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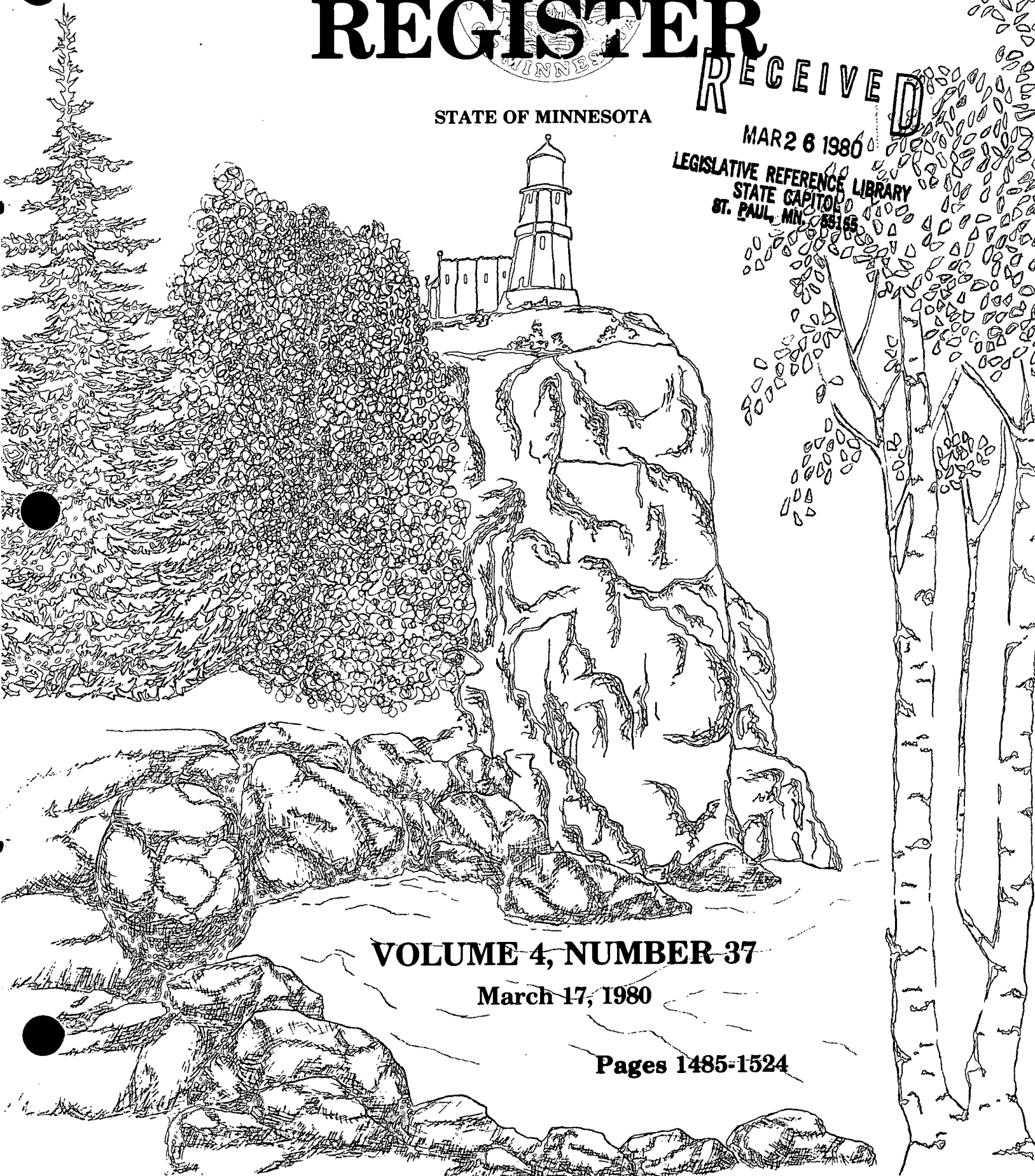
STATE REGISTER

STATE OF MINNESOTA

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VOLUME 4, NUMBER 37

March 17, 1980

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Volume 4 Printing Schedule for Agencies

Issue Number	*Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules	*Submission deadline for State Contract Notices and other **Official Notices	Issue Date
SCHEDULE FOR VOLUME 4			
38	Monday Mar 10	Monday Mar 17	Monday Mar 24
39	Monday Mar 17	Monday Mar 24	Monday Mar 31
40	Monday Mar 24	Monday Mar 31	Monday Apr 7
41	Monday Mar 31	Monday Apr 7	Monday Apr 14

*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 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 Office of the State Register, Suite 415, Hamm Building, 408 St. Peter Street, St. Paul, Minnesota 55102.

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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, and official notices to the public. Judicial notice shall be taken of material published in the *State Register*.

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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**. Such notices are published in the **OFFICIAL NOTICES** section. Proposed rules and adopted rules are published in separate sections of the magazine.

The **PROPOSED RULES** section contains:

- Proposed new rules (including Notice of Hearing).
- Proposed amendments to rules already in existence in the Minnesota Code of Agency Rules (MCAR).
- Proposed temporary rules.

The **ADOPTED RULES** section contains:

- Notice of adoption of new rules and rule amendments (those which were adopted without change from the proposed version previously published).
- Adopted amendments to new rules or rule amendments (changes made since the proposed version was published).
- Notice of adoption of temporary rules.
- Adopted amendments to temporary rules (changes made since the proposed version was published).

All **ADOPTED RULES** and **ADOPTED AMENDMENTS TO EXISTING RULES** published in the *State Register* will be published in the Minnesota Code of Agency Rules (MCAR). Proposed and adopted **TEMPORARY RULES** appear in the *State Register* but are not published in the MCAR due to the short-term nature of their legal effectiveness.

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

Issues 1-13, inclusive	Issue 39, cumulative for 1-39
Issues 14-25, inclusive	Issues 40-51, inclusive
Issue 26, cumulative for 1-26	Issue 52, cumulative for 1-52
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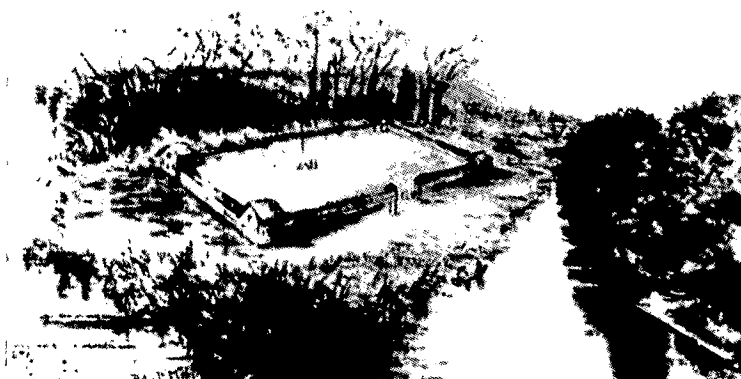
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FORT SNELLING as it looked in 1852 with Pike Island in the foreground. The large house on the hill at the left was the home of the Indian agent. This painting attributed to James McC. Boal is probably the work of Edward K. Thomas.



CANTONMENT NEW HOPE, a makeshift camp built by Colonel Leavenworth late in 1819, was situated in the swampy lowlands near Mendota. After soldiers spent a terrible winter at this site, the camp was moved to higher ground and renamed Camp Coldwater. Pencil drawing by Ada B. Morrill.

(Courtesy of Minnesota Historical Society)

PROPOSED RULES

Pursuant to Minn. Stat. § 15.0412, subd. 4, agencies must hold public hearings on proposed new rules and/or proposed amendment of existing rules. Notice of intent to hold a hearing must be published in the *State Register* at least 30 days prior to the date set for the hearing, along with the full text of the proposed new rule or amendment. The agency shall make at least one free copy of a proposed rule available to any person requesting it.

Pursuant to Minn. Stat. § 15.0412, subd. 5, when a statute, federal law or court order to adopt, suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 20 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Board of Nursing

Proposed Amendment of Rules Relating to Nursing Education Programs

A public hearing concerning the proposed repeal of 7 MCAR § 5.1070 C. and a portion of 7 MCAR §§ 5.1060 A. and 5.2050 A. will be held in Room 105, Minnesota Department of Health Building, 717 Delaware Street Southeast, Minneapolis, Minnesota, on April 16, 1980, commencing at 9:00 a.m. The proposed repeal may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed repeal you are urged to participate in the rule hearing process.

The agency's authority to repeal 7 MCAR § 5.1070 C. and portions of 7 MCAR §§ 5.1060 A. and 5.2050 A. is contained in Minn. Stat. § 148.191 (1978).

The proposed repeal of 7 MCAR § 5.1070 C. would eliminate the present requirement that a majority of faculty members in professional nursing education programs be employed full-time. The agency is proposing that 7 MCAR § 5.1070 C. be repealed and 7 MCAR § 5.1070 D. and E. be renumbered as C. and D. respectively.

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to ask questions and make comments. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or material may be submitted to George A. Beck, Hearing Examiner, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104, telephone: (612) 296-8108, either before the hearing or within five working days after the close of the hearing. The hearing examiner may, at the hearing, order that the record be kept open for a longer period not to exceed 20 calendar days. All such statements will be entered into and become part of the record. For those wishing to submit written statements or exhibits, it is requested that at least two (2) copies be furnished. In addition, it is suggested, to save time and avoid duplication, that those persons, organizations, or associations having a common viewpoint or interest in these proceedings join together where possible and present a single statement in behalf of such interests. The rule hearing procedure is governed by Minn. Stat. §§ 15.0411-15.0417, and 15.052, and by 9 MCAR §§ 2.101-2.112 (Minnesota Code of Agency Rules). If you have any questions about the procedure, call or write the hearing examiner.

Twenty-five (25) days prior to the hearing, a Statement of

Need and Reasonableness will be available for review at the agency and at the Office of Hearing Examiners. This Statement of Need and Reasonableness will include all of the evidence which the agency intends to present at the hearing to justify both the need for and the reasonableness of the proposed rule. However, additional evidence may be submitted in response to questions raised by interested persons. You are therefore urged to both review the Statement of Need and Reasonableness before the hearing and to attend the hearing. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge.

Any person may request notification of the date on which the hearing examiner'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. Any person may request notification of the date on which the hearing record has been submitted or resubmitted to the Attorney General by the agency. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the hearing examiner, in the case of the hearing examiner's report, or to the agency, in the case of the agency's submission or resubmission to the Attorney General.

Minn. Stat. ch. 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 Minn. Stat. § 10A.01, subd. 11, (Supp. 1979) 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* 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, 41 State Office Building, St. Paul, Minnesota 55155, telephone: (612) 296-5615.

February 21, 1980

Joyce M. Schowalter, R.N.
Executive Secretary

Rules as Proposed

7 MCAR § 5.1070 Composition and functions. The faculty shall formulate and implement the educational policies for the program according to the powers delegated to the faculty by the controlling body of the institution.

A. The director shall have adequate assistance in the administration of the program.

B. Members of the faculty are persons employed for instruction, guidance, research or administration.

~~C. The majority of faculty members shall be employed on a full-time basis.~~

~~C.~~ D. The faculty shall have the responsibility for development and implementation of the curriculum.

D. ~~E.~~ Nursing courses shall be the responsibility of faculty members who are registered nurses employed by the program.

[The proposed amendments to 7 MCAR §§ 5.1060 A. and 5.2050 A. would repeal two sentences in the rules which prohibit the Board of Nursing from approving a hospital's professional or practical nursing education program if the hospital's program did not exist as of July 1, 1976. The agency is proposing that the last sentences of 7 MCAR §§ 5.1060 A. and 5.2050 A. be repealed so that the rules will read as follows:]

7 MCAR § 5.1060 Controlling institution.

A. The controlling institution shall be an educational institution which the Board deems able to provide an effective program leading to graduation and eligibility for Registered Nurse licensure and which shall include universities, senior colleges, or community/junior colleges, both public and private. ~~Only those general hospitals which have existing programs as of July 1, 1976 shall constitute a controlling institution within these regulations.~~

7 MCAR § 5.2050 Controlling institution.

A. The controlling institution shall be an educational institution which the Board deems able to provide an effective Licensed Practical Nurse preparing program and which shall include but not be limited to comprehensive high schools, vocational-technical schools, community/junior colleges, senior colleges and universities, both public and private. ~~Only those general hospitals which have existing programs as of July 1, 1976 shall constitute a controlling institution within these regulations.~~

Board of Teaching

Proposed Amendments to Rule Governing the Licensure of Teachers of Special Learning Disabilities-Learning Disabled, Special Learning Disabilities-Emotionally Disturbed, Crippled Children (Physically Handicapped)

Notice of Hearing

Notice is hereby given that a public hearing will be held pursuant to Minn. Stat. § 15.0412 subd. 4 (1978), in the above entitled matter in the Capitol Square Building, Conference Room 716 A&B, 550 Cedar Street, St. Paul, Minnesota 55101, on Saturday, April 19, 1980, commencing at 9:00 a.m. and continuing until all representatives of associations or other interested persons have had an opportunity to be heard concerning the adoption, amendment, or repeal of the proposed rules captioned above by submitting either oral or written data, statements, or arguments. Written material may be submitted without appearing at the hearing and may be submitted and recorded in the hearing record for five (5) days after the public hearing ends or for a longer period not to exceed twenty (20) calendar days if ordered by the hearing examiner at the hearing. Written materials should be mailed to:

Harry Seymour Crump
Office of Hearing Examiners
1745 University Avenue
St. Paul, Minnesota 55104
(612) 296-8111

The board proposes to adopt, amend, or repeal a rule governing the licensure of teachers of special learning disabilities-learning disabled, special learning disabilities-emotionally disturbed, crippled children (physically handicapped). The authority of the board to promulgate the proposed rule is found in Minn. Stat. §§ 125.05 subd. 1 and 125.185 subd. 4. A copy of the proposed rule is attached hereto.

Notice is hereby given that twenty-five (25) days prior to the hearing, a statement of need and reasonableness will be available for review at the Office of the Board of Teaching and at the Office of Hearing Examiners. This statement of need and reasonableness will include a summary of all of the evidence which will be presented by the Board of Teaching at the hearing justifying both the need for and the reasonableness of the pro-

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language. **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."

PROPOSED RULES

posed rule. Copies of the statement of need and reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge at this address: Office of Hearing Examiners, 1745 University Avenue, St. Paul, Minnesota 55104.

Minn. Stat. § 10A.01, subd. 11 (Supp. 1979), 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* 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.

