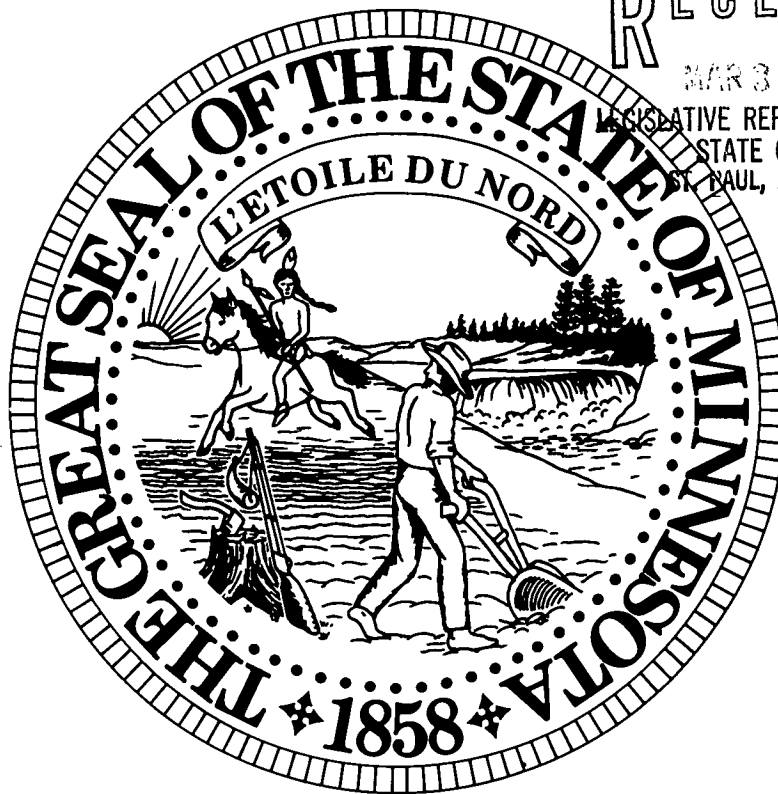


STATE OF MINNESOTA

STATE REGISTER

DEPARTMENT OF ADMINISTRATION—DOCUMENTS DIVISION



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STATE REGISTER

Judicial Notice Shall Be Taken of Material Published in the *State Register*

The *State Register* is the official publication of the State of Minnesota, containing executive orders of the governor, proposed and adopted rules of state agencies, official notices to the public, state and non-state public contracts, grants, supreme court and tax court decisions, and a monthly calendar of cases to be heard by the state supreme court.

Volume 11 Printing Schedule and Submission Deadlines

Vol. 11 Issue Number	*Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules	*Submission deadline for State Contract Notices and other **Official Notices	Issue Date
39	Monday 16 March	Monday 23 March	Monday 30 March
40	Monday 23 March	Monday 30 March	Monday 6 April
41	Monday 30 March	Monday 6 April	Monday 13 April
42	Monday 6 April	Monday 13 April	Monday 20 April

*Deadline extensions may be possible at the editor's discretion; however, none will be made beyond the second Wednesday (12 calendar days) preceding the issue date for rules, proposed rules and executive orders, or beyond the Wednesday (5 calendar days) preceding the issue date for official notices. Requests for deadline extensions should be made only in valid emergency situations.

**Notices of public hearings on proposed rules and notices of intent to adopt rules without a public hearing are published in the Proposed Rules section and must be submitted two weeks prior to the issue date.

Instructions for submission of documents may be obtained from the State Register editorial offices, 504 Rice Street, St. Paul, Minnesota 55103, (612) 296-4273.

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**Sandra J. Hale, Commissioner
Department of Administration**

**Stephen A. Ordahl, Director
Minnesota Documents Division**

Robin PanLener, Editor

Paul Hoffman, Assistant Editor

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FOR LEGISLATIVE NEWS

Publications containing news and information from the Minnesota Senate and House of Representatives are available free to concerned citizens and the news media. To be placed on the mailing list, write or call the offices listed below:

SENATE

Briefly-Preview—Senate news and committee calendar; published weekly during legislative sessions.

Perspectives—Publication about the Senate.

Session Review—Summarizes actions of the Minnesota Senate.

Contact: Senate Public Information Office
Room 231 State Capitol, St. Paul, MN 55155
(612) 296-0504

HOUSE

Session Weekly—House committees, committee assignments of individual representatives; news on committee meetings and action. House action and bill introductions

This Week—weekly interim bulletin of the House.

Session Summary—Summarizes all bills that both the Minnesota House of Representatives and Minnesota Senate passed during their regular and special sessions.

Contact: House Information Office
Room 175 State Office Building, St. Paul, MN 55155
(612) 296-2146

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How to Follow State Agency Rulemaking Action in the *State Register*

State agencies must publish notice of their rulemaking action in the *State Register*. If an agency seeks outside opinion before promulgating new rules or rule amendments, it must publish a **NOTICE OF INTENT TO SOLICIT OUTSIDE OPINION** also.

The **PROPOSED RULES** section contains:

- Proposed new rules (including notice of hearing and/or notice of intent to adopt rules without a hearing).
- Proposed amendments to rules already in existence in the Minnesota Rules.
- Proposed emergency rules.
- Withdrawal of proposed rules (option; not required).

The **ADOPTED RULES** section contains:

- Notice of adoption of new rules and rule amendments adopted without change from the previously published proposed rules. (Unchanged adopted rules are not republished in full in the *State Register* unless requested by an agency.)
- Adopted amendments to new rules or rule amendments (adopted changes from the previously published proposed rules).
- Notice of adoption of emergency rules.
- Adopted amendments to emergency rules (changes made since the proposed version was published).
- Extensions of emergency rules beyond their original effective date.

The **OFFICIAL NOTICES** section includes (but is not limited to):

- Notice of intent to solicit outside opinion before promulgating rules.
- Additional hearings on proposed rules not listed in original proposed rules calendar.

ALL ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES published in the *State Register* and filed with the Secretary of State before April 8, 1985 are published in the *Minnesota Rules 1985*. ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES filed after April 8, 1985 are included in a supplement published in Spring, 1986. Proposed and adopted EMERGENCY (formerly called TEMPORARY) RULES appear in the *State Register* but are generally not published in the *Minnesota Rules* due to the short-term nature of their legal effectiveness. Those that are long-term may be published.

The *State Register* publishes partial and cumulative listings of rule in the MINNESOTA RULES AMENDMENTS AND ADDITIONS list on the following schedule:

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.0476; .0478; .0482; .0484; .0485; .0538; .0552;	
.0556; .0584; .0588; .0638; (proposed)	916
Ibid. (errata)	1087
7001.0190; .0560; .0650; .0730;	
7045.0020; .0486; .0488; .0490; .0492; .0494;	
.0496; .0502; .0504; .0506; .0508; .0518; .0524;	
.0594; .0596; .0600; .0602; .0604; .0606; .0608;	
.0610; .0612; .0614; .0616; .0620 (proposed)	1579

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7010.0010-.0080 (adopted)	43
7010.0100;.0200;.0300;.0400;.0500;.0600; .0700 (repealed)	43
7035.8000;.8010;.8020;.8030;.8040;.8050;.8060; .8070;.8080 (proposed)	383
7035.8000;.8010;.8020;.8030;.8040;.8050;.8060; .8070;.8080 (adopted)	1113
7045.0135 (adopted)	335
7045.0534 s.4,5 (proposed repealer)	916
Ibid. (errata)	1087
7045.0075;.0219;.0261;.0292;.0381 (proposed)	1102
7046.0031;.0040;.0050;.0070 (proposed)	1273
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7408.0100;.0200;.0300 (adopted)	1741
7414.0400 (proposed)	1782
7414.0200;.0400 (proposed)	891
7419.0100;.0200;.0300;.0400;.0500;.0600; .0700;.0800; (adopted)	777
7440.0100;.0300;.0350;.0400 (adopted)	957
7500.0100-.3600 (adopted)	6
7500.0100, s.12,15,20,21;.0900;.1000;.1100; .1700;.1800, s.5;.1900;.2300;.2800;.3200; s.1;.3300 (repealed)	6
7503.0800 (proposed)	775
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7845.0100-.1000 (emergency extended)	1743
7845.7000;.7100;.7200;.7300;.7400;.7500; .7600 (proposed)	540
7845.7000;.7100;.7200;.7300;.7400;.7500;.7600 (adopted)	1743

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7860.0010;.0030;.0040;.0100;.0120;.0160; .0190;.0200;.0220;.0230;.0240;.0250;.0260;.0270; .0280;.0400 (adopted)	1310
7860.0070 s.1;.0220 s.2 (repealed)	1310

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7869.0100;.7870.0480;7873.0130;.0190;.0191;.0195; 7876.0100;7877.0135;.0145;.0155;.0170;.0180; 7878.0100;.0140;7879.0100;.7883.0100;.7884.0230; 7890.0110;.0120;.0150;7895.0100;7897.0110 .0115;.0120;.0130;.0150; (proposed)	1733
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7950.0500;.0510;.0520 (proposed)	1779

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9500.1125 s.5 (proposed repealer)	975
9500.1125 s.5 (repealed)	1688
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9500.1450-.1464 (proposed)	35
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9500.1650-.1663 (proposed)	69
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9500.2000-.2880 (adopted)	212
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9505.0010-.0150 (adopted)	1069
9505.0170; .0175; .0180; .0185; .0190; .0195; .0200; .0205; .0210; .0215; .0220; .0221; .0225; .0235; .0240; .0245; .0250; .0255; .0270; .0275; .0280; .0285; .0290; .0295; .0300; .0305; .0310; .0315; .0320; .0325; .0330; .0335; .0340; .0345; .0350; .0353; .0355; .0360; .0365; .0380; .0395; .0405; .0415; .0420; .0425; .0430; .0440; .0445; .0450; .0455; .0460; .0465; .0470; .0475; 9500.1070 (proposed)	1645
9500.0900; .0930; .0960; .0970; .0990; .1000; .1060; .1070, s.2,3,5,7,8,9,10,11,16,17,18,19,20,21,22,24;	

9505.1080 (proposed repealer)	1645
9505.0211; .0212 (emergency extended)	714
9505.0500; .0510; .0520; .0530; .0540 (proposed)	1031
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9530.2800; .5300; .6600; .6605; .6630; .6635; .6640; .6645; .6650; .6655; .6800-.7030 (proposed)	1442
9530.6600-.6655 (adopted)	1005
9549.0030; .0036; .0041; .0060 (adopted)	866
9549.0050-.0059 (withdrawn proposed)	710
9549.0050-.0059 (proposed)	988
9549.0050-.0060 (errata)	1054
9549.0060 (proposed)	1004
9555.5105; .5205; .5305; .5405; .5415; .5505; .5605; .5705; .6105; .6115; .6125; .6145; .6155; .6165; .6167; .6175; .6185; .6195; .6205; .6215; .6225; .6233; .6245; .6255; .6265 (proposed)	650
9555.5100; .5200; .5300; .5400; .6100; .6200; .6300; .6400 (proposed repealer)	650
9555.9600; .9610; .9620; .9630; .9640; .9650; .9660; .9670; .9680; .9690; .9700; .9710; .9720; .9730 (proposed)	582
9575.1070 (adopted)	893
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9575.0350; .1500 (proposed)	598
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EXECUTIVE ORDERS

Executive Order #87-5 Providing for Continuation of the Governor's Minnesota Judicial Merit Advisory Commission; Rescinding Executive Order Number 83-2 and all Amendments Thereto

I, RUDY PERPICH, GOVERNOR OF THE STATE OF MINNESOTA, by virtue of the authority vested in me by the Constitution and the applicable statutes, do hereby issue this Executive Order:

WHEREAS, it is desirable that the concept of merit selection of judges through the use of a judicial nominating commission be employed to assist the Governor in filling vacancies which occur in county and district courts; and

WHEREAS, it is necessary that all areas of the state and all segments of the population be represented both on the nominating panel and in the judiciary;

NOW, THEREFORE, I order:

1. Establishment of the Minnesota Judicial Merit Advisory Commission

There is hereby created a Governor's Minnesota Judicial Merit Advisory Commission to seek out, evaluate, and recommend to the Governor outstanding persons who are learned in the law to fill vacancies which may occur on the courts of Minnesota.

This Commission shall be composed of thirteen members, including the following:

- a. One member appointed by the Governor from each of ten judicial districts;
- b. A chair, appointed by the Governor; and
- c. Two members-at-large, appointed by the Governor.

The chair shall be responsible for calling such meetings of the commission as are necessary to carry out its functions.

2. Appointment of Additional Members

Whenever one or more judicial vacancies occur in a judicial district, the membership of the commission shall be expanded by one member. The Governor shall appoint one member from each district having one or more judicial vacancies. That member shall serve until nominees for that district's judicial vacancy or vacancies are filled.

3. Duties

Members shall attend commission meetings and consider each candidate for a judicial vacancy in an impartial and objective manner. They shall actively seek out and encourage qualified individuals to apply for judicial office with particular emphasis on women and minorities who are under-represented in the judicial system. No expenses or per diem payments shall be allowed for commission members.

4. Officers

The commission shall select from among its own members a secretary who shall prepare the minutes of all meetings of the commission, keep a record of its official actions, and maintain a list of names considered for each judicial vacancy.

The chair shall select from among the commission membership one or more candidate solicitors who shall be primarily responsible for actively seeking out candidates for judicial vacancies as they occur.

5. Procedures When Judicial Vacancies Occur or Will Occur in the Future

Within ten days after a judicial vacancy occurs in a district or county court in the judicial districts, the Governor shall notify the chair of the Minnesota Judicial Merit Advisory Commission. The Governor shall advise the chair of the name of the person appointed to serve as a special member of the commission for the purpose of considering candidates to fill that judicial vacancy. The chair shall notify the members of the commission that a vacancy has occurred and shall call a meeting of the commission to consider the candidates for the vacancy to be held seven (7) to ten (10) days following the published application deadline.

When it is known that a future judicial vacancy will occur on a definite date, the Governor shall so notify the chair. The Governor shall advise the chair of the name of the person appointed to serve as a special member of the commission for the purpose of considering candidates to fill that judicial vacancy. The chair shall call a meeting of the commission to consider candidates for the judicial vacancy to be held not more than 4 months before the judicial vacancy is to occur nor less than 15 days after the chair takes the actions described in Section 'a' herein.

- a. The chair shall immediately issue a news release stating that a judicial vacancy has occurred

EXECUTIVE ORDERS

or will occur; that applications from qualified persons are being accepted by the commission and must be received by the published application deadline to be considered candidates for nomination; and that any names submitted will be kept in strict confidence by the commission until the names of the nominees are transmitted to the Governor.

b. The chair shall immediately distribute the news release to all media serving the county or judicial district in which the judicial vacancy has occurred or will occur and shall transmit copies of the news release to the presidents of the bar associations in the county or judicial district. The candidate solicitor shall encourage the local bar associations, where practical, to directly contact their members and advise them of the procedures to be followed if attorneys wish to apply for consideration by the commission.

6. Procedures

The chair shall convene and preside over all meetings of the commission. The chair shall designate a member to preside if the chair is absent.

A quorum for commission meetings shall be six (6) members.

The commission shall recommend to the Governor no more than five (5) nor fewer than three (3) candidates for each judicial vacancy, unless there are fewer than three candidates available, in which case the commission shall transmit those names to the Governor in the manner described in Article 8 herein. The commission shall not rank the candidates submitted to the Governor. The recommendations to the Governor shall be advisory.

7. Standards for Evaluation of Candidates

In evaluating the candidates, the commission shall give consideration to the following factors, as well as such other factors as the commission members deem important:

- a. integrity and moral courage;
- b. legal education and training;
- c. legal and trial experience;
- d. patience and courtesy;
- e. common sense and sound, mature judgment;
- f. ability to be objective and impartial;
- g. capacity for work;
- h. mental and physical health as they would affect the candidate's ability to perform judicial duties;
- i. good personal habits compatible with judicial dignity and deportment;
- j. knowledge and understanding of human nature; and,
- d. cooperativeness and ability to work with others.

8. Transmittal of Nominees to Governor

Within six weeks after the Governor has notified the chair that a judicial vacancy has occurred or when the commission has completed its work before a future judicial vacancy is to occur, the secretary shall transmit to the Governor the names of the commission's recommended nominees. The names of the nominees shall be listed in alphabetical order. The secretary shall transmit to the Governor all of the applications submitted to the commission.

No other information shall be transmitted to the Governor, except that the members of the com-

mission may consult with the Governor at his request and may provide him with any other information gathered by the commission during its deliberations.

