section 13.08 and the penalty established by section 13.09 if they improperly use or
8.29 further disseminate the data.

8.30 Subd. 12. **Right of entry.** The state archaeologist or designee may enter on property for
8.31 the purpose of ~~authenticating burial sites.~~ identifying or assessing cemetery sites. A
8.32 designated representative of the Indian Affairs Council may enter on property, in
8.33 collaboration with the state archaeologist, for the purpose of identifying or assessing
8.34 American Indian burial sites. Only after obtaining permission from the property owner or

9.1 lessee, descendants of persons buried in burial grounds covered by this section may enter
 9.2 the burial grounds for the purpose of conducting religious or commemorative ceremonies.
 9.3 This right of entry must not unreasonably burden property owners or unnecessarily restrict
 9.4 their use of the property. The right of entry cannot be denied unless an unreasonable burden
 9.5 can be shown by the property owners.

9.6 Subd. 13. **Definitions.** As used in this section, the following terms have the meanings
 9.7 given.

9.8 (a) "Abandoned cemetery" means a cemetery where the cemetery association has
 9.9 disbanded or the cemetery is neglected and contains marked graves older than 50 years.

9.10 (b) "Appropriate authority" means:

9.11 (1) the trustees when the trustees have been legally defined to administer burial grounds;

9.12 (2) the Indian Affairs Council in the case of American Indian burial grounds lacking
 9.13 trustees;

9.14 (3) the county board in the case of abandoned cemeteries under section 306.243; and

9.15 (4) the state archaeologist in the case of ~~non-Indian~~ non-American Indian burial grounds
 9.16 lacking trustees or not officially defined as abandoned.

9.17 (c) "Artifacts" means natural or artificial articles, objects, implements, or other items of
 9.18 archaeological interest.

9.19 (d) ~~"Authenticate"~~ "Assess" means to establish the presence of or high potential of ~~human~~
 9.20 ~~burials~~ for a cemetery or human skeletal remains ~~being~~ located in a discrete area, delimit
 9.21 the boundaries of ~~human burial grounds~~ the cemetery or graves, and attempt to determine
 9.22 the ethnic, cultural, or religious affiliation of individuals interred.

9.23 (e) "Burial" means the organic remnants of the human body that were intentionally
 9.24 interred as part of a mortuary process.

9.25 ~~(f) "Burial ground" means a discrete location that is known to contain or has high potential~~
 9.26 ~~to contain human remains based on physical evidence, historical records, or reliable informant~~
 9.27 ~~accounts.~~

9.28 ~~(g)~~ (f) "Cemetery" means a discrete location that is known to contain or intended to be
 9.29 used for the interment of human remains, or has high potential to contain human remains
 9.30 based on physical evidence, historical records, or reliable informant accounts.

9.31 ~~(h)~~ (g) "Disturb" means any activity that ~~significantly~~ harms the physical integrity or
 9.32 setting of a ~~human burial or human burial ground~~ cemetery.

10.1 ~~(h)~~ (h) "Grave goods" means objects or artifacts directly associated with human burials
10.2 or ~~human burial grounds~~ cemeteries that were placed as part of a mortuary ritual at the time
10.3 of interment.

10.4 ~~(i)~~ (i) "Human remains" means the calcified portion of the human body, not including
10.5 isolated teeth, or cremated remains deposited in a container or discrete feature.

10.6 ~~(j)~~ (j) "Identification" means to analyze organic materials to attempt to determine if they
10.7 represent human remains and to attempt to establish the ethnic, cultural, or religious
10.8 affiliations of such remains.

10.9 (k) "American Indian cemetery" means a discrete location that is known to contain or
10.10 has a high potential to contain American Indian human remains based on physical evidence,
10.11 historical records, or reliable informant accounts.

10.12 (l) "Marked" means a burial that has a recognizable tombstone or obvious grave marker
10.13 in place or a legible sign identifying an area as a burial ground or cemetery.

10.14 (m) "Qualified ~~physical~~ forensic anthropologist" means a specialist in identifying human
10.15 remains who holds an advanced degree in forensic anthropology or a closely related field.

10.16 (n) "Qualified professional archaeologist" means an archaeologist who meets the United
10.17 States Secretary of the Interior's professional qualification standards in Code of Federal
10.18 Regulations, title 36, part 61, appendix A, or subsequent revisions.

10.19 (o) "Recorded cemetery" means a cemetery that has a surveyed plat filed in a county
10.20 recorder's office.

10.21 (p) "State" or "the state" means the state of Minnesota or an agency or official of the
10.22 state acting in an official capacity.

10.23 (q) "Trustees" means the recognized representatives of the original incorporators, board
10.24 of directors, or cemetery association.

APPENDIX
Article locations in SF4002-0

ARTICLE 1 STATE GOVERNMENT APPROPRIATIONS..... Page.Ln 1.7
ARTICLE 2 MISCELLANEOUS..... Page.Ln 3.9