“Lobbyist” does not include any:

(a) Public official or employee of the state or any of its political subdivisions or public bodies acting in his official capacity;

(b) Party or his representative appearing in a proceeding before a state board, commission or agency of the executive branch unless the board, commission or agency is taking administrative action;

(c) Individual while engaged in selling goods or services to be paid for by public funds;

(d) News media or their employees or agents while engaged in the publishing or broadcasting of news items, editorial comments or paid advertisements which directly or indirectly urge official action;

(e) Paid expert witness whose testimony is requested by the body before which he is appearing, but only to the extent of preparing or delivering testimony; or

(f) Stockholder of a family farm corporation as defined in § 500.24, subd. 1, who does not spend over \$250, excluding *his own* travel expenses, in any year in communicating with public officials; or

(g) Party or his representative appearing to present a claim to the legislature and communicating to legislators only by the filing of a claim form and supporting documents and by appearing at public hearings on the claim.

Pursuant to Minn. Stat. § 10A.03 (1978), lobbyists must register with the State Ethical Practices Board as a lobbyist within five (5) days of the commencement of such activities by the individual.

Any questions regarding lobbying should be directed to the State Ethical Practices Board, Room 41, State Office Building, Wabasha Street, St. Paul, Minnesota 55155, (612) 296-5615.

Public comment will be accepted after presentation of the

proposed rule. Copies of the proposed rule are now available and may be obtained by writing to:

Minnesota Board of Teaching
608 Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101

Additional copies of the proposed rule will be available at the door on the date of the hearing.

Notice is hereby given that any person may request notification of the date on which the report of the hearing examiner will be available, after which date the Board of Teaching may not take any final action on the rule for a period of five (5) working days. Any person may request notification of the date on which the hearing record has been submitted or resubmitted to the Attorney General by the Board of Teaching. 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 hearing examiner in the case of the report of the hearing examiner, or to the Board of Teaching in the case of the Board of Teaching submission or resubmission to the Attorney General.

February 13, 1980

Kenneth L. Peatross, Executive Secretary
Minnesota Board of Teaching

Rule as Proposed

5 MCAR § 3.090 Special classes, handicapped children.

E. Crippled children.

1. Regular license. Completion of requirements under 1.a. or ~~2.1.b.~~ will qualify an applicant for a license.

~~1.a.~~ Graduation from an accredited college or university on completion of a four-year course with a major in elementary or secondary education and an approved minor in the field of teaching crippled children. Practice teaching in a class for crippled children will be required.

~~2.b.~~ The qualifications for a teacher's license valid for the elementary or secondary schools and an approved minor or ~~its equivalent~~ the equivalent in the teaching of crippled children and two years of successful teaching experience.

2. Provisional license. Completion of requirements under 2.a. and 2.b. will qualify an applicant for a provisional license.

a. Possession of a valid elementary or secondary school classroom teaching license; and,

b. Completion of 15 quarter hours of course work or the equivalent in a program approved by the Minnesota Board of Teaching for teaching crippled children.

3. The provisional license will be valid for two years after which full licensure as specified under 1., above, will be required.

4. Provisions E.2., E.3., and E.4. of this rule shall remain in effect until July 1, 1985, at which time these provi-

sions shall be repealed without further action by the Board of Teaching.

G. Special learning disabilities (S.L.D.) licenses indicating qualification to serve in the S.L.D. area are differentiated as S.L.D. (emotionally disturbed and socially maladjusted) or S.L.D. (learning disabled). The following are the requirements for licensure in these two areas—S.L.D. (emotionally disturbed and socially maladjusted) and S.L.D. (learning disabled).

1. Minimum requirements for licensure, valid for two years:

a. Possession of a valid elementary or secondary school classroom teaching license.

b. Completion of a college training program approved by the state department of education Board of Teaching with appropriate emphasis in emotionally disturbed and socially maladjusted or learning disabled, involving no less than 30 quarter credits in the area.

2. Renewal. Renewal of the S.L.D. (emotionally disturbed and socially maladjusted) and S.L.D. (learning disabled) licenses ~~are~~ is contingent upon the completion of a minimum of one year of successful teaching in an S.L.D. program while holding a valid S.L.D. license § 3.090 G.1.

3. Provisional license. Completion of requirements under 3.a. and 3.b. will qualify an applicant for a provisional license in S.L.D. (emotionally disturbed and socially maladjusted) or S.L.D. (learning disabled).

a. Possession of a valid elementary or secondary school classroom teaching license; and,

b. Completion of 15 quarter hours of course work or the equivalent in a program approved by the Minnesota Board of Teaching in S.L.D. (emotionally disturbed and socially maladjusted) or S.L.D. (learning disabled).

4. The provisional license will be valid for two years after which full licensure as specified under 1., above, will be required.

5. Provisions G.3., G.4., and G.5. of this rule shall remain in effect until July 1, 1985, at which time these provisions shall be repealed without further action by the Board of Teaching.

Department of Transportation

Proposed Rules Establishing a Program of State Grants for the Development of Local Bicycle Trails (Bikeways)

Notice of Hearing

Notice is hereby given that a public hearing in the above entitled matter will be held pursuant to Minn. Stat. § 15.0412, subd. 4 (1978) in Conference Room "D", Veterans Service Building, 20 West 12th Street and Columbus Avenue, Saint Paul, Minnesota on April 22, 1980 at 10:00 a.m.

All interested or affected persons will have an opportunity to participate concerning the adoption of the proposed rules relating to rules establishing a program of state grants for the development of local bicycle trails (bikeways). Statements may be made orally and written material may be submitted at the hearing. In addition, whether or not an appearance is made at the hearing, written statements or material may be submitted by mail to Harry S. Crump, Hearing Examiner, Office of Hearing Examiners, at Room 300, 1745 University Avenue, Saint Paul, Minnesota 55104, telephone (612) 296-8111, either before the hearing or within five (5) working days after the close of the hearing. If so ordered by the hearing examiner, the hearing record may remain open and such materials may be submitted for a period longer than five (5) working days but not exceeding twenty (20) calendar days after the close of the hearing. All such statements and materials will be entered into and become a part of the record for this proceeding. The rule hearing procedure is governed by Minn. Stat. §§ 15.0411 to 15.0412 and § 15.052; as well as by 9 MCAR §§ 2.101 to 2.112 (*Minnesota Code of Agency Rules*). If you have any questions about the procedure, call or write the hearing examiner.

Notice is hereby given that twenty-five (25) days prior to the hearing a Statement of Need and Reasonableness will be available for review at the Department of Transportation address given immediately below and at the Office of Hearing Examiners. This Statement of Need and Reasonableness will include a summary of all of the evidence which will be presented by the department at the hearing justifying both the need for and the reasonableness of the proposed rule/rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge. The statutory authority of the Department of Transportation to adopt and promulgate these rules is provided in Minn. Stat. § 160.265.

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. **Strike-outs** indicate deletions from proposed rule language. **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."

PROPOSED RULES

(1978) and Laws of 1977, ch. 421, § 14, subd. 3. The proposed rules, if adopted, would: establish working definitions for terms found within the rules; set down procedures to establish eligibility and priority for a project grant; set forth the financial support commitment required of the local unit of government; set forth other uniform conditions to be met under all project grants; provide procedures under which grant monies would be distributed and accounted for; provide that facilities developed would be held for public transportation uses. A copy of the proposed rules is attached. Additional copies of the proposed rules are now available and one free copy may be obtained by writing to: Lawrence E. Foote, Manager, Planning Development and Bikeways Section, Technical Services Division, Minnesota Department of Transportation, Room 807, Transportation Building, Saint Paul, Minnesota 55155. The rules will be available at the door on the date of the hearing.

The proposed rules are subject to change as a result of the rule hearing process. The Department of Transportation therefore strongly urges those who are potentially affected by these proposed rules to participate in the rule hearing process.

Any person may request notification of the date on which the hearing examiner's report will be available, after which date the Department of Transportation may not take any final action on the rules for a period of five (5) working days. Any person may request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the Department of Transportation. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the hearing examiner (in the case of the hearing examiner's report) or to the department (in the case of the department's submission or resubmission to the Attorney General).

The department expects that 25 to 50 persons may attend the hearing and it estimates that one to two hours will be necessary for the department to present its evidence at the hearing.

It is not anticipated that adoption of the proposed rules will result in the expenditure of public monies by local bodies of government to implement the rule for the two years immediately following its adoption within the meaning of Minn. Stat. § 15.0412, subd. 7 (1978).

In addition, please be advised that Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he or she commences lobbying. Minn. Stat. ch. 10A provides that an individual appearing at a rules hearing is a lobbyist if he or she is:

(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 \$250.00, not including *his or her 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 \$250.00, not including *his or her own* 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:

"Communicating with public officials" includes, but is not limited to, testifying at rulemaking hearings where the public officials' decisions will be based on the hearing record.

The following individuals are not lobbyists even if they meet the above criteria:

(a) Public official or employee of the state or any of its political subdivisions or public bodies acting in his official capacity;

(b) Party or his representative appearing in a proceeding before a state board, commission or agency of the executive branch unless the board, commission or agency is taking administrative action;

(c) Individuals while engaged in selling goods or services to be paid for by public funds;

(d) News media or their employees or agents while engaged in the publishing or broadcasting of news items, comments or paid advertisements which directly or indirectly urge official action;

(e) Paid expert witness whose testimony is requested by the body before which he is appearing, but only to the extent of preparing or delivering testimony; or

(f) Stockholder of a family farm corporation as defined in Minn. Stat. § 500.24, subd. 1, who does not spend over \$250, excluding *his own* travel expenses, in any year in communicating with public officials.

An individual who falls within the lobbyist definition shall register with the Ethical Practices Board within five days of becoming a lobbyist.

Lobbyist registration forms may be obtained by writing the Ethical Practices Board, 41 State Office Building, Saint Paul, Minnesota 55155, or telephoning (612) 296-5615. Please contact the board if you have any questions concerning lobbying registration and reporting requirements.

March 5, 1980

Richard P. Braun, Commissioner
Department of Transportation

Rules as Proposed (all new material)

14 MCAR § 1.5041 Rules establishing a program of state grants for the development of local bicycle trails (bikeways).

A. Purpose. The purpose of these rules is to carry out the mandate of the legislature and to implement that mandate as set forth in Minn. Stat. § 160.265 (1978) and Laws of 1977, ch. 421, § 14, subd. 3.

B. Scope. The scope of these rules is intended to be confined within the framework of and consistent with Laws of 1977, ch. 421.

C. Definitions. For purposes of these rules, the following terms shall have the meaning here given them.

1. Commissioner. The Commissioner of Transportation.

2. Department. Unless stated otherwise, "department" means the Minnesota Department of Transportation.

3. Bikeway. A bicycle travel corridor structure so designed, constructed and maintained that a bicycle may be safely operated thereon.

4. Bicycle. "Bicycle" means every device propelled solely by human power upon which a person or persons may ride, except scooters and similar devices and including any device generally recognized as a bicycle though equipped with two front or rear wheels.

5. Agency. "Agency" means any unit of government as defined in Minn. Stat. § 4.36 (c) 1978.

6. Construction. The physical development of a facility suitable for use as a bikeway.

7. Reconstruction. The physical redevelopment of an existing facility so as to make it suitable for use as a bikeway.

8. Matching funds. Those funds required by law to be supplied by the grant requesting agency.

D. Grant project eligibility.

1. The grant project requests shall be made on application forms prescribed by the department.

2. No project, the construction of which at the time of grant application has commenced or for which a construction contract has at the time of application been let, shall be eligible for a grant under this program.

3. There shall be an agreement by the agency to accept maintenance and operational costs of the bikeway.

4. No grant project located on trunk highway rights-of-way will be eligible.

5. In addition to bikeway structure construction and/or reconstruction, bicycle safety improvement work, shelters, storage facilities and signs may be eligible for grant funding.

6. Project work may be carried out by award of a contract in accord with all applicable laws to the lowest responsible bidder (contract work) or by the applying agency itself (force account work) when the applying agency can demonstrate that such work procedure (force account) is in the best interests of the public, not contrary to any applicable law or ordinance and that there is established an acceptable accounting procedure so as the project costs may be audited.

7. The agency shall by resolution agree to all terms and conditions specified in the grant approval notification by the commissioner, consistent with Laws of 1977, ch. 421.

E. Establishment of priority.

1. The commissioner using information furnished by the agency from the grant application document, departmental information systems, and other consultation groups as may be required by law, shall assign a priority to each project application based on need for the project as compared to the other project applications.

2. In the metropolitan area defined in Minn. Stat. § 473.121, subd. 2 (1978), the program shall be developed in accordance with plans and priorities jointly agreed upon between the Metropolitan Council and the department.

F. Local units of government-matching funds. The applying agency must supply at least 25 percent of the total construction costs of a grant project.

1. The value or cost of existing rights-of-way may not be used as matching funds.

2. The value or cost of any and all pre-construction work may not be used as matching funds.

G. Grant conditions. If the commissioner determines that a grant application is eligible for funding, before any funds are made available to the applicant agency, the following conditions shall be met:

1. A resolution shall be passed by the agency agreeing to the acceptance of the grant in accord with the department's requirements.

2. A guarantee shall be made by the agency that matching funds are available and will continue to be available for its share of the cost of the project until the project is completed.

3. The agency shall agree to continue operation and maintenance of the project after its completion for the benefit of the public.

H. Distribution of grants. Grants shall be distributed by priority until the bikeway funds are depleted. To those requesting agencies for whom final applications have been approved the department will submit a project agreement to be executed between the agency and the department. Upon completion of the executed project agreement, 90% of the state's share of the funds will be released to the requesting agency. The remaining 10% of the state share will be released to the requesting agency after inspection and final approval by the state of the completed project.

I. Accounting. The agency shall maintain a separate accounting of the project costs and shall submit documentation as required by the department to verify the costs and compliance with the project agreement and other requirements.

J. Retention and use of project. Facilities developed by bikeway grants shall be retained for public transportation use.

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PROPOSED RULES

K. Any agreement, obligation or contract entered into pursuant to this rule shall remain in full force and effect, notwithstanding expiration of this rule.

Department of Transportation

Proposed Amendments to Rules for State-Aid Operations under Minn. Stat. chs. 161 and 162, (1978)

Notice of Hearing

Notice is hereby given that a public hearing in the above entitled matter will be held pursuant to Minn. Stat. § 15.0412, subd. 4 (1978) in Room 81, State Office Building, 435 Park Street (Between Aurora and Fuller), Saint Paul, Minnesota on April 17, 1980 at 10:00 a.m.