If a vacancy occurs in the office of a judge in the same district for which the Governor filled a judicial vacancy within the past six months, and if the commission provided recommendations to the Governor for the prior judicial vacancy, then the Governor may elect to consider again the names submitted for the prior judicial vacancy as if those names had been submitted for the pending judicial vacancy. If the Governor so elects, he shall so inform the chair as soon thereafter as possible.

Pursuant to Minnesota Statutes, Section 4.035, subd. 2, this Order shall be effective 15 days after its publication in the *State Register* and filing with the Secretary of State and shall remain in effect until rescinded by proper authority or it expires in accordance with Minnesota Statutes 1986, Section 4.035, subd. 3.

IN TESTIMONY WHEREOF, I have set my hand this twelfth day of March, 1987.



RUDY PERPICH
Governor

PROPOSED RULES

Pursuant to Minn. Stat. of 1982, §§ 14.22, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless 25 or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules; and
4. that the rule may be modified if the modifications are supported by the data and views submitted.

If, during the 30-day comment period, 25 or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of §§ 14.14-14.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

Pursuant to Minn. Stat. §§ 14.29 and 14.30, agencies may propose emergency rules under certain circumstances. Proposed emergency rules are published in the *State Register* and, for at least 25 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Board of Animal Health

Proposed Permanent Rules Relating to Control of Rabies in Minnesota

Notice of Intent to Amend Rules without a Public Hearing

Notice is hereby given that the State Board of Animal Health proposes to adopt the above entitled rules without a public hearing. The Board has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

PROPOSED RULES

procedures set forth in Minnesota Statutes section 14.22 through 14.28 (1986). Authority for adoption of these rules is contained in Minnesota Statutes section 35.03 (1986).

Persons interested in these rules shall have 30 days to submit comments in support of or in opposition to the proposed rules and such comments are encouraged. Any person requesting a public hearing should state his or her name and address. Each comment should identify the portion of the rule addressed, the reason for the comment and any change proposed. The proposed rules may be modified if modifications are supported by data and views submitted to the agency and do not result in substantial change in the proposed language.

Unless 25 or more persons submit a written request for a public hearing on the proposed rule within the 30 day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes section 14.131 through 14.20.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or requests to:

Keith A. J. Friendshuh, DVM
State Board of Animal Health
90 West Plato Blvd.
160 Agriculture Building
St. Paul, MN 55107
Telephone: (612) 296-3428

A statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information supporting the proposed rules has been prepared and is available from Dr. Friendshuh upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this notice, the Statement of Need and Reasonableness, all written comments received and Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change.

Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as adopted should submit a written statement of such request to Dr. Friendshuh.

The rules proposed for adoption relate to the following matters:

The Control of Rabies in Minnesota

A copy of the proposed rule is attached to this notice.

Dated: 13 March 1987

T. J. Hagerty, DVM, Executive Secretary
Board of Animal Health

Rules as Proposed

1705.1090 DEFINITIONS.

Subpart 1. to 4. [Unchanged.]

Subp. 5. **Positive rabies case.** "Positive rabies case" ~~shall mean any means an~~ animal showing ~~symptoms commonly signs~~ associated with rabies ~~which that~~ are observed and reported to the board by a veterinarian, or ~~any an~~ animal diagnosed as positive for rabies by a recognized laboratory, or both.

Subp. 6. **Rabies specimen.** "Rabies specimen" ~~shall mean means~~ that part of an animal, ~~usually the head,~~ or ~~an~~ entire animal submitted for rabies examination.

Subp. 6a. Under the supervision of a veterinarian. "Under the supervision of a veterinarian" means that a veterinarian is on the premises.

Subp. 7. **Vaccinated.** "Vaccinated" ~~shall mean means~~ an animal ~~vaccinated immunized~~ for rabies by or under the supervision of a licensed veterinarian with a ~~product approved by the board vaccine licensed by the United States Department of Agriculture and used in accordance with the label approved by USDA taking into consideration the duration period of immunity set forth for the vaccine. The National Association of State Public Officials annually publishes a booklet entitled Compendium of Animal Rabies Vaccines which lists all vaccines approved and licensed by the USDA and the duration of immunity for each vaccine. The board shall maintain current editions of this compendium which are available to the public upon request.~~

Subp. 8. **Veterinarian.** "Veterinarian" ~~shall mean means~~ a licensed graduate of a ~~recognized~~ veterinary college ~~approved by the board and, who is~~ accredited by the United States Department of Agriculture.

1705.1120 INVESTIGATION OF POSITIVE RABIES CASE.

All known positive cases of rabies shall be investigated by a veterinarian employed by the board or the ~~Animal Disease Eradication Division and Plant Health Inspection Service~~, United States Department of Agriculture. The results of each investigation shall be submitted on forms furnished by the board.

1705.1130 ANIMALS BITTEN OR EXPOSED BY RABID ANIMAL.

~~Any animal(s)~~ Animals determined by the veterinarian to be bitten or otherwise exposed by ~~the a~~ rabid animal shall be humanely euthanized or quarantined ~~for a period not to exceed six months~~ in an animal-tight enclosure ~~so constructed so~~ that the animal cannot ~~get through or over escape~~ and ~~will to~~ prevent the animal from biting or coming in contact with persons or other animals; ~~except as circumstances would allow one of the conditions in parts 1705.1140 to 1705.1180 to prevail.~~ The quarantine period is for six months unless conditions in part 1705.1175 or 1705.1180 are met.

1705.1145 ANIMAL RABIES VACCINES.

Because of techniques and tolerances, species limitations, and public health implications, animal rabies vaccines may only be administered by or under the supervision of a veterinarian.

1705.1170 ~~RELEASE OF QUARANTINE~~ VETERINARIAN'S INSPECTION REPORT.

Quarantines established on ~~dogs and cats~~ animals under these rules will not be released 40 days after revaccination provided until a written report is ~~submitted to~~ received by the board by from a veterinarian stating he has inspected the ~~dog or cat~~ animals, and no signs or ~~symptoms~~ of rabies were observed.

1705.1175 ~~RELEASE OF QUARANTINE~~ ON DOGS AND CATS.

Dogs and cats may be released from quarantine after 40 days under the conditions in items A to C.

A. The animal must have been vaccinated for rabies at least 21 days before exposure.

B. The animal must have been revaccinated for rabies immediately after exposure. The 40-day period begins on the date of the revaccination.

C. The written report required in part 1705.1170 must be received by the board.

1705.1180 ~~RELEASE OF~~ QUARANTINE ON DOMESTICATED FARM ANIMALS.

Quarantines established on domesticated farm animals other than dogs and cats because of rabies exposure may be released upon request after 90 days have elapsed from date of exposure provided if:

A. no new cases of rabies have developed on the premises; and further provided

B. a written report is submitted to the board by a veterinarian stating he has inspected all animals on the premises and that no animals are showing signs or ~~symptoms~~ of rabies.

1705.1190 AREA PROCLAMATION AND QUARANTINE.

When an investigation reveals that rabies exists and presents imminent danger of an epidemic ~~of rabies developing,~~ and it is necessary to control the outbreak and prevent the spread of the disease, the ~~executive secretary and executive officer~~ of the board ~~deems it necessary;~~ he shall make and file a proclamation and establish a quarantine to include any territory in the state ~~which in his judgment is necessary to control an outbreak and prevent the spread of rabies.~~

1705.1210 PERMIT FOR REMOVAL OF DOGS.

Special permits may be issued by the ~~executive secretary and executive officer~~ of the board for removal of dogs from a quarantined area to other points in Minnesota. ~~Such~~ The permits will be granted only ~~under certain conditions and with specific requirements~~ if: (1) the dog has been vaccinated for rabies at least 21 days before the quarantine proclamation under part 1705.1190; (2) there is no evidence of exposure to a rabid animal; and (3) the dog will be quarantined for 40 days at its new destination.

Removal of dogs from a quarantined area in Minnesota to other states will require prior approval from disease control officials in the state of destination.

REPEALER. Minnesota Rules, parts 1705.1140, 1705.1150, and 1705.1160 are repealed.

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PROPOSED RULES

Department of Labor and Industry

Proposed Permanent Rules Relating to Prevailing Wage Rates

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Department of Labor and Industry, Labor Standards Division, proposes to adopt the above-captioned amendment to Minn. Rules, part 5200.1000-5200.1130 without a public hearing. The Department has determined that the proposed adoption of the amendment will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. Section 14.22-14.28 (1986).

Persons or groups interested in this amendment shall have 30 days to submit comments on the proposed amendment. Comments in support of or in opposition to the proposed amendment are encouraged. Each comment should identify the portion of the proposed amendment addressed, the reason for the comment, and any change proposed. The proposed amendment may be modified if the modifications are supported by the data and views submitted to the Department and do not result in a substantial change in the proposed language.

A public hearing will be held if 25 or more persons submit written requests for a public hearing on the proposed amendment within the 30-day comment period. If a public hearing is required, the Department will proceed according to the provisions of Minn. Stat. Section 14.131-14.20 (1986). Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed amendment addressed, the reason for the request, and any change proposed.

Comments or written requests for a public hearing should be submitted to:

Don Jackman
Director, Division of Labor Standards
4th Floor, Space Center Building
444 Lafayette Road
St. Paul, Minnesota 55101
(612) 297-3349

Authority for the adoption of these amendments is contained in Minn. Stats. §§ 175.171 and 177.44, subd. 3 (1986). A Statement of Need and Reasonableness that describes the need for and reasonableness of the proposed amendment, identifies the data and information relied upon to support the proposed amendment and assesses the impact of the proposed amendment on small business and on local public bodies has been prepared and is available from the Director upon request at the above address.

Upon adoption of the final amendment without a public hearing, all jurisdictional documents, the Statement of Need and Reasonableness, all written amendments and requests for hearing received, and the final amendment as adopted, will be delivered to the Attorney General. The amendment will then be reviewed by the Attorney General as to legality and form as it relates to legality, including the issues of substantial change, the agency's authority to adopt the amendment and the existence of a rational basis for the need for and reasonableness of the proposed amendment. Persons who wish to be notified of the submission of this material to the Attorney General, including modifications to the amendment as originally proposed, or who wish to receive a free copy of the final amendment as adopted, should submit a written request to the Director at the above address.

The text of the proposed amendment follows this notice in the *State Register*. The amendment relates to truck rental rates for owner-operators furnishing trucks on highway and heavy construction projects.

One free copy of the proposed amendment may be obtained by contacting Don Jackman at the above address or by calling (612) 297-3349.

Dated: 9 March 1987

Ray Bohn, Commissioner
Department of Labor and Industry

Rules as Proposed (all new material)

5200.1105 Rental Rates for Trucks.

Owner operators furnishing trucks on highway and heavy construction projects shall be compensated for their equipment and wages according to the following formula:

A. Tandem axel, three axel, or four axel units, Labor Codes 307 and 308. The hourly rate shall be not less than 2-1/3 times the certified prevailing wage rate for the appropriate labor class.

B. Tractor trailer, Labor Codes 305 and 309. The hourly rate shall be not less than three times the certified prevailing wage rate for the appropriate class of labor.

C. Tractor only, Labor Codes 305 and 309. The hourly rate shall be not less than 2-1/2 times the certified prevailing wage rate for the appropriate class of labor.

Public Employees Retirement Association

Proposed Permanent Rules Relating to Joint and Survivor Annuity and Benefit Options

Notice of Hearing

NOTICE IS HEREBY GIVEN that the Board of Trustees of the Public Employees Retirement Association (PERA), having reviewed the history and issues relating to the above-titled rules and having approved their elements, proposes to adopt these rules following the procedures set forth in Minnesota Statutes, sections 14.131 to 14.20 (1984). PERA's specific authority to adopt these rules is Minnesota Statutes, sections 353.03 and 353.18. A public hearing on these proposed rules will be held in Room 300 South, State Office Building, 435 Park, Saint Paul, Minnesota, 55155, on Monday, May 4, 1987, commencing at 1:00 p.m. and continuing until all interested or affected persons have had an opportunity to participate. The proposed rules may be modified as a result of the hearing process; therefore, all interested persons or groups are urged to participate in the rule hearing process.

Following PERA's presentation at the hearing, all interested or affected persons or groups will have an opportunity to make a presentation. Such persons may state their views orally at the hearing or in writing at any time prior to the close of the hearing record. All evidence presented should be pertinent to the matter at hand. Written material not submitted at the time of the hearing that is to be included in the hearing record may be mailed to Jon L. Lunde, Administrative Law Judge, Office of Administrative Hearings, 400 Summit Bank Building, 310 Fourth Avenue South, Minneapolis, Minnesota, 55415, telephone (612) 341-7645. This may be done either before the hearing or within five working days after the public hearing ends. The Administrative Law Judge may, at the hearing, order the record to be kept open for a longer period not to exceed 20 calendar days.

The comments received during the comment period shall be available for review at the Office of Administrative Hearings. Following the close of the comment period, the PERA agency and all interested persons shall have three business days to respond in writing to any new information submitted during the comment period. During the three-day period, the agency may indicate in writing whether there are amendments suggested by other persons which the agency is willing to adopt. No additional evidence may be submitted during the three-day period. The written responses shall be added to the rule-making record.

Upon the close of the record, the Administrative Law Judge shall write a report as provided for in Minnesota Statutes, sections 14.15 and 14.50. The rule hearing is governed by Minnesota Statutes, section 14.14 to 14.20 and by Minnesota Rules, parts 1400.0200 to 1400.1200. Questions about procedures may be directed to the Administrative Law Judge at the above listed address and phone number.

Proposed Minnesota Rules, parts 7950.0500 to 7950.0530 include sections on: (1) rule purpose and applicability; (2) the specific joint and survivor options established; (3) the actuarial standards and the assumptions used in developing the option percentage factor table which is, in turn, used to calculate the annuity/benefit option amounts; and (4) examples of the application of the option percentage factors in calculating annuity/benefit option amounts. The objectives of the proposed rules are to: (1) establish through formal rule-making procedures PERA's specific joint and survivor annuity/benefit options; (2) put in place an option calculation table that yields optional joint and survivor annuity/benefit amounts, the cost of which is, in the aggregate, the actuarial equivalent of "normal" or single life annuities/benefits as required by statute; (3) replace the current option calculation table which does not yield actuarial equivalent annuity/benefit option amounts and for which statutory authority does not exist; (4) bring to an end the losses which the PERA Funds have sustained as a result of the use of the current option calculation table—losses which, as of the close of fiscal year 1986, had already aggregated to over \$30,500,000; and (5) provide a date certain on which the change to the new option calculation table will be effective so that PERA members will have adequate notice.

NOTICE IS HEREBY GIVEN that Minnesota Statutes, chapter 10A requires each lobbyist to register with the state Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minnesota Statutes, section 10A.01, subdivision 11, as any individual:

(a) engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than \$250, not including travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

PROPOSED RULES

(b) who spends more than \$250, not including traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 625 North Robert Street, Saint Paul, Minnesota 55101, telephone (612) 296-5148.

NOTICE IS HEREBY GIVEN that copies of the proposed rules and Statement of Need and Reasonableness are now available. The Statement of Need and Reasonableness describes the need for, and reasonableness of, the provisions of the proposed rules and identifies the data and information relied upon to support them. Copies of the proposed rules and Statement may be reviewed at the PERA offices located at 514 St. Peter Street, Suite 200—Skyway Level, Saint Paul, Minnesota, 55102, or may be obtained free of charge by contacting Cynthia MacDonald at that address. The proposed rule and the Statement may also be reviewed at the Office of Administrative Hearings; copies may be obtained from the Office of Administrative Hearings at the cost of reproduction.

The adoption of these proposed rules will not require the expenditure of public money by local public bodies, thereby not exceeding provisions of Minnesota Statutes, Section 14.11, subdivision 1.

NOTICE IS HEREBY GIVEN that any person may request notification of the date on which the Administrative Law Judge's report will be available, after which date the agency may not take any final action on the rules for a period of five working days. If you desire to be notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Administrative Law Judge. Any person may request notification of the date on which the rule was adopted and filed with the Secretary of State. The notice must be mailed on the same day that the rule is filed. If you wish to be so notified you may so indicate at the hearing or send a request in writing to PERA at any time prior to the filing of the rule with the Secretary of State.

James M. Hacking, Executive Director
Public Employees Retirement Association

Rules as Proposed (all new material)

7950.0500 PURPOSE AND APPLICABILITY.

Subpart 1. **Purpose.** Parts 7950.0500 to 7950.0520 implement Minnesota Statutes, section 353.30, subdivision 3, by establishing the specific joint and survivor options that the Public Employees Retirement Association (PERA) offers and the actuarial standards and assumptions which will be used to determine joint and survivor annuity and benefit option percentage factors. These factors will, in turn, be used to calculate joint and survivor annuity or benefit amounts under each option type. The percentage factors as determined must yield joint and survivor annuity or benefit amounts that are actuarially equivalent to the normal (for example: single life) annuity or benefit amounts provided under Minnesota Statutes, sections 353.29; 353.30; 353.32, subdivision 1a; 353.33; 353.651; 353.656; 353.657, subdivision 2a; 353.71; 356.30; 356.32; and 356.70.

Subp. 2. **Applicability.** Parts 7950.0500 to 7950.0520 apply to all PERA members who retire from active service or become disabled and select a joint and survivor annuity or benefit option in lieu of the normal annuity or benefit provided under Minnesota Statutes, sections 353.29; 353.30; 353.32, subdivision 1a; 353.33; 353.651; 353.656; 353.657, subdivision 2a; 353.71; 356.30; 356.32; and 356.70.

7950.0510 JOINT AND SURVIVOR OPTIONS ESTABLISHED.

Subpart 1. **Selection.** In lieu of the normal annuities or benefits provided under Minnesota Statutes, sections 353.29; 353.30; 353.32, subdivision 1a; 353.33; 353.651; 353.656; 353.657, subdivision 2a; 353.71; 356.30; 356.32; and 356.70, a member of PERA, upon retirement or application for disability benefits, may select one of the joint and survivor annuity or benefit options in subparts 2 to 5.

Subp. 2. **Joint and 100 percent survivor option.** The joint and 100 percent survivor option provides a reduced monthly annuity or benefit to the member for life and upon the death of the member, a monthly annuity or benefit to the designated optional annuity beneficiary for life in an amount which is equal to the member's monthly annuity or benefit amount determined as of the annuity or benefit starting date, and as increased in accordance with Minnesota Statutes, section 11A.18. Any adjustment of an annuity under Minnesota Statutes, section 353.29, subdivision 6, is not included in the amount payable to the designated optional annuity beneficiary upon the death of the member.

Subp. 3. **Joint and 50 percent survivor option.** The joint and 50 percent survivor option provides a reduced monthly annuity or benefit to the member for life and upon the death of the member, a monthly annuity or benefit to the designated optional annuity beneficiary for life in an amount which is equal to 50 percent of the member's monthly annuity or benefit amount determined as of the annuity or benefit starting date and as increased in accordance with Minnesota Statutes, section 11A.18. Any adjustment of an annuity under Minnesota Statutes, section 353.29, subdivision 6, is not included in the amount payable to the designated optional annuity beneficiary upon the death of the member.

Subp. 4. **Joint and 100 percent bounce-back option.** The joint and 100 percent bounce-back option provides a reduced monthly annuity or benefit to the member for life and upon the death of the member, a monthly annuity or benefit to the designated optional

annuity beneficiary for life in an amount which is equal to the member's monthly annuity or benefit amount determined as of the annuity or benefit starting date, and as increased in accordance with Minnesota Statutes, section 11A.18. Any adjustment in annuity under Minnesota Statutes, section 353.29, subdivision 6, is not included in the amount payable to the designated optional annuity beneficiary upon the death of the member. In the event the designated optional annuity beneficiary predeceases the member, the monthly annuity or benefit amount paid to the member increases to an amount equal to the normal annuity or benefit amount and as increased in accordance with Minnesota Statutes, section 11A.18, that would have been received had no optional annuity or benefit been selected by the member. Any adjustment in an annuity under Minnesota Statutes, section 353.29, subdivision 6, is included in the amount payable to the member upon the death of the designated optional annuity beneficiary.

Subp. 5. **Joint and 50 percent bounce-back option.** The joint and 50 percent bounce-back option provides a reduced monthly annuity or benefit to the member for life and upon the death of the member, a monthly annuity or benefit to the designated optional annuity beneficiary for life in an amount which is equal to 50 percent of the member's monthly annuity or benefit amount determined as of the annuity or benefit starting date, and as increased in accordance with Minnesota Statutes, section 11A.18. Any adjustment in annuity under Minnesota Statutes, section 353.29, subdivision 6, is not included in the amount payable to the designated optional annuity beneficiary upon the death of the member. In the event the designated optional annuity beneficiary predeceases the member, the monthly annuity or benefit amount paid to the member increases to an amount equal to the normal annuity or benefit amount, and as increased in accordance with Minnesota Statutes, section 11A.18, that would have been received had no optional annuity or benefit been selected by the member. Any adjustment in an annuity under Minnesota Statutes, section 353.29, subdivision 6, is included in the amount payable to the member upon the death of the designated optional annuity beneficiary.

7950.0520 ACTUARIAL STANDARDS AND ASSUMPTIONS ESTABLISHED, APPLIED, AND MAINTAINED.

Subpart 1. **Enumerated.** The following actuarial standards and assumptions will be used in deriving the joint and survivor option percentage factors that will, in turn, be used to determine each member's applicable joint and survivor annuity or benefit amount. These standards and assumptions are based on generally accepted actuarial principles, Minnesota statutes, and the most recent actual PERA group mortality experience study.

A. Pension mortality tables adopted by the PERA board of trustees in accordance with Minnesota Statutes, sections 353.03, subdivision 3, paragraph (b), and 353.30, subdivision 3, on October 28, 1986, and as modified at subsequent dates upon the recommendation of the association actuary in accordance with Minnesota Statutes, section 353.03, subdivision 3, paragraph (b).

B. A merged gender mix as adopted by the PERA board of trustees in accordance with Minnesota Statutes, sections 353.03, subdivision 3, paragraph (b), and 353.30, subdivision 3, on October 28, 1986, and as modified at subsequent dates upon the recommendation of the association actuary in accordance with Minnesota Statutes, section 353.03, subdivision 3, paragraph (b).

C. An interest assumption equal to the postretirement interest assumption for funds governed by Minnesota Statutes, chapter 353, under Minnesota Statutes, section 356.215, subdivision 4d.

D. An assumed beginning of month payment date.

Subd. 2. **Application of standards and assumptions.** Using the standards and assumptions in subpart 1 and generally accepted actuarial principles, and taking into account all potential age differentials between the age of the member rounded to the nearest birthday and the age of the designated optional annuity beneficiaries rounded to the nearest birthday, PERA's actuary, appointed under Minnesota Statutes, section 353.03, subdivision 3, paragraph (b), clause (6), shall determine joint and survivor option percentage factors and compile them into a reference table. PERA shall apply these joint and survivor option percentage factors from the table in determining the monthly joint and survivor annuity or benefit amount for those members and their designated optional annuity beneficiaries who select a joint and survivor option. The effect of applying the specific factors for the option types selected by members to the normal annuity or benefit amounts that these same members would otherwise receive shall yield joint and survivor annuity or benefit amounts, the actuarial present value of which shall equal the actuarial present value of those members' normal annuity or benefit amounts.

Subp. 3. **Maintenance of tables.** PERA shall maintain as part of its permanent records a copy of the mortality table adopted under subpart 1, and the recommendations of its appointed actuary and the table of joint and survivor option percentage factors as determined and compiled by its actuary in accordance with subpart 2. These records shall be available for review by PERA members and the public at PERA's office during normal business hours and with advance notice. Two copies of the table of joint and survivor option percentage factors shall be placed on deposit with the Legislative Reference Library, Room 645, State Office Building, Saint Paul, Minnesota 55155.

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PROPOSED RULES

EFFECTIVE DATE. Parts 7950.0500 to 7950.0520 are effective as of July 1, 1987, or five days after notice of adoption is published in the *State Register*, whichever is later.

Department of Public Safety

Proposed Amendments to Proposed Permanent Rules Relating to School Bus Driver Endorsement

Notice of Intent to Adopt Rules without a Hearing

Notice is hereby given that the State Department of Public Safety is proposing to adopt the above entitled rules without a public hearing. The Commissioner of Public Safety has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow procedures set forth in Minn. Stat. Sections 14.22 through 14.28.

Persons interested in these rules shall have 30 days to submit comments in support of or in opposition to the proposed rules. Public comments are encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for comment, and any change proposed. The proposed rules may be modified prior to final adoption if modifications are supported by the data and views submitted to the Department of Public Safety and do not result in a substantial change in the proposed language.

If 25 or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will be held. The written request must be specific on which rule(s) a hearing is desired. Identification of the portion of the proposed rule addressed, the particular objection, the suggested modifications, and the reasons or data relied upon to support the suggested modifications are requested. Any person requesting a public hearing should state his or her name and address. In the event a public hearing is required, the department will proceed according to the provisions of Minn. Stat. Sections 14.13 through 14.20.

Persons who wish to submit comments or a written request for a public hearing, or persons who wish to receive a free copy of this notice and/or a free copy of the proposed rules, should address their correspondence to the address below and include the name of the rulemaking:

Virginia Lockman
161 Transportation Building
St. Paul, MN 55155

The Department's authority to adopt the proposed rules is contained in Minnesota Statutes, Section 171.321, Subd. 2. A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available free from the Department of Public Safety upon request to the above address.

You are hereby advised, pursuant to Minn. Stat. Section 14.115, "Small business consideration in rulemaking," that the proposed rules may have an indirect effect on some small businesses in Minnesota.

Insofar as there is an indirect effect on a small business caused by an employee's or principal's loss of a school bus driver endorsement, the effect is outweighed by the need to insure that only qualified drivers are transporting children to and from school.

Upon adoption of the final rules without a public hearing, the proposed rules, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the date of submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written request to the above address.

Please be advised that Minn. Stat. Chapter 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. Minn. Stat. Section 10A.01, Subd. 11 defines a lobbyist as any individual: (a) engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than \$250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or (b) who spends more than \$250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 625 No. Robert St., St. Paul, Minnesota 55101, telephone (612) 296-5615.

The department estimates that there will be no cost to local public bodies in the state to implement the rules for the two years immediately following their adoption, within the meaning of Minnesota Statutes Section 14.11, Subd. 1. Any costs incurred by local jurisdictions in the permit issuance process can be recovered through imposition of a fee authorized by the rules.

PROPOSED RULES

A prior notice of intent to adopt these rules was published in the Minnesota *State Register* on November 17, 1986 (Cite 11 S.R. 891). That notice included the full text of the proposed rules. The proposed rules published on November 17, 1986, have been modified and the modifications are a substantial change in the proposed language. A copy of the proposed modifications to the proposed rules is attached to this notice.

Paul J. Tschida, Commissioner
Department of Public Safety

Rules as Amended

7414.0400 DRIVER BACKGROUND CHECK.

Subpart 1. [See *State Register*, Volume 11, Number 20, pages 891-893.]

Subp. 2. **Denial, cancellation of endorsement.** The department shall not issue or renew a school bus driver's endorsement and shall cancel an existing endorsement if the applicant's criminal or driving record shows that the applicant has been convicted of any one of the following:

A. selling a controlled substance, and five years have not elapsed since the applicant's conviction or release from a correctional facility, whichever event occurred last;

B. a felony or gross misdemeanor against another, and five years have not elapsed since the applicant's conviction or release from a correctional facility, whichever event occurred last;

C. ~~three~~ two or more felony convictions not against another and five years have not elapsed since the applicant's conviction or release from a correctional facility, whichever event occurred last;

D. two or more convictions for driving while under the influence of alcohol or a controlled substance; two or more driver's license revocations under the implied consent law; or, in combination, one or more convictions of driving while under the influence of alcohol or a controlled substance and one or more driver's license revocations under the implied consent law, which do not arise out of the same factual circumstances or behavioral incident, and five years have not elapsed since the applicant's conviction or release from a correctional facility for driving while under the influence of alcohol or a controlled substance, or five years have not elapsed since the expiration of the license revocation period under the implied consent law, whichever event occurred last;

E. and F. [See *State Register*, Volume 11, Number 20, pages 891-893.]

Subp. 3. [See *State Register*, Volume 11, Number 20, pages 891-893.]

Board of Teaching

Notice of Withdrawal of Proposed Rules

Notice is hereby given that Minnesota Rules, Part 8700.0502 Provisional Licenses, Teaching in Unlicensed Subjects or Fields; 8700.0900 Continuing License; 8700.1000 Clock Hours; 8700.1100 Local Committees for Continuing Education and Relicensure; 8700.1300 Transfer of Clock Hours; 8700.1400 Grantor of Clock Hours; and 8700.2200 Right of Appeal and proposed at *State Register*, Volume 11, No. 23, pages 1035-1042, December 8, 1986, (11 S.R. 1035) are hereby withdrawn.

Dated: 16 March 1987

Kenneth L. Peatross
Executive Secretary

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ADOPTED RULES

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 14.14-14.28 have been met and five working days after the rule is published in *State Register*, unless a later date is required by statutes or specified in the rule.

If an adopted rule is identical to its proposed form as previously published, a notice of adoption and a citation to its previous *State Register* publication will be printed.

If an adopted rule differs from its proposed form, language which has been deleted will be printed with strikeouts and new language will be underlined. The rule's previous *State Register* publication will be cited.

An emergency rule becomes effective five working days after the approval of the Attorney General as specified in Minn. Stat. § 14.33 and upon the approval of the Revisor of Statutes as specified in § 14.36. Notice of approval by the Attorney General will be published as soon as practicable, and the adopted emergency rule will be published in the manner provided for adopted rules under § 14.18.

Department of Administration

Adopted Permanent Rules Relating to Competitive Bidding

The rule proposed and published at *State Register*, Volume 11, Number 29, pages 1330-1331, January 19, 1987 (11 S.R. 1330) is adopted as proposed.

Department of Jobs and Training

Adopted Permanent Rules Relating to Rehabilitation Services for Blind and Visually Handicapped Persons

The rules proposed and published at *State Register*, Volume 11, Number 6, pages 178-210, August 11, 1986 (11 S.R. 178) are adopted with the following modifications:

Rules as Adopted

CHAPTER 3325

GENERAL

3325.0100 PURPOSE AND SCOPE.

Subpart 1. **Purpose.** The purpose of parts 3325.0100 to ~~3325.0500~~ 3325.0490 is to establish procedures and standards for the provision of rehabilitation services to blind and visually handicapped persons present in Minnesota.

Subp. 2. **Scope.** Parts 3325.0100 to ~~3325.0500~~ 3325.0490 apply to ~~State~~ State Services for the Blind and Visually Handicapped (SSB), all vendors of services under agreement with SSB and all persons applying for or receiving rehabilitation service from SSB. Parts 3325.0100 to ~~3325.0500~~ 3325.0490 do not require expenditures for a client if funds are not available to SSB from federal and state appropriations for the provision of rehabilitation services under the program in which the client is being served.

Subp. 3. **Exclusion.** All matters pertaining to the operation of the Business Enterprises Program under the Code of Federal Regulations, title 34, part 395 are governed by parts 9570.0100 to 9570.1400 and are not affected by parts 3325.0100 to ~~3325.0500~~ 3325.0490.

Subp. 4. **Delayed implementation.** Part 3325.0440 shall not be construed to require alteration in the financial obligations of a client on a service initiated prior to the effective date of parts 3325.0100 to ~~3325.0500~~ 3325.0490 for a period of 12 months following initiation of the service. For purposes of this subpart, a service is initiated when:

3325.0110 DEFINITIONS.

Subpart 1. **Scope.** The terms used in parts 3325.0100 to ~~3325.0500~~ 3325.0490 have the meanings given to them in this part.

Subp. 18. **Disability and licensed health professional.** "Disability" means a physical or mental condition diagnosed by the appropriate licensed health professional which materially limits, contributes to limiting, or, if not corrected, will probably result in limiting a person's employment activities, vocational functioning, ability to perform self-care activities, or capacity for growth and development. "Licensed health professional" means a person licensed under Minnesota Statutes, chapter 147 or 148.

Subp. 19. **Employability.** "Employability" means the capacity of a person to obtain or retain gainful employment consistent with the person's capacities, interests, and abilities.

Subp. 27. **Independence.** "Independence" ~~refers to a person's maximum potential for self-sufficiency~~ means freedom from unwanted and unnecessary dependence upon other persons and things in all areas of life.

Subp. 37. **Low vision aids.** "Low vision aids" means optical and nonoptical instruments and techniques which help blind and visually handicapped persons improve the use of their residual vision.

A. "Optical low vision aids" means lenses or lens systems which enlarge or clarify the retinal image of an object so that it can be better perceived without enlarging the object itself. These aids include monocular and binocular hand-held magnifiers, head and stand-supported magnifiers of both simple and telescopic types, color filter lenses, and electro-optical devices such as closed circuit televisions.

Subp. 51. **Orientation and mobility specialist.** "Orientation and mobility specialist" means a person with a degree in orientation and mobility from ~~an accredited~~ a college or university accredited by a regional accrediting association or by an agency with standards equivalent to those of the regional accrediting association.

Subp. 67. **Rehabilitation teacher.** "Rehabilitation teacher" means a person ~~who has with a graduate or undergraduate~~ degree in rehabilitation teaching from ~~an accredited~~ a college or university accredited by a regional accrediting association or by an agency with standards equivalent to those of the regional accrediting association.