All interested or affected persons will have an opportunity to participate concerning the adoption of proposed amended rules relating to state-aid operations under Minn. Stat. chs. 161 and 162, (1978) as amended. Statements may be made orally and written material may be submitted at the hearing. In addition, whether or not an appearance is made at the hearing, written statements or material may be submitted by mail to George Deretich, Hearing Examiner, Office of Hearing Examiners, at Room 300, 1745 University Avenue, Saint Paul, Minnesota 55104, telephone (612) 296-8116, either before the hearing or within five (5) working days after the close of the hearing. If so ordered by the hearing examiner, the hearing record may remain open and such materials may be submitted for a period longer than five (5) working days but not exceeding twenty (20) calendar days after the close of the hearing. All such statements and materials will be entered into and become a part of the record for this proceeding. The rule hearing procedure is governed by Minn. Stat. §§ 15.0411 to 15.0412 and § 15.052; as well as by 9 MCAR §§ 2.101 to 2.112 (*Minnesota Code of Agency Rules*). If you have any questions about the procedure, call or write the hearing examiner.

Notice is hereby given that twenty-five (25) days prior to the hearing a Statement of Need and Reasonableness will be available for review at the Department of Transportation address given immediately below and at the Office of Hearing Examiners. This Statement of Need and Reasonableness will include a summary of all of the evidence which will be presented by the department at the hearing justifying both the need for and the reasonableness of the proposed rule/rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge. The statutory authority of the Department of Transportation to adopt and promulgate these rules is provided in Minn. Stat. chs. 161 and 162 (1978 and 1979 Supp.). The proposed amended rules, if adopted, would:

(1) Provide new working definitions for state-aid engineer and district engineer;

(2) Establish a committee and the means to investigate and make recommendations to the Commissioner of Transportation on requests for variances from the rules;

(3) Increase the Municipal State-Aid Street (MSAS) system from 2,000 miles to 2,500 miles in urban municipalities;

(4) Provide and allow, for MSAS mileage purposes, that 28 foot undivided one-way streets with no parking lanes would be chargeable at one-half of the total length;

(5) Change the language requiring County State-Aid Highway (CSAH) and MSAS systems to be permissively (may) approved by the Commissioner of Transportation, rather than mandatorily (shall) approved;

(6) No longer specify that CSAH and MSAS systems need only meet the criteria and requirements of these rules in order to be so designated;

(7) Correct the citation in the *Minnesota Code of Agency Rules (MCAR)* pertaining to the local road research account;

(8) Renumber certain provisions;

(9) Correct citations to Minnesota Statutes;

(10) Abolish and substitute new (renumbered) language setting forth an administrative process which would require a public hearing to transfer advances (monies) from the county municipal account to the county regular account;

(11) Reduce the span length from 20 to 10 feet used to define town bridges where replacement or reconstruction is considered and increase payment for such town bridges from fifty to ninety percent;

(12) Provide new geometric design standards, clearance standards, and other roadway standards for CSAH and MSAS systems;

(13) Provide new language pertaining to preparation, review, and approval of plans.

A copy of the proposed rules is attached. Additional copies of the proposed rules are now available and one free copy may be obtained by writing to: Gordon M. Fay, State-Aid Engineer, Room 420, Transportation Building, Saint Paul, Minnesota 55155. The rules will be available at the door on the date of the hearing.

The proposed rules are subject to change as a result of the rule hearing process. The Department of Transportation therefore strongly urges those who are potentially affected by these proposed rules to participate in the rule hearing process.

Any person may request notification of the date on which the hearing examiner's report will be available, after which date the Department of Transportation may not take any final action on the rules for a period of five (5) working days. Any person may request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the Department of Transportation. If you desire to be so notified,

you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the hearing examiner (in the case of the hearing examiner's report) or to the department (in the case of the department's submission or resubmission to the Attorney General).

The department expects that fifty to one hundred persons may attend the hearing and it estimates that one to two hours will be necessary for the department to present its evidence at the hearing.

It is not anticipated that adoption of the proposed rules will result in the expenditure of public monies by local bodies of government to implement the rule for the two years immediately following its adoption within the meaning of Minn. Stat. § 15.0412, subd. 7 (1978).

In addition, please be advised that Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he or she commences lobbying. Minn. Stat. ch. 10A provides that an individual appearing at a rules hearing is a lobbyist if he or she is:

(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 \$250.00, not including *his or her 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 \$250.00, not including *his or her own* 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;

"Communicating with public officials" includes, but is not limited to, testifying at rulemaking hearings where the public officials' decisions will be based on the hearing record.

The following individuals are not lobbyists even if they meet the above criteria:

(a) Public officials or employees of the state or any of its political subdivisions or public bodies acting in his official capacity;

(b) Party or his representative appearing in a proceeding before a state board, commission or agency of the executive branch unless the board, commission or agency is taking administrative action;

(c) Individuals while engaged in selling goods or services to be paid for by public funds;

(d) News media or their employees or agents while engaged in the publishing or broadcasting of news items, comments or

paid advertisements which directly or indirectly urge official action;

(e) Paid expert witness whose testimony is requested by the body before which he is appearing, but only to the extent of preparing or delivering testimony; or

(f) Stockholder of a family farm corporation as defined in § 500.24, subd. 1, who does not spend over \$250.00, excluding *his own* travel expenses, in any year in communicating with public officials.

An individual who falls within the lobbyist definition shall register with the Ethical Practices Board within five days of becoming a lobbyist.

Lobbyist registration forms may be obtained by writing the Ethical Practices Board, 41 State Office Building, Saint Paul, Minnesota 55155, or telephoning (612) 296-5615. Please contact the board if you have any questions concerning lobbying registration and reporting requirements.

March 5, 1980

Richard P. Braun, Commissioner
Department of Transportation

Amendments as Proposed

14 MCAR § 1.5032 Rules for state-aid operations under ~~Minn. Minnesota Stat. Statutes 1974 1978~~, ch. Chapters 161 and 162, as amended.

A. Purpose. The purpose of 14 MCAR § 1.5032 is to carry out the mandate of the legislature and to effectuate that mandate as set forth in Minn. Stat. ~~1974~~, ch. 162, (1978) as amended.

B. Scope. The scope of 14 MCAR § 1.5032 is confined within the framework of and consistent with Minn. Stat. ~~1974~~ chs. 161 and 162, (1978) as amended.

C. Definitions. For purposes of 14 MCAR § 1.5032 the following terms shall mean:

1. Commissioner. The Commissioner of Transportation.

2. State-Aid Engineer. A registered engineer employed as the state-aid engineer of the Minnesota Department of Transportation.

3. District Engineer. A district engineer of the Minnesota Department of Transportation or a registered engineer employed as his state-aid assistant.

4. County Engineer. A registered engineer employed as the county engineer or the director of public works-county engineer of each county.

5. City Engineer. A registered engineer employed as the city engineer or the director of public works-city engineer of each urban municipality.

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike-outs~~ indicate deletions from proposed rule language. **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."

PROPOSED RULES

6. Needs Report. A report of the estimated construction cost required to improve a state-aid system to standards adequate for future traffic on a uniform basis.

7. County-Municipal Account. A separate record of that portion of the county state-aid highway funds allocated for expenditure solely within cities, having less than 5,000 population.

8. Urban Municipality. Any city, having 5,000 or more population, determined in accordance with the provisions of law.

9. Local Highway or Street Departments. The highway or appropriate department of each county and each urban municipality.

10. Township Allotment. The county apportionment of county state-aid highway funds for use in the construction of township roads.

11. Advance Encumbrance. The authorized expenditure of local funds, in lieu of state-aid funds, by a county or urban municipality for use on an approved state-aid project. By agreement with the commissioner, the local funds will be repaid to the county or urban municipality from future county or municipal state-aid allotments or from future county or municipal turnback funds.

12. Screening Committee. The county or municipal committee, appointed in accordance with law, and authorized to recommend to the commissioner the mileage and money needs for each of their state-aid systems.

13. Disaster Account. The accounts provided by law for use in aiding a county or urban municipality that has suffered a serious damage to its county state-aid highway system or municipal state-aid street system from fire, flood, tornado or other uncontrollable forces of such proportion that the cost of repairs to such county state-aid highway system or municipal state-aid street system is beyond the normal resources of the county or urban municipality.

14. Trunk Highway Turnback. A former trunk highway or portion thereof that has reverted to a county or municipality in accordance with law.

15. Turnback Accounts. The respective accounts provided by law for payment to the county for the restoration or urban municipality for the reconstruction and improvement of former trunk highways that have reverted to the county or municipality and have become part of the state-aid system.

16. Disaster Committee. A committee, appointed in accordance with the law, to investigate and report its findings and recommendations to the commissioner as to a county's or urban municipality's claim of a disaster or unforeseen event affecting its county state-aid highway or municipal state-aid street system and resulting in a financial hardship.

17. Local Road Research Board. A board appointed in accordance with these rules to recommend specific research projects to the commissioner.

18. Town Bridge Needs. The estimated construction

costs required to improve or replace town bridges to standards adequate for future traffic on a uniform basis.

19. Town Bridge Account. The apportionment of county state-aid turnback funds for use in the construction or reconstruction of bridges on township roads.

20. Functional Classification Plan. A plan by which highways and streets are grouped into classes according to the character of service they are intended to provide.

21. Variance Committee. A committee appointed in accordance with these rules to investigate and make recommendations to the commissioner on requests for variances from these rules.

D. Organization and powers of local highway departments. Each county and each urban municipality shall establish and maintain a highway or street department. Such departments shall be adequately organized, staffed, and equipped to administer for the county or urban municipality all matters relating to the operations of the state-aid program and to exercise all functions, incidental thereto, in accordance with law. All preparation of plans and specifications, and the supervision of construction and maintenance shall be under the control and direction of a professional engineer, registered in the State of Minnesota and employed or retained for that purpose.

E. Selection and designation of state-aid systems. The state-aid highways and streets designated to form the basis for a long range improvement program shall, in general, be so selected as to form an integrated network of highways and streets in accordance with the following provisions:

1. Systems.

a. Final selection of routes to be included in the respective county state-aid and municipal state-aid systems shall be subject to the approval of the commissioner.

b. The highway and street systems to be selected and designated in accordance with law are:

(1) County state-aid highway system not exceeding 30,000 miles in extent, excluding trunk highway turnback mileage.

(2) Municipal state-aid street system not exceeding ~~2,000~~ 2500 miles in extent within urban municipalities, excluding trunk highway turnback mileage.

(a.) On 28' undivided one-way streets with no parking lanes, the chargeable mileage allowed for municipal state aid street mileage purposes shall be one-half of the length of the one-way street.

2. Criteria. State-aid routes shall be selected on the basis of the following criteria:

a. County state-aid highways which:

(1) Carry relatively heavier traffic volumes or are functional classified as collector or arterial as identified on the county's functional plans as approved by the county board;

(2) And connect towns, communities, shipping points, and markets within a county or in adjacent counties;

(a) Or provide access to rural churches, schools, community meeting halls, industrial areas, state institutions, and recreational areas;

(b) Or serve as principal rural mail routes and school bus routes;

(3) And occur at reasonable intervals consistent with the density of population;

(4) And provide an integrated and coordinated highway system, affording within practical limits a state-aid highway network consistent with traffic demands.

b. Municipal state-aid streets which:

(1) Carry relatively heavier traffic volumes or are functionally classified as collector or arterial as identified on the urban municipality's functional plan as approved by the urban municipality's governing body;

(2) And connect the points of major traffic interest within an urban municipality;

(3) And provide an integrated street system affording within practical limits a state-aid street network consistent with traffic demands.

3. Route designations. All county state-aid highways and municipal state-aid streets shall be selected by resolution of the respective boards of county commissioners, or the respective governing bodies of urban municipalities. The highway or street designations, as contained in the resolution, shall be reviewed by the district engineer of that area and his recommendation shall be filed with the commissioner. Within three months after receipt by the commissioner of each such resolution and recommendation he shall may approve all or such part of said highway or street designations contained in the resolution, as complies with the criteria and other requirements ~~set out in these rules~~. The commissioner shall certify to the respective boards of county commissioners or governing bodies of urban municipalities the approved portion of their resolution. All highways or streets so approved shall become a part of the county state-aid highway system or the municipal state-aid street system, subject to such additions or revisions as may be, from time to time, requested and approved.

a. Turnback designations. Prior to release of a former trunk highway to the jurisdiction of a county or urban municipality, the commissioner shall notify the board of county commissioners or the governing body of the urban municipality, through its county or city engineer, which portions of the turnback are eligible for designation as part of its state-aid system. Upon a request for the designation of such eligible portions from the board of county commissioners or the governing body of the urban municipality, the commissioner shall issue the official order for designation and notify the county or municipal screening committee of this action.

F. State-aid apportionments. All state-aid apportionments shall be made from the county state-aid highway fund and the municipal state-aid street fund as provided by law. Apportionments to the respective counties and urban municipalities shall be released in accordance with 14 MCAR § 1.5032 G.

1. Money needs.

a. Construction costs estimates. To provide data to implement the formulas for state-aid apportionment, each county engineer and city engineer shall prepare cost estimates of construction required to improve his county state-aid or municipal state-aid system to approved standards.

b. Incidental costs. In addition to the direct construction or maintenance costs permitted under law, the cost of the following incidental items will be considered as eligible for inclusion in the total estimate of needs:

(1) County state-aid highways:

(a) Automatic traffic control signals.

(b) Lighting of intersections and bridges within approved standards.

(c) Proportionate share of all drainage costs within municipalities, to reflect the responsibility of the state-aid highway.

(2) Municipal state-aid streets:

(a) Right-of-Way.

(b) Automatic traffic control signals.

(c) Lighting of intersections and bridges within approved standards.

(d) Proportionate share of all drainage costs, to reflect the responsibility of the state-aid street.

c. Deductible Items. The respective screening committees shall consider reports from the commissioner, consisting of, but not limited to, the county state-aid allotments to townships, or the municipal state-aid payments on state trunk highways or county state-aid highways, covering all said allotments or payments made during the preceding year; and shall recommend to the commissioner the amount of deductions to be made in the money needs for each such county or municipality, in order to equalize their status with other counties or municipalities not making similar expenditures.

2. Screening committees.

a. Annual reports. A detailed report of the state-aid mileage and cost estimates shall be tabulated and referred to the respective screening committees appointed pursuant to law. These committees shall investigate and review all such mileage, cost estimates and the reports of those expenditures listed under deductible items, and shall, on or before the first day of Novem-

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PROPOSED RULES

ber of each year, submit their findings and recommendations in writing as to the mileage and adjusted money needs for each of the governmental subdivisions represented by the respective committees.

b. Local road research account. Within the limitations provided by law, the respective screening committees shall annually determine, and recommend, the amount the commissioner shall set aside from the county state-aid highway fund or the municipal state-aid street fund, for the purpose of local road research. These funds, along with such federal funds as may be provided, shall be used for conducting research as provided by law. The use and proportionate share of such county and municipal funds shall be as specifically authorized in the project approval as provided for in 14 MCAR § 1.5032 L., ~~5., e., (2).~~ 3., b.