Subp. 73. **Severe disability.** "Severe disability" means a disability that causes a person to be severely handicapped as defined in subpart 74.

Subp. 73 74. **Severely handicapped.** "Severely handicapped" refers to a severely handicapped individual as defined in the Code of Federal Regulations, title 34, section 361.1(c)(2).

Subp. 74 75. **Severe limitation in ability to function independently in family or community.** "Severe limitation in ability to function independently in family or community" means an inability to maintain functional independence in two or more of the following areas:

- A. personal hygiene and grooming;
- B. eating and meal preparation for oneself;
- C. communicating; or
- D. traveling.

Subp. 75 76. **Similar benefits.** "Similar benefits" means services or financial assistance available to clients from one or more sources other than SSB or a client to meet, in whole or part, the cost of rehabilitation services to be provided under a client's written plan. Similar benefits include benefits available to clients from Medicare, Medicaid, the Veteran's Administration, individual and group insurance, community social service agencies, state agencies other than SSB, and public and private educational grants.

Subp. 76 77. **State Services for the Blind and Visually Handicapped or SSB.** "State Services for the Blind and Visually Handicapped" or "SSB" means the organizational unit of the Department of Jobs and Training responsible for providing and coordinating the provision of rehabilitation services to blind and visually handicapped persons. For purposes of the vocational rehabilitation and independent living programs, "State Services for the Blind and Visually Handicapped" or "SSB" is the state unit as defined in the Code of Federal Regulations, title 34, sections 361.1(c)(2)(1) and 361.6(b).

Subp. 77 78. **Substantial handicap to employment.** "Substantial handicap to employment" means that a disability (in light of attendant medical, psychological, vocational, educational, and other related factors) prevents a person from obtaining, retaining, or preparing for gainful employment consistent with the person's capacities and abilities.

Subp. 78 79. **Suitable employment.** "Suitable employment" means employment that is consistent with a person's capacities, interests, and abilities.

Subp. 79 80. **Supervisory staff.** "Supervisory staff" means persons, other than the director employed by SSB, classified as supervisors or managers by the Minnesota Department of Employee Relations (DOER) in the labor agreement between the state of Minnesota and the Middle Management Association for 1985 through June 30, 1987, or in the DOER Managerial Plan for 1985 through June 30, 1987. These publications are incorporated by reference and are not subject to frequent change. These publications are available for inspection at the Minnesota State Law Library.

Subp. 80 81. **Supportive services.** "Supportive services" means rehabilitation services which facilitate the provision of other rehabilitation services but which do not, in themselves, provide a person with skills or capabilities that will enable the person to

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function more independently without continuation of the services for an unlimited period of time. These services include maintenance, transportation services, reader services, note-taking services, and interpreter services.

Subp. ~~84~~ 82. **Telecommunications, sensory, and other technological aids and devices.** "Telecommunications, sensory, and other technological aids and devices" means mechanical or electronic equipment and related engineering which improves or substitutes for one or more of a person's senses or which compensates for impaired mobility or motor coordination.

Subp. ~~82~~ 83. **Transportation services.** "Transportation services" means assistance to a client in obtaining transportation necessary to implement the client's written plan.

Subp. ~~83~~ 84. **Visual disability.** "Visual disability" means:

- A. central visual acuity of 20/60 or less in the better eye with best correction;
- B. the absence of at least one full quadrant of binocular visual field; or
- C. a physical condition or progressive loss of visual ability which will more likely than not result in legal blindness.

Subp. ~~84~~ 85. **Visually handicapped.** "Visually handicapped" refers to a person who has a visual disability which does not constitute legal blindness but which constitutes a substantial handicap to employment or limits the person's ability to live independently, perform self-care activities, or grow and develop.

Subp. ~~85~~ 86. **Vocational assessment.** "Vocational assessment" means the use and interpretation of objective, standardized tests and inventories to help determine a vocational rehabilitation client's vocational interests, levels of intellectual functioning, personality characteristics, and basic academic skills for the purpose of identifying the client's rehabilitation goal and rehabilitation service needs.

Subp. ~~86~~ 87. **Vocational rehabilitation program.** "Vocational rehabilitation program" means the state and federally funded SSB program under which clients receive rehabilitation services in accordance with individualized written plans for the purpose of preparing the clients for gainful employment.

Subp. ~~87~~ 88. **Vocational training services.** "Vocational training services" means instruction and supplies provided to a vocational rehabilitation client to help the client acquire the knowledge, skills, attitudes, and educational qualifications necessary to obtain and retain gainful employment consistent with the client's capacities and abilities. These services consist of:

- A. tuition and materials normally required for training in an educational program at an institution of higher learning; and
- B. fees and materials normally required for vocational skills training in settings other than institutions of higher learning such as competitive employment settings and workshops.

Subp. ~~88~~ 89. **Work activity.** "Work activity" means activity designed exclusively to provide therapeutic activities for handicapped persons whose physical or mental disabilities are so severe as to make their productive capacities inconsequential. For this purpose, "inconsequential" means that the wage paid to the client is in the range specified for work activity centers in the Code of Federal Regulations, title 29, section 525.2, as amended.

Subp. ~~89~~ 90. **Work evaluation.** "Work evaluation" means an assessment of a person's performance in a simulated or real work situation to determine the person's abilities, skills, attitudes toward work, and work behaviors.

3325.0120 APPLICATION PROCEDURE FOR REHABILITATION SERVICES.

Subp. 3. **Legal representative.** All signature requirements placed on applicants and clients by parts 3325.0100 to ~~3325.0500~~ 3325.0490 may be satisfied by the signature of an applicant's or client's legal representative. All written notices which must be provided to applicants or clients under parts 3325.0100 to ~~3325.0500~~ 3325.0490 must be provided to the applicant's or client's legal representative unless providing the information would violate provisions of the Minnesota Data Practices Act.

Subp. 5. **Initial interview.** A rehabilitation counselor shall personally interview each person referred to SSB for rehabilitation services within 30 days after the referral is received unless circumstances beyond SSB's control make it impossible to interview the referral within 30 days or unless otherwise agreed upon by the referral and the counselor. As part of the interview, the rehabilitation counselor shall begin to:

- C. inform the referral or applicant of the:
 - (1) right of confidentiality under subpart 8;
 - (2) right of appeal under parts 3325.0480 to ~~3325.0500~~ and 3325.0490; and

3325.0140 PRELIMINARY EVALUATION.

Subp. 2. **Scope of evaluation.** Each eligibility determination must be based on the information specified in items A, B, and C.

C. Information regarding the applicant's employment history and educational background and other information needed to determine whether:

(1) the applicant's visual disability constitutes or results in a substantial handicap to employment; and

Subp. 5. **Notice of ineligibility.** After a rehabilitation counselor has determined that an applicant is ineligible for rehabilitation services, the rehabilitation counselor shall inform the applicant in writing of the reasons for and effective date of the determination, the applicant's appeal rights under parts 3325.0480 ~~to 3325.0500~~ and 3325.0490, and the applicant's right to and means of obtaining assistance under the client assistance program. The notice must be mailed or personally delivered by SSB within ten working days after certification of ineligibility under the Code of Federal Regulations, title 34, section 361.35(c).

3325.0170 INDIVIDUALIZED WRITTEN REHABILITATION PLAN.

Subp. 2. **Contents of written plan.** The written plan must contain the following information:

H. a summary of the client's appeal rights under parts 3325.0480 ~~to 3325.0500~~ and 3325.0490 and the means by which the client can contact and obtain assistance through the client assistance program;

Subp. 4. **Assessment of progress under written plan.** The client and the client's rehabilitation counselor shall assess the client's progress under the written plan as frequently as necessary, but at least once a year according to the schedule established in the written plan. The client must be offered an opportunity to participate in the assessment which must consist of a review of information relevant to the client's progress toward the intermediate rehabilitation objectives and rehabilitation goal identified in the plan. If the client is enrolled in secondary school or an institution of higher learning, the assessment must include a review of the client's most current official school transcript or grade reports. If the client is enrolled in a training program at a rehabilitation facility, the assessment must include a review of written reports on the client's progress submitted to SSB by the rehabilitation facility as required under part 3325.0470. An in-person assessment is required if so requested by the client and if the client agrees to meet with the counselor at the appropriate SSB office or if an in-person assessment would not involve travel to a distant location by the counselor.

Subp. 6. **Notice of agency proposed change in written plan.** If SSB proposes to change a client's written plan, SSB shall notify the client by certified mail of the proposed change at least ten working days prior to the effective day of the proposed change unless circumstances beyond SSB's control make the ten-day notice impossible. The notice must contain:

B. a summary of the client's appeal rights under parts 3325.0480 ~~to 3325.0500~~ and 3325.0490; and

3325.0190 TERMINATION OF SERVICES.

Subpart 1. **Conditions for refusing services to referrals, applicants, and unrehabilitated clients.** SSB may refuse to provide or terminate the provision of services to a referral, applicant, or unrehabilitated vocational rehabilitation client only if the referral, applicant, or client:

B. has left the state or been impossible to contact ~~after reasonable efforts by SSB to do so by telephone at work, at home, or at the person's last known place of employment and has not responded to correspondence requesting a response mailed to the person's last known address and containing a specific notification that the failure to respond within 15 days shall result in the refusal to provide or termination of the provision of services;~~ or

Subp. 4. **Notice of termination and amendment to written plan.** If a client's services are to be terminated for reasons other than successful rehabilitation under subpart 2, or death, SSB shall notify the client of the proposed termination in accordance with part 3325.0170, subpart 6. When the services are terminated, SSB shall amend the client's written plan to reflect the termination. The amendment must contain a summary or description of the information or circumstances upon which the termination decision was based. If the termination decision was based on the client's refusal to accept or use necessary services provided by SSB, the amendment must include a description of the efforts made by SSB to encourage the client's participation in the rehabilitation process.

3325.0210 CONDITIONS OF ELIGIBILITY.

An applicant is eligible for rehabilitation services under the independent living program only if:

A. the applicant has a visual disability that constitutes or is accompanied by a severe disability;

B. the applicant's visual disability, alone or in conjunction with other disabilities, results in a severe limitation in ability to function independently in family or community; and

3325.0220 PRELIMINARY EVALUATION.

Subp. 2. **Scope of evaluation.** Each eligibility determination must be based on the information specified in items A, B, and C.

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C. Information regarding the applicant's employment history and educational background and other information needed to determine whether:

(1) the applicant's ability to function independently in family or community is severely limited by ~~disabilities~~ a visual disability and by any other disability that may be present; and

Subp. 5. **Notice of ineligibility.** After a rehabilitation counselor has determined that an applicant is ineligible for rehabilitation services, the rehabilitation counselor shall inform the applicant in writing of the reasons for the determination, the applicant's appeal rights under parts 3325.0480 ~~to 3325.0500~~ and 3325.0490, and the applicant's right to and means of obtaining assistance under the client assistance program. The notice must be mailed or personally delivered by SSB within ten working days after certification of ineligibility under the Code of Federal Regulations, title 34, section 365.33(b).

3325.0230 THOROUGH EVALUATION.

Subp. 2. **Scope of evaluation.** The thorough evaluation of each independent living client must consist of a review by the client and the client's rehabilitation counselor of the following:

H. The reports obtained for the preliminary evaluation under part 3325.0220, subpart 2 and the results of any additional medical, optometric or audiological examinations which the client's rehabilitation counselor, in consultation with the medical or ophthalmologic consultant, considers necessary to determine how and to what extent the client's ~~visual~~ disability can be corrected or minimized by restoration services.

3325.0240 INDIVIDUALIZED WRITTEN REHABILITATION PLAN.

Subp. 2. **Contents of written plan.** The written plan must contain the following information:

E. A summary of the client's appeal rights under parts 3325.0480 ~~to 3325.0500~~ and 3325.0490 and the means by which the client can obtain assistance through the client assistance program.

Subp. 4. **Assessment of progress under written plan.** The client and the client's rehabilitation counselor shall assess the client's progress under the written plan as frequently as necessary, but at least once a year according to the schedule established in the written plan. The client must be offered an opportunity to participate in the assessment which must consist of a review of information relevant to the client's progress toward the intermediate rehabilitation objectives and rehabilitation goal in the plan. An in-person assessment is required if so requested by the client and if the client agrees to meet with the counselor at the appropriate SSB office or if an in-person assessment would not involve travel to a distant location by the counselor.

3325.0260 TERMINATION OF SERVICES.

Subpart 1. **Conditions for refusing services to referrals, applicants, and unrehabilitated clients.** SSB may refuse to provide or terminate the provision of services to a referral, applicant, or unrehabilitated independent living client only if the referral, applicant, or client:

B. has left the state or been impossible to contact ~~after reasonable efforts by SSB to do so by telephone at work, at home, or at the person's last known place of employment and has not responded to correspondence requesting a response mailed to the person's last known address and containing a specific notification that the failure to respond within 15 days shall result in the refusal to provide or termination of the provision of services~~; or

Subp. 4. **Notice of termination and amendment to written plan.** If a client's services are to be terminated for reasons other than successful rehabilitation under subpart 2, SSB shall notify the client and amend the client's written plan to reflect the termination. The notice and amendment must contain a summary or description of the information or circumstances upon which the termination decision was based and a summary of the client's appeal rights under parts 3325.0480 ~~to 3325.0500~~ and 3325.0490. If the termination decision was based on the client's refusal to accept or use necessary services provided by SSB, the amendment must include a description of the efforts made by SSB to encourage the client's participation in the rehabilitation process.

3325.0290 PRELIMINARY EVALUATION.

Subp. 4. **Notice of ineligibility.** After a rehabilitation counselor has determined that an applicant is ineligible for rehabilitation services, the rehabilitation counselor shall inform the applicant in writing of the reasons for the determination and of the applicant's appeal rights under parts 3325.0480 ~~to 3325.0500~~ and 3325.0490. The notice must be mailed or personally delivered by SSB within ten working days after the determination is made.

3325.0310 INDIVIDUALIZED WRITTEN REHABILITATION PLAN.

Subp. 2. **Contents of written plan.** The written plan must contain the following information:

E. A summary of the client's appeal rights under parts 3325.0480 ~~to 3325.0500~~ and 3325.0490.

Subp. 4. **Assessment of progress under written plan.** The client and the client's rehabilitation counselor shall assess the client's

progress under the written plan as frequently as necessary, but at least once a year. The client must be offered an opportunity to participate in the assessment which must consist of a review of information relevant to the client's progress toward the intermediate rehabilitation objectives and rehabilitation goal in the plan. If the client is enrolled in a training program at a rehabilitation facility, the assessment must include a review of written reports on the client's progress submitted to SSB by the rehabilitation facility as required under part 3325.0470. An in-person assessment is required if so requested by the client and if the client agrees to meet with the counselor at the appropriate SSB office or if an in-person assessment would not involve travel to a distant location by the counselor.

3325.0330 TERMINATION OF SERVICES.

Subpart 1. **Conditions for refusing services to referrals, applicants, and unrehabilitated clients.** SSB may refuse to provide or terminate the provision of services to a referral, applicant, or unrehabilitated self-care client only if the referral, applicant, or client:

A. does not satisfy the eligibility conditions of the program identified in part 3325.0280; or

B. has left the state or been impossible to contact ~~after reasonable efforts by SSB to do so by telephone at work, at home, or at the person's last known place of employment and has not responded to correspondence requesting a response mailed to the person's last known address and containing a specific notification that the failure to respond within 15 days shall result in the refusal to provide or termination of the provision of services;~~ or

Subp. 3. **Notice of termination and amendment to written plan.** If a client's services are to be terminated for reasons other than successful rehabilitation under subpart 2, SSB shall notify the client and amend the client's written plan to reflect the termination. The amendment and notice must contain a summary or description of the information or circumstances upon which the termination decision was based and a summary of the client's appeal rights under parts 3325.0480 ~~to 3325.0500~~ and 3325.0490. If the termination decision was based on the client's refusal to accept or use necessary services provided by SSB, the amendment must include a description of the efforts made by the rehabilitation counselor to encourage the client's participation in the rehabilitation process.

3325.0360 PRELIMINARY EVALUATION.

Subp. 4. **Notice of ineligibility.** After a rehabilitation counselor has determined that an applicant is ineligible for rehabilitation services, the rehabilitation counselor shall inform the applicant in writing of the reasons for the determination and of the applicant's appeal rights under parts 3325.0480 ~~to 3325.0500~~ and 3325.0490. The notice must be mailed or personally delivered within ten working days after the decision is made.