3. Compilation of data by commissioner. The commissioner shall determine the apportionment percentage due each county and urban municipality in accordance with the formulas established by law.

4. Notice of annual apportionment. Not later than January 25 of each year, the commissioner shall certify the annual apportionment to each respective county or urban municipality.

G. State-aid payments. Annual apportionments to the respective counties and to urban municipalities shall be released in the following manner:

1. Maintenance apportionments. As soon as the annual county and urban municipal state-aid allotments have been determined, the commissioner shall apportion and set aside the following amounts:

a. County-regular account. Forty percent of the regular county state-aid allotment for the general maintenance of county state-aid highways.

b. County-municipal account. Forty percent of the county-municipal account allotment for the maintenance of county-state-aid highways within municipalities of less than 5,000 population.

c. Revisions of county maintenance apportionments. The commissioner may, upon recommendation of the screening committee or upon receipt of a resolution from a county board, and for good cause shown, increase or decrease the proportion to be used for maintenance under either 14 MCAR § 1.5032 G., 1., a. and/or b. above.

d. Urban account. Twenty-five percent of the total allocation, or \$1,500.00 per mile of improved municipal state-aid streets, whichever is the least, as the minimum allotment for the general maintenance of the approved state-aid system. The commissioner may modify the minimum payment to the extent necessary to accommodate the screening committee resolutions pertaining to trunk highway turnback maintenance allowances. Those municipalities desiring to receive an amount greater than the established minimum shall file a request not later than December 15 preceding the annual allocation and shall agree to file a detailed annual maintenance expenditure report at the end of the year.

e. Transfer of unexpended balance. Any unobligated balance remaining in the state-aid maintenance account to the credit of any county or urban municipality, after final settlement has been made for the annual maintenance expenditures, shall be automatically transferred to the construction account of said county or municipality.

f. Payment schedule. At the earliest practical date, after the allotments have been determined, the commissioner shall release the following amounts to the respective counties and urban municipalities:

(1) Fifty percent of the maintenance allotment from the regular account of each county.

(2) Fifty percent of the maintenance allotment from the municipal account of each county that has filed a request for advance payments prior to the annual apportionment in January of each year. Such request shall include the estimate of the maintenance expenditures anticipated within said account during the calendar year.

(3) Fifty percent of the maintenance allotment to each urban municipality.

g. On or about July 1 of each year, the commissioner shall release an additional advance from the respective maintenance accounts listed above, in an amount not to exceed forty percent of the total maintenance allocations. The commissioner shall retain the remaining amounts within said allocations pending determination of the final amount due, based upon a report of actual maintenance expenditures and receipt of the district engineer's certification of acceptable maintenance performance. Urban municipalities receiving the minimum maintenance allotment as outlined in 14 MCAR § 1.5032 G., 1., d. above will be eligible to receive the balance remaining in their maintenance account upon the commissioner's receipt of the district engineer's certification of acceptable maintenance.

2. Construction apportionments. The construction portion of the annual allocation to each county and urban municipality shall be credited to their respective accounts and retained by the commissioner for payment on approved projects in accordance with the following procedure:

a. State-aid contracts. The commissioner, upon receipt of an abstract of bids and a certification as to the execution of a contract and bond therein, shall promptly release from the funds available to said county or urban municipality up to ninety percent of the state-aid portion of said contract. The commissioner, unless otherwise requested, shall retain the remaining percentage of the state-aid share of said contract, provided funds are available therefor, until the final cost is determined and the project accepted by the district engineer.

b. Federal-aid contracts. The commissioner, under authority of an agency agreement with the governing body of a county or urban municipality, and acting as its agent in federal-aid operations, will release from state-aid funds available therefor, ninety percent of the county's or urban municipality's share of the entire contract obligation for immediate redeposit in an agency account, to be used in paying the county's or urban

municipality's share of the partial estimates and for advancing the federal share of such estimate payments. The commissioner shall retain the remaining percentage of the contract cost of said project until the final cost is determined and the project accepted by the district engineer. Where other than state-aid funds are to be used for depositing in the agency account, one hundred percent of the local governmental share of said contract amounts shall be deposited in the agency account prior to award of the contract.

c. Force account agreements. Partial estimates will be accepted on all projects approved for construction by local forces, using the agreed unit prices for determining the value of the completed work. The commissioner shall promptly release from funds available therefor ninety percent of the cost of current accomplishments as reported by said partial estimates. Upon request of the county or urban municipality, the commissioner will set aside and retain their state-aid funds in an amount equal to the agreed total cost of the entire project to ensure final settlement of the completed construction when final estimate is submitted and upon acceptance by the district engineer.

d. Payment limitations. Approval of state-aid projects by the commissioner does not imply that state-aid payments will be made in excess of the construction funds available from current state-aid allotments. Any county or urban municipality having depleted their currently available funds during the calendar year will not be eligible for reimbursement from future allotments unless request for advance encumbrance has been approved or a project is completed in a subsequent year and funds are available.

e. Engineering costs.

(1) Preliminary engineering. Requests for reimbursement of preliminary engineering costs shall be submitted with the report of state-aid contract or with the initial partial estimate on an approved force account project. The commissioner shall upon receipt of such request supplemented by such documentation as may be requested by the commissioner authorize the reimbursement for actual engineering costs, not to exceed eight percent of the total estimated contract or agreement amount.

(2) Construction engineering. Requests for payment of construction engineering costs shall be submitted along with the final estimate report. The commissioner shall upon receipt of such request, authorize a construction engineering payment which will either be limited to five percent of the eligible construction costs where there are no unusual traffic or construction problems, or which may at the commissioner's discretion be paid in the maximum amount of ten percent of said construction costs on complex projects involving difficult construction features or the continuous movement of dense traffic.

f. Right-of-Way. State-aid payments for right-of-

way costs on approved projects shall be limited to ninety percent of the approved claim until the acquisition of all right-of-way required for the project is actually completed and the final costs established.

g. Advances from county funds. When the commissioner approves a request from the county board for the construction of an approved county state-aid project, which requires county state-aid highway funds in excess of the available allotment and which excess costs will be initially paid for from other local sources, then and in that event, the commissioner will, to the extent authorized by law, repay those locally financed expenditures out of subsequent construction apportionments to the county's state-aid accounts in accordance with the terms and conditions specified in the approved request.

h. Advance of county state-aid highway funds.

~~(1) Advance of county regular account funds to county municipal account fund. Where the commissioner approves a request from the county board for the advance of county regular account funds for use on a municipal section of an approved county state-aid highway project, and where repayments to the county regular account fund are to be made from subsequent accruals to the county municipal account fund, such repayments will be made by the commissioner, to the extent authorized by law, in the form of transfers from the county municipal account fund to the county regular account fund, in the amounts and at the time specified in the authorization.~~

~~(2) Advance of County Municipal Account Funds to County Regular Account Fund. The commissioner may approve a request from a county board for the advance of County Municipal Account funds for use on an approved County State Aid highway project provided that notification pursuant to law has been given those municipalities within the county having a population less than 5,000. Advances from the county municipal account fund to the county regular account fund must be repaid to the county municipal account fund from monies accruing to the county regular account fund within a maximum of five years unless the terms and conditions of repayment are otherwise agreed by the county and the governing bodies of those cities within the county having a population of less than 5,000. Repayments will be made by the commissioner to the extent authorized by law, in the form of transfers from the county regular account fund to the county municipal account fund, in the amounts and at the time specified in the agreement.~~

i. Advances from urban municipal funds. When the commissioner approves a request from the governing body of an eligible urban municipality for the construction of an approved municipal state-aid street project, which requires funds in excess of the available allotment and which excess costs will be initially paid from other local sources, then and in that event, the commissioner will, to the extent authorized by law, repay these

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locally financed expenditures out of subsequent construction apportionments to the urban municipal account of that municipality in accordance with the terms and conditions specified in the approved request.

j. County or municipal bond account. Any county or urban municipality that resolves to issue bonds payable from the appropriate state-aid fund in accordance with law for the purpose of establishing, locating, relocating, construction, reconstructing or improving state-aid streets or highways under its jurisdiction shall certify to the commissioner within thirty days following issuance of the bond, the amount of the total obligation and the amount of principal and interest that will be required annually to liquidate the bonded debt. The commissioner shall set up a bond account therefor, itemizing the total amount of principal and interest involved and he shall annually certify to the Commissioner of Finance the amount needed from the appropriate state-aid construction fund to pay the principal due on the obligation, and the amount needed from the appropriate state-aid maintenance fund to pay the current interest. Proceeds from bond sales are to be expended only on approved state-aid projects and for items determined to be eligible for state-aid reimbursement. A county or urban municipality which intends to expend bond funds on a specific state-aid project shall notify the commissioner of this intent forthwith upon the award of contract or the execution of a force account agreement. Upon completion of each such project, a statement of final construction costs shall be furnished to the commissioner by the county or the urban municipality.

k. Municipal state-aid funds for county state-aid or trunk highway projects. The governing body of an urban municipality desiring to use a portion of its state-aid funds for improvements within its boundaries of any state trunk highway or county state-aid highway, shall request such authorization by resolution. Before any such funds are released for said purposes, the resolution shall be approved by the commissioner. A copy of the approved resolution shall be filed with the state-aid engineer. This subparagraph does not apply to payments made for interest on bonds sold under Laws of 1959, ch. 538, and Laws of Minnesota 1965, Chapter 443.

3. Semi-annual statements. Within thirty days after the close of each six month period, the commissioner shall submit to each county or urban municipality semi-annual statements as to the status of its respective state-aid accounts.

4. Other authorized payments. Certain specific allotments or transfers of state-aid funds have been authorized by law. These will be processed as hereinafter provided:

a. Transfers for hardship conditions or other local use. The county board or governing body of any urban municipality desiring to use a part of its state-aid funds for this purpose shall certify to the commissioner either that all of its existing state-aid routes are improved to state-aid standards or that it is experiencing a hardship condition in regard to financing its local roads or streets, while holding its current road and bridge levy equal to or greater than said levy for previous years. Where a hardship transfer is requested, the commissioner may require

fiscal information showing the extent of the financial deficiency. Within thirty days of the receipt of a request for transfer, the commissioner shall act to authorize or deny the transfer of state-aid funds for use outside of the approved state-aid system. Upon approval of the requested transfer, the commissioner without requiring any progress reports, shall within thirty days, authorize immediate payment of not less than fifty percent of the total amount authorized, with the balance to be paid within ninety days; or schedule immediate payment of the entire amount authorized if he determines there are sufficient funds available.

b. Township allotments. Upon receipt of a certified copy of a county board resolution, allocating a specific amount of its county state-aid construction funds for aid to its townships, which resolution shall indicate compliance with the law governing such allocations and be forwarded to the commissioner on or before the second Tuesday of January of each year, the commissioner shall authorize payment of the amount requested for distribution by the county for the construction of township roads.

c. Construction of selected park projects. As provided by law, a portion of the county state-aid highway funds shall be set aside and used for the construction, reconstruction and improvement of county state-aid highways which provide access to the headquarters of or the principal parking lot located within a state park. Such funds, so set aside, may be expended for this purpose only on a request from the Commissioner of Natural Resources. Projects so selected will be approved by the Commissioner of Transportation in accordance with the procedure established for other state-aid operations.

d. Disaster account. Any disaster appropriation approved by the commissioner for a county or urban municipality in accordance with law, shall be promptly paid to the county or urban municipality for which such appropriation was authorized. The funds so allotted and paid to the county or urban municipality can only be spent for the purpose for which they were authorized, and within a reasonable time period specified by the commissioner. Forthwith upon completion of the work for which the disaster payment was made, or the expiration of the time specified for doing such work, whichever occurs first, the county or urban municipality shall file a report certifying the extent of the authorized work completed, and showing the total expenditure made therein. In the event the total disaster allotment was not required or used for the purpose specified, the remainder shall be promptly returned to the commissioner for redeposit in the county state-aid highway fund or the municipal state-aid street fund, as the case may be, and apportioned by law. Damage estimates submitted by a county or urban municipality must exceed ten percent of the current annual state-aid allotment to the county or urban municipality before the commissioner shall authorize the disaster committee to inspect the disaster area.

e. Research account. County and municipal state-aid funds that may be annually allocated to the research account shall be used solely for those research projects recommended by

the local road research board and approved by the commissioner. Unexpended balances in this account shall at the end of each year be transferred back to the state-aid fund from which they were obtained.

f. Turnback accounts. A percentage of the net highway user tax distribution fund has been set aside by law and apportioned to separate accounts in the county state-aid highway fund and the municipal state-aid street fund, and respectively identified as the county turnback account and the municipal turnback account. Further, a percentage of the county turnback account has been set aside and shall be used for replacement or reconstruction of town bridges, ~~20,~~ 10 feet or more in length, in those counties that have two or more towns, pursuant to law. This latter account shall be known as the county town bridge account.

(1) Town bridge monies allocation. The sums of monies set aside for town bridges shall be allocated to the eligible counties on the basis of town bridge needs.

(2) Surplus turnback funds. At any time the commissioner determines that either the county or municipal turnback accounts, notwithstanding the townbridge accounts, has accumulated a surplus not needed for turnback purposes, he shall properly notify the Commissioner of Finance requesting the transfer of such surplus to the respective county state-aid highway fund or municipal state-aid street fund for apportionment as provided by law.

(3) Advances from county or urban municipal funds. When the commissioner approves a request from the governing body of a county or urban municipality for the construction of an approved county state-aid or municipal state-aid turnback project which will require funds in excess of the available turnback fund balance and which excess costs will be initially paid for from other sources, then and in that event, the commissioner will reimburse those locally financed expenditures out of subsequent apportionments to the county's or urban municipality's turnback fund in accordance with the terms and conditions specified in the approved request. The total of such advances to be reimbursed from the respective turnback funds shall not exceed forty percent of the last county or municipal turnback allotment. Any advances shall be repaid in accordance with the terms of the approved request from money accruing to the respective turnback funds.

(4) Advances from the town bridge account. When the commissioner approves a request from the governing body of a county for the replacement or reconstruction of a town bridge which will require funds in excess of the county's available town bridge account and which excess costs will be initially paid for from other sources, then and in that event, the commissioner will reimburse those locally financed expenditures out of subsequent apportionments to the town bridge account in ac-

cordance with the terms and conditions specified in the approved request. The total of such advances to be reimbursed from the town bridge account shall not exceed forty percent of the last town bridge apportionment. Any advances shall be repaid in accordance with terms of the approved request from monies accruing to the respective town bridge accounts.

(5) Release of turnback account funds. Upon receipt of an abstract of bids and a certification as to the execution of a contract and bond on an eligible project, the commissioner shall release to a county or urban municipality from turnback account funds up to ninety percent of the turnback share of said contract. The commissioner shall retain the remaining percentage of the turnback share of said contract, until the final cost is determined and the project accepted by the district engineer. On force account agreements partial estimates will be accepted on turnback projects approved for construction by local forces, using the agreed unit prices for determining the value of the completed work. The commissioner shall release from the respective turnback account ninety percent of the value as reported by said partial estimates on an eligible turnback project. Requests for reimbursement of preliminary and construction engineering costs on an eligible turnback project shall be submitted and payment will be authorized in accordance with 14 MCAR § 1.5032 G., 2., e. (1), (2). engineering costs.

(6) Release of town bridge account funds. Upon receipt of an abstract of bids and a certification as to the execution of a contract and bond on an eligible project, the commissioner shall release to a county, from town bridge account funds, up to ninety percent of the town bridge account share of said contract. The commissioner shall retain the remaining ten percent until the final cost is determined and the project is accepted by the district engineer.

g. Transfer of accumulated county municipal account funds to county regular account fund. Upon receipt of a certified copy of a county board resolution requesting the transfer of a portion of or the total accumulated amount in the county municipal account fund, to the county regular account fund, the commissioner may transfer said funds provided:

(1) The county submits a written request to the commissioner and holds a public hearing within 30 days of the request to receive and consider any objections by the governing bodies of cities within the county having a population of less than 5,000 and no written objection is filed with the commissioner by any such city within 14 days of that hearing.

(2) If within 14 days of the public hearing held by the county a city having a population of less than 5,000 files a written objection with the commissioner identifying a specific county state-aid highway within the city which is requested for improvement and the commissioner investigates the nature of

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the requested improvement and finds the identified highway is not deficient in meeting minimum state-aid street standards or the county has shown evidence that the identified highway has been programmed for construction in the county's five-year capital improvement budget in a manner consistent with the county's transportation plan or there are conditions created by or within the city beyond the control of the county that prohibit programming or reconstruction of the identified highway.

H. State-aid standards. Subject to approval by the commissioner, geometric design standards shall be cooperatively determined for use on all County State Aid highways and Municipal State Aid streets.

a. The following standards shall apply to all rural undivided roadways:

RURAL UNDIVIDED GEOMETRIC STANDARDS

Projected ADT	Lane Width	Shoulder Width	Inslope ¹	Recovery Area ²	Design Speed ³	Surfacing	Design Strength	New & Rehabilitated Bridges ⁴	Bridges to Remain	
								Width Curb-Curb	Width Curb-Curb	Structural Capacity
0-49	11'	1'	3:1	7'	30-50	Traffic Bound	—	24'	22'	H-15
50-99	11'	3'	3:1	9'	30-50	Traffic Bound	—	28'	22'	H-15
100-399	12'	4'	4:1	15'	40-50	Paved	7 Ton Ult. 9 Ton	32'	24'	H-15
400-749	12'	4'	4:1	20'	40-60	Paved	7 Ton Ult. 9 Ton	32'	24'	H-15
750-999	12'	6'	4:1	25'	40-60	Paved	7 Ton Ult. 9 Ton	36'	28'	H-15
1000 & Over	12'	8'	4:1	30'	40-60	Paved	9 Ton	40'	30'	H-15

¹Applies to Slope Within Recovery Area Only.

²Obstacle Free (Measured from edge of Traffic Lane) Culverts with less than 27" Vert. height allowed without protection in recovery area.

³Subject to Terrain.

⁴Minimum widths listed shall apply, except that lesser widths may be approved upon justification where the bridge length exceeds 200'—HS-20 loading required.

b. The following standards shall apply to those roadways that meet indicated conditions:

SUBURBAN GEOMETRIC DESIGN STANDARDS*

Projected ADT	Lane Width	Shoulder Width	Inslope ¹	Recovery Area ²	Design Speed ³	Structural Design	New & Rehabilitated Bridges ⁴	Bridges to Remain	
							Width Curb-Curb	Width Curb-Curb	Structural Capacity
Less Than 1000	12'	6'	4:1	20'	40	9 Ton	36'	28'	H-15
1000 & Over	12'	8'	4:1	20'	40	9 Ton	40'	30'	H-15

*This standard shall apply only when the project is located in an area where the following conditions exist:

1. A platted area or an area in a detailed development process, or
2. Physical restraints are present which prevent reasonable application of the rural Design Standards.

¹Applies to slope within recovery area only.

²Obstacle free (measured from edge of traffic lane).

³Desirable design speed 50 mph.

⁴Minimum widths shall apply, except that lesser widths may be approved upon sufficient justification where the bridge length exceeds 200'. HS-20 Loading required.

1. Geometric design standards.

a. Adoption. The commissioner in cooperation with representatives of the Minnesota County Highway Engineers Association or the City Engineers Association of Minnesota, as the case may be, shall establish desirable minimum geometric design standards for use in improving County State Aid highways and Municipal State streets.

b. Revisions. When need for revision of State Aid standards arises, the commissioner shall confer with representatives of the county or city engineers associations and determine such change as might be necessary or desirable, and cause such change to be made in the same manner as outlined above.

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c. The following standards shall apply to all urban roadways:

URBAN ROADWAY WIDTHS
TOTAL WIDTH IN FEET
FACE TO FACE OF OUTER CURBS

No. of Through Lanes	Density	Undivided. No Parking Lanes	With Median, 4' Median	No Parking Lanes 14' Median	Undivided. With Parallel Parking Lanes		With 4' Median and Two Parking Lanes
					One Side	Both Sides	
2 (Collector)	Low	28			34	40	
	High	32			36	46	
4 (Collector)	Low	46	50	60	56	64	70
	High	50	54	64	60	68	74
2 (Arterial)	Low	36			38	48	
	High	50	54	64	60	68	74
4 (Arterial)	Low	50	54	64	60	68	74
	High	52	58	68	62	72	80
6 (Arterial)	High	76	82	92	86	96	104

URBAN ROADWAY CLASSIFICATION

CLASSIFICATION	FACILITY FUNCTION	DESIGN CHARACTER	TYPICAL TRIP LENGTH	ADT RANGE
Collector (Low Density)	Serves as feeder facility from neighborhood and local streets to the collector/arterial network. Also serves local access/parking function for local business and residential development.	Low to Moderate operating speeds of 20-25 mph.	Short—generally less than ½ mile on this type facility	200-3000 ADT
Collector (High Density)	Collects traffic from local and feeder streets and connects with arterials. Can serve local business districts	Variable—should provide for equal service to access and mobility	Variable	1000-7000 ADT
Arterial (Low Density)	Should serve intra-community travel. Augments high density arterial system	Some access control with emphasis on mobility	Variable	500-10,000 ADT
Arterial (High Density)	Forms backbone of urban network along with freeway system. Serves as through facility. Also can serve major traffic generators such as shopping centers, centers, stadiums, etc.	High. Must provide for through nature of traffic and also accounts for frequent turning movements. Control of access and width for separation of turning movements. Speeds generally 30-50 mph.	Longer—usually greater than 1-2 miles	8000 ADT and up

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d. The following minimum requirements shall apply to rural roadways on resurfacing projects:

SPECIAL RESURFACING PROJECTS
(Overlays)
COUNTY STATE AID HIGHWAYS
(Minimum Requirements)

Present A.D.T.	Strength In Tons Per Axle	Surface Type	Width	Shldr-shldr Width	Design Speed
Under 100	7	Paved	22	26	35
100-749	7	Paved	22	26	45
750-999	7	Paved	22	30	45
1000-2000	7	Paved	24	32	45
2001-Over	7 Ult 9	Paved	24	32	45

Widths of bridges to remain in place must equal roadway pavement width

e. The following vertical clearances for underpasses shall apply:

VERTICAL CLEARANCES FOR UNDERPASSES

	<u>Rural-Suburban Design</u> <u>Vertical Clearance</u>	<u>Urban Design</u> <u>Vertical Clearance</u>
<u>Highway under roadway bridge</u>	16'4"	14'6"
<u>Highway under railroad bridge</u>	16'4"	14'6"
<u>Highway under pedestrian bridge</u>	17'4"	14'6"
<u>Highway under sign structure</u>	17'4"	14'6"
<u>Railroad under roadway bridge</u>	22'0"	22'0"

2. Specifications. Specifications for construction shall be the latest approved Minnesota Department of Transportation specifications, except as modified by special provisions which set forth conditions or requirements for work or materials not covered by the approved specifications, or which set forth conditions or requirements to meet exigencies of construction peculiar to the approved project.

3. Right-of-Way. The minimum widths of right-of-way for all state-aid routes shall be not less than sixty feet within

municipalities and sixty-six feet in rural areas, except for conditions where modifications can be justified to the satisfaction of the commissioner. Prior to construction the counties shall acquire control of such additional widths of right-of-way in rural areas, as may be necessary to properly maintain the ditch section.

4. Parking provisions

a. The following criteria must be used in establishing diagonal parking:

Minimum Design Standards for 45° & 60° Diagonal Parking

<u>Parking Angle</u>	<u>Stall Width</u>	<u>Stall or Curb</u>	<u>Traffic Aisle Width</u>	<u>Length along Curb</u>	<u>½ Roadway Width (Minimum)</u>	<u>Present ADT</u>	<u>Legal Speed Limit</u>
45°	9'	19.8'	13.0'	12.7'	33'	Less than 3000	30 MPH or less
60°	9'	21.0'	18.0'	10.4'	39'	Less than 3000	30 MPH or less
45°	9'	19.8'	25'	12.7'	45'	More than 3000	30 MPH or less
60°	9'	21.0'	30'	10.4'	51'	More than 3000	30 MPH or less

b. Diagonal parking provisions shall be established by cooperative agreement between the local road authority and the commissioner.

(1) The cooperative agreement shall indicate the angle of parking provide for pavement marking of the parking lanes and the provision that the road authority may alter parking provisions if traffic volumes exceed the design criteria.

c. The minimum design standards for roadways with

parallel parking are shown in these rules under 14 MCAR § 1.5032 H., 1., c.

d. Minn. Stat. 169.34 must be adhered to in determining diagonal parking spacing.

I. State-aid operations. State-aid funds allotted to counties and urban municipalities shall be expended in accordance with the following provisions:

1. Maintenance.

a. The commissioner shall require a reasonable standard of maintenance on all state-aid routes within the county or urban municipality, consistent with available funds, the existing street or road condition and the traffic being served. This maintenance shall be considered to include, but shall not be limited to:

(1) The maintenance of all road surfaces, shoulders, ditches and slopes and the cutting of brush and weeds; affecting the respective state-aid systems;

(2) The maintenance and inspection of all bridges, culverts and other drainage structures; pursuant to Minn. Stat. § 165.03;

(3) The maintenance of all regulatory and direction signs, markers, traffic control devices and protective structures in conformance with the current manual on uniform traffic control devices affecting the respective state-aid systems and consistent with state-wide application;

(4) The striping of all pavements of 22 feet or more in width, consistent with the traffic service provided, and for which there are no pending improvements;

~~(5) The enforcement of parallel parking on any approved State Aid project;~~

~~(6)~~ (5) The exclusion of advertising signs, billboards, buildings and other privately owned installations other than utilities of public interest from the right of way of any approved state-aid projects.

(6) The installation of approved route markers on all rural county state-aid highways in accordance with the current manual on uniform traffic control devices.

b. Unsatisfactory maintenance. When, in the opinion of the commissioner, the maintenance of any county or municipal state-aid route is determined to be unsatisfactory, he shall retain up to ten percent of the current annual maintenance apportionment to the responsible county or urban municipality. Funds so retained shall be held to the credit of that county or urban municipality until the unsatisfactory condition has been corrected and a reasonable standard of maintenance is provided.

~~(1) Route Markers Approved route markers shall be installed on all rural County State Aid highways in accordance with the current manual on uniform traffic control devices. Failure to comply with this requirement shall result in the withholding of ten percent of the annual maintenance allocation until such markers are properly installed.~~

c. Biennial report. The commissioner's biennial report to the legislature shall enumerate all such funds retained more than ninety days, together with an explanation for this action.

2. Construction. Survey, plans and estimates for all state-aid projects shall be made by or under the immediate direction of the county or city engineer in accordance with standards as to form and arrangement prescribed by the commissioner.

a. Plans and estimates. Plans and estimates for each state-aid construction project must be submitted for review. Each plan shall show all subsequent stages required for the completion of the improvement, portions of which may be covered by later contracts or agreements. Only those projects for which plans are approved by the state-aid engineer prior to the award of contract or approval of a force account agreement shall be eligible for state-aid construction funds.

b. Project numbers. Approved projects will be assigned state-aid project numbers and shall be so identified in records of the Minnesota Department of Transportation and the local governmental unit.

c. Contract information. Upon award of a state-aid contract by any county or urban municipality the engineer thereof shall furnish the commissioner with an abstract of bids and a certification as to the specific contract and bond executed for said approved construction work.

d. Force account. Any county or urban municipality desiring to use funds credited to it on a force account basis shall have its engineer file a request with the commissioner for each construction project to be built by the county or urban municipality at agreed unit prices, which shall be based upon estimated prices for contract work, less a reasonable percentage to compensate for move-in, move-out taxes and contractor's profit. Such requests shall contain a complete list of pay items and the unit prices at which it is proposed to do the work. Prior to the approval by the commissioner, the district engineer shall file his recommendations with the commissioner as to the request and the cost estimate. Items of work other than those listed as a pay item or approved by supplemental agreements shall be considered incidental work not eligible for State-Aid payment.

e. Project reports. Prior to final acceptance of each construction project by the commissioner, the county engineer or the city engineer shall submit to the commissioner such final project records as the commissioner may deem necessary or desirable.

f. Project payments. On all state-aid construction projects, ~~the commissioner shall pay a maximum of ninety percent of the contract amount, or of each partial estimate in the case of force account agreements, until final acceptance of the completed work. Upon receipt of required reports and data and a recommendation of final acceptance by the district engineer, the commissioner shall, within the limits of funds available therefor, authorize final payment for said project within the limitation~~

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~~hereinbefore established~~ payments will be made in accordance with 14 MCAR § 1.5032 G., 2., a., b., c., d.

3. Turnback accounts. The funds in the county and municipal turnback accounts shall be expended only as payments to a county or urban municipality for the approved reconstruction or improvement of those former trunk highways that have reverted to county or municipal jurisdiction and which meet the eligibility requirement as set forth herein. Further, a percentage of the county turnback account has been set aside, as provided by law, and shall be used for replacement or reconstruction of town road bridges that are ~~20~~ 10 feet or more in length in those counties that have two or more towns.

a. Eligibility.