3325.0380 INDIVIDUALIZED WRITTEN REHABILITATION PLAN.

Subp. 2. **Contents of written plan.** The written plan must contain the following information:

E. A summary of the client's appeal rights under parts 3325.0480 ~~to 3325.0500~~ and 3325.0490.

F. A summary of the relevant elements of the client's individualized educational program.

Subp. 4. **Assessment of progress under written plan.** The client and the client's rehabilitation counselor shall assess the client's progress under the written plan as frequently as necessary, but at least once a year. The client must be offered an opportunity to participate in the assessment which must consist of a review of information relevant to the client's progress toward the intermediate rehabilitation objectives and rehabilitation goal in the plan. If the client is enrolled in a primary or secondary school, the assessment must include a review of the client's most current official school transcript or grade reports and the most current individualized educational program. If the client is enrolled in a training program at a rehabilitation facility, the assessment must include a review of written reports on the client's progress submitted to SSB by the rehabilitation facility as required under part 3325.0470. An in-person assessment is required if so requested by the client and if the client agrees to meet with the counselor at the appropriate SSB office or if an in-person assessment would not involve travel to a distant location by the counselor.

3325.0400 TERMINATION OF SERVICES.

Subpart 1. **Conditions for refusing services to referrals, applicants, and unrehabilitated clients.** SSB may refuse to provide or terminate the provision of services to a referral, applicant, or unrehabilitated child rehabilitation client only if the referral, applicant, or client:

B. has left the state or been impossible to contact ~~after reasonable efforts by SSB to do so by telephone at home and has~~

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not responded to correspondence requesting a response mailed to the person's last known address and containing a specific notification that the failure to respond within 15 days shall result in the refusal to provide or termination of the provision of services; or

Subp. 3. **Notice of termination and amendment to written plan.** If a client's services are to be terminated for reasons other than successful rehabilitation under subpart 2, SSB shall notify the client and amend the client's written plan to reflect the termination. The amendment and notice must contain a summary or description of the information or circumstances upon which the termination decision was based and a summary of the client's appeal rights under parts 3325.0480 ~~to 3325.0500~~ and 3325.0490. If the termination decision was based on the client's refusal to accept or use necessary services provided by SSB, the amendment must include a description of the efforts made by the rehabilitation counselor to encourage the client's participation in the rehabilitation process.

3325.0420 CONDITIONS OF SERVICE.

Subp. 8. **Orientation and mobility services.** Items A to C govern the provision of orientation and mobility services.

B. Travel techniques for purposes of outdoor travel must be taught by an orientation and mobility specialist or a person who has, ~~to the satisfaction of the director,~~ demonstrated a mastery of the travel techniques used by blind persons and the ability to safely and effectively teach these techniques to others. The director shall determine whether a person is qualified in these areas by considering all of the following factors:

Subp. 11. **Rehabilitation teaching services.** Items A to C govern the provision of rehabilitation teaching services.

B. Braille instruction must be provided by a rehabilitation teacher or a person who has demonstrated, ~~to the satisfaction of the director,~~ a mastery of grade 2 braille and the ability to teach grade 2 braille to blind persons. The director shall determine whether a person is qualified in these areas by considering all of the following factors:

C. Rehabilitation teaching services other than braille instruction must be provided by a rehabilitation teacher or a person ~~with a post-secondary degree in education or a human service or rehabilitation field~~ who has demonstrated, ~~to the satisfaction of the director,~~ a mastery of alternative techniques other than braille or outdoor cane travel and the ability to teach alternative techniques to blind persons. The director shall determine whether a person is qualified in these areas by considering all of the following factors:

Subp. 14. **Vocational training services.** SSB may provide tuition and supplies to a client for training at an institution of higher learning only if there is evidence that the client is capable of completing the required coursework or degree program. Tuition paid by SSB for training at a private or non-Minnesota institution of higher learning must not exceed the tuition charged by Minnesota public colleges, universities, or vocational technical institutes unless the necessary training is not available at a public Minnesota institution. When a client attends a non-Minnesota institution, SSB shall not pay more for maintenance and transportation than SSB would otherwise be required to pay in covering these costs for the client's attendance at an institution located in Minnesota unless the necessary training is not available at a Minnesota institution.

3325.0440 FINANCIAL PARTICIPATION BY CLIENTS.

Subpart 1. **Services exempted from financial participation.** Regardless of a client's income, SSB shall not require client financial participation for the following services:

F. low vision services, including closed circuit televisions, up to a cumulative value of \$500;

Subp. 7. **Variance.** A client who is unable to pay for rehabilitation services to the extent required by subparts 4 and 5 because of unusual financial circumstances may apply to the director for a variance in the determination of the client's financial need as follows:

B. The director shall determine whether the client is eligible for a variance and notify the client of the determination in writing within 30 days after the director receives all the information required under item A. The written notification must:

(4) inform the client of review and appeal rights under parts 3325.0480 ~~to 3325.0500~~ and 3325.0490; and

C. The director shall grant a variance only if the client ~~provides clear evidence~~ demonstrates that it would be impossible for the client to make the cost contributions required under subparts 5 and 6 without using the client's savings because of:

(1) court ordered financial obligations of the client;

(2) legal financial obligations incurred by the client prior to being found eligible to receive rehabilitation services from SSB; or

(3) extraordinary expenditures for necessities such as food, shelter, clothing, or medical care the client is required to make because of illness or disability.

Clear evidence means evidence that is positive, precise, and explicit, and that tends directly to establish the point on which it is offered.

D. The director shall determine the amount of a client's variance by:

(1) calculating the sum of the client's financial obligations and extraordinary expenditures identified in item C which make it impossible for the client to make the cost contributions required under subparts 5 and 6; and

(2) subtracting that sum from the financial participation amount the client would have to pay without the variance.

E. A client who receives a variance shall immediately notify the director in writing if the client's financial situation improves.

~~E. F.~~ The director may review the financial situation of a client who receives a variance at any time to determine whether the client's financial situation continues to justify the variance.

3325.0450 RECOVERY OF MONETARY ASSISTANCE OVERPAYMENTS.

Subpart 1. **Written notification.** SSB shall notify a client in writing as soon as possible after discovering that the client has received monetary assistance from SSB in excess of that to which the client is entitled under parts 3325.0100 to ~~3325.0500~~ 3325.0490. The written notification must:

C. inform the client of appeal rights under parts 3325.0480 ~~to 3325.0500~~ and 3325.0490;

3325.0460 PROVISION AND RECOVERY OF EQUIPMENT.

Subp. 3. **Lease payments.** Clients shall pay monthly lease charges on all equipment items leased under this part that are subject to client financial participation under part 3325.0440 ~~unless clients choose to pay their entire financial obligation under part 3325.0440 in one lump sum.~~ The maximum monthly lease charge must be equal to the purchase price of the equipment and handling costs incurred by SSB divided by 60. A client shall pay a percentage of the monthly lease charge equal to the percentage by which the client's monthly family income exceeds the adjusted median income estimate referred to in part 3325.0440, subpart 3, unless the client elects to pay more. SSB shall not require lease payments in amounts that would cause a client's monthly financial participation to exceed the limits established in parts 3325.0440, subpart 6.

3325.0470 STANDARDS FOR REHABILITATION FACILITIES.

Subp. 8. **Location of rehabilitation facilities.** SSB shall not purchase services from a facility located outside the state of Minnesota unless:

C. the client expressly indicates that adjustment to blindness training is wanted at a facility outside the state. If a client obtains training at a non-Minnesota facility under this item, SSB shall not pay more for the client's training, maintenance, and transportation than it would otherwise pay for the client's training, maintenance, and transportation at ~~a~~ the facility located in Minnesota which would be the least costly for the client to attend.

3325.0480 ADMINISTRATIVE REVIEW.

Subpart 1. **Request for review.** An applicant or client may make ~~an oral or~~ a written request to the director for a review and redetermination of any action taken by SSB regarding the provision or denial of rehabilitation services. To preserve the applicant's or client's right to appeal, the request must be received by the director no more than 30 days after the applicant or client is notified of the action for which the review is requested. If the disputed SSB action is a proposed change in a client's written plan, the change must be delayed for 30 days beyond the effective date of the proposed change if the client's review request is received by the director prior to the effective date of the proposed change. The request for review must state:

Subp. 2. **Review and redetermination.** Review and redetermination under this part must be conducted by supervisory staff not involved in the original decision or action which caused the appellant to ask for a review. Supervisory staff conducting the review shall consider all written and oral evidence and argument presented from the time the request for review is received until the final decision is made. The final decision must be made by the reviewing supervisory staff within 30 days after the director receives the appellant's request for review unless agreed otherwise by the appellant and reviewing supervisory staff.

Subp. 3. **Review conference.** A review conference may be requested by the appellant or supervisory staff conducting the review. If a review conference is requested within five days after the director receives the administrative review request under subpart 1, a review conference must be held. The conference must be held within 15 days after the conference is requested. The supervisory staff conducting the review shall convene the conference at SSB during regular SSB working hours unless an alternative date, time, or place is agreed upon by the supervisor and appellant. When a time and place for the conference is set, the supervisor conducting the review shall notify the appellant of the time and place at least ~~five~~ ten days before the conference. At a minimum, the supervisor conducting the review, the appellant, and appropriate SSB staff shall participate in the conference. The appellant must be present at

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the conference but may be represented and may bring witnesses to speak on the appellant's behalf. If the appellant is handicapped in communication, then SSB shall appoint an interpreter, consistent with Minnesota Statutes, sections 546.42 to 546.44.

Subp. 4. **Written notice of decision.** The supervisory staff conducting the review shall notify the appellant in writing of the review decision. The notice must contain a summary of the nature and basis of the decision and the appellant's appeal rights under subpart 5 part 3325.0490.

Subp. 5. **Additional supervisory review.** If the appellant is dissatisfied with the supervisory review decision communicated under subpart 4 and wants to further contest that decision, the appellant shall request an additional review and redetermination by alternative supervisory staff. The appellant shall notify the director in writing of the request for an additional supervisory review within 15 days after receipt of the notice identified in subpart 4. If the request under this subpart is made, SSB shall provide the review and redetermination process identified in subparts 2 and 3.

Subp. 6. **Written notice of decision.** The supervisory staff conducting the review under subpart 5 shall notify the appellant in writing of the review decision. The notice must contain a summary of the nature and basis of the decision and the appellant's appeal rights under parts 3325.0490 to 3325.0500.

3325.0490 EVIDENTIARY HEARING.

Subpart 1. **Written request for hearing.** An applicant or client who is dissatisfied with the results of the administrative review under part 3325.0480, subpart 5 2, may request a hearing by submitting a written request for a hearing to SSB within 15 days after receiving the written notice of the administrative review decision under part 3325.0480, subpart 6 4. SSB shall file the request for assignment of an administrative law judge as required under part 1400.5300 within ten working days of the date the appellant's written request for a hearing is received.

Subp. 3. **Decision and notice.** The director shall make the final decision after the hearing in accordance with Minnesota Statutes, sections 14.61 and 14.62 and shall not delegate the responsibility for making the final decision to any other person. The director shall notify the appellant of the decision in accordance with Minnesota Statutes, section 14.62. The notice shall inform the appellant of the appellant's right to judicial review or federal agency review of the director's decision.

3325.0500 APPEAL TO FEDERAL AGENCY.

~~A vocational rehabilitation or independent living client who is dissatisfied with the decision of the director after an evidentiary hearing may submit a written request for a review of the decision to the secretary. The written request must be submitted to the secretary after the client receives the written notice of decision under part 3325.0490, subpart 3. The secretary will review the decision and make recommendations to the director concerning action to be taken. Within 60 days after receiving these recommendations, the director shall notify the appellant and the secretary of the final disposition of the matter in writing.~~

Department of Labor and Industry

Adopted Rules Relating to Occupational Safety and Health Standards

Pursuant to Minn. Stat. § 182.655 (1986) notice was duly published in the *State Register*, Volume 11, Number 34, dated February 23, 1987 (11 S.R. 1496) specifying the adoption of certain Occupational Safety and Health Standards. No objections, comments or written requests for public hearing have been received. Therefore, these Occupational Safety and Health Standards, as published in the noted Federal Registers, are adopted and are identical to the standards proposed on February 23, 1987.

Rules as Adopted

5205.0010 ADOPTION OF FEDERAL OCCUPATIONAL SAFETY AND HEALTH STANDARDS BY REFERENCE.

The Minnesota Department of Labor and Industry Occupational Safety and Health Codes and rules are amended by incorporating and adopting by reference, and thereby making a part thereof, Title 29 of the Code of Federal Regulations as follows:

Part 1910: Occupational Safety and Health Standards as published in Volume 43, No. 206 of the Federal Register on October 24, 1978 and corrected in Volume 43, No. 216 on November 7, 1978 which incorporates changes, additions, deletions, and corrections made up to November 7, 1978; and subsequent changes made prior to ~~August 4~~ December 31, 1986:

Federal Register, Vol. 51, No. 181, dated September 18, 1986; "Commercial Diving Standard (1910.430); Technical Amendments to Final Rule."

Federal Register, Vol. 51, No. 182, dated September 19, 1986; "Accident Prevention Tags (1910.145); Amendment to Final Rule."

Federal Register, Vol. 51, No. 188, dated September 29, 1986; "Recordkeeping Requirements for Tests, Inspections, and Maintenance Checks (1910.68, 1910.106, 1910.157, 1910.179, 1910.180, 1910.181, 1910.217, 1910.218, 1910.252, and 1910.440)."

Federal Register, Vol. 51, No. 201, dated October 17, 1986; "Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite (1910.1101); Partial Administrative Stay of Final Rules and Redesignation and Amendment of Final Rule."

Federal Register, Vol. 51, No. 244, dated December 19, 1986; "Hazardous Waste Operations and Emergency Response (1910.120); Interim Final Rule."

Part 1915: Occupational Safety and Health Standards for Shipyard Employment as published in Volume 47, No. 76 of the Federal Register on April 20, 1982 and subsequent changes made prior to December 31, 1986, which consolidates Part 1915 and Part 1916.

Federal Register, Vol. 51, No. 188, dated September 29, 1986; "Recordkeeping Requirements for Tests, Inspections, and Maintenance Checks (1915.113 and 1915.172); Final Rule."

Board of Optometry

Adopted Permanent Rules Relating to Home Study Programs, Emeritus Registration

The rules proposed and published at *State Register*, Volume 11, Number 8, pages 332-334, August 25, 1986 (11 S.R. 332) and Volume 11, Number 18, pages 773-774, November 3, 1986 (11 S.R. 773) are adopted as proposed.

Minnesota Board of Teaching

Adopted Permanent Rules Relating to Teaching Licenses; Continuing Education and Miscellaneous Others

The rules proposed and published at *State Register*, Volume 11, Number 23, pages 1035-1042, December 8, 1986 (11 S.R. 1035) are adopted with the following modifications:

Rules as Adopted

8700.0210 EXAMINATIONS FOR TEACHER LICENSES.

Subpart 1. **Examination requirement.** Effective April 4, 1988, an applicant described in Minnesota Statutes, section 125.03, subdivision 5 for an initial license, shall provide official evidence of having successfully completed examinations of skills in reading, writing, and mathematics before being issued an initial Minnesota teaching license. The examinations must have been adopted by the Board of Teaching.

Subp. 6. **Administration, scoring, and reporting.** Administration, scoring, and reporting of examinations shall be conducted by the party whose examinations have been adopted by the Board of Teaching. Applicants may take the examinations on any of the dates that are established by the party for national administration or on dates established by the Board of Teaching for special administration. Examinations shall be administered at least four times a year in Minnesota. It is the responsibility of the applicant to be informed about the dates and locations of the examinations and to apply for the appropriate examinations. Registration procedures are governed by the party whose examinations have been adopted. Examinees must authorize the forwarding of their scores to the institutions they attend and to the Board of Teaching. The scores as forwarded are the official evidence required in this part.

Subp. 8. **Admission to upper division or graduate coursework.** Candidates for an initial license shall provide ~~provisional~~ official evidence to the institutions they attend of having taken the examinations adopted in subpart 2 before enrolling in upper division coursework in the professional education sequence. Candidates for an initial license who have a baccalaureate degree shall provide official evidence to the institutions they attend of having taken the examinations adopted in subpart 2 before enrolling in coursework in the professional education sequence. Candidates who fail to achieve the minimum passing score on one or more of the examinations may enroll in upper division or graduate coursework in the professional education sequence; however, candidates must achieve the passing scores established in subpart 3 before recommendation for an initial teaching license. Colleges and universities must provide candidates who fail the examinations access to opportunities to enhance their skills.

Subp. 9. **Candidates already enrolled in education sequences.** Candidates who have been enrolled in upper division or graduate

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

ADOPTED RULES

coursework before April 4, 1988, shall provide official evidence of successful completion of the examinations adopted in subpart 2 before licensure recommendation.