(1) Any former trunk highway reverted to county or urban municipal jurisdiction subsequent to July 1, 1965, and which is part of the county state-aid highway or municipal state-aid street systems, shall be eligible for payment from the ~~respective~~ turnback account ~~to the county or urban municipality of~~ for all costs covering the restoration or the reconstruction and improvement of said highways as detailed on approved plans. Approval of plans for the initial construction of such projects shall be limited to a period of five years from the date of reversion. After plan approval for the construction of the initial part of a turnback project, plans for other portions of the same route must be approved within ten years from the date of reversion to be eligible for turnback funds. Each such approved project shall be advanced to construction status within one year after notification to the county or urban municipality that sufficient funds are available for the construction of said project. Payment for such reconstruction and improvement of any section will terminate all eligibility for reconstruction and improvement of that section with turnback funds.

(2) Any town bridge, ~~20~~ 10 feet or more in length, is eligible for replacement or reconstruction if after all pertinent data supplied by local citizenry, local units of government, the Regional Development Commission or the Metropolitan Council, is reviewed by the county board and a formal resolution by the county board is adopted identifying the town bridge or bridges to be replaced or reconstructed. Payment to the counties will be limited to ~~fifty~~ ninety percent of the cost of the bridge, and will be made in accordance with 14 MCAR § 1.5032 G., 4., f., (6).

b. Plan approval and construction requirements. Plans for all county or municipal state-aid turnback or town bridge projects must be submitted to the commissioner and be approved before any reconstruction or improvement work is undertaken. All of the state-aid rules that are consistent with the turnback regulations shall apply to all projects to be financed from the county or municipal turnback accounts or the town bridge account.

c. Construction authorization. As soon as the plans for a state-aid turnback or town bridge project are approved, the county or urban municipality shall be furnished either an authorization to proceed with construction or a notice that sufficient

funds are not available within the applicable turnback account or town bridge account and that a priority has been established for said project for construction authorization as soon as funds are available. Where local funds are advanced by the county or urban municipality to construct an approved project for which sufficient funds are not available in the turnback account or town bridge account authorization to proceed with construction will be notification that the agreement for reimbursement of funds, in accordance with 14 MCAR § 1.5032 G., 4., f., (3) has been approved by the commissioner.

J. General rules. In addition to those provisions heretofore mentioned, expenditures of state-aid funds by any county or urban municipality shall conform to the following rules:

1. Legal requirements. State-aid construction projects shall comply with all federal, state, and local laws, together with all ordinances, rules and regulations applicable to the work. Responsibility for compliance shall rest entirely with the local unit of government.

2. Bridge plans. Plans for all bridge construction or bridge reconstruction projects shall be approved by the bridge engineer of the Minnesota Department of Transportation prior to the approval by the state-aid engineer.

3. Reports and records. Annual reports, status maps, and all maintenance and construction reports and records shall be filed at the time and in the form specifically requested by the commissioner or his authorized representatives.

4. Non-compliance. The commissioner, upon determination that a county or urban municipality has failed to comply with the established state-aid requirements, other than for unsatisfactory maintenance, or has failed to fulfill an obligation entered into for the maintenance or improvement of any portion of a state trunk highway or interstate route, shall determine the extent of the failure and the amount of such county's or urban municipality's apportionment that shall be retained until such time as suitable compliance is accomplished, or the obligation fulfilled, as the case may be. The amount withheld shall reasonably approximate the extent of the non-compliance or the value of the unfulfilled obligation.

5. Defective work. Whenever unsatisfactory conditions are found to exist on an approved construction project, the district state-aid engineer can, if necessary, order the suspension of all work affected thereby until said condition is satisfactorily corrected. Failure to conform with such suspension order shall be considered willful non-compliance. All work or materials which fail to conform to the requirements of the contract or force account agreement shall be considered as defective. Unless the work is satisfactorily remedied or repaired before final acceptance is requested, the commissioner shall either withhold funds in accordance with paragraph 4., or shall establish the reasonable value of the defective work as the basis for settlement with the county or urban municipality.

6. Engineering and technical assistance. The commissioner may, as authorized by law, execute agreements with any county or urban municipality for technical assistance from the

Department of Transportation. These services, if furnished, shall be paid for by the governmental subdivision at the rates established by the Department of Transportation.

K. General state-aid limitations. The extent of state-aid participation on special items shall be limited as follows:

1. Lighting. The lighting of hazardous or accident-prone locations, ~~were~~ when concurred in by the traffic engineer of the Minnesota Department of Transportation shall be considered as eligible expense to the following extent:

a. New construction. Cost of complete lighting at approved locations only on multiple-lanes.

b. Cost of lighting approved intersections on single-lane design.

c. Locations where the municipality would normally install lighting units are not considered as an eligible expense. The county or urban municipality shall furnish traffic information or other needed data to support its request.

d. Reconstruction. All costs incidental to the necessary revision or relocation of existing lighting facilities, up to and including the cost of completing the new base.

2. Traffic control signals. ~~Plans for the construction or reconstruction of all traffic control signals shall be approved by the traffic engineer of the Minnesota Department of Transportation prior to the approval of the State Aid engineer. The extent of~~

a. State-aid projects.

(1) Plans for the construction or reconstruction of all traffic control signals may be designed and certified by an electrical engineer registered in the State of Minnesota.

a. The district state aid engineer may review said plans upon submittal by the local engineer and make recommendations to the state aid engineer.

b. The state aid engineer may approve the electrical portion of said plan based on the certification by the electrical engineer, and the geometrics of the signal standards if in accordance with the current "Manual on Uniform Traffic Control Devices."

(2) Plans for the construction or reconstruction of all traffic control signals not certified by a registered electrical engineer shall be approved by the traffic engineer of the Minnesota Department of Transportation prior to the approval by the state aid engineer.

b. Federal-aid projects. Plans for the construction or reconstruction of all traffic control signals shall be approved by the traffic engineer of the Minnesota Department of Transportation prior to the approval by the state aid engineer.

c. The extent of state aid participation in all signal

installations shall be determined by the state aid engineer in relation to the proportion of state aid routes involved at each installation.

~~State Aid participation in all signal installations shall be determined by the State Aid engineer in relation to the proportion of State Aid routes involved at each installation.~~

3. Right-of-Way. The cost of any lands and properties required to accommodate the design width of the street or highway as governed by the state-aid standards, including necessary width for sidewalks, shall be considered as eligible expense. This cost may include relocation and moving costs as provided by law and may include damages to other lands if reasonably justified to the satisfaction of the commissioner.

4. Sidewalks. On county state-aid projects, sidewalks shall be considered as an eligible expense only where the proposed construction necessitates the alteration of existing walks. On municipal state-aid street projects, state-aid payment for sidewalk may be made when requested by the urban municipality.

5. Storm sewers. Plans containing items for storm drainage shall be reviewed by the hydraulics engineer for the Minnesota Department of Transportation and his recommendations obtained as to design features and the proportionate share chargeable to the state-aid system. These recommendations, along with those of the district engineer shall be considered in determining the maximum state-aid participation in said work.

L. Local Road Research Board.

1. The commissioner shall appoint a Local Road Research Board consisting of the following members:

~~1.~~ a. Four county engineers, only one of whom may be from a county containing a city of first class.

~~2.~~ b. Two city engineers, only one of whom may be from a city of first class.

~~3.~~ c. Two Department of Transportation staff engineers.

~~4.~~ d. One University of Minnesota staff engineer.

~~5.~~ e. One ex officio secretary, who shall be the department's research coordination engineer.

~~a. Initial Appointments. The initial terms of the appointees shall be as follows, beginning January 1, 1960:~~

~~(1) One county engineer — 1 year.~~

~~(2) One county engineer — 2 years.~~

~~(3) Two county engineers — 3 years.~~

~~(4) One city engineer — 2 years.~~

~~(5) One city engineer — 3 years.~~

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PROPOSED RULES

~~b.~~ 2. Future appointments. All future appointments of county and city engineers, except for unexpired terms shall be for three years. The other members shall serve at the will of the commissioner.

~~e.~~ 3. Operating procedure:

~~(+)~~ a. The board shall initially meet on call from the commissioner, at which time they shall elect a chairman, and establish their own procedure for the selection of research projects to be recommended to the commissioner. Final determination on all such research projects shall be made by the commissioner, and the cost thereof shall be paid out of the state-aid research accounts provided for by law.

~~(-)~~ b. In the event that the board recommends a project covering research in methods of and materials for the construction and maintenance of both the county state-aid highway system and the municipal state-aid street system, the board shall also recommend to the commissioner the proportionate share of the cost of such project to be borne by the respective county state-aid highway research account, and the municipal state-aid street research account, based on the benefits to be realized by each system from such research project.

M. Variance

1. Any formal request by a local unit or units of government for a variance from these rules shall be submitted to the commissioner in writing.

2. A request shall be accompanied by an application fee of \$1,000 to ensure the reimbursement of expenses of any committee member so appointed by the commissioner to evaluate said request.

a. Any monies not needed to compensate committee members shall be returned pro-rata to the local units of government from which they were received.

3. Any variance objected to in writing or denied by the commissioner is subject to a contested case hearing as required by law.

a. The costs of a contested case hearing shall be the responsibility of the local unit or units of government.

4. The commissioner may appoint a committee to serve as required to investigate and determine a recommendation for each variance. The committee shall consist of any five persons of the following:

a. Not more than two county engineers only one of whom may be from a county containing a city of the first class.

b. Not more than two city engineers only one of whom may be from a city of the first class.

c. Not more than two county officials only one of whom may be from a county containing a city of the first class and

d. Not more than two city officials only one of whom may be from a city of the first class.

5. No elected or appointed official may serve on the

committee that represents a governmental unit or agency requesting the variance.

6. Operating procedure.

a. The committee shall meet on call from the commissioner at which time they shall elect a chairperson and establish their own procedure to investigate the requested variance.

b. The commissioner shall publish notice of the variance request in the State Register and shall request comments from all interested parties be directed to the commissioner within 20 calendar days from date of publication.

(1) If a written objection is received a contested case hearing will be held as required by law.

c. The committee, after considering all data pertinent to the requested variance and considering the economic, social, safety and environmental impacts which will result from the requested variance, shall recommend to the commissioner an acceptance or rejection of the requested variance.

(1) If the committee recommends rejection of the requested variance a contested case hearing will be held as required by law.

d. If no objection to the requested variance is received and the committee recommends acceptance of the requested variance, the commissioner may approve said request and direct the state aid engineer to approve said variance.

(1) If the commissioner determines to deny the request, a contested case hearing will be held as required by law.

7. Criteria to be considered in evaluating a variance request:

a. Effectiveness of the project in eliminating an existing and projected deficiency in the transportation system.

b. Economic considerations.

c. Effect on adjacent lands.

d. Number of persons affected.

e. Effect on future maintenance.

f. Safety considerations as they apply to:

(1) Pedestrians

(2) Bicyclists

(3) Motoring public

(4) Fire, police and emergency units

g. Other considerations as may be directed to or by the commissioner.

~~M.~~ N. Personal expenses authorized board or committee members. The commissioner will authorize the payment of all necessary personal expenses in connection with meetings of board and committee members, appointed by him for state-aid purposes. These expenses shall be reported on forms furnished by the commissioner and paid from the state-aid administrative fund.

~~N. O.~~ Identification and numbering. The commissioner is authorized and empowered to change the numbering system of the approved rules.

~~O. P.~~ Severability. The provisions of these rules shall be severable, and the invalidity of any paragraph, subparagraph or subdivision thereof, shall not make void any other paragraph, subparagraph or subdivision or any other part.

~~14 MCAR § 1.50325 Rules for Bridge Construction Program Under Laws 1976, Chapter 339~~

~~A. Purpose.~~ The purpose of 14 MCAR § 1.50325 is to carry out the mandate of the legislature and to effectuate that mandate with respect to application, selection and funding of bridge construction projects on key bridges under local jurisdiction as set forth in Minnesota Laws of 1976, Chapter 339.

~~B. Scope.~~ The scope of 14 MCAR § 1.50325 is confined within the framework of and consistent with Minnesota Laws of 1976, Chapter 339, Section 1, and Minnesota Statutes 1974, Chapters 161 and 162 as amended.

~~C. Definitions.~~ For purposes of 14 MCAR § 1.50325 the terms defined in 14 MCAR § 1.5032 shall have the same meaning.

~~D.~~ Any deficient bridge, 20 feet or more in length, is eligible to be financed wholly or partially by the Minnesota state trans-

portation fund and is subject to State Aid Standards and Specifications as provided in 14 MCAR § 1.5032 H.

~~E.~~ Application for state financing of a project shall be made by resolution of a county board in the case of roads under the jurisdiction of counties, townships or municipalities of less than 5,000 population, or resolution of a city council of an urban municipality. Prior to selection by the commissioner, every application shall be reviewed by the appropriate Regional Development Commission or Metropolitan Council for consistency with its long term comprehensive development plan and guides.

~~F.~~ Criteria for the selection of specific bridge projects will be the same as the six factors required to be considered under Minnesota Laws 1976, Chapter 339, Section 1, Subdivision 6 as it may be amended. The commissioner will make the final determination as to priority of construction.

~~G.~~ Release of funds to the local road authority will be in accordance with 14 MCAR § 1.5032 C., 2., a.

~~H.~~ 14 MCAR § 1.50325 shall expire at such time as rules of the Minnesota Department of Transportation implementing Minnesota Laws of 1976, Chapter 339, become effective. Any agreement, obligation or contract entered into pursuant to 14 MCAR § 1.5032A shall remain in full force and effect after expiration of the rule.

ADOPTED RULES

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 15.0412, subd. 4, have been met and five working days after the rule is published in the *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 strike outs and new language will be underlined, and the rule's previous *State Register* publication will be cited.

A temporary rule becomes effective upon the approval of the Attorney General as specified in Minn. Stat. § 15.0412, subd. 5. Notice of his decision will be published as soon as practicable, and the adopted temporary rule will be published in the manner provided for adopted rules under subd. 4.

Department of Natural Resources**Adopted Rules Concerning Dam Safety**

The adopted rules published at *State Register*, Volume 4, Number 17, pp. 685-699 (4 S.R. 685), are corrected as printed

below, and the effective date of the rules is changed to 7 calendar days after the date of this publication.

6 MCAR § 1.5033 A. Class III dams, waivers. For Class III dams which are sponsored by a governmental agency which will be responsible for operation and maintenance or for which the design, construction supervision, and inspection is performed by a federal agency; the commissioner may waive certain details of the required submittals, provided that the federal agency will furnish the commissioner with adequate facts on the design and

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ADOPTED RULES

construction inspection to allow the commissioner to adequately evaluate the permit and approvals.