Subp. 11. **Applicants prepared in other states.** Applicants for Minnesota licensure who are prepared in other states who otherwise meet the applicable statutes and rules shall be granted a one-year nonrenewable provisional license, during which time the applicant must provide official evidence of successful completion of the requirements of this part. Applicants prepared in other states who provide evidence of meeting requirements for initial Minnesota licensure shall be granted an entrance license.

8700.0502 PROVISIONAL LICENSES; TEACHING IN UNLICENSED SUBJECTS OR FIELDS. [Withdrawn at 11 S.R. _____.]

8700.0900 CONTINUING LICENSE. [Withdrawn at 11 S.R. _____.]

8700.1000 CLOCK HOURS. [Withdrawn at 11 S.R. _____.]

8700.1100 LOCAL COMMITTEES FOR CONTINUING EDUCATION AND RELICENSURE. [Withdrawn at 11 S.R. _____.]

8700.1300 TRANSFER OF CLOCK HOURS. [Withdrawn at 11 S.R. _____.]

8700.1400 GRANTOR OF CLOCK HOURS. [Withdrawn at 11 S.R. _____.]

8700.2200 RIGHT OF APPEAL. [Withdrawn at 11 S.R. _____.]

OFFICIAL NOTICES

Pursuant to the provisions of Minnesota Statutes § 14.10, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

Department of Commerce

Notice of Intent to Solicit Outside Opinion Regarding Proposed Rules Relating to Uniform Conveyancing Blanks including the Impact of the Rules on Small Businesses

Notice is hereby given that the Department of Commerce is seeking information or opinions from persons outside the agency in preparing to promulgate new rules governing Uniform Conveyancing Blanks for the adoption of new blanks 35-M (Quit Claim Receiving Lien in Marriage Dissolution (Divorce) Judgment and Decree), 36-M (Release of Land From Lien in Marriage Dissolution (Divorce) Judgment and Decree), and 88-M (Release of Land from Judgment Lien). Promulgation of these rules is authorized by Minnesota Statutes, section 507.09 (1986) and Minnesota Statutes section 45.023 (1986).

Outside opinion is also being solicited as to how these rules will affect small businesses as defined by Minnesota Statutes section 14.115, subd. 1.

The Department of Commerce requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing to: Scott P. Borchert, Department of Commerce, 500 Metro Square Building, St. Paul, Minnesota 55101, (612) 296-9431.

All statements of information and comment shall be accepted until April 30, 1987. Any written material received by the Department of Commerce shall become part of the record in the event that the rules are promulgated.

Michael A. Hatch, Commissioner of Commerce

Department of Health: Maternal and Child Health Division

Notice of Solicitation of Outside Information or Opinions Regarding Proposed Rules Governing the Special Supplemental Food Program for Women, Infants, and Children carried out by the United States Department of Agriculture (WIC Program)

Notice is hereby given that the State Department of Health is seeking information or opinions from sources outside the department in preparing to propose the adoption of rules governing the Special Supplemental Food Program for Women, Infants, and Children

(WIC program), proposed rule parts 4617.0000 to 4617.0300. The adoption of the proposed rules is consistent with Minnesota Statutes 1986, sections 14.05 subdivision 1, 14.06, 144.12, 144.05 (f), and 145.893 to 145.897, which permits the department to implement the WIC program. The WIC program is also implemented according to the Code of Federal Regulations, title 7, sections 246.1 to 246.25, including administration of the WIC Program by local agencies, vendor requirements, eligibility guidelines for women, infants, and children who participate in the WIC program, and approval of WIC program foods.

The State Department of Health requests information and opinions concerning the subject matter of the rules. Outside opinion is also being solicited as to how these rules will affect small businesses as defined by Minnesota statutes, section 14.115, subdivision 1. Interested persons or groups may submit data or views on the subject matter of the rules in writing and or orally. Written statements should be addressed to Pati Maier, Minnesota Department of Health, 717 S.E. Delaware Street, Room 353, Minneapolis, MN 55440. Oral statements will be received during regular business hours over the telephone at (612) 623-5115 and in person at the above address.

All statements of information and opinions shall be accepted until 4:30 p.m., September 1, 1987. Any written material received by the State Department of Health shall become part of the rulemaking record to be submitted to the attorney general or administrative law judge if the rules are adopted.

Dated: 20 March 1987

Pati Maier, Director
WIC Program

Department of Human Services

Notice of Enrollment of Mentally Retarded Persons in Medical Assistance Demonstration Project

The Minnesota Department of Human Services is conducting a three year Demonstration Project of prepaying Medical Assistance (MA) to a variety of health plans. In return for the capitated prepayments, the health plans agree to provide all medically necessary health care for the MA recipients who are enrolled with them. The Demonstration Project is taking place in Dakota, Hennepin, and Itasca counties.

The Department will soon begin enrolling MA recipients who are mentally retarded and who are residents of Dakota and Hennepin counties. An extensive planning process is under way to prepare for this change from fee-for-service reimbursement.

On April 27, the Department and Dakota County will conduct an orientation session on the Demonstration Project for service providers and advocates who serve mentally retarded people in Dakota County. It will be held from 1:00-4:00 p.m. in the Dakota County Public Library, 1340 Wescott Road, Eagan.

The Department and Hennepin County will conduct a similar session for service providers and advocates on Friday, April 24, from 8:30-11:30 a.m. in the Hennepin County Government Center Auditorium (lower level).

Department of Human Services

Notice of Public Comment Period on Proposed Amendments to Diagnostic Related Groups (DRG's) as Part of the Rules on Inpatient Hospital Reimbursement Under Medical Assistance and General Assistance Medical Care

Pursuant to Laws of Minnesota 1986, chapter 420, section 6, subdivision 2, as amended by Laws of Minnesota, 1986, 1st Special Session, chapter 3, article 2, section 51, "The commissioner may reconstitute the diagnostic categories to reflect actual hospital practices, the specific character of specialty hospitals, or to reduce variances within the diagnostic categories, after notice in the *State Register* and a 30-day comment period". Revision of the Diagnostic Categories is exempt from Minnesota Statutes, chapter 14 rulemaking requirements.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

OFFICIAL NOTICES

The proposed DRG revision listed below will be published in the *State Register* on March 30, 1987. The comment period runs through 4:30 p.m., 29 April, 1987. Please note that the balance of the rule provisions on Inpatient Hospital Reimbursement under Medical Assistance and General Assistance Medical Care, Minnesota Rules, parts 9500.1090 to 9500.1155, are being revised under the standard rulemaking procedures of Minnesota Statutes, chapter 14.

The public comment period ends at 4:30 p.m. on April 29, 1987. Written comments should be forwarded to the following address:

Juli Ann Menssen
Director of Hospital Rates
Department of Human Services
444 Lafayette Road
St. Paul, Minnesota 55155

Notice of adopted changes in diagnostic categories will be published in the *State Register*.

Rules as Adopted

9500.1100 DEFINITIONS.

Subpart 1. to 19. [Unchanged.]

Subp. 20. **Diagnostic categories.** "Diagnostic categories" means the classification of inpatient hospital services according to the diagnostic related groups (DRG's) under medicare with adjustments as follows:

Diagnostic Categories	DRG Numbers Within the Diagnostic Category
A. to N. [Unchanged.]	
O.	
<u>Extreme Immaturity</u>	(386)
<u>P. Prematurity with major problems</u>	(387)
<u>Q. Prematurity without major problems</u>	(388)
<u>R. Full-term neonates or neonates died or transferred</u>	(385,389,390)
P to JJ. [Reletter as S. to MM.]	
<u>Subp. 21. to 50.</u> [Unchanged.]	

Bureau of Mediation Services

Notice of Solicitation of Outside Information or Opinions Regarding Proposed Rule Governing Status of the Labor Contract when there is a Change in Exclusive Representative

Notice is hereby given that the State Bureau of Mediation Services is seeking information or opinions from sources outside the agency in preparing to propose amendment of the rule governing the status of the labor contract when there is a change in exclusive representative. The rules are authorized by Minnesota Statutes Section 179.04, subdivision 3(f).

The State Bureau of Mediation Services requests information and opinions concerning the rule as it relates to the status of the labor contract when there is a change in exclusive representative. Under provisions of the current rule, the labor agreement remains in effect and is administered by the original union until its expiration date even where that union has been replaced as a result of a representation election. The Bureau is contemplating a change in the rules to provide for termination of the existing contract upon the certification of a different exclusive representative. Interested persons or groups may submit data or views on the subject matter of concern in writing or orally. Written statements should be addressed to: Paul W. Goldberg, Director, Minnesota Bureau of Mediation Services, 205 Aurora Avenue, St. Paul, MN 55103. Oral statements will be received during regular business hours over the telephone at (612) 296-2525 and in person at the above address.

All statements of information and opinions shall be accepted until the close of business on Thursday, April 30, 1987. Any written material received by the State Bureau of Mediation Services shall become part of the rulemaking record to be submitted to the attorney general or administrative law judge in the event that the rule is adopted.

Dated: 30 March 1987

Paul W. Goldberg, Director

Pollution Control Agency Solid and Hazardous Waste Division

Notice of Intent to Solicit Outside Opinions Concerning Proposed Amendments to Rules for Establishing Fee Systems for Generators of Low-Level Radioactive Waste

Notice is hereby given that the Minnesota Pollution Control Agency (Agency) is seeking information and opinions from sources outside the Agency in preparing amendments to rules adopted pursuant to Minn. Stat. § 116C.834 (1986), which requires establishment of a fee system for generators of low-level radioactive waste (LLRW), to provide funds for carrying out Minnesota's responsibilities in the Midwest Interstate Low-Level Radioactive Waste Compact.

The Agency requests information and comments concerning the subject matter of the proposed amendments. Written or oral statements and comments concerning these matters will be accepted for consideration until April 29, 1987 and should be addressed to:

Ms. Dagmar M. Romano
Solid and Hazardous Waste Division
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, Minnesota 55155
Telephone Number: 612/296-7992

Oral statements will be accepted during regular business hours, 8:30 a.m. to 4:30 p.m., Monday through Friday, at 612/296-7992 or in person at the above address.

Any written material received by the Agency shall become part of the record regarding the amendments to these rules.

Dated: 24 March 1987

Thomas J. Kalitowski, Executive Director

Department of Public Safety

Notice to All Minnesota Businesses Regarding Requirements of the Superfund Amendments and Reauthorization Act of 1986

The Superfund Amendments and Reauthorization Act (SARA) of 1986 includes a section (Title III) on emergency planning and community right-to-know. The federal legislation requires that any company that has a chemical or chemicals on the list of 402 extremely hazardous chemicals found in 40 CFR 300 in excess of the Threshold Planning Quantity must notify the state commission by May 17, 1987. Those notifications and all future required notifications should be made to the following address in Minnesota:

State Emergency Response Commission
% Thomas Motherway, Director
Division of Emergency Services
Room B5, State Capitol
St. Paul, Minnesota 55155

The Division of Emergency Services has been designated as the lead state agency for the law, and emergency reporting of a chemical release should be made to the state emergency number 612/778-0800.

Department of Public Service Energy Division

Outside Opinion Sought for Proposed Amendments to Residential Thermal Insulation Standards

Notice is hereby given that the Department of Public Service (DPS) is seeking information or opinions from sources outside the agency in preparing amendments to Minn. Rules Chapter 4155, Residential Thermal Insulation Standards (as proposed at 9 S.R. 2424 and as adopted at 10 S.R. 1208). The adoption of these rules is authorized by Minnesota Statutes, sections 325F.20, subdivision 1 and 325F.21, subdivisions 1 and 2.

OFFICIAL NOTICES

This notice supplements the solicitation of outside opinion on amendments to Minn. Rules Chapter 4155 published at 10 S.R. 2295. The Department requests information and comments on any part of the rules.

Interested persons may submit statements of information or comment orally or in writing. Written statements should be addressed to: Bruce Nelson, Insulation Standards Program, DPS, 900 American Center Building, 150 E. Kellogg Blvd., St. Paul, MN 55101. Oral statements will be received during regular business hours by telephone at (612) 297-2313 and in person at the above address.

All statements and comments pertaining to this matter shall be accepted until May 15, 1987, or until the end of the comment period for any proposed rules. Any written material received by DPS shall become part of the rulemaking record in the event that amendments to these rules are proposed.

Tony Perpich, Director

Office of the Secretary of State

Notice of Vacancies in Multi-Member State Agencies

Notice is hereby given to the public that vacancies have occurred in multi-member state agencies, pursuant to Minn. Stat. § 15.0597, subd. 4. Application forms may be obtained at the Office of the Secretary of State, 180 State Office Building, St. Paul 55155-1299; (612) 296-2805. Application deadline is April 21, 1987.

CAPITOL AREA ARCHITECTURAL AND PLANNING BOARD has 1 vacancy open for a public member. The board is responsible for architecture and comprehensive land-use planning in the capitol area of St. Paul; exercises zoning and design control authority; controls redevelopment of the north capitol area. Members are appointed by the Governor. Members must file with the Ethical Practices Board. Monthly meetings at the Capitol; members receive \$35 per diem. For specific information contact the Capitol Area Architectural and Planning Board, B-46 Capitol Bldg., St. Paul 55155; (612) 296-7138.

MINNESOTA STATE BOARD OF EDUCATION CURRICULUM TASK FORCE IN EDUCATING THE BLACK LEARNER has 15 vacancies open for members. The following qualifications apply:

- 1) one member from each congressional district
- 2) 50/50 representation by gender
- 3) at least 50% representation of minority group members
- 4) representation from each of the following groups
 - a. parents
 - b. students
 - c. Pre-K Post Secondary Educators
 - d. business
 - e. community

The State Board of Education has rule making and policy making authority for Minnesota schools. The task force will advise the State Board of Education on issues relating to Black Learners in Minnesota. Members are appointed by the Board of Education. Members will be reimbursed for travel, lodging and meals in accordance with state agency guidelines; no per diem. One meeting a month from July 1987-August 1988 in the Twin Cities. For specific information contact the Minnesota State Board of Education Curriculum Task Force in Educating the Black Learner, 980 Capitol Square Bldg., St. Paul 55101; (612) 296-5147.

GOVERNOR'S MINNESOTA JUDICIAL MERIT ADVISORY COMMISSION has 12 vacancies open for the following:

- a) 1 member from each of the ten judicial districts
- b) 2 at-large members

The commission shall seek out, evaluate and recommend to the Governor outstanding persons who are learned in the law to fill vacancies which may occur on the courts of Minnesota. Members are appointed by the Governor. Members receive no compensation or per diem. For specific information contact the Governor's Minnesota Judicial Merit Advisory Commission, 130 Capitol, St. Paul 55155; (612) 296-0055.

Other Vacancies for Which the Secretary of State has been Asked to Seek Applicants**MINNESOTA ZOOLOGICAL GARDEN BOARD**

1 public member.

For additional information contact the Minnesota Zoological Garden Board, Virginia Bender, 12101 Johnny Cake Rd., Apple Valley 55123; (612) 432-9010.

State Board of Vocational Technical Education**Notice of Intent to Solicit Outside Opinion Regarding Proposed Rules Governing the Rules for Licensure of Postsecondary and Adult Vocational Technical Education Personnel**

Notice is hereby given that the State Board of Vocational Technical Education is seeking information or opinions from sources outside the agency in preparing to amend Chapter 3515 Rules for Licensure of Vocational Technical Education Personnel and specifically in Agricultural occupations, Business and Office occupations, and Full Time Adult licenses. The promulgation of these rules is authorized by Minnesota Statutes § 136C.04, subd. 9 and 125.185 subd. 4.

The State Board of Vocational Technical Education requests information and comments concerning the subject matter of these rules. Interested or affected persons may submit written statements of information or comment orally. Written comments should be addressed to:

Ms. Helen Henrie
State Board of Vocational
Technical Education
565 Capital Square Bldg.
550 Cedar Street
St. Paul, MN 55101
(612) 297-4575

Ms. Georgia Pomroy
State Board of Vocational
Technical Education
558 Capital Square Bldg.
550 Cedar Street
St. Paul, MN 55101
(612) 296-0680

Oral statements will be received during regular business hours over the telephone at (612) 296-0680 and in person at the above address.

All statements of information and comments shall be accepted until 4:30 P.M., April 30, 1987. Any written material received by the State Board of Vocational Technical Education shall become part of the record in the event that the rules are amended.

Dated: 19 March 1987

Helen Henrie, Deputy Director
State Board of Vocational Technical Education

STATE CONTRACTS AND ADVERTISED BIDS

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6, an agency must make reasonable effort to publicize the availability of any services contract or professional and technical services contract which has an estimated cost of over \$2,000.