6 MCAR § 1.5034 A. LIMITED STATE LIABILITIES Legal claims. ~~The granting of a permit for a dam shall not impose any liability upon the State of Minnesota, for its employees or consultants, for the activities of the permittee.~~ Any permit shall be permissive only and shall not be construed as estopping or limiting any legal claims of persons other than the state against the permittee, or as estopping or limiting any legal claims of the state against the permittee for violation of any of the terms or conditions of the permit. ~~No action shall be brought against the State or the Commissioner by virtue of:~~

- ~~1. Any approval.~~
- ~~2. The issuance or enforcement of orders.~~
- ~~3. Control and regulation.~~
- ~~4. Measures taken to protect against failure during an emergency.~~

6 MCAR § 1.5034 B. Liability of owner and permittee. Nothing in these rules shall be construed to relieve an owner of a dam or permittee of the legal duties, obligations or liabilities incident to the ownership or operation of the dam. ~~The permittee and owner assume all risks and liabilities.~~

Department of Revenue

Adopted Rule Relating to An Income Tax Energy Credit

The rule proposed and published at *State Register*, Volume 4, Number 19, pp. 772-775, November 12, 1979 (4 S.R. 772) is adopted with the following amendments:

Rule as Adopted

13 MCAR § 1.6020 Energy credit.

A. General provisions.

1. Residence. For purposes of this credit, a building or dwelling unit must be the taxpayer's principal residence. The term "principal residence" is defined as that residence which would qualify for the non-recognition of gain on the sale and the rollover of that gain when a new principal residence is purchased except that no ownership requirement is imposed. The period for which a building or a dwelling unit is treated as the principal residence of the taxpayer includes the 30-day period ending on the first day on which it would (but for this sentence) be treated as the taxpayer's principal residence. The term "building" includes a single family dwelling, duplex, condominium unit, townhouse, cooperative unit, and any other residential building containing six dwelling units or less. A condominium unit, a townhouse, or a cooperative unit which is used by a taxpayer as his principal residence will each qualify separately for purposes of this credit regardless of how many units are in the building. A taxpayer who buys or rents a residential unit in a condominium,

townhouse or a cooperative need only buy or rent that unit and not the entire physical structure to qualify for this credit.

Individuals who rent a dwelling unit as their residence can claim this credit. The dwelling unit, except in the case of the rental of a condominium, townhouse, or cooperative unit, must be located in a building that contains six dwelling units or less.

If less than 80 percent of the use of a building or dwelling unit is for use as the taxpayer's principal residence, only that portion of the expenditures for that building or dwelling unit which is properly allocable for use as the taxpayer's principal residence shall be taken into account. A swimming pool shall be treated as a use which is not for residential purposes. ~~This allocation provision does.~~ These provisions on residence do not apply to biomass conversion equipment.

2. A taxpayer must actually purchase the equipment or earth-sheltered dwelling to qualify for this credit. The expenses connected with the leasing of equipment or the leasing of an earth-sheltered dwelling do not qualify for this credit. If the taxpayer received a refund from the seller or the manufacturer of equipment on which the taxpayer claimed this credit, the amount of expenditures that were allowable for this credit must be reduced by the amount of the refund that was received. The taxpayer will need to file an amended income tax return if the refund that was received would require a reduction in the energy credit which had already been claimed. Expenditures will qualify even though they are paid for as the result of a federal or state grant, but only to the extent that the grant was included in federal adjusted gross income. Each dollar of expenditure which qualifies for this credit may be used only one time for purposes of computing this credit.

6. A shareholder in a family farm corporation is allowed to claim this credit for any of the expenditures that qualify for ~~one of the four parts of this credit, notwithstanding the fact that an earlier provision of the law limits three of the four parts of this credit to individual taxpayers.~~ A family farm partnership will be treated as an individual taxpayer and expenditures that qualify for the energy credit which are made by the family farm partnership may be claimed by the family farm partners as joint owners. ~~For purposes of this credit, an electing small business corporation will qualify as a corporation and not as a partnership. A partnership, which is not a family farm partnership, will not be treated as an individual taxpayer.~~

8. The Department of Revenue, ~~on behalf of a request-~~ ing upon the written request of a taxpayer, shall furnish the Energy Agency with a copy of the energy credit form that has been completed by the taxpayer so that the taxpayer and the Department of Revenue may receive technical advice and assistance from the Energy Agency and so that the Energy Agency may compile information on the use of this credit.

10. As used in this rule, the term "R" value is the measure of resistance to heat flow through a material or the reciprocal of the heat flow through a material expressed in British thermal units per hour per square foot per degree ~~Faren-~~ heit Fahrenheit at 75 degrees ~~Farenheit~~ Fahrenheit mean temper-

ature. The term "U" value is the thermal transmission of heat in unit time through unit area of a particular body or assembly, including its boundary films divided by the difference between the environmental temperatures on either side of the body or assembly; (Btu/Hr•Ft²•F°). Also the reciprocal of total R-Value.

B. Piggybacked federal renewable energy source credit. Any expenditure that qualifies for the federal renewable energy source credit, including expenditures for labor costs, geothermal energy, wind energy for electricity, renewable energy used to heat water, and any other expenditures which are allowable for the federal credit, would also be allowable for purposes of the state piggybacked credit provided that the building is located in Minnesota and does not contain more than six dwelling units. Expenditures that are allowable are only those that were allowable on the date that the legislature has specified in § 290.06, subd. 14 for purposes of adopting the federal credit provisions. If an expenditure qualifies for both the federal energy conservation credit and for the federal renewable energy source credit and the taxpayer used the expenditure for the federal conservation credit, the taxpayer can use that expenditure for the state piggybacked federal renewable energy source credit provided that the expenditure otherwise qualifies.

C. Earth-sheltered dwelling units. Expenditures that qualify for the credit for earth-sheltered dwellings include material, labor and other construction costs (except interest) incurred to construct the dwelling. The structure of the earth sheltered dwelling unit must meet the standards of the Minnesota building code even though the code may not be in effect in that area. The earth-sheltered dwelling unit's structure must also comply with all three tests which are contained in clause (b) (1)-(3) of ~~the law~~ § 290.06, subd. 14 and which are as follows:

- "(1) 80 percent or more of the roof* area is covered with a minimum depth of 12 inches of earth; and
- (2) 50 percent or more of the wall area is covered with a minimum depth of 12 inches of earth; and
- (3) Those portions of the structure not insulated with a minimum of seven feet of earth shall have additional insulation;"

The roof area contained in clause (b) (1) that must be covered with earth means that area of the roof that is above the area used for residential living which is heated. The roof area that must be covered with earth does not include the roof area for a garage,

*A computer typing error was made here in the final copy of the conference committee report on H.F. 1495 (Laws of 1979, ch. 303). The law contains the word "wall" and not the word "roof." However, it is clear that this was a technical mistake and the department is proposing a law change to the 1980 legislature.

unless the garage is heated. For clause (b) (2) the term "wall" means the exterior walls of the residential living area. The walls of a garage are not included in this definition. If a garage is attached to the exterior walls at the residential living area, that area of the exterior wall of the residential living area that is part of the attached garage is not counted in the area of the wall that must be covered with earth. The wall must be covered with a minimum horizontal depth of 12 inches (30 cm) of earth. The term "structure" contained in clause (b) (3) means the exterior walls and roof as defined for clauses (b) (1) and (2).

In clause (b) (3) the additional insulation that will be required is the amount of insulation that is needed to equal the following requirements:

2. The wall which is above grade and which is not covered with a minimum of 7 horizontal feet (2.1 m) of earth and which is not part of a collection aperture of a passive solar system, as defined in part E.2., must meet the following criteria:

- a. The opaque wall area may not exceed a maximum U value of 0.0555 Btu/Hr•Ft²•F° (0.315 W/m²K).
- b. The glazing area must not exceed a maximum U value of 0.47 Btu/Hr•Ft²•F° (2.7 W/m²K) and must not exceed a maximum area which is more than 10% of the floor area of the room in which it is installed. The maximum glazing area for a room shall be reduced by the amount of collection aperture glazing, as defined in part E.2., installed in that room. Glass doors shall be considered as glazing area.
- c. The doors must not exceed a maximum U value of 0.40 Btu/Hr•Ft²•F° (2.3 W/m²K).

D. Biomass conversion equipment. The term "biomass conversion equipment" means equipment which is located in Minnesota and which is (1) equipment for the production of gaseous fuels from biomass sources by biological or physical-chemical processes. To qualify for the credit, the gaseous energy produced shall sustain combustion, by itself, in air. Examples of the types of equipment that qualify for the credit are methane digestors, and destructive distillation equipment. (2) Equipment for the production of liquid fuels from biomass sources by biological or physical-chemical processes. To qualify for the credit, the liquid fuel produced shall sustain combustion, by itself, in air, and shall contain ethanol or methanol.

The gaseous energy or liquid fuels produced by the equipment shall not be sold or offered for sale.

The term "biomass sources" means wood, wood residues, agricultural crops, agricultural crop residues, other plant materials, human or animal manure, and food processing waste.

A taxpayer who is a corporation (including an electing small business corporation), ~~a bank~~, a partnership, a trust or an estate may claim the credit for biomass conversion equipment.

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ADOPTED RULES

E. 2. Collection aperture. The term "collection aperture" means:

a. Double glazing material ~~installed in walls which face facing south, plus or minus 30 degrees, installed in exterior walls, and fully exposed to the sun for at least four hours on December 21, during which time the sun must pass through an imaginary vertical plane drawn perpendicular to the glazing.~~ The area of glazing shall exceed the lesser of 15 percent of the floor area of the room in which the glazing is installed or 8 percent of the floor area of the habitable rooms within the dwelling unit. The entire expenditure for glazing shall qualify for the credit.

b. Double glazing material installed in a roof which is elevated at an angle of at least 45 degrees from horizontal and which faces the south, plus or minus 30 degrees. Such glazing shall be fully exposed to direct solar radiation for at least four hours on December 21. A taxpayer who has installed both a wall and a roof collection aperture may qualify.

3. Storage element. The term "storage element" means thermal mass in the form of water, masonry, brick, rock, concrete or other material with heat storage performance equivalent to or better than that of any of these forms of thermal mass. The

thermal mass must be installed within the insulated shell of the building or attached building and it must be insulated from the earth by materials with at least an R value of $6.5 \text{ F}^\circ\text{Hr}^\circ\text{Ft}^2/\text{Btu}$ ($1.1 \text{ m}^2\text{K}/\text{W}$). The thermal mass must have a storage capacity of at least 15 Btu per degree Fahrenheit per square foot ($300 \text{ kJ}/\text{K}^\circ\text{m}^2$) of aperture area. The thermal mass shall be situated so that at least half of it is completely exposed to the sun's direct radiation for four hours on December 21. The exposed half of the thermal mass must not be shielded from direct solar radiation by hangings, rugs, carpet, furniture, etc. Thermal mass which is heated by forced convection can also qualify. An example would be that of a system in which a blower forces solar air from a collection area through a rock bed, when the rock bed has been insulated to prevent heat loss into the earth or outside air.

The entire amount of the expenditures and labor costs allocable to qualifying thermal mass will be allowed. Concrete slab floors uninsulated from the earth and swimming pools do not qualify as a storage element for purposes of this credit. Stone and masonry materials used in fireplace construction, which meet the above requirements for thermal mass, may will qualify as a storage element. The flues and other mechanical devices of a fireplace do not qualify.

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.

F & M Leasing Corp., formerly
Naked Zoo Enterprises,

vs.

The Commissioner of Revenue,

Docket No. 2870

Appellant,

Appellee.

Order dated March 3, 1980

This is an appeal from the Commissioner of Revenue's Order dated January 25, 1979, relating to sales and use tax liability of \$8,760.22 for the taxable period January 1, 1974, through December 31, 1977. The issue is whether appellant's purchases of sound and lighting equipment were exempt from sales and use tax under Minn. Stat. § 297A.01, subd. 4 as property utilized by the owner only for leasing to others.

Robert J. Schroeder, attorney for appellant,
Thomas K. Overton, Special Assistant Attorney General, for appellee.

Decision

The Order of the Commissioner of Revenue dated January 25, 1979, is reversed.

Findings of Fact

Earl B. Gustafson

1. Appellant, F & M Leasing Corp. is in the business of leasing sound and lighting systems to musicians and entertainers.
2. Appellant's office/warehouse and principal place of business is in Edina, Minnesota.

3. During the period from January 1, 1974, through December 31, 1977, appellant purchased tangible personal property from various suppliers and assembled these items into sound and lighting systems.
4. After these systems were assembled, they were rented, usually with an operator, to parties who used the systems in musical or entertainment productions both inside and outside the State of Minnesota.
5. Appellant collected and transmitted to the state sales tax on equipment rented without an operator in the State of Minnesota, unless it was rented to an exempt institution.
6. All of the items of personal property in question were utilized by appellant by leasing them in their assembled form as sound or lighting systems to others.

Conclusions of Law

1. The sales of tangible personal property in question made to appellant constituted sales for resale under Minn. Stat. § 297.01, Subd. 4 and exempt from the Minnesota sales and use tax.

Memorandum

The appellant is in a specialized business. It leases sound and lighting systems to musical groups and entertainers principally outside the State of Minnesota. During the years under review it made a number of purchases that were component parts or nearly complete sound or lighting systems. All of these items were incorporated into rather elaborate lighting or sound systems rented to producers or agents to be used in shows or entertainment productions.

The commissioner seeks to collect a use tax on these purchases on the grounds that these were sales at retail to appellant.

Appellant raises a number of objections, but the only one we need discuss because it disposes of the entire case is the defense that these purchases were not sales at retail, but rather sales for resale which were tax exempt.

The applicable statute is Minn. Stat § 297A.01, subd. 4 which reads in pertinent part:

Subd. 4. A "retail sale" or "sale at retail" means a sale for any purpose other than resale in the regular course of business. *Property utilized by the owner only by leasing such property to others* or by holding it in an effort to so lease it, and which is put to no use by the owner other than resale after such lease or effort to lease, *shall be considered property purchased for resale.* (emphasis added)

The evidence received at trial places these transactions within this exemption. The equipment and parts purchased were "utilized by the owner only by leasing such property to others" and, therefore, are considered property purchased for resale and consequently exempt from both sales and use tax.

Earl B. Gustafson
Judge

SUPREME COURT

Decisions Filed Friday, March 7, 1980

49564/341 Verna Hall Eddy, et al., Appellants, vs. Republic National Life Insurance Company, Rollie M. Martin. Hennepin County.

Appeal by plaintiffs, the named beneficiary of a life insurance policy and the decedent's employer, from trial court's dismissal of their claim against defendant insurance agent/broker after plaintiffs had settled with the insurer. Since a fact question existed as to whether the defendant was acting as a broker and therefore independently liable, the trial court erred in dismissing the plaintiffs' claim.