Department of Administration procedures require that notice of any consultant services contract or professional and technical services contract which has an estimated cost of over \$10,000 be printed in the *State Register*. These procedures also require that the following information be included in the notice: name of contact person, agency name and address, description of project and tasks, cost estimate, and final submission date of completed contract proposal. Certain quasi-state agencies are exempted from some of the provisions of this statute.

Commodities contracts with an estimated value of \$5,000 or more are listed under the Procurement Division, Department of Administration. All bids are open for 7-10 days before bidding deadline. For bid specifics, time lines, and other general information, contact the appropriate buyers whose initials appear in parentheses next to the commodity for bid, by calling (612) 296-6152.

Department of Administration: Procurement Division

Contracts and Requisitions Open for Bid

Call 296-6152 for Referral to Specific Buyers, whose initials are next to each commodity.

Commodity for Bid (and Buyer)	Bid Closing Date at 2 pm	Department or Division	Delivery Point	Requisition #
Telephone Wiring (PA)	March 30	State Planning	St. Paul	02 310 15362
Typesetting Equipment (AW)	March 30	Admin: Printing & Mailing	St. Paul	02 520 5576
Fire Extinguishers Servicing and Recharging (DRT)	April 1	Various	Various	Price Contract
Genuine Repair Parts for Int'l Case Tractors, Mowers & Other Equipment (DM)	April 1	Various	Various	Price Contract
Parts for Culligan Deionizer (DM)	April 1	Admin: Plant Mgmt.	St. Paul	02 307 52727
Outdoor Elec. Light Fixtures (BV)	April 1	Transportation	St. Paul	79 000 74091
Thernet Tester (PA)	April 1	Transportation	St. Paul	79 000 74026
Remodel (BV)	April 2	Community College	Ely	27 000 48724
Buoys (DRT)	April 2	Natural Resources	St. Paul	29 000 45886
Weed Cutters, Line & Blade, Gas- oline Powered (DRT)	April 2	Various		Price Contract
Utility Tractor (DM)	April 2	Correctional Facility	St. Cloud	78 830 08544
Mower (DM)	April 2	State University	Mankato	25 071 17263
Aerial Platform (DM)	April 2	State University	Mankato	26 071 17264
Computer Software (MJB)	April 2	Human Services	St. Paul	55 000 96062
Folder (AW)	April 3	State University	Mankato	26 071 17279
Security Detection Device (Pam)	April 3	Community College	Brainerd	27 140 70044
Fishery Supplies (DRT)	April 3	Natural Resources	Hutchinson	29 004 08483
Rubbish Disposal—Sauk Centre (BV)	April 3	Correctional Facility	Sauk Centre	78 770 02427
Construction Laser Instrument (Surveying Equipt.) (JD)	April 3	State University	St. Cloud	26 073 19510
Mycom equipment (PA)	April 1	State University	Moorhead	26 072 07126
Novell (PA)	April 3	Charitable Gambling	St. Paul	99 730 87044
Upgrade computer equipment— rebid (PA)	April 4	State Planning	St. Paul	30 000 16233
Skid steer loader (DM)	April 4	Transportation	Various	79 382 01202
Ballast kit (BV)	April 4	Transportation	St. Paul	79 000 74113
Resurface parking lots (BV)	April 4	Academy for the Deaf	Faribault	37 001 70575
Network data comm. equipment (DO)	April 4	Various	Various	Price Contract
Lawn and shrub care (DRT)	April 6	Community College	Bloomington	Price Contract
Compaq (PA)	April 6	Transportation	St. Paul	79 000 73953
Ampex terminals—rebid (PA)	April 6	State University	St. Cloud	26 073 19439

STATE CONTRACTS & ADVERTISED BIDS

Commodity for Bid (and Buyer)	Bid Closing Date at 2 pm	Department or Division	Delivery Point	Requisition #
Lounge area furniture—rebid (JPK)	April 6	State University	Moorhead	26 072 07113/07114
Used forklift truck (DM)	April 6	Human Services	Brainerd	55 304 07302
Water sampler accessories (DK)	April 6	Pollution Control Agency	St. Paul	32 100 15690

Department of Administration: Printing & Mailing Services

Printing vendors for the following printing contracts must review contract specifications in printing buyers office at 117 University Avenue, Room 134-B, St. Paul, MN.

Commodity for Bid (and Buyer)	Bid Closing Date at 2 pm	Department or Division	Delivery Point	Requisition #
Career/Major Brochure/Folder	April 1	Community College	Minneapolis	5173 27156 10120
1987-89 Undergraduate Catalog	April 1	State University	Winona	5551 26074 11271
Report to Investors	April 1	State University	Mankato	5851 26071 17288
Summer Scholarship Poster & Brochure	April 1	Higher Ed. Coord. Bd.	St. Paul	5186 & 7 6000 05092 & 3
Composition for 1987 State Tele- phone Directory	April 7	Administration	St. Paul	5276 02340 52650
1987 State Telephone Directory	April 7	Administration	St. Paul	5275 02430 52649
1987 Resident Deer Firearm License	April 7	Natural Resources	St. Paul	5399 29000 45875
1987 Resident Bow & Arrow Deer License	April 7	Natural Resources	St. Paul	5398 29000 45868

Department of Administration: Contract Management Division

Notice of Request for Proposals for Court Reporting and Transcription Services

The Minnesota Department of Administration is Acting as contracting agent for state departments and agencies that have a need for:

1. Court reporting services to provide an accurate and verbatim record of proceedings and depositions required by state and federal law, and
2. Transcription services to prepare an accurate and verbatim typewritten record from proceedings recorded on single track or four track audio magnetic recording devices; such as 5" reel-to-reel tapes and standard cassette tapes.

All state agencies needing one or both of these services will be required to use the contracts resulting from this proposal. Some of the state agencies having a need for the services are the Attorney General's Office, Office of Administrative Hearings (Administrative Procedure Act and Workers' Compensation Law hearings), Department of Labor and Industry, Tax Court, Public Utilities Commission, Department of Public Services, Environmental Quality Board, Pollution Control Agency, Mediation Services, Human Services, Transportation and Economic Security.

IT IS UNLIKELY THAT WE WILL BE SOLICITING ADDITIONAL PROPOSALS DURING FISCAL YEAR 1988.

Additional information on the requested services will be included in the Request for Proposal which will be sent to all persons or associations who ask to receive one. Persons or associations desiring to receive a request for proposal must request one by notifying Dennis Reek, Office of Administrative Hearings, 400 Summit Bank Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415, telephone 612/341-7643, *no later than* 4:30 p.m., April 23, 1987. Final proposals must be returned to the Office of Administrative Hearings at the above address by 4:30 p.m., April 30, 1987.

Department of Employee Relations Employee Benefit Plan Claims Audit

Request for Proposals for Audit Services

NOTE: This Request for Proposal (RFP) does not obligate the State to complete the project and the State reserves the right to cancel the solicitation if it is considered to be in its best interest.

STATE CONTRACTS & ADVERTISED BIDS

BACKGROUND

The State of Minnesota, including the University of Minnesota, provides group health and dental coverage to approximately 48,000 employees. Blue Cross/Blue Shield provides coverage through a minimum premium plan to 28,000 of this total. Estimated costs are approximately \$64 million for 1987-88. The remaining employees are covered through nine HMO's.

Dental insurance is similarly provided through a minimum premium plan with Delta Dental covering 39,000 employees with total costs estimated to be \$11 million. The remaining employees receive dental coverage through two HMO's.

Enclosed is a brief description of these State benefit plans for use in preparing proposals.

SCOPE OF PROJECT

Phase 1—The State of Minnesota plans to have the current claims administration process performed by Blue Cross/Blue Shield of Minnesota audited to determine whether their procedures are appropriate, efficient and effectively contain medical costs while accurately paying all eligible and legitimate claims.

Phase 2—To audit the current claims administration process as performed by Delta Dental of Minnesota to similarly determine their effectiveness and accuracy in the processing of dental claims for the State of Minnesota. This second phase to be conducted in the first year of the biennium (July 1, 1988—June 30, 1989) and may or may not be actually performed pending possible budgetary limitations in the second year. This should be considered a stand-alone portion of this audit process with a separate proposal being developed. However, only one organization will be selected to perform both Phase 1 and Phase 2 of the audit.

OBJECTIVES AND PROJECT TASKS

The overall objective of the audit process is to review and determine the effectiveness of the claims payment process and procedures being used by the two providers of service. It is expected that this review will include a careful review of the claims administration process to determine effectiveness, efficiency and accuracy. It is expected that the audit will identify potential problem areas and recommend possible improvements or changes the State should consider. The following is a representative list of the type of review which is expected, but the State is open to all recommendations on how best to perform this audit process.

1. Tests of coverage and in-force status of benefits;
2. Tests of covered/non-covered status of charges;
3. Tests of deductibles;
4. Tests of coordination of benefit detection and administration;
5. Clerical errors in preparation;
6. Tests of reliability of output reports;
7. Tests of benefit payments in accordance with appropriate plan provisions including benefit schedules;
8. Tests of all cost containment provisions and the internal procedures to administer these programs;
9. Verification of current and contingent State liability (BCBS).

DEPARTMENT OF CONTACTS

All inquiries regarding the RFP and request for additional information or clarification should be directed to:

Robert Cooley
Benefits Manager
Department of Employee Relations
3rd Floor
520 Lafayette Road
St. Paul, MN 55155
(612) 296-2642

SUBMISSION OF PROPOSALS

All proposals must be sent to and received by:

Robert Cooley
Benefits Manager
Department of Employee Relations
3rd Floor
520 Lafayette Road
St. Paul, MN 55155

STATE CONTRACTS & ADVERTISED BIDS

The proposals must be received no later than April 24, 1987. Please submit four copies of the proposal. Prices and terms of the proposal as stated must be valid for the length of the project.

PROJECT COST

It is anticipated that costs for Phase 1 of this project will not exceed \$20,000. Costs for Phase 2 should not exceed \$12,500.

PROJECTED COMPLETION DATE

Phase 1 of this project must be completed no later than September 30, 1987 (earlier if possible), and Phase 2 no later than February 29, 1988.

PROPOSAL CONTENTS

It is expected that the proposals will include a thorough description of the procedures and methods to be used in conducting the audit. Included should be methods of claims analysis, sampling techniques, employee/users input, etc.

The proposal should also state outcomes of the audit including the types of reports or information to be provided as part of the final product. Included should be an approximate timetable which would be followed in completion of the audit.

Individuals who would be assigned to the project and a synopsis of their technical expertise and background in working on similar type projects should be included. The inclusion of prior studies or similar reports as examples of the type of audits which have previously been conducted would be desirable.

Requirements for support from the Benefits Division of the State should be identified and listed as to amount and type of assistance and input which will be required.

EVALUATION

All proposals received by the deadline will be evaluated by representatives from the Department of Employee relations and final candidates will be contacted for the opportunity to make formal presentations regarding their proposal. Factors upon which the proposals will be judged include, but are not limited to, the following:

1. Proposed audit, including the type and extent of services to be provided.
2. Prior experience and demonstrated capabilities by the staff and organization to effectively conduct such an audit.
3. Project cost.

Department of Transportation Technical Services Division Research Administration and Development Section

Notice of Availability of a Contract for Investigation of Man-made Floatable Litter Entering Waterways Through Storm Sewers

The Department of Transportation, acting as the agent for the Local Road Research Board, requires the services of a consultant for an investigation of man-made floatable litter entering waterways from storm sewers. The study would evaluate the type and amount of man-made floatable litter directly attributable to storm sewers, determine what percent of the total that is, and determine the relative effect of eliminating this contribution. The study would also propose and evaluate engineering methods to eliminate or mitigate these floatables and determine their cost effectiveness.

The Local Road Research Board has budgeted \$33,000 for this 15-month project.

Those interested may obtain a "Request for Proposal" from:

Gabriel S. Bodoczy, PE.
Research Services Engineer
Mn/DOT Research Administration and
Development Section
Room B-9, Transportation Building
St. Paul, Minnesota 55155
Telephone: (612) 296-4925

Request for Proposals will be available through April 10, 1987. All proposals will be due no later than April 17, 1987.

STATE GRANTS

In addition to requests by state agencies for technical/professional services (published in the State Contracts section), the *State Register* also publishes notices about grant funds available through any agency or branch of state government. Although some grant programs specifically require printing in a statewide publication such as the *State Register*, there is no requirement for publication in the *State Register* itself.

Agencies are encouraged to publish grant notices, and to provide financial estimates as well as sufficient time for interested parties to respond.

Department of Jobs and Training Division of Rehabilitation Services Minnesota Supported Employment Project

Availability of Funds to Address and Implement Issues of Conversion from Facility-Based Services to Community-Based Supported Employment Services

The Minnesota Supported Employment Project announces the availability of *grant funding* to assist communities who have already made a substantial commitment to convert to supported employment services. The purpose of these grants is to assist the applicant to (re) organize and develop further its community's capacity to provide supported employment services to persons with severe disabilities for whom employment without long-term, on-going support on the jobs site would be considered unlikely.

Any public or private non-profit agency, organization or corporation (able to qualify under Minnesota Statutes, Chapter 317, or Section 501 (c) (3) of the Internal Revenue Code) with the authority and ability to bring about desirable outcomes for the target population is eligible to apply.

An approximate total of \$125,000 to \$160,000 is available for projects for the period from August 1, 1987 through July 31, 1988 with average grant awards anticipated to average from \$40-50,000.

Copies of the Request for Proposals for this project are available from:

Minnesota Supported Employment Project
Division of Rehabilitation Services
390 North Robert Street, Fifth Floor
St. Paul, Minnesota 55101
ATTN: Kim Rezek

Proposals must be received by 4:30 p.m. on April 20, 1987.

Department of Jobs and Training State Job Training Office

Notice of Availability Of Juvenile Justice Grants

The Minnesota Juvenile Justice Advisory Committee announces the availability of \$456,275 for Juvenile Justice Grants contingent upon the receipt of the federal award from the U.S. Department of Justice. Funds are available in the following areas:

- Prevention
- Courts—Legal Services
- Preadjudication Alternatives
- Postadjudication Alternatives
- Training

Funds will be available from the total award for mini-grant programs in the areas of prevention and training to begin October 1, 1987 and end September 30, 1988. Mini-grant applications in the prevention area may request up to \$2,000 per application. Mini-grant applications in the training area may request up to \$1,000 per application. Mini-grant applications will be accepted on a one-time basis. The balance of the award will be available for projects that meet the requirements stated in the Multi-year Action Plan.

Applications for the regular grant and mini-grant programs must be received no later than May 22, 1987. Please indicate whether you are interested in the regular grant program or the mini-grant program when requesting application materials.

The Juvenile Justice Advisory Committee will award the grants in August for an October 1, 1987 start-up date.

Application forms, the Multi-Year Action Plan, and other program information can be obtained by contacting:

Jerry Ascher
Juvenile Justice Grant Program
State Job Training Office
690 American Center Building
150 East Kellogg Boulevard
St. Paul, MN 55101
(612) 296-8601

Lawyer Trust Account Board

Notice of Grant Cycle July 1, 1987 to June 30, 1988

The Minnesota Supreme Court has established a program to use the interest on lawyer trust accounts (IOLTA) to improve the delivery of legal services to the poor, to promote development of law-related education for the public, and to develop programs to enhance the administration of justice.

The Lawyer Trust Account Board has made grants in the amount of over \$4,000,000 to legal services organizations, to programs to enhance the administration of justice and to programs providing legal education for the public in its four prior grant cycles.

The Board is soliciting proposals to distribute funds to projects in any of the three program areas. The Board will support not only traditional approaches, but will encourage projects that show innovative approaches to recognized needs throughout the state. For application information, contact the Executive Director, 318 Capitol, St. Paul, MN 55155. The deadline for submitting applications is April 15, 1987.

Dated: 13 February 1987

State Board of Vocational Technical Education Instructional/Student Support Services Section

Notice of Availability of Funds for Community-Based Organization Programs

The State Board of Vocational Technical Education will distribute federal funds to eligible recipients in accordance with the Carl D. Perkins Vocational Education Act for individuals who are *to be served by Community Based Organizations*. The amount of federal funds available for Community Based Organization Program activities is \$100,559.

Organizations and associations interested in applying for federal funds should contact the nearest AVTI for additional information or refer to Section 4.19, "Community Based Organizations" or *Minnesota State Plan for Vocational Technical Education FY'88*, for information relating to the availability and disbursement of federal funds.

Qualified organizations and associations must prepare a joint application with an appropriate eligible recipient whose main responsibility will be to act as fiscal agent for distribution of and accountability for the federal funds.

An eligible recipient is defined as: a) a nonprofit educational recipient legally authorized to provide post-secondary or secondary vocational education; and b) have established certified vocational technical education programs.

Additional information will be included in the "Request for Proposal" which will be mailed upon request. To receive a Request for Proposal notify Sharon Grossbach, 529 Capitol Square Building, 550 Cedar Street, St. Paul, MN 55101, not later than 4:30 on May 15, 1987.

Final proposals must be submitted to 529 Capitol Square Building, 550 Cedar Street, St. Paul, MN 55101 by 4:30 p.m. on May 22, 1987.

State Board of Vocational Technical Education Instructional/Student Support Services Section

Notice of Availability of Funds for Incarcerated Programs

The State Board of Vocational Technical Education will distribute federal funds to eligible recipients in accordance with the Carl D. Perkins Vocational Education Act for individuals who are *incarcerated*. The amount of federal funds available for *Incarcerated Program* and activities is \$100,450.

STATE GRANTS

Organizations and associations interested in applying for federal funds should contact the nearest AVTI for additional information or refer to Section 4.14 "Incarcerated" in the *Fiscal Year 1988 Minnesota State Plan for Vocational Technical Education* for information relating to the availability and disbursement of federal funds.

Qualified organizations and associations must prepare a joint application with an appropriate eligible recipient whose main responsibility will be to act as fiscal agent for distribution of and accountability for the federal funds.

An eligible recipient is defined as: a) a nonprofit educational recipient legally authorized to provide post-secondary or secondary vocational education; and b) have established certified vocational technical education programs.

Additional information will be included in the "Request for Proposal" which will be mailed upon request. To receive a Request for Proposal notify Sharon Grossbach, 529 Capitol Square Building, 550 Cedar Street, St. Paul, MN 55101, not later than 4:30 p.m. on May 15, 1987.

Final proposals must be submitted to 529 Capitol Square Building, 550 Cedar Street, St. Paul, MN 55101, by 4:30 p.m. on May 22, 1987.

State Board of Vocational Technical Education Section: Instructional and Student Support Section

Notice of Availability of Funds for Minnesota Vocationally Licensed Vocational Educators

The State Board of Vocational Technical Education will distribute Federal funds to qualified organizations in accordance with the Carl D. Perkins Vocational Education Act for staff development of Minnesota vocationally licensed vocational educators. The amount of Federal funds available for staff development activities is \$50,000, to be distributed in \$500-\$2,000 awards.

Qualified organizations are: Minnesota public sector vocational education agencies (including secondary schools, area vocational technical institutes, vocational coop centers, and four-year vocational teacher education institutions).

Qualified organizations must prepare an application to provide technical or professional updating to: a) vocationally licensed educators or b) certified vocational education programs in Minnesota.

Additional information will be included in the "Request for Applications", which can be picked up or mailed upon request. To receive a Request for Application, notify JoAnn Akemann-Chein, 550 Cedar Street, St. Paul, MN 55101.

Staff development applications must be submitted to the Staff Development Office, 550 Cedar Street, St. Paul, MN 55101, by 4:00 p.m. on April 30, 1987.

SUPREME COURT DECISIONS

Decisions Filed Friday, 20 March 1987

Compiled by Wayne O. Tschimperle, Clerk

C1-85-1998 Carolyn Waller v. Powers Department Store, Minneapolis Civil Rights Commission, Relator. Court of Appeals.
Reversed in part and remanded. Amdahl, C.J.

C3-86-264 State of Minnesota, Appellant v. Emanuel A. Serstock. Court of Appeals.

Indictment alleging only that city attorney violated Minnesota Code of Professional Responsibility and Minneapolis City Code of Ethics did not state an offense under Minn. Stat. § 609.43 (1984), the public officer misconduct statute.

Indictment alleging that city attorney violated his statutory authority states offense under public officer misconduct statute, but indictment does not satisfy requirements of Minn.R.Crim.P. 17.02, subd. 2, and Minn. Stat. § 628.18 (1986), where it fails to specify statutory authority allegedly exceeded.

Affirmed in part, reversed in part. Amdahl, C.J.

C0-86-1582 Norbert J. Moes, Relator v. City of St. Paul, Self-Insured, and Blue Cross & Blue Shield of Minnesota, intervenor, Relator. Workers' Compensation Court of Appeals.

Compensation judge did not commit prejudicial error by considering additional report by employee's expert and brief submitted by employee after the compensation hearing.

Minn. Stat. § 176.011, subd. 15, does not violate equal protection clause.

Respondent failed to overcome statutory presumption of causation between employee's work as a firefighter and his coronary arteriosclerosis.

An employee is disabled if he is unable to earn full wages at the work at which he was last employed.

Affirmed in part, reversed in part, decision of the Compensation Judge is reinstated. Amdahl, C.J.

C3-86-1625 Paul Eugene Appelgate v. Commissioner of Public Safety, petitioner, Appellant. Court of Appeals.

Totality of circumstances gave police officers "reasonable, articulable suspicion" of possible involvement of defendant in burglary-in-progress reported minutes earlier and therefore justified limited investigative stop of defendant for purpose of "freezing" the situation.

Reversed and judgment of trial court reinstate. Amdahl, C.J.

C3-86-40 State of Minnesota v. Ronald Vernon Schneider, Appellant. Hennepin County.

There was sufficient evidence of intent to support defendant's conviction of first-degree burglary and first-degree murder.

Defendant did not prove he was legally insane at the time of the murder.

It was not error to allow the state to subpoena testimony from a defense-retained psychiatrist.

It was not error to elicit evidence from witnesses that they had been hired, but not called, by defendant.

Consecutive sentences were proper for defendant's multiple convictions.

Affirmed. Yetka, J.

Dissenting in part, Wahl, J.

C2-86-1802 Johnson Brothers Wholesale Liquor Company, Intercontinental Packaging Company, Twin City Wine Company, Relators v. Commissioner of Revenue. Tax Court.

Minn. Stat. § 340.436 (repealed 1985) violated the United States Constitution.

The appropriate remedy for the constitutional violation was to invalidate Minn. Stat. § 340.436 and collect the appropriate back taxes from Minnesota's farm wineries.

Affirmed. Yetka, J.

C4-85-2000 Glenn Bulau, et al. v. Hector Plumbing and Heating Company, defendant and third party plaintiff v. 20th Century Building Center, Inc., third party defendant, petitioner, Appellant, Marvin Degner, d.b.a. Degner Construction. Court of Appeals.

The two-year statute of limitations for actions arising out of the defective and unsafe condition of an improvement of real property, Minn. Stat. § 541.051, subd. 1 (1984), bars an action for contribution commenced more than two years after the discovery of the defective and unsafe condition.

Reversed. Scott, J.

C1-85-2102 C3-85-2117 Gary Frederickson, petitioner, Appellant, v. C3-85-2117, Alton M. Johnson Co., Pringle Electrical Manufacturing Co., Pennsylvania Corp., et al., Michaud, Cooley, Hallberg, Erickson & Associates, Inc., petitioner, Appellant and Michaud, Cooley, Hallberg, Erickson & Associates, Inc., third party plaintiff, petitioner, Appellant v. C1-85-2102, Hoffman Electric Co., third party defendant, Continental Insurance Co., intervenor. Court of Appeals.

The nonsettling defendant's crossclaims are barred by Minn. Stat. § 541.051, subd. 1 (1984), because they arose out of an improvement to real property and were brought more than two years after the discovery of the defective and unsafe condition.

The trial court properly reduced the verdict by the settling defendant's fault because the plaintiff released (*Pierringer*) his cause of action to that extent.

The fault attributable to the nonsettling defendant whose share is uncollectible should be reallocated to the other nonsettling defendant, the settling defendant, and the plaintiff, pursuant to Minn. Stat. § 604.02, subd. 2 (1984).

On these facts, there is no entitlement to contractual indemnification.

Affirmed in part and reversed in part. Scott, J.

SUPREME COURT DECISIONS

C6-86-369 Thomas Ocel, et al., v. City of Eagan, defendant and third party plaintiff v. Gabbert Development, Inc., third party defendant, petitioner, Appellant, Bonestroo, Rosene, Anderlik and Associates, Inc., third party defendant, petitioner, Appellant Schimek Construction, Inc., third party defendant, petitioner, Appellant. Court of Appeals.

The 2-year statute of limitations of Minn. Stat. § 541.011 (1986) begins to run from the discovery of the defective improvement to real property, and bars the third-party plaintiff's claim for contribution; the contribution claims were only inchoate at the time the statute was enacted, so application of the statute has no impermissible retroactive effect.

The exemption from the 2-year statute of limitations for claims against "the owner or other person in possession" is inapplicable to the claims against the contractor, the developer, and the engineering firm.

The 10-year period for bringing claims of a vendee or purchaser for breach of statutory warranties is inapplicable here.

Reversed. Simonett, J.

C4-86-1150 Attorney General Hubert H. Humphrey, III, Attorney General of the State of Minnesota, o.b.o. the State of Minnesota and the Public Employees Retirement Fund v. C. Michael McLaren, defendant and third party plaintiff, Morris J. Anderson, et al. Ramsey County.

The attorney general has authority to sue for recovery of monies allegedly improperly paid to the executive director of the Public Employees Retirement Association (PERA).

A special assistant attorney general representing the PERA has the PERA, not its executive director, as a client.

The disqualification of a special assistant attorney general from acting as trial counsel because a likely necessary witness in the pending lawsuit is not to be imputed to the entire attorney general's staff where, as here, the presumed indivisibility of the various divisions of the attorney general's staff has been rebutted.

Affirmed. Simonett, J.

CX-86-1777 In the Matter of the Application for the Discipline of Douglas E. Schmidt, an Attorney at Law of the State of Minnesota. Supreme Court.

When, during the course of handling litigation, an attorney at law misrepresents facts to a judge, to opposing counsel, and to his client; misrepresents facts to his client in order to secure a release absolving the lawyer from professional liability; and delays the handling of client affairs and fails to keep in communication with his clients, he merits temporary suspension from the practice of law.

Suspended. Per Curiam.

TAX COURT

Pursuant to Minn. Stat. § 271.06, subd. 1, an appeal to the tax court may be taken from any official order of the Commissioner of Revenue regarding any tax, fee or assessment, or any matter concerning the tax laws listed in § 271.01, subd. 5, by an interested or affected person, by any political subdivision of the state, by the Attorney General in behalf of the state, or by any resident taxpayer of the state in behalf of the state in case the Attorney General, upon request, shall refuse to appeal. Decisions of the tax court are printed in the *State Register*, except in the case of appeals dealing with property valuation, assessment, or taxation for property tax purposes.

Docket No. 4541

Findings of Fact, Conclusions of Law and Order for Judgment Dated: March 13, 1987

Howard F. Marcotte, Appellant, vs. Commissioner of Revenue, Appellee.

The above-entitled matter came on for hearing before the Honorable Earl B. Gustafson, Chief Judge of the Minnesota Tax Court, on February 2, 1987 at the Courtroom of the Tax Court in St. Paul, Minnesota.

Howard F. Marcotte, appellant, appeared pro se.

Thomas M. O'Hern, Jr., Special Assistant Attorney General, appeared for appellee.

The issue presented by this appeal is whether appellant was a resident of Minnesota during the entire taxable year 1982, or whether he had changed his domicile to Florida during that year.

The Court, having heard and considered the evidence adduced at the hearing, now makes the following:

FINDINGS OF FACT

1. Appellant, Howard F. Marcotte, was undisputably domiciled in Minnesota for many years prior to 1982.

2. Prior to March, 1982, appellant was part-owner and manager of a Minneapolis stock brokerage firm, Cronin & Marcotte, Inc.
3. In December, 1981, appellant married and purchased a condominium at 1237 Yale Place in Minneapolis for \$210,000, which was homesteaded as of the January 2, 1982 assessment date but not in subsequent years.
4. After returning from a January, 1982 honeymoon in Hawaii, appellant agreed to sell his interest in the brokerage firm to his business partner for \$923,570 cash.
5. The sale was completed in March, 1982 and appellant deposited \$700,000 of the proceeds of the sale into a "Cash Management Account" with Merrill Lynch Co.
6. Appellant continued to maintain a checking account with Northwestern National Bank of Minneapolis.
7. On March 15, 1982, appellant officially retired from Cronin & Marcotte, Inc.
8. On May 7, 1982, appellant and his wife purchased a condominium in Naples, Florida for \$75,000 cash.
9. On May 13, 1982, appellant and his wife changed their driver's licenses and registered to vote in Florida.
10. During the summer and fall of 1982, appellant and his wife spent considerable time in Minnesota while selling Mrs. Marcotte's former home (without a real estate agent) and spending time with friends and relatives. During this same period they also traveled extensively outside of Minnesota in a newly purchased motorhome.
11. In late October, 1982, appellant and his wife returned to Florida.

CONCLUSIONS OF LAW

1. In May, 1982, appellant was physically present in Florida and occupied a residence in Naples, Florida with the intention of making this his home.
2. As of May, 1982, appellant no longer was a resident of Minnesota for income tax purposes under Minn. Stat. §§ 290.17 and 290.01, subd. 7 (1982).
3. The Order of the Commissioner of Revenue dated February, 1986, assessing additional income tax against appellant for the year 1982, is hereby reversed.

LET JUDGMENT BE ENTERED ACCORDINGLY. A STAY OF 15 DAYS IS HEREBY ORDERED.

BY THE COURT,
Earl B. Gustafson, Chief Judge
Minnesota Tax Court

Docket No. 4642

Findings of Fact, Conclusion of Law and Order for Judgment Dated: March 11, 1987

Jerome M. Liefert and Mary T. Liefert, Appellants, vs. Commissioner of Revenue, Appellee.

The above-entitled matter came on for hearing before the Honorable M. Jean Stepan, Judge of the Minnesota Tax Court, on January 12, 1987 at the Courtroom of the Tax Court in St. Paul, Minnesota.

Jerome M. Liefert, one of the appellants, appeared pro se.

Michele M. Owen, Special Assistant Attorney General, appeared for appellee.

The issue presented on appeal is whether appellants were entitled to an IRA deduction for the taxable year 1983.

The Court, having heard and considered the evidence adduced at the hearing, now makes the following:

FINDINGS OF FACT

1. In 1983 appellants, Jerome M. and Mary T. Liefert, set up two individual retirement accounts (IRAs). They deposited \$2,000 to each account during the 1983 tax year.
2. On their 1983 Minnesota income tax return, appellants took a \$1,500 deduction based on the \$2,000 contribution made to Mrs. Liefert's IRA.
3. Mrs. Liefert had no earned income in 1983. The contribution to her IRA was made from Mr. Liefert's earnings.
4. Jerome M. Liefert was an employee of the State of Minnesota during 1983. He was then covered by an employer-funded government pension plan.
5. In 1983, Minnesota law governing IRA contributions followed pre-1982 federal law. An individual not entitled to an IRA deduction under pre-1982 federal law must add back non-deductible amounts on their Minnesota income tax return. Minn. Stat. § 290.01, subd. 20a(19) (1983).

TAX COURT

6. Prior to the year 1983, Internal Revenue Code § 219(b)(2)(A) (1981) provided that an individual or spouse covered by a government pension plan was not entitled to individual IRA deductions on federal income tax returns.

CONCLUSIONS OF LAW

1. Mr. Liefert was an active participant in a qualified government pension plan during the 1983 tax year.
2. Mrs. Liefert had no earned income during the 1983 tax year.
3. Mrs. Liefert's deduction of IRA contributions for Minnesota income tax purposes for 1983 was properly disallowed.
4. The Order of the Commissioner of Revenue from which this appeal was taken is affirmed.

LET JUDGMENT BE ENTERED ACCORDINGLY. A STAY OF 15 DAYS IS HEREBY ORDERED.

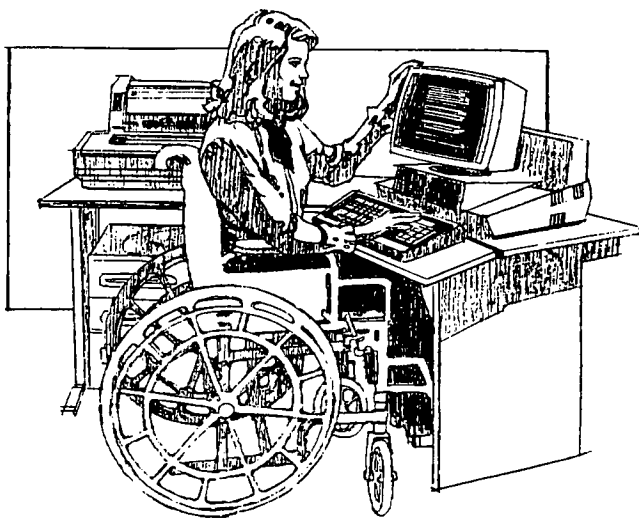
BY THE COURT,
M. Jean Stepan, Judge
Minnesota Tax Court

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