Reversed and remanded. Sheran, C. J. Took no part, Todd, J.

49465/22 State of Minnesota vs. Michael Dennis Ferraro, Appellant. Ramsey County.

Warrantless seizure of property open to plain view through a window of a lawfully stopped motor vehicle was reasonable where there was probable cause to believe the property was stolen.

No prejudicial error was committed when the trial court instructed the jury that it was permitted, but not required, to infer from an inability to satisfactorily explain possession of recently stolen property, that the possessor knew the property was stolen.

The evidence sustains the verdict in all respects.

Affirmed. Otis, J.

SUPREME COURT

49597/55 State of Minnesota vs. Gregory Parker Mills, Appellant. Hennepin County.

Evidence of defendant's guilt held sufficient.

Trial court properly admitted other-crime evidence which was relevant to issue of identity.

Affirmed. Rogosheske, J.

49880/103 State of Minnesota vs. Guy Phillip Wenberg, Appellant. Ramsey County.

Evidence of defendant's guilt held sufficient to support the verdict.

Defendant, by failing to object to alleged improprieties by the prosecutor, must be deemed to have forfeited his right to have this court consider these allegations on appeal.

If a prosecutor wishes to question a defense witness about whether he has ever been convicted of a felony, the prosecutor must have adequate proof of the witness' prior conviction to rebut any denial and should seek a hearing outside the jury's presence, preferably before trial, to obtain the court's permission to ask the question.

Affirmed. Rogosheske, J.

49850/107 State of Minnesota vs. Leslie Gaylord Meaney, Appellant. Hennepin County.

Evidence of defendant's guilt was sufficient to sustain the verdict.

Defendant, by failing to object at trial, must be deemed to have forfeited his right to have this court consider his claim on appeal that the trial court erred in admitting certain evidence on the issue of great bodily harm.

Affirmed. Yetka, J.

49877/446 Derrill Liffbrig, petitioner, Appellant, vs. Independent School District No. 442, Oslo, Minnesota. Marshall County.

The school board's findings that a principal engaged in intentional fraudulent misrepresentations are reversed where not supported by substantial evidence in the whole record.

Reversed and remanded. Wahl, J.

49358/102 State of Minnesota vs. John T. Keim, Appellant. Mower County.

The defendant's conviction for felonious theft of property from the former wife is reversed because evidence of his guilt was insufficient as a matter of law.

Reversed. Per Curiam.

STATE CONTRACTS

Pursuant to the provisions of Minn. Stat. § 16.098, subd. 3, an agency must make reasonable effort to publicize the availability of any consultant 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.

Department of Administration Information Services Bureau

Notice of Availability of Contract for Backup Programming Services

The Information Services Bureau of the Department of Administration of the State of Minnesota is requesting a proposal

from qualified firms to provide back-up programming services to be used by the Bureau on an as-needed basis. This may involve programming in COBOL, BAL, BASIC, or FORTRAN IV programming languages, with emphasis on COBOL and BAL. This may also involve coding for the report generators ASI-ST and DYLAKORE. These services may also include designing and coding the linkages to the TOTAL data base manager, and designing and coding for the interface to the on-line monitor CICS. This work may be on projects for any of forty-one state agencies. The total amount expended for this activity will not exceed \$300,000 for a period of three months (April, 1980 through June, 1980).

The full text of the request for proposal is available on request. Inquiries and responses should be directed to:

Norbert A. Bohn
Information Services Bureau
5th Floor Centennial Building
658 Cedar Street
St. Paul, Minnesota 55155
Telephone: (612) 296-8791

Responses must be received by 4:00 p.m., March 25, 1980.

Department of Economic Security

Notice of Request for Proposal for MOICC Occupational Information Network Design

1. Agency Name and Address: Minnesota Department of Economic Security, Minnesota Occupational Information Coordinating Committee, Room 690 American Center Bldg., St. Paul, MN., 55101.

2. Contact Person: John B. Cosgrove, MOICC Coordinator (612) 296-2072.

3. Brief Description: The Occupational Information Network Design project will identify, describe and document occupational data sources from several state agencies and other organizations which may be organized so as to provide career guidance and program planning to curricula planners, career guidance and placement personnel. The project will require the contractor to work with occupational and management information program staff from several agencies and organizations which both produce and use occupational information. Network design will include the documentation of information source factors such as occupational and educational classification codes, data accessibility and medium, confidentiality requirements, etc.

4. Total estimated cost: \$13,000

5. Responses accepted up to 4:30 p.m., Monday, April 7, 1980.

Housing Finance Agency

Notice of Request for Proposals for Technical and Professional Services Related to Energy Budgets

The Minnesota Housing Finance Agency (MHFA) is developing a Home Mortgage Energy Program (HMEP). The purpose of this program is to demonstrate the affordability and marketability of energy efficient housing within a moderate construction budget.

MHFA hereby requests proposals from HVAC engineers to

provide MHFA with technical and professional assistance in (1) developing a method of calculation to estimate an energy budget including forms and charts and assisting in setting guidelines for what the budget should be (to be completed by April 18, 1980); and (2) evaluating and analyzing submitted plans for eligibility based on an energy budget.

The deadline for submission of proposals is March 25, 1980. Each proposal shall be in writing and is to include: (a) cost per hour and estimated number of hours to complete (1) above; (b) experience in energy related fields; and (c) availability to work on project.

For further information contact Mr. Al Hans (296-9813) or Ms. May Hutchinson (296-8840). Applications should be mailed to:

Minnesota Housing Finance Agency
333 Sibley Street
St. Paul, MN 55101
Attention: Ms. May Hutchinson

Department of Public Safety Office of Traffic Safety

Notice of Availability of Contract to Conduct A Study of Pedestrian/Vehicle Accidents

The Department of Public Safety is seeking a qualified consultant to conduct an in-depth study of pedestrian/vehicle accidents in selected Minnesota cities.

The work program would also include:

(1) Development of countermeasure plans for each community studied.

(2) Providing technical assistance to improve pedestrian conditions to designated communities.

Details of the work program are contained in a Request for Proposal. Copies of the Request for Proposal may be obtained at the Department of Public Safety, Office of Traffic Safety, 207 Transportation Building, St. Paul, MN 55155.

Estimated cost of the project is up to \$30,000.

Final submission date for proposals is April 14, 1980.

**Department of Public
Welfare
Systems and Data Flow
Division**

**Notice of Request for Proposals
for Technical Systems and
Programming Support for A
System Using Assembly
Language**

Notice is hereby given that the Systems and Data Flow Division, Department of Public Welfare is seeking proposals for competent technical staff for continuing systems and programming support. This staff will support the operation of an advanced OCR system (Recognition Equipment Incorporated, Model C-1) and key disk data entry system (Entrex/Nixdorff). Technical support sought in the RFP will be utilized for consultation and complex programming that may be required on this equipment. The initial agreement shall be for a period expiring June 30, 1981. The estimated amount of the contract in each of these will not exceed \$17,000. Responses must be received by April 8, 1980.

Direct inquiries to:

G. Warren Peterson
Department of Public Welfare
Systems and Data Flow Division
P.O. Box 43170
690 North Robert Street
Saint Paul, Minnesota 55101

**State Planning Agency
Administrative Services
Division**

**Notice of Request for Proposals
for Auditing Services**

The Minnesota State Planning Agency invites qualified independent public accountants to submit proposals for the performance of an audit of its financial accounts and records covering grants from the U.S. Department of Housing and Urban Development, for five (5) fiscal years, during the period of July 1, 1974 through June 30, 1979.

The purpose of the audit is to render an auditor's opinion regarding the fairness of applicable financial statements and the compliance of the State Planning Agency with applicable federal regulations, in accordance with generally accepted auditing standards.

A. General information:

The State Planning Agency is an agency of the State of Minnesota.

The agency's accounting system is a part of the State of Minnesota's computerized accounting system. The agency has on-line terminal entry to the system. Financial data and supporting documents are retained by the agency. The agency adheres to the accounting requirements of the State of Minnesota, Department of Finance.

U.S. Department of Housing and Urban Development (HUD) Planning assistance grants covered by the audit examination total \$4,281,486.00. Included in these grants are sub-grants to ten (10) Regional Development Commissions located throughout the State of Minnesota.

B. Performance specifications:

1. The audit shall be conducted to satisfy the requirements of the U.S. Department of Housing and Urban Development as set forth by that department in the "Audit Guide for the Comprehensive Planning Assistance Program" (Section 701 of the Housing Act of 1954 as amended).

2. The audit shall be a financial and compliance review of HUD grants for fiscal years 1975, 1976, 1977, 1978 and 1979, covering the period July 1, 1974 through June 30, 1979. Reports are to be rendered for each fiscal year separately.

3. The firm shall adhere to generally accepted auditing standards.

4. The firm shall submit a final draft of its reports no later than June 30, 1980.

5. The firm shall express an opinion on the financial statements and an opinion on compliance with applicable federal regulations.

6. The firm shall submit a draft written report on internal control weaknesses, if any, no later than June 1, 1980.

7. The firm shall provide the agency with three (3) copies of the reports and the Regional Inspector General for Audits with two (2) copies of the audit reports, any management letter, or disclosure or report on internal control weaknesses.

8. The firm shall make available its working papers to HUD, the General Accounting Office, the Regional Inspector General for audits, the Legislative Auditor of the State of Minnesota or the State Planning Agency, upon request and in accordance with federal and state grant provisions.

C. Instructions regarding proposals:

Two copies of proposal should be submitted and will be accepted by the person listed below until 4:30 PM on April 4, 1980.

1. Qualifications of the firm:

a. A description of your firm and its relevant prior experience.

b. References from other state agencies or departments or units of local governments.

c. A description of partner and manager assigned to this engagement, including their resumes.

2. Technical approach:

a. Agreement to meet or exceed performance standards stated in Section B.

b. Tentative schedule for performing key phases of the audit.

c. A brief description of the audit procedures to be followed.

3. Fees:

a. Maximum fees your firm will charge for the audit and hourly rates for each level of staff.

D. Evaluation procedures:

The management staff of the State Planning Agency shall evaluate the proposals on the basis of qualifications, relevant experience, and responsiveness of the bidders, as well as estimated cost of the engagement. The staff expects to conduct oral

interviews with some or all proposers and will recommend a selected candidate to the agency director by April 14, 1980.

E. Contracts, billings and payment:

The State Planning Agency expects to sign a contract with the selected firm. Progress payments will be billed monthly for services rendered in the prior month. Final payment will be due upon receipt of the final reports.

F. Further information:

Inquiries and proposals shall be directed to:

Leo M. Steiner, Administrative Director
State Planning Agency
550 Cedar Street
St. Paul, Minnesota 55101
(612) 296-6977

All proposals must be received by 4:30 p.m., April 4, 1980.

OFFICIAL NOTICES

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6, 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.

Minnesota Teachers Retirement Association

Meeting Notice

The Board of Trustees, Minnesota Teachers Retirement Association will hold a meeting on Thursday, March 20, 1980, at 9 a.m. in the office of the association, 302 Capitol Square Building, 550 Cedar Street, St. Paul, Minnesota, to consider matters which may properly come before the board.

Secretary of State

Notice of Vacancy in Multi-Member State Agency

Notice is hereby given to the public that a vacancy has occurred in a multi-member state agency, 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; (612) 296-2805. Application deadline is April 1, 1980.

Crime Control Planning Board has one position open immediately for a term expiring in January, 1981. The board provides comprehensive planning for improvement of crime control. Members are appointed by the governor and confirmed by the senate. Meetings are held monthly. For further information, contact the Crime Control Planning Board, 444 Lafayette Road, St. Paul 55101; (612) 296-3133.

Department of Transportation

Petition of Chicago and North Western Transportation Co. for Authority to Retire and Remove Track No. 9 and Track No. 15, at St. Paul, Minnesota.

Notice of Application and of Opportunity for Hearing

Notice is hereby given that The Chicago and North Western

OFFICIAL NOTICES

Transportation Company (with Attorneys at 4200 IDS Center, 80 South 8th Street, Minneapolis, Minnesota) has filed a petition with the Commissioner of Transportation pursuant to Minn. Stat. §§ 219.741, and 218.041, subd. 3 (10) to retire and remove Track No. 9, 550 feet long including Turnout, and Track No. 15, 550 feet long including Turnout, located at St. Paul, Minnesota.

Any person may file a written objection to the proposed action by means of a letter addressed to the Commissioner of Transportation, Transportation Building, Saint Paul, Minnesota 55155, not later than the date specified below. An objection must be received on or before April 7, 1980. The objection should state specifically how the objector's interest will be adversely affected by the proposed action.

The petition recites among other matters that:

"The subject track is no longer needed for rail transportation service, constitutes a continuing and burdensome maintenance expense, and is an unnecessary safety hazard. The track is not used at the present time, and there is no present prospect that the track will be needed in the future. The only shipper, patron or member of the public who might have any interest in the retention of the tracks or facilities, or who has used the same to any substantial degree within the past several years, is West Publishing Company . . . (50 W. Kellogg Boulevard, P.O. Box 3526, St. Paul, Minnesota 55102)."

Upon receipt of a written objection, the commissioner will, with respect to the named petitioner, set the matter down for

hearing. If no objections are received, the commissioner may grant the relief sought by the petitioner.

If this matter is set for hearing, any person who desires to become a party to this matter must submit a timely Petition to Intervene to the hearing examiner pursuant to 9 MCAR § 2.210, showing how the person's legal rights, duties and privileges may be determined or affected by the decision in this case. The petition must also set forth the grounds and purposes for which intervention is sought. All parties have the right to be represented by legal counsel or any other representative of their choice. In the event the objecting party does not do so, or otherwise does not participate in the hearing, the statements contained in the application filed may be taken as true.

March 10, 1980

Richard P. Braun
Commissioner

Errata

At *State Register*, Vol. 4, Number 34, p. 1321, February 25, 1980 (Department of Health, Proposed Amendments to Rules for Construction, Equipment, Maintenance, Operation and Licensing of Nursing Homes and Boarding Care Homes), please make the following correction:

7 MCAR § 1.048 A.8.c.(5): Change "in excess of \$10,000" to read "in excess of \$100.00."

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OFFICE OF THE STATE REGISTER

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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:

Briefly/Preview—Senate news and committee calendar; published weekly during legislative sessions. Contact Senate Public Information Office, Room B29 State Capitol, St. Paul MN 55155, (612) 296-0504.

This week—weekly interim bulletin of the House. Contact House Information Office, Room 8 State Capitol, St. Paul, MN 55155, (612) 296-2146.

Weekly Wrap-Up—House committees, committee assignments of individual representatives, news on committee meetings and action, House action and bill introductions. Contact House Information Office.